



Analysis of Bulk Tax Lien Sale City of Rochester

Submitted by

Center for Community Progress

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FINAL REPORT

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Preface

In response to the Request for Proposals (“RFP”) for consultant services for the analysis of the tax lien sale process issued by the City of Rochester (hereinafter the “City”) on August 6, 2012, the *Center for Community Progress* (“*Community Progress*”) assembled a team of qualified researchers, academics, policymakers and practitioners with specific experience and expertise to address each of the requisite services. On November 20, 2012, *Community Progress* entered into an agreement with the City to commence work on the analysis.

Community Progress served as the prime contractor and author of this final report and is therefore solely responsible for its content. The sub-consultants on the team who contributed their expertise include: Eric Hangen of I Squared Community Development Services; Jack Northrup of New England Market Research, Inc.; Roger Blain, Dan Kusic and Tom Malnati of TaxServ Capital Services VA, LLC; Alma Balanon-Rosen and Phillip Bush of Enterprise Community Partners; and Frank Alexander, Paul Brophy, Kim Graziani and Sara Toering of *Community Progress*. For the past 90 days, this team was deployed based on their unique skill sets in quantitative and qualitative analysis, tax lien sales, tax foreclosure processes, neighborhood stabilization and community development best practices.

Our charge was to evaluate the City’s current bulk tax lien sale process and *in rem* tax foreclosure process in order to provide guidance on future policy related to enforcement of delinquent property taxes. We understand the City’s goals in this tax enforcement context are to:

- Maximize tax revenue in order to fund critical services for residents;
- Meet the needs of local neighborhoods impacted by tax foreclosures and blight; and
- Protect the quality of life for City residents and treat them in an equitable manner.

In response to these goals, our analysis evaluates the fiscal and community impacts of the current approach to enforcement of delinquent tax liens and identifies and recommends alternative strategies for delinquent tax enforcement used by other municipalities.

Community Progress is pleased to present this final report which begins with an executive summary of our key findings and recommendations. Chapter 1 focuses on the fiscal impacts of the City’s bulk tax lien sale. Chapter 2 details the community impacts of the City’s current enforcement strategy including the bulk liens sale and *in rem* foreclosure proceedings on certain properties. Chapter 3 compares the delinquent tax enforcement strategies of other New York municipalities. Chapter 4 explores the impacts of discontinuing the bulk tax lien sale. We have also included various appendices and reference documents to provide additional context to our analyses.

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Executive Summary

In February of 2009 the City of Rochester began selling delinquent tax liens to American Tax Funding, LLC (“ATFS”) pursuant to a bulk lien sales agreement that remains in effect today. The City also retains a small portion of the delinquent tax lien digest for an annual City foreclosure process for the purposes of demolition, blight removal, neighborhood stabilization and economic development. Over the past four years of bulk lien tax sales, some indicators have been tracked, such as collection rates and staffing costs, although factors related to more detailed fiscal impacts and community development impacts have not been evaluated. *Community Progress* has been asked to evaluate the fiscal and community impacts of the bulk lien tax sale and *in rem* foreclosure processes in place in Rochester, and to provide a comparison of the Rochester processes with other delinquent tax enforcement procedures utilized across New York State. Upon completion of our research and analysis, our primary findings and recommendations are as follows:

Fiscal Impacts:

Overall, we have found the bulk tax lien sale strategy may not be the most cost-efficient delinquent tax enforcement strategy available to the City. Alternative strategies including tax lien servicing contracts and the optimization of lien to value should be further explored.

- **Fiscal Impact 1:** The bulk sale of tax liens generated a short term increase in the City’s cash flow of approximately \$1.5 million, and allowed the City to reduce some staffing costs between 2009 and 2012.
- **Fiscal Impact 2:** The bulk sale of tax liens potentially under-compensates the City for the liens that are redeemed. ATFS appears to have enjoyed strong returns on the first two cohorts of delinquent tax liens it has purchased, although it has not yet fully recovered its investment on the second two lien sales. While the pricing from ATFS reflects the best pricing the City could achieve in a competitive, market-based bidding process, these strong returns suggest that the City may be able to achieve better financial outcomes by holding on to delinquent tax liens or by being more selective about which liens to sell.
- **Fiscal Impact 3:** Pursuant to currently applicable local law, ATFS utilizes delinquent taxpayer payment plans that apply first to the oldest liens on a parcel resulting in a significant return. Repayment plans in the hands of a third party purchaser maximize rates of return for the investor. Repayment plans, when administered by the City, can reflect a balancing of maximizing rates of return as well as other public policy considerations.

Community Development Impacts:

Overall, we have found the most effective intervention in reducing negative community development impacts is forcing a change in ownership. Other interventions, such as issuing a Notice of Intent to Foreclose or selling the tax liens, have essentially no rehabilitative effect on tax delinquent properties.

- **Community Impact 1:** Community and City stakeholders report that Rochester’s bulk sale of tax liens presents several perceived challenges for community members including

1) the creation of “Limbo Properties” (as hereinafter defined) that deteriorate while remaining inaccessible to the private market, 2) difficulties accessing information on key parcels bearing liens held by ATFS, 3) a decrease in real property inventory available to local developers and investors, and 4) a perception that the bulk lien sale strategy prioritizes dollars over neighborhood stabilization.

- **Community Impact 2:** Properties that are tax delinquent have a higher rate of vacancy, are more likely to have outstanding code violations, and are more likely to generate police calls than all properties within the City of Rochester.
- **Community Impact 3:** The aggregate number of tax delinquent properties increased after the City began selling its tax liens in bulk to ATFS.
- **Community Impact 4:** The percentage of tax delinquent properties that are vacant is more than double the percentage of vacancy among all properties in the City.
- **Community Impact 5:** Twenty-seven percent of tax delinquent properties have code violations, compared to 11 percent of non-tax delinquent properties (or more than double the incidence).
- **Community Impact 6:** Tax delinquent properties are also somewhat more likely to generate calls for service to the police department for nuisance issues, as well as calls for service to the fire department. An increase in the number of tax-delinquent properties on a block is associated with an increase in the number of fire and police calls for service to that block, after controlling for other variables such as the poverty rate in the surrounding neighborhood.
- **Community Impact 7:** The bulk tax lien sale does not directly cause an increase in measurable incidents of destabilization relative to properties for which the tax liens are not sold.
- **Community Impact 8:** The bulk sale of tax liens creates a category of properties (“Limbo Properties”) which remain tax delinquent, increase destabilization, and are beyond control of the City.
- **Community Impact 9:** Change in ownership of tax delinquent property correlates with reductions in code violations, vacancy, investor ownership, and subsequent tax delinquency. Other interventions, such as issuing a Notice of Intent to Foreclose or selling the tax liens, have essentially no rehabilitative effect on tax delinquent properties.
- **Community Impact 10:** Tax delinquent properties negatively impact sale prices of nearby homes, after controlling for the characteristics of those homes and the neighborhoods in which they are located.

- **Community Impact 11:** The presence of tax delinquent properties correlates with an increase in police and fire calls in the surrounding area.

Additional Observations:

- Rochester is the only municipality in the State of New York that presently engages in bulk tax lien sales to a private investor.
- Other New York municipalities that previously engaged in bulk tax lien sales to a private investor found the policy counterproductive for the local government or have otherwise ceased such practices.

As an alternative to the bulk tax lien policy, we recommend the following:

- Evaluate the possibility of a contract with a private third party for servicing of the delinquent tax lien digest.
- Consider the possibility of issuing Requests for Proposals for delinquent tax lien servicing, either to handle servicing of liens excluded from bulk tax lien sales or as a complete alternative to bulk tax lien sales.

If the City decides to continue the bulk tax lien sale policy, we recommend the following:

- A valuation of liens (according to property characteristics and redemption probabilities) would likely yield a high net payment and cash flow to Rochester.
- Properties bearing tax liens with low probability of redemption should be excluded from the contract for sale.
- The contract should require the tax lien purchaser to purchase all subsequent tax liens on the same properties, or immediately return the prior tax lien (that was purchased) to the City at the applicable purchase price for that prior lien.
- The contract should require the tax lien purchaser to either proceed with judicial enforcement proceedings within 24 months of transfer of the tax lien or return the lien to the City at the applicable purchase price for that lien.
- All properties excluded from a bulk tax lien, or for which liens are returned to the City, should be aggressively pursued with *in rem* foreclosure (and land bank acquisition if authorized).

A note on land banking:

- Regardless of the delinquent tax enforcement method utilized in the future, the City should consider the advantages of land bank acquisition of properties not redeemed prior to a foreclosure sale. A land bank could be an option for an entity that is solely focused on acquiring Limbo Properties and those properties considered a liability.

Introduction

This report contains a description and analysis of the bulk tax lien sale process employed by the City of Rochester between 2009 and 2012. The qualitative and quantitative research described in the *Community Progress* Proposal dated September 24, 2012 that was provided in response to the Rochester Request for Proposals dated August 6, 2012 (hereinafter “RFP”), form the basis of the observations contained herein. In order to present our findings and recommendations with maximum efficiency and coherency, our integrated response to the various issues raised in the RFP is presented in a slightly different order than presented in the RFP.

Chapter 1 of this report addresses the fiscal impacts of the bulk sale of tax liens by the City to ATFS beginning in 2009, including the impact of that sale on the City’s cash flow and the performance of ATFS liens. Chapter 1 is specifically responsive to sections 1.8 and 2.0 of the RFP.

Chapter 2 describes the community impacts of the City’s bulk lien sale including a qualitative and quantitative analysis of the results of the sale. Interviews with various community stakeholders are the source of the qualitative analysis, and data obtained from various City departments and ATFS provide the foundation for the quantitative analysis. An examination of trends in tax delinquency and in the neighborhood impacts of tax delinquent parcels is provided, in addition to an analysis of the effectiveness of various legal interventions into the life cycle of a tax delinquent property. Chapter 2 is specifically responsive to sections 1.1-1.8, and 2.0 of the RFP.

Chapter 3 summarizes the delinquent tax enforcement legal structure in the City of Rochester and describes the various legal structures utilized for delinquent tax collection throughout the State of New York. In addition, Chapter 3 provides in depth discussion of the delinquent tax enforcement systems in six key New York municipalities and in the city of Waterbury, Connecticut. Particular attention is paid to the use or discontinued use of bulk tax lien sales in each municipality, and the successful use of a tax lien servicing contract in Waterbury. Chapter 3 is specifically responsive to sections 4.1 and 4.2 of the RFP.

Chapter 4 provides an analysis of potential alternatives to the City’s current bulk tax lien sale strategy, including contracted lien servicing and the utilization of a lien valuation model in negotiations for any future bulk tax lien sale contract. Chapter 4 is specifically responsive to section 3.0 of the RFP.

Appendices to this report are contained in a separate volume. A list of reference documents is provided in the Table of Contents and any and all such reference documents may be provided upon request.

Chapter 1: Fiscal Impacts of the City's Bulk Tax Lien Sale

We have been asked to examine the fiscal impact of the bulk tax lien sales on the City of Rochester. Our analysis, presented through the fiscal impacts described below, is based on data compiled and provided by the City Treasurer's Office and by ATFS.

A. Impact of Bulk Lien Sale on City Cash Flow

Fiscal Impact 1: *The City of Rochester's realization rate on delinquent taxes increased from an average of 42% (2005-2008) to an average 44.8% (2009-2012) after switching from foreclosure sales to bulk tax lien sales as a primary method of enforcing delinquent taxes. This 2.8% increase represents approximately \$1.5M in increased revenue to the City.*

Table 1:1 below presents data for 2005-2012 on the collection of delinquent taxes from all sources of proceeds to the City – including redemption of delinquent taxes by property owners, City foreclosure sales, and City sale of tax liens to ATFS. The figures include both principal and interest the City received on delinquent taxes.

T1:1 2005-2012 Rochester Delinquent Tax Collections

Fiscal Year	Principal strategy for managing delinquencies	Beginning delinquent balance	Redemption of delinquent taxes received prior to bulk foreclosure sale or bulk lien sale	Total collections of delinquent taxes from all sources	Collection rate on delinquent taxes (interest and principal)
2005	Foreclosure	\$22,968,443	\$5,216,195	\$13,651,664	59.4%
2006	Foreclosure	\$23,003,806	\$5,213,748	\$13,108,284	57.0%
2007	Foreclosure	\$24,102,157	\$7,647,464	\$13,947,859	57.9%
2008	Foreclosure	\$25,881,808	\$8,042,533	\$13,678,502	52.8%
2009	Lien Sale	\$28,448,291	\$10,769,356	\$16,883,357	59.3%
2010	Lien Sale	\$20,889,811	\$4,322,611	\$10,492,037	50.2%
2011	Lien Sale	\$21,084,138	\$5,791,060	\$12,006,826	56.9%
2012	Lien Sale	\$17,188,964	\$6,806,655	\$11,805,109	68.7%
All Foreclosure Years:		\$95,956,214	\$26,119,940	\$54,386,309	56.7%
All Tax Lien Sale Years:		\$87,611,204	\$27,689,682	\$51,187,329	58.4%

In examining the collection of delinquent principal tax liens only, over the four years (2005-2008) when the City relied on the bulk foreclosure process as its principal delinquent tax collection strategy, it collected 42 percent of delinquent taxes. In the subsequent four years (2009-2012) pursuant to the ATFS bulk tax lien contract, the City obtained from ATFS an amount equal to 44.8 percent of delinquent principal taxes.

To try to put this performance improvement into dollar terms, the question was asked, “What would the City have collected on delinquent taxes in 2009-2012 had it stayed with the bulk foreclosure strategy and achieved a similar collections rate to 2005-2009?” *Total collections would have been \$49.7 million or approximately \$1.5 million less than was achieved through the bulk lien sale strategy.* Note that this analysis assumes the lien pools were of similar quality in each year.

T1:2: Compensation for 2009-2012¹

City collections in 2009-2012 if it had stayed with foreclosure process:	\$49,656,503
Actual collections	\$51,187,329
Difference	\$1,530,826

In addition, the City has saved on operating costs associated with servicing past-due liens and conducting the bulk foreclosure sale. The City Treasurer’s Office has estimated the incremental annual costs of conducting a bulk foreclosure sale at \$1,084,700.²

Note that current tax collection rates have also increased slightly during the study years.³

¹ Totals include principal tax and interest.

² Analysis provided by the City Treasurer’s office.

³ Data provided by the City Treasurer’s office.

T1:3 Current Collections 2005-2012

Fiscal Year	Principal strategy for managing delinquencies	Percent of tax levy collected on a current basis
2005	Foreclosure	91.54%
2006	Foreclosure	91.42%
2007	Foreclosure	91.79%
2008	Foreclosure	91.91%
2009	Lien Sale	92.42%
2010	Lien Sale	92.43%
2011	Lien Sale	92.10%
2012	Lien Sale	92.19%

B. Performance of ATFS Liens

Fiscal Impact 2: *ATFS appears to have enjoyed strong returns on the first two cohorts of delinquent tax liens it has purchased, although it has not yet fully recovered its investment on the second two lien sales. While the pricing from ATFS reflects the best pricing the City could achieve in a competitive, market-based bidding process, these strong returns suggest that the City may be able to achieve better financial outcomes by holding on to delinquent tax liens or by being more selective about which liens to sell, a possibility we explore in more detail in Chapter 4.*

ATFS acquired a total of 20,948 liens through four separate purchases from the City: the first during the first quarter of 2009; the second during the third quarter of 2009; the third during the fourth quarter of 2010; and the fourth during the first quarter of 2012. The number of liens acquired per purchase, or cohort, decreased with each additional purchase, ranging from a high of 5,618 in Q1 2009 to a low of 4,493 in Q1 2012.⁴

⁴ Note that within our analysis, purchased liens will show a total count of 20,674, as 274 property liens in the ATFS data were not listed with purchase dates.

T1:4 ATFS Lien Purchase Price

Cohort*	# Purchased	Price Paid	Value**	Percent of Valuation
Q1_2009	5,618	\$6,036,829	\$13,976,777	43.2%
Q3_2009	5,391	\$4,981,986	\$11,443,795	43.5%
Q4_2010	5,172	\$5,342,778	\$10,999,275	48.6%
Q1_2012	4,493	\$4,578,407	\$10,336,100	44.3%
	20,674	\$20,940,000	\$46,755,947	44.8%
* 274 property liens listed in ATFS data without date				
** Face Value + Purchased Interest				

For all 20,948 liens, ATFS paid \$20,940,000 with individual cohort purchases ranging from a high of \$6.04 million in Q1 2009 to a low of \$4.58 million in Q1 2012. These cohorts were purchased at significant discounts to their valuations (the sum of their face value and any accrued interest to the time of purchase). The City sold these liens to ATFS, on average for all cohorts, at a rate of approximately 45 cents on the dollar.

T1:5 ATFS Lien Performance

Cohort*	# Purchased			# Repaid through Foreclosure	#Outstanding		# Foreclosed (in-process)**	Avg Days to Redemption'
		#Repaid	%			%		
Q1_2009	5,618	3,062	54.5%	120	2,556	45.5%	380	331
Q3_2009	5,391	2,793	51.8%	60	2,598	48.2%	296	231
Q4_2010	5,172	1,728	33.4%	26	3,444	66.6%	267	94
Q1_2012	4,493	554	12.3%	11	3,939	87.7%	271	11
	20,674	8,137	39.4%	217	12,537	60.6%	1,214	176
* 274 property liens listed in ATFS data without date								
** Assumed in process of foreclosure, given ATFS data flags these properties as in foreclosure and not yet settled								
' Per date data; pulled for those redeemed, excluding those "redeemed" through foreclosure								

Of the 20,674 liens with cohort dates, 8,137 (39 percent), to-date, have been repaid, settled or foreclosed; another 12,537 (61 percent) are still outstanding. The first cohort has the highest redemption rate (for our purposes herein, all liens repaid, settled or foreclosed upon) at 54.5%, falling to 12.3% with the most recent, first quarter 2012 purchase. The further back the cohort goes, the number repaid through foreclosure goes up significantly, likely due to the process and due diligence ATFS must go through in order to initiate and pursue foreclosure on a property.

Property liens in the first cohort remained unpaid or unredeemed (excluding bankruptcy) for far longer than the liens in the second, third and fourth cohorts. This, especially with the latter two cohorts, is likely due simply to lower redemption rates in the time given (as longer-term redeemers have not yet redeemed). However, even when compared to the second cohort, a purchase just two quarters later, the duration is almost fifty percent greater (351 days, on average, for redeemers in Q1 2009 compared to 239 for those in Q3 of the same year). This, quantitatively, is due to a disparity in the number of payers taking 1,000 or more days to complete repayment on their tax liens: 689 individuals in Q1 2009 versus only 112 for Q2 2009). It is unclear whether this difference is due to a better negotiated package of liens, treatment of lien holders, or other factors.

According to ATFS data, slightly more than 1200 properties bearing liens owned by ATFS are in the process of being foreclosed upon, and another 217 were placed in the foreclosure process and then redeemed.⁵

T1:6 ATFS Outstanding Liens and Non-Redeemed Balance

Cohort*	# Purchased	# Outstanding**	Original Value for liens still outstanding	Price Paid (Est) for liens still outstanding***	Outstanding Balance' for liens still outstanding
Q1_2009	5,618	2,556	\$6,988,480	\$3,018,454	\$9,140,837
Q3_2009	5,391	2,598	\$5,130,710	\$2,233,623	\$6,930,932
Q4_2010	5,172	3,444	\$6,957,269	\$3,379,418	\$8,388,955
Q1_2012	4,493	3,939	\$8,866,260	\$3,927,337	\$9,593,428
	20,674	12,537	\$27,942,719	\$12,514,355	\$34,054,152
* 274 property liens listed in ATFS data without date					
** As end of Q3_2012					
*** Est. price paid based upon initial purchase ratio					
' w/ 4.5% quarterly simple interest rate on original remaining principal value					

⁵ Data indicated a Foreclosure flag and a Redemption flag

Of the original 20,674 property liens purchased with lien date information, approximately 12,537 still have balances outstanding with ATFS. These liens, in total, had an original valuation (principal plus accrued interest at time of purchase) of approximately \$27.9 million, on an approximate price paid (based upon previously mentioned cohort ratios) of \$12.5 million. Their current outstanding balances are \$34.05 million, based upon a simple (not compounding) quarterly interest rate (only taken on original property lien principal [or amount]) of 4.5%.⁶

As shown in Table 1:7, despite a higher amount redeemed to date for the first cohort; it still maintains the second highest outstanding balance. This is largely due to the interest on still delinquent property liens accumulating over the past four years. The latest cohort, Q1 2012, has the highest outstanding balance, driven by the highest original valuation. The latest two rounds of liens purchased by ATFS, the third and fourth cohorts, have, as expected, low Internal Rates of Return (“IRRs”) to-date, as ATFS is still waiting for the bulk of these liens to be redeemed.

T1:7 ATFS Internal Rate Return To-Date

Cohort*	Redeemed Amount (to-date)	IRR	
		Quarterly	Annualized
Q1_2009	\$6,734,315	1.7%	7.1%
Q3_2009	\$6,660,878	5.7%	25.0%
Q4_2010	\$3,868,955	-8.5%	-30.0%
Q1_2012	\$1,275,202	-44%	-90.4%
	\$18,539,350		
* 274 property liens listed in ATFS data without date			

Based upon the amount redeemed to date for all property liens (including those fully redeemed, and those still making payments on balances outstanding), ATFS has seen an internal rate of return (IRR) of 7.1% on its first cohort of loans and 25% on its second. ATFS paid the City approximately \$6.04M for the 5618 liens in the first cohort and has realized more than \$6.73M in redemptions including interest on the 3062 liens from the first cohort that have been redeemed or foreclosed. Similarly, ATFS paid the City an estimated \$4.98M for the 5391 liens in the second cohort and has realized more than \$6.66M in redemptions including interest on the 2793 liens from the second cohort that have been redeemed or foreclosed. Thus, for the first two cohorts alone, ATFS has realized more than \$13.39M in redemptions and interest to date.

⁶ ATFS did not provide actual data on its calculations of balances owed; this number represents our estimate of balances owed.

As discussed in further detail in Chapter 4, the substantial payment streams that ATFS has been able to realize suggest that the City might improve its financial outcomes by holding onto delinquent tax liens and contracting for lien servicing instead of selling them.

Fiscal Impact 3: Pursuant to currently applicable local law, ATFS utilizes delinquent taxpayer payment plans that apply first to the oldest liens on a parcel resulting in a significant return. Repayment plans in the hands of a third party purchaser maximize rates of return for the investor. Repayment plans, when administered by the City, can reflect a balancing of maximizing rates of return as well as other public policy considerations.

Payment plans play a crucial financial role as a performing investment that permits a tax lien purchaser to capture the pricing discount from Rochester on the purchase of the portfolio as well as the interest accrual on the liens. The largest portion of ATFS's return is from taxpayer payment plans. Rochester Charter Sec. 6-123 F permits a lien holder to accept partial payments without regard to any restrictions that would apply to Rochester. ATFS reports that the average length of a payment plan is 18 months and that they apply partial payments to interest on the **oldest** lien first. ATFS's repayment term of eighteen (18) months likely results in another year of tax delinquency for each affected parcel. This subsequent delinquent tax lien then becomes available for ATFS to acquire.

Chapter 2: Community Impacts of City's Bulk Tax Lien Sale

This section explores the community development impacts of the City's bulk tax lien sale including investor ownership, vacancy, code violations, fire calls, police calls, property values and socioeconomic indicators. Additional research questions were developed based on interviews with various community stakeholders.

***Community Impact 1:** City stakeholders report that Rochester's bulk sale of tax liens presents several challenges for community members including 1) the creation of Limbo Properties that deteriorate while remaining inaccessible to the private market, 2) difficulties accessing information on key parcels bearing liens held by ATFS, 3) a decrease in property inventory available to local developers and investors, and 4) a perception that the bulk lien sale strategy prioritizes dollars over neighborhood stabilization.*

A. Qualitative Analysis of Bulk Tax Lien Sale

Over the past 90 days, several interviews were conducted in person or on the phone with various City stakeholders including neighborhood and municipal leadership. In addition, a roundtable discussion was conducted with representatives of the local investment community (see Appendix A for complete list of interviewees). The purpose of these interviews was to identify concerns in the community regarding the sale of tax liens to ATFS. Some interviews reported negative perceptions about ATFS or the bulk tax lien sale policy itself, while others were relatively ignorant of the policy or moderately supportive of the policy. However several key refrains regarding the impact of bulk tax lien sales did emerge throughout the interviews including a) frustration with the difficulties presented by "Limbo Properties," b) challenges encountered in attempts to contact ATFS about particular properties, c) concerns that the bulk tax lien sale prioritizes City revenue generation at the expense of neighborhood stabilization and community development, and d) frustration with the lack of access to and decrease in availability of tax delinquent properties for purchase or development.

1. Limbo Properties Resulting from Bulk Lien Sale

Every stakeholder interviewed expressed frustration with the problems presented by Limbo Properties, defined as those properties for which ATFS has purchased a lien but has neither settled the outstanding taxes with the property owners nor foreclosed on the subject property. Neighborhood representatives and developers stated that while they understand that ATFS has no incentive to maintain and upkeep Limbo Properties because ATFS is not the property owner, they believe that ATFS is generally unwilling to move properties out of limbo and to begin foreclosure action. Consequently, Limbo Properties continue to deteriorate and the ultimate cost to rehabilitate such property continues to increase. Properties that may have interested a private investor around the time tax liens on such properties were sold to ATFS deteriorate to a point where they no longer present a feasible investment opportunity for the private market. One investor was told by an ATFS representative that ATFS would not foreclose on property bearing liens owned by ATFS because "the property values in Rochester are too low."

Stakeholders reported that Limbo Properties are perceived to have a negative effect on the neighborhood in which they are located. An investor landlord noted that one of his tenants

commented that “the neighborhood is going downhill,” referring to a vacant tax-delinquent property whose tax lien had been sold to ATFS across the street from his home. The same tenant commented that loitering and drug dealing had increased outside of that particular property. Another interviewee began speaking to ATFS a year ago about a property abutting his that had been vacant for 7 years. ATFS has been unresponsive to calls within the past 3 months about this particular property.

2. Inability to Access Property Information from ATFS

Another frequent criticism of the ATFS process offered by investors, community organizations and even City representatives, was the inability to obtain clear and timely information about properties from ATFS. Many investors interviewed had been in contact with ATFS about specific properties. While some were able to get information about a particular parcel upon her/his first contact with ATFS, requests for follow up information about the same parcels commonly go unanswered. The most common inquiry presented by investors and stakeholders to ATFS was related to ATFS timing to foreclose on properties on which ATFS held a lien or liens. Both community groups and investors reported visiting the ATFS website regularly only to find no properties for Rochester listed. One investor noted that the ATFS website was not updated and that a property listed for sale on the ATFS website following foreclosure by ATFS had in fact been sold.

Dissatisfaction about a lack of local ATFS presence was echoed by many of the community organizations and community leaders. This theme is linked to the inability for those in Rochester to easily obtain information about properties where the lien has been sold to ATFS.

Uncertainty related to when tax delinquent properties would become available for purchase or development was a common theme among investors and neighborhood leaders. Prior to lien sales to ATFS, the City’s foreclosure process was clear. The City had a set time by which a notice of delinquency would be sent to a property owner, followed by a legal proceeding and, if necessary, a foreclosure sale. Neighborhood groups were able to follow the progress of a vacant tax delinquent property and learn from the City when that property would be available for sale at foreclosure. Neighborhood groups were then able to make plans to purchase and move such property toward productive use. Following tax lien sales to ATFS, community groups continued to try to work with the City by providing lists of properties whose liens had been sold which they were interested in purchasing. The City was unable to be of assistance as ATFS held the liens on the properties.

3. Decrease in Available Property Inventory

Developers, both for-profit investors and non-profit community groups, reported a difference in tax delinquent property availability pre- and post-tax lien sales. All the developers interviewed were regular attendees at City auctions before the City entered into its contract with ATFS in 2009. One developer noted that even though the City sold only 50% of properties at auction prior to ATFS tax lien sales, there were more properties available then compared to recent post-ATFS City auctions.

Eight investors were interviewed, each of whom was recommended by the City for an interview and each of whom had an interest in increasing their acquisition of properties per year. These investors reported a preferred scale of property rehabilitations ranging from 3-20

properties per year. The availability of fewer foreclosed properties has slowed down the number of properties available to investors and consequently, the number of properties being rehabilitated and returned to the City tax rolls.

Stakeholders also reported the perception that limited availability of properties following the City's sale of liens to ATFS causes a loss of construction and real estate industry jobs because investors are not able to access as many properties desired. Most investors hire 4-5 persons on each house acquired and rehabilitated.

4. Perception that Bulk Lien Sale Prioritizes Dollars over Neighborhoods

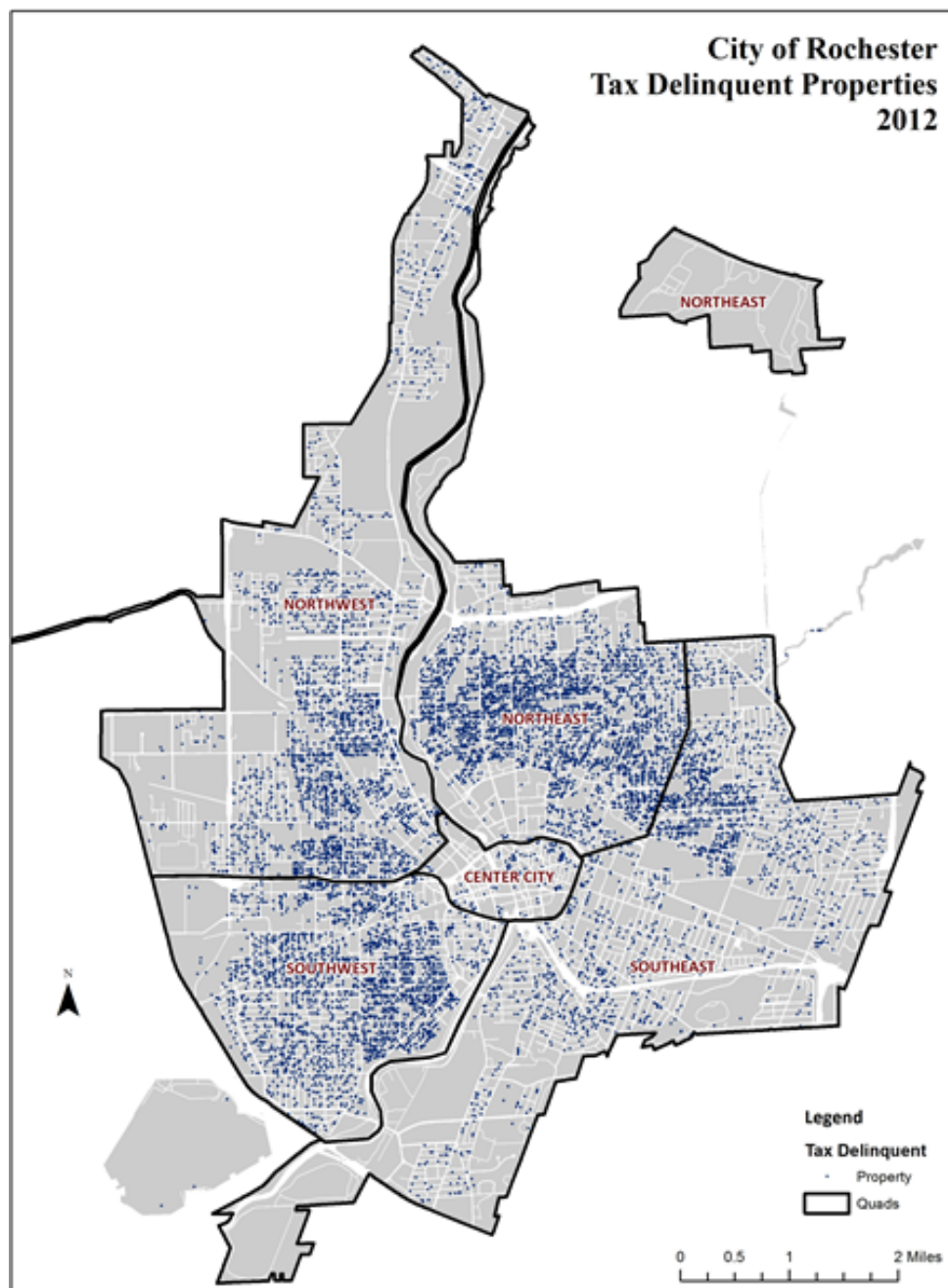
City neighborhood organizations and investors reported concerns that the City is only considering the wisdom of bulk tax lien sales from a financial perspective. These stakeholders reported their perception that the City wants to generate cash quickly at the expense of the City neighborhoods. Some stakeholders interviewed indicated their understanding that the sale of bulk tax liens to ATFS, which liens ATFS then services, enables the City to save on staffing expenses by laying off some staff and not filling other positions related to the disposition of tax-delinquent property. Community organizations also reported their impression that tax lien sales in targeted city areas, such as focused investment strategy areas, appeared to be slower than in non-targeted areas, an indication that the City was paying attention to the target areas.

B. Quantitative Analysis

1. Information & Data Collection

In this section of the report, we look at the characteristics of tax delinquent City properties and the neighborhoods in which they are located. Tax delinquent properties are located throughout the City, but heavy concentrations are located in areas north and west of the center City. These areas also tend to have high percentages of properties that are vacant, in violation of housing and building codes and generate high volumes of police calls.⁷

We make comparisons to tax compliant properties and examine various subgroups of tax delinquent properties, for example tax delinquent properties on which ATFS purchased a lien, tax delinquent properties that were auctioned by the City,⁸ and other key groupings. There are a total of 65,955 properties examined with 32 quarters of information on each property. A new variable was created called “property quarter” which combines the property’s section, block lot (“SBL”) and quarter number. A total of 2,110,560 observations are included in the full dataset anticipated by this report, with each observation corresponding to a unique property in a particular quarter.



⁷ See Appendix B for additional maps showing tax delinquent properties and vacant structures, code violations, police calls, unemployment and poverty rates.

⁸ To compile this profile, data was gathered from the City of Rochester, including data from the assessor’s office, the codes department, the police department and the fire department. Information was also gathered from ATFS and the 2010 decennial census and the American Community Survey using the 2006-2010 5 year estimates. The information was collected over time and, when data was available on a quarterly basis, by quarter beginning in Q1 2005 through Q4 2012 for each property in the City of Rochester.

Data that was only made available annually (such as Assessor's data and City tax delinquency data) was extrapolated into quarterly data to facilitate analysis.

2. Tax Delinquent v. Tax Compliant Properties in 2012

Community Impact 2: *Properties that are tax delinquent have a higher rate of vacancy, are more likely to have outstanding code violations, and are more likely to generate police calls than all properties within the City of Rochester. They are also more likely to be located in distressed neighborhoods with higher rates of poverty and unemployment.*

Table 2:1 below outlines the stark differences between the profiles of tax delinquent City properties compared to tax compliant City properties in 2012. The group "tax delinquent properties in 2012" is defined as all the property quarters that were tax delinquent (whether the taxes were owed to ATFS or the City of Rochester) in any specific quarter in 2012. This analysis is based on 21,954 property quarters. The group "tax compliant properties in 2012" represents all property quarters that were tax compliant in that quarter in 2012. A total of 241,866 property quarters were used to build the profile.

T2:1 2012 Tax Delinquent v. Tax Compliant Properties

Comparison of Tax Delinquent and Tax Compliant Properties in 2012		
	Tax Delinquent 2012	Tax Compliant 2012
Percent Investor Owned	65%	48%
Percent Vacant	12%	3%
Percent With Outstanding Code Violation	27%	11%
Percent With Fire Calls	7%	5%
Percent With Violent Police Calls	2%	2%
Percent With Vice Police Calls	1%	1%
Percent With Property Police Calls	2%	2%
Percent With Nuisance Police Calls	9%	7%
Percent With Domestic Police Calls	5%	5%
Percent With Other Police Calls	9%	9%
Median Assessed Value Of Property	\$36,000	\$60,000
Median Assessed Value Of Single Family Homes	\$35,000	\$60,600
Median Assessed Value Of Two Family Homes	\$37,400	\$57,000
Median Assessed Value Of Commercial Properties	\$75,000	\$118,800
Median Percent Minority In Census Tract	73%	63%
Median Poverty Rate In Census Tract	40%	28%
Median Household Income In Census Tract	\$25,798	\$30,694
Median Unemployment Rate In Census Tract	15.9%	10%
Median Housing Vacancy Rate In Census Tract	14%	9%
Median Homeownership Rate In Census Tract	41%	32%

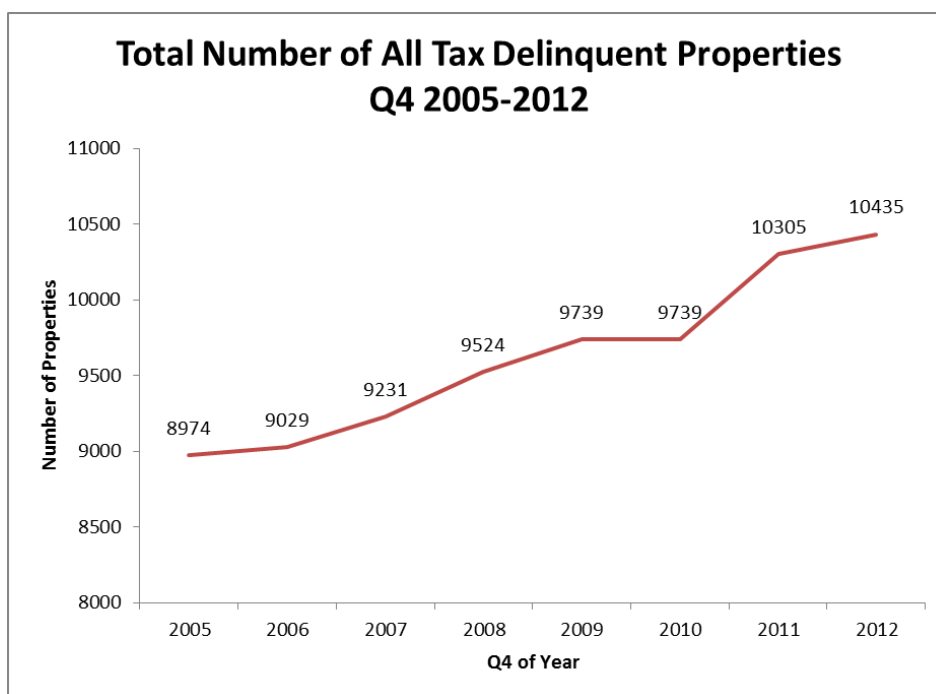
Tax delinquent properties show more symptoms of distress than their tax compliant counterparts – they have much lower assessed values, are much more likely to be vacant or to have outstanding code violations, and are slightly more likely to generate calls for service to the fire department and for nuisance-related issues⁹ to the police department. Tax-delinquent properties tend to be located in more distressed neighborhoods than their tax compliant counterparts, with higher poverty, unemployment, and housing vacancy rates. Tax-delinquent properties also tend to be located in Census Tracts with somewhat higher homeownership rates.

3. Tax Delinquent Property Trends 2005-2012

Community Impact 3: *The aggregate number of tax delinquent properties increased after the City began selling its tax liens in bulk to ATFS.*

As demonstrated by Tables 2:2 and 2:3 the number of tax delinquent properties in the City grew each year between 2005 and 2009. Between 2009 and 2010 the number of tax delinquent properties remained the same and then increased sharply by 7% between 2010 and 2012.

T2:2 Total Number Tax Delinquent Properties Q42005-2012



The aggregate number of properties with delinquent property taxes in Rochester has increased rather than decreased since the commencement of bulk tax lien sales.

⁹ Specifically, we define nuisance police calls as calls relating to vandalism, criminal mischief, loitering, loud noise, barking dogs, suspicious people, and similar calls. Police Department codes used to track these sorts of calls include ANMLA, ANMLB, ANOYA, ANOYB, CRMSA, CRMSB, FIREA, FIREB, NBTRA, NBTRB, PARKB, STRUCT, SUSPA, and SUSPB.

T2:3 Total Tax Delinquent Parcels 2002-2012

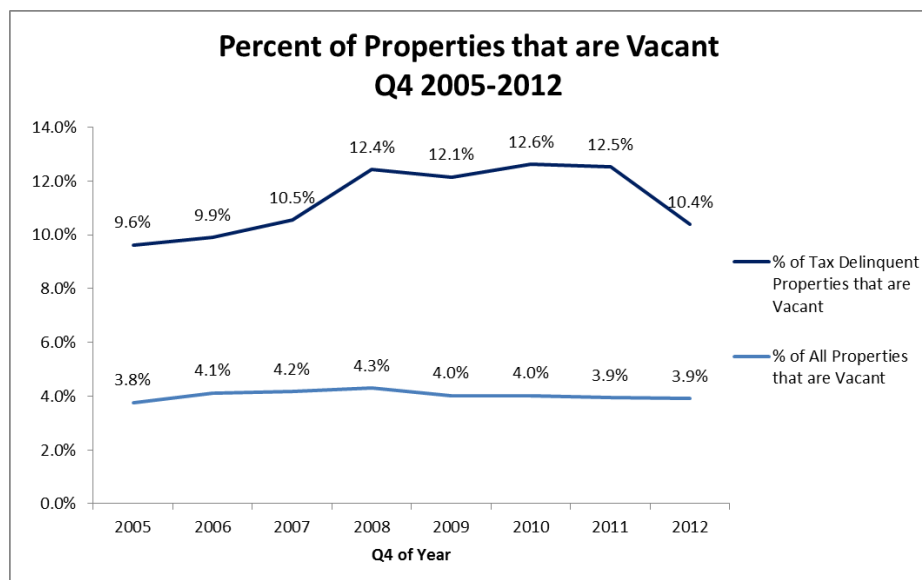
Year	Current Tax Collection Rate (%)	Total Tax Delinquent Parcels	Delinquent Tax Parcels vs. All 65,955 Parcels (%)	Total Taxable Parcels	Delinquent Tax Parcels vs. Taxable Parcels (%)
2002	90.93	9,321	14.13		
2003	91.18	10,384	15.74		
2004	91.53	9,335	14.12		
2005	91.54	8,974	13.61		
2006	91.42	9,029	13.69		
2007	91.79	9,231	14.00		
2008	91.91	9,524	14.44		
2009	92.42	9,739	14.77	62,858	15.49%
2010	92.43	9,739	14.77	62,976	15.46%
2011	92.10	10,205	15.62	62,943	16.21%
2012	92.19	10,435	15.82	62,879	16.60%

The experience of a slight bump in the current collection rate is typical for a tax district after its first bulk sale. Owners of tax delinquent properties view a proposed sale to a private company similarly to a notice of tax enforcement by the district. Without a bulk sale those taxpayers responsible for this slight bump would likely have paid over time and Rochester would have earned delinquent interest. The erosion of the initial benefit of bulk tax lien sales is more evident in the numbers and percentage of delinquent tax parcels. With the exception of the outlier year 2003, the number of tax delinquent parcels was steady, averaging in the low 9,000s from 2002 through 2008. While the first bulk sales in 2009 coincided with an increase to 9,739 delinquent tax parcels, that number held stable over a two year period. This mirrored the increase in the current collections rate that held stable for the same two year period. But in 2011 there was a dramatic increase in the number and percentage of delinquent parcels continuing into 2012 together with a decrease in the current collections rate.

Community Impact 4: *The percentage of tax delinquent properties that are vacant is more than double the percentage of vacancy among all properties in the City.*

Table 2:4 below illustrates the fact that tax delinquent properties have a much higher rate of vacancy compared to the City-wide vacant property rate. A vacant property is defined as a building that was cited by the City Code Enforcement Department as vacant or abandoned. The rate of vacancy among tax delinquent properties grew between 2005 and 2008, fell slightly in 2009, and then grew to the highest level in 2010 at 12.6%. Since then the vacancy rate among tax delinquent properties declined to 10.4% in 2012. In contrast, the vacancy rate for all properties in the City has remained relatively stable around 4% since 2005.

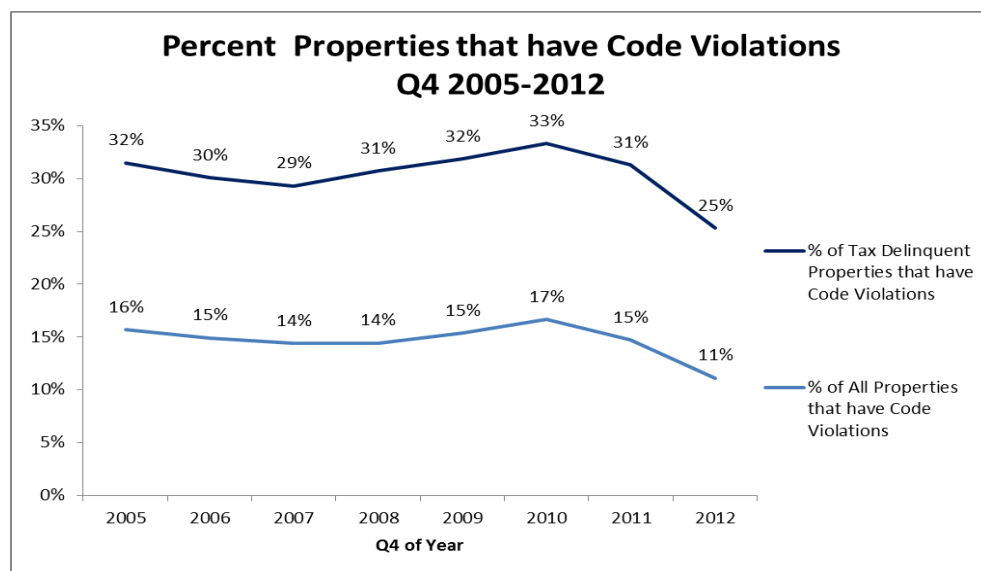
T2:4 Percent Vacant Properties Q4 2005-2012



Community Impact 5: *Twenty-seven percent of tax delinquent properties have code violations, compared to 11 percent of non-tax delinquent properties (or more than double the incidence).*

Table 2:5 illustrates that the percentage of tax delinquent properties with outstanding code violations dropped from 32% to 29% between 2005 and 2007, rose to 33% in 2010, and then dropped off sharply in 2012 to an eight year low of 25%. This same pattern is observed in the percentage of all properties with outstanding code violations between 2005 and 2012.

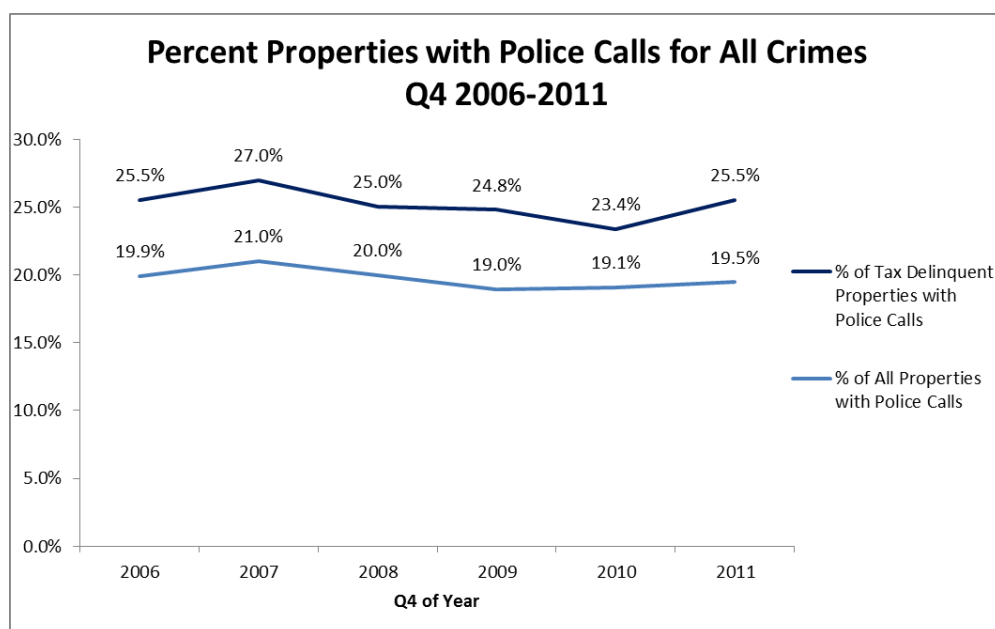
T2:5 Percent Properties with Code Violations Q4 2005-2012



Community Impact 6: *The percentage of tax delinquent properties that generate police calls is higher than the percentage of all properties that generate police calls.*

Table 2:6 illustrates tax delinquent properties are 5 to 6 percentage points more likely to generate police calls when compared to the percentage of all properties that generate police calls. The percentage of tax delinquent properties with police calls has ranged between 23.4% to 27% in the 2005-2012 time period, and increased from 23.4% to 25.5% between 2010 and 2011. The percent of all properties that generated a police call ranged from 19% to 21% between 2005 and 2012, and remained fairly stable at 19% between 2009 and 2011.

T2:6 Percent Properties with Police Calls Q4 2006-2011

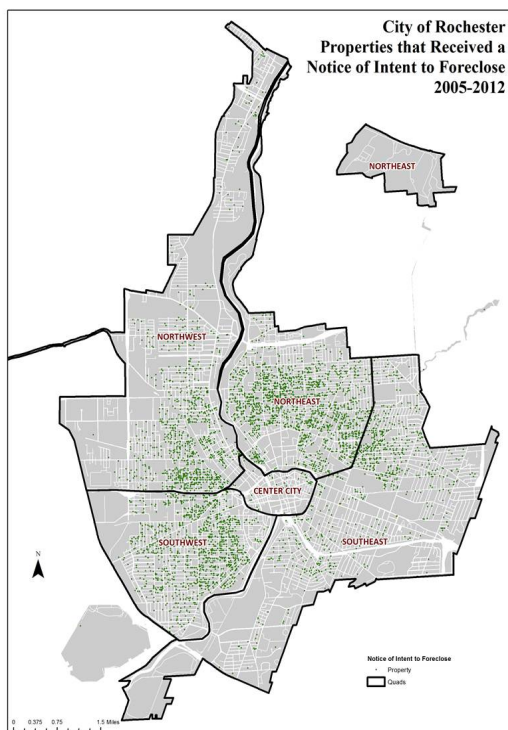


4. Tax Foreclosure Noticed and Tax Auctioned Properties

Properties identified as having received a “notice of intent to foreclose” represent all the properties by quarter that received an initial notice from the City for tax foreclosure. The profile of properties that received a “notice of intent to foreclose” includes a total of 6304 property quarters since 2005.¹⁰ Only 715 properties that received a notice of intent to foreclose were actually sold at tax auction – these are properties with the status code “N – Notice of Interest” and “U – Unpaid.” Table 2:7 provides a breakout by status code that describes the outcomes of all the properties that received a notice of intent to foreclose.

Since 2005 the City of Rochester sold 715 properties through tax auction. This is a subset of properties that received a “notice of intent to foreclose” and comprises 11.7% of all property quarters that received a notice.¹¹

Generally, properties sold at tax auction are more distressed and are located within neighborhoods that are more distressed when compared to the larger group that received foreclosure notices.



T2:7 Property Outcome by Status Code	Freq.	%
R – Redeemed	3,647	57.9%
S - Signed tax Agreement	701	11.1%
N - Notice of Interest	636	10.1%
T - No title report	570	9.0%
W – Withdrawn	384	6.1%
B – Bankruptcy	203	3.2%
U – Unpaid	79	1.3%
E - Environmental	75	1.2%
No label provided	9	0.1%
Total	6,304	100.0%

¹⁰ A total of 6,461 properties received a “notice of intent to foreclose” since 2005, however after merging these property SBLs to the base file, that number dropped to 6,304 for the analysis.

¹¹ 715 of the 758 properties were used to develop the profile of tax auctioned properties. The remaining properties did not merge to the master dataset that included the additional variables.

Of the 715 properties sold by the City at tax auction between 2005 and 2012, 97% (nearly all) were investor owned properties. Properties sold at tax auction had much higher rates of vacancy (62% compared to 21%) and were much more likely to have outstanding code violations (76% compared to 43%) than those properties that received a notice of intent to foreclose but which were never sold at tax auction.

Properties that were sold at tax auction were in areas where the median poverty rate is 44%, the median vacancy rate is 17% and the median homeownership rate is 30%. The median household income is \$21,099 and the median unemployment rate is 21.2%. The median percent minority is 80% in these areas. This group of properties is scattered geographically throughout the western and northern areas of Rochester outside of the downtown core.

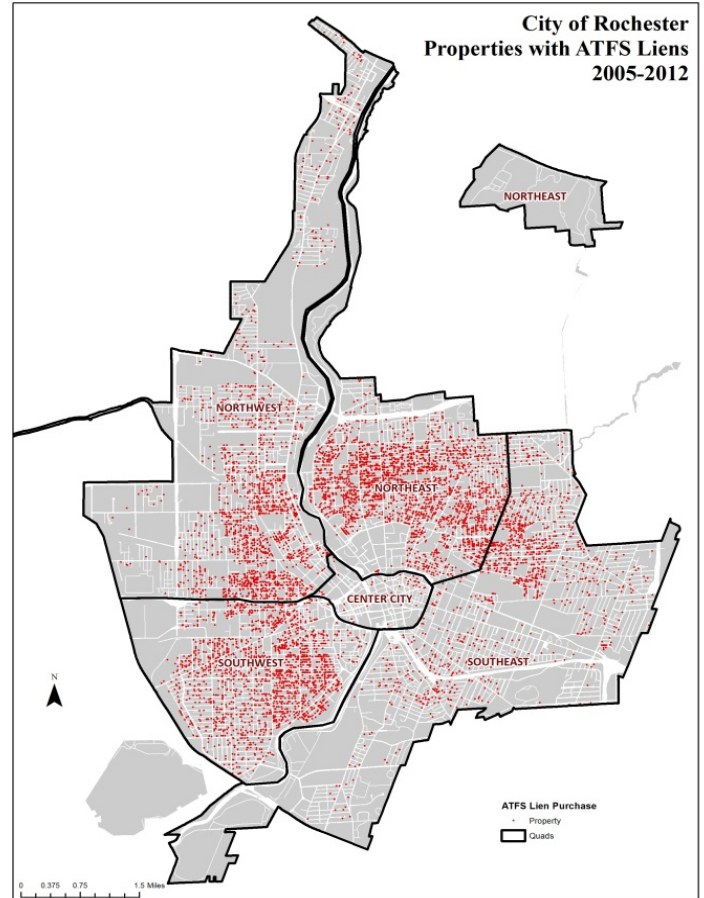
5. Properties with ATFS Liens

Community Impact 7: *The bulk tax lien sale does not directly cause an increase in measurable incidents of destabilization relative to properties for which the tax liens are not sold.*¹²

In Q1 2009 the first tax liens were sold to ATFS. The ATFS liens properties represent property quarters that received an ATFS tax lien in that quarter. There are 16,373 property quarters included in this analysis.¹³

Of the properties that received an ATFS tax lien, 68% were investor owned, 16% were vacant, 39% had an outstanding code violation and 6% received a fire call. The land use composition of these properties includes 60% single family homes, 19% two family homes, 8% commercial properties, and 5% vacant land. Properties with ATFS liens have a higher percentage of properties that receive nuisance police calls than their tax delinquent counterparts at 16%.

The neighborhoods where ATFS lien properties are located have a median poverty rate of 42% and a median household income of \$23,630. The median unemployment rate is 16.9%, the median vacancy rate is 15% and the median homeownership rate is 32%. The properties are located in areas where the median percent minority is 75%. Geographically, ATFS lien



¹² Furthermore our analysis in section 2C of existing intervention strategies indicates that current interventions have negligible stabilizing effect.

¹³ There are a total of 17,028 property quarters that have ATFS liens, however after merging the SBLs to the basefile that number was reduced to 16,373.

properties are dispersed throughout the City with the highest concentrations north and west of the City's downtown core and most heavily concentrated closest to the downtown area.

The vast majority of properties with ATFS liens have had ATFS purchase more than one lien. ATFS purchased 2 liens on 24% of these properties, 3 liens on 29% of properties, and 4 liens on 34% of properties. Only 13% of properties have had ATFS purchase only one lien.

When comparing properties with ATFS liens to properties that received a notice of intent to foreclose, ATFS lien properties tend to have a slightly higher median assessed value for all properties as well as single family and two family homes and commercial properties. A smaller percentage of properties are investor owned, a smaller percentage of properties are vacant, and a smaller percentage of properties have outstanding code violations. The neighborhoods where the properties with ATFS liens are located share similar characteristics to the neighborhoods where properties that received a "notice of intent to foreclose" are located as well.

6. ATFS Lien Properties sold to 3rd Party at Foreclosure Auction

ATFS has sold 106 properties on which it held liens to third parties.¹⁴ This subset of properties is 77% investor owned. Nearly a quarter or 22% are vacant, 61% had outstanding code violations, and 7% received a fire call. The properties are predominately single family homes at 65% followed by two family homes at 16% and commercial properties at 14%. The median assessed value of these properties is a bit higher than the properties with ATFS liens at \$44,750. These properties had a high percentage of properties with nuisance police calls at 17% and domestic police calls at 11%. Violent and property police calls both included 3% of this subgroup and 13% received a police call for some other crime.

The neighborhoods where these properties are located have a median poverty rate of 39% and a median household income of \$28,180, a lower poverty rate and higher median household income than the larger group of ATFS lien properties. The median unemployment rate is 14%, the median vacancy rate is 11%, and the median homeownership rate is 34%. The median percent minority within is 68% in these neighborhoods.

Geographically these properties are located mostly west and somewhat north of the downtown core, but are concentrated further out from the inner ring neighborhoods where much of the ATFS lien properties are located.

7. Properties Acquired by ATFS at Foreclosure Auction

The subgroup acquired by ATFS at auction is defined as all properties ATFS acquired at auction. There were 85 properties in this category.¹⁵ Of the properties ATFS acquired at auction, 42% are single family homes, 20% are two family homes and 29% are commercial. The median assessed value is \$42,000, higher than the median assessed value of properties with ATFS liens. Over a quarter or 28% of the properties are vacant and 64% have outstanding code

¹⁴ ATFS provided the researchers a list of properties that were sold to a 3rd party at a foreclosure auction. This section describes these properties. Data is presented on 102 properties that could be fully matched to other datasets.

¹⁵ ATFS provided a list of properties that it characterized as ATFS acquired at the foreclosure auction. It subsequently sold the majority of these properties to 3rd parties and no longer holds title. As of email correspondence with ATFS on February 5, 2013, ATFS currently owns 4 properties in the City of Rochester.

violations, both much higher than the percent vacant and the percent with code violations of the ATFS lien properties. There is no police call data for Q4 2012 and 5% received a fire call.¹⁶

The median poverty rate within neighborhoods where ATFS acquired properties at auction is 43% and the median household income is \$24,964. The median unemployment rate is 16.2%, the median vacancy rate is 14%, and the median homeownership rate is 32%. The median percent minority is 74%. ATFS properties acquired at auction are scattered through the northern and western parts of the City and also include several properties within downtown Rochester.

8. Properties in “Limbo”

Community Impact 8: *The bulk sale of tax liens creates a category of properties (“Limbo Properties”) which remain tax delinquent and increase neighborhood destabilization.*

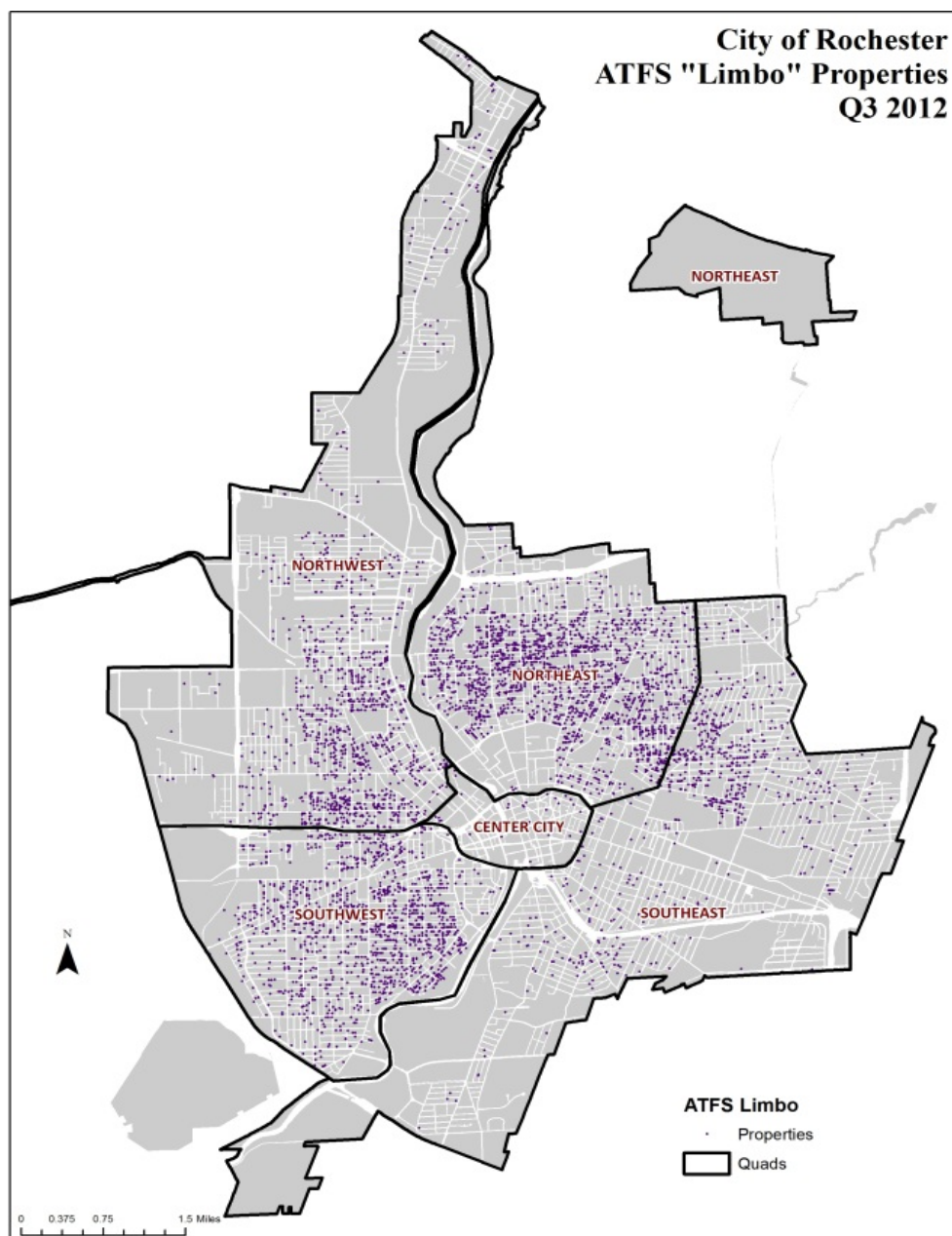
Limbo Properties are defined as those properties for which ATFS has purchased a lien but has neither settled the outstanding taxes with the property owners nor foreclosed on the subject property. For purposes of this portion of the study, we reviewed those Limbo Properties having an ATFS lien outstanding in Q3 of 2012. There are 4,779 properties that fell into this category for analysis. Limbo Properties comprise 7% of all properties in the City of Rochester and approximately 25% of the total properties bearing liens held by ATFS.

Of the Limbo Properties, 65% are investor owned, 16% are vacant and 36% have outstanding code violations. The median assessed value is \$32,500 and 8% received a fire call. Nuisance police calls and domestic police calls were the highest on Limbo Properties out of any other category with 19% of properties receiving a nuisance call and 12% of properties receiving a call for a domestic crime. Of the Limbo Properties 5% received a police call for a violent crime, 4% for a property crime, and 2% for a vice crime. The predominant land use of Limbo Properties is single family at 61% followed by two family homes at 18%, commercial properties at 7% and vacant land at 6%.

The areas where Limbo Properties are located have a median poverty rate of 42% and a median household income of \$23,630. The median unemployment rate is 16.9%, the median vacancy rate is 15% and the median homeownership rate is 32%. The median percent minority is 79%.

Geographically, the Limbo Properties are concentrated in the northern and western portions of the city, but some Limbo Properties are located throughout all parts of the City. Sizable portions of Limbo Properties are concentrated in areas with the highest percentage of vacant properties, the highest percentage of properties with outstanding code violations and the highest percentage of properties that received police calls. A total of 21% of Limbo Properties fall within the upper quintile where 12%-100% of properties are vacant within a census block. A total of 28% of Limbo Properties fall with the upper quintile where 23%-100% of properties - have outstanding code violations within a census block. Over a third or 34% of Limbo Properties fall within the upper quintile where 34%-100% properties received a police call within a census block.

¹⁶ Data based on Q4 2012 information for each property.



The City has little control of Limbo Properties while liens on those properties are held by ATFS. ATFS will only foreclose when a) there is a minimal likelihood of redemption and, b) when the foreclosure is likely to generate a high return sufficient to cover the redemption amount or to satisfy loss mitigation goals. The contracts with ATFS permit the City to buy back liens which would be a way for the City to gain control of various liens sold. However, the buy-back price is determined at the full redemptive balance of the lien, rather than the approximately 43% of the redemptive balance paid by ATFS.

T2:8 Comparisons of Properties with ATF Liens

Comparison of ATFS Properties				
	All properties that have ever had ATFS Liens	ATFS Sold to 3rd Party at Foreclosure Auction	Acquired by ATFS at Foreclosure Auction	"Limbo" Properties as of Q3 2012
N (number of properties in this category)	16,373	106	85	4,779
Percent Investor Owned	68%	77%	n/a	65%
Percent Vacant	16%	22%	28%	16%
Percent With Outstanding Code Violation	39%	61%	64%	36%
Percent With Fire Calls	6%	7%	5%	8%
Percent With Violent Police Calls	3%	3%	n/a	5%
Percent With Vice Police Calls	1%	0%	n/a	2%
Percent With Property Police Calls	3%	3%	n/a	4%
Percent With Nuisance Police Calls	16%	17%	n/a	19%
Percent With Domestic Police Calls	11%	11%	n/a	12%
Percent With Other Police Calls	15%	13%	n/a	18%
Median Assessed Value Of Property	\$34,000	\$44,750	\$42,000	\$32,500
Median Percent Minority	75%	68%	74%	79%
Median Poverty Rate	42%	39%	43%	42%
Median Household Income	\$23,630	\$28,182	\$24,964	\$23,630
Median Unemployment Rate	16.90%	14%	16.20%	16.90%
Median Vacancy Rate	15%	11%	14%	15%
Median Homeownership Rate	32%	34%	32%	32%

C. Effectiveness of Interventions

Community Impact 9: *Change in ownership of tax delinquent property tends to lessen problems with code violations, vacancy, investor ownership, and subsequent tax delinquency. Other interventions, such as issuing a Notice of Intent to Foreclose or selling the tax liens, have essentially no rehabilitative effect on tax delinquent properties.*

This section of our report analyzes how tax delinquent properties fare over time after certain key interventions – such as receiving a Notice of Intent to Foreclose from the City, having their tax liens sold to ATFS, or going all the way through a tax foreclosure. Using the same datasets for our “Profiles of Tax Delinquent Properties” report, we identify the quarter where a tax-related intervention has occurred for the property, and then track the trend in code violations, police and fire calls, vacancy, investor-ownership, and subsequent tax delinquency for up to 12 quarters after that intervention.

The specific interventions we studied are as follows:

- In 2005 and 2007 (quarters 4 and 9 of the 31 quarters studied in this analysis), the City issued notices of intent to foreclose to a total of 6,013 properties. These properties correspond to a time period in which the bulk foreclosure process was the core strategy employed by the City to address tax delinquent properties. Only 472 of these properties, or 8 percent, actually went to tax auction while the remainder were redeemed or otherwise disposed.
- In 2009 and 2010 (quarters 20 and 24 of our analysis), the City again issued notices of intent to foreclose, but this time to a smaller group of 449 properties in all. This time, the City was specifically holding these properties back from the lien sale process, generally because the properties were the subject of interest from a community development program or other developer. Of these properties, 316 or 71 percent, went to tax auction. We therefore analyze this pool of properties separately, as the goal with these properties was specifically to generate a change in ownership.
- ATFS purchased liens on four pools of properties (in quarters 17, 19, 24 and 29 of our study quarters) for a total of 17,028 properties.
- The City conducted four tax auctions (in quarters 9, 13, 21 and 26) of 788 properties in all.
- ATFS sold 106 properties at foreclosure auction to third parties (these sales occurred from 2011 onwards, or quarter 25).

1. Effectiveness of Interventions in Reducing Code Violations

As can be seen in Table 2:9, neither the standard bulk notice of intent to foreclose process of 2005 and 2007, nor the tax lien sale, was able to reduce the percentage of properties with code violations – in fact, the incidence of code violations for both groups went upwards slightly. However, the more targeted City interventions in 2009 and 2010 – as well as the City tax sale auction – were able to generate a substantial reduction in the prevalence of code violations. For example, 75.4% of properties that went to City tax auction had an open code violation case at the time they were auctioned. Eight quarters later, only 41.8% of these properties still had an open code violation.

T2:9 Effect of Intervention on Code Violations

Intervention	City issues Notice of Intent to Foreclose – 2005 and 2007	City issues Notice of Intent to Foreclose – 2009 and 2010	ATFS purchases tax lien	City sells property at tax auction	ATFS forecloses and sells to 3rd party
Percent of properties with code violations at time of intervention	38.7%	81.0%	37.8%	75.4%	30.4%
Percent of properties with code violations 4 quarters later	40.3%	56.7%	41.6%	53.8%	34.1%
Percent of properties with code violations 8 quarters later*	39.4%	32.1%	38.1%	41.8%	N/A

*Note that the number of properties studied (the denominator within this percentage) is smaller when we reach 8 quarters after the intervention, since some properties received their intervention more recently than 8 quarters ago.

2. Effectiveness of Interventions in Reducing Property Vacancy

By “property vacancy,” we mean a property that is cited by the City Codes Enforcement department as being a vacant and abandoned structure. As illustrated in Table 2:10 interventions oriented towards achieving a change in property ownership – this time including sales by ATFS to third parties – were able to reduce the incidence of problems with vacancy. Notices of intent to foreclose alone and tax liens sales alone, tend to result in a slight increase in the incidence of vacancy.

T2:10 Effect of Intervention on Vacancy

Intervention	City issues Notice of Intent to Foreclose – 2005 and 2007	City issues Notice of Intent to Foreclose – 2009 and 2010	ATFS purchases tax lien	City sells property at tax auction	ATFS forecloses and sells to 3rd party
Percent of properties vacant at time of intervention	13.6%	72.3%	15.3%	60.8%	96.1%
Percent of properties vacant 4 quarters later	17.2%	68.3%	18.5%	58.2%	9.1%
Percent of properties vacant 8 quarters later	18.3%	50.0%	19.4%	31.9%	N/A

3. Effect of Interventions on Investor-Owned Status of Property

We estimate whether a property is investor-owned by comparing the owner's mailing address to the property address (the City Assessor's office compiles and tracks a variable in its data for this purpose). This definition would therefore include any properties owned and managed by nonprofit community development corporations as well as properties owned by private sector investors. Investor ownership may be an appropriate outcome for a property and is not an inherently negative trait. However, given policy emphasis on encouraging homeownership, we look to see whether any interventions had the effect of lowering investor ownership rates. As illustrated in Table 2:11 We find a slight decrease in investor ownership rates for properties sold at City tax auction, and slight to moderate increases for all other categories of intervention.

T2:11 Effect of Intervention on Investor-Owned Status

Intervention	City issues Notice of Intent to Foreclose – 2005 and 2007	City issues Notice of Intent to Foreclose – 2009 and 2010	ATFS purchases tax lien	City sells property at tax auction	ATFS forecloses and sells to 3 rd party
Percent of properties investor-owned at time of intervention	47.6%	91.5%	65.2%	96.8%	77.5%
Percent of properties investor-owned 4 quarters later	49.2%	96.4%	68.5%	89.7%	95.5%
Percent of properties investor-owned 8 quarters later	49.7%	94.4%	68.8%	83.4%	N/A

4. Effectiveness of Interventions in Reducing Subsequent Tax Delinquency

We find that all interventions were able to reduce tax delinquency (we assume all properties were tax delinquent as of the date of the intervention), but find again that interventions oriented towards a transfer in ownership were most effective. Similarly, transfer and subsequent rehabilitation or development of delinquent properties is the most effective means of increasing the current collections rate. Note particularly, as illustrated by Table 2:12 that the City tax auction dramatically reduced tax delinquency 4 quarters out from the auction quarter, although by 8 quarters out this percentage was beginning to creep up again.

T2:12 Effective of Intervention on Subsequent Delinquency

Intervention	City issues Notice of Intent to Foreclose – 2005 and 2007	City issues Notice of Intent to Foreclose – 2009 and 2010	ATFS purchases tax lien	City sells property at tax auction	ATFS forecloses and sells to 3 rd party
Percent of properties tax delinquent 4 quarters later	74.6%	33.0%	90.9%	4.7%	9.1%
Percent of properties tax delinquent 8 quarters later	59.4%	26.3%	81.6%	12.4%	N/A

5. Effectiveness of Interventions in Reducing Police and Fire Calls for Service

We tracked the number of police and fire calls to properties in the quarter of the intervention and in subsequent quarters. In general, as illustrated in Tables 2:13 and 2:14 we do not see a pattern to this data that suggests that any of the interventions reduces the number of calls generated by a property over time. This may be because generating a police call is a relatively infrequent event to begin with, and the percentage of properties generating a police call can vary substantially from quarter to quarter.

T2:13 Effect of Intervention on Police Calls

Intervention	City issues Notice of Intent to Foreclose –2007 ¹⁷	City issues Notice of Intent to Foreclose – 2009 and 2010	ATFS purchases tax lien	City sells property at tax auction	ATFS forecloses and sells to 3 rd party
Percent of properties generating a police call in quarter of intervention	14.3%	7.6%	12.5%	19.5%	25.5%
Percent of properties generating a police call 4 quarters later	14.0%	7.1%	13.0%	19.0%	29.5%
Percent of properties generating a police call 8 quarters later	12.8%	1.6%	9.7%	12.4%	N/A

¹⁷ Note that we do not have police call data for 2005, with the result that only the 2007 cohort of properties receiving a notice of intent to foreclose from the City is included in this analysis.

T2:14 Effect of Intervention on Fire Calls

Intervention	City issues Notice of Intent to Foreclose – 2007 ¹⁸	City issues Notice of Intent to Foreclose – 2009 and 2010	ATFS purchases tax lien	City sells property at tax auction	ATFS forecloses and sells to 3 rd party
Percent of properties generating a fire call in quarter of intervention	6.5%	1.6%	6.0%	3.4%	8.8%
Percent of properties generating a fire call 4 quarters later	6.5%	5.4%	6.5%	3.2%	6.8%
Percent of properties generating a fire call 8 quarters later	6.1%	2.5%	6.4%	4.2%	N/A

In Reference Document 8 (R-8) we provide a detailed review (quarter by quarter) of the data presented in this section, including a breakdown of police calls by call type and calculations of the mean number of calls per property, by quarter.

D. Impacts on Neighboring Properties

Community Impact 10: *Tax delinquent properties negatively impact surrounding home values.*

1. Impact on Neighboring Property Values

One concern identified through the community interview process is whether tax delinquent properties are negatively impacting nearby property values. We built statistical models to test this hypothesis. We considered three levels of geography in our models: Street Segments (the buildings along one side of a street, bounded by streets on either end), Census Blocks (buildings bounded on four sides by streets), and Census Block Groups (made up of multiple Census Blocks, most Census Tracts have between 2 and 4 Census Block Groups). Generally, we found that:

The total number of tax-delinquent properties in the Census Block Group surrounding a home does appear to have a mild, negative effect on the sales price of that home. Each

¹⁸ Note that we do not have police call data for 2005, with the result that only the 2007 cohort of properties receiving a notice of intent to foreclose from the City is included in this analysis.

additional tax-delinquent property in a Census Block Group is associated with a decline in observed homes sales prices in that Block Group of \$785. However, we no longer observe a significant relationship when we use counts of tax delinquent properties at the Census Block or Street Segment level. Also, when we split up this measure into two variables, one counting the number of properties with City-held tax delinquencies and another counting the number of properties with ATFS-held tax delinquencies, the variables are no longer significant, perhaps due to multi-collinearity.

The number of vacant (meaning abandoned, boarded-up) buildings in the area surrounding a home also has a negative effect on the sales price of that home. For example, for every additional vacant building in the Census Block Group where a property is located, the house price is expected to decrease by about \$3,000. After controlling for other factors, house prices are considerably lower for two family homes than they are for single-family homes. For example, in Model 1 below, a 2 or 3-unit property would expect to sell for about \$41,000 less than an otherwise comparable single-family property. Since a significant portion of the housing stock in Rochester consists of such small multi-unit properties, strategies to either improve the marketability of this stock or reduce its prevalence (e.g. through conversion to single-family homes where possible) may be desirable.

House prices go down as the percentage of minority population and the percentage of people living in poverty in a home's Census Tract goes up. For example house prices are expected to decline about \$795 for every percentage point that minority population increases, and about \$566 for every percentage point increase in the poverty rate. Interestingly, house prices are also expected to go down, albeit slightly, as the Census Tract homeownership rate increases, by about \$443 for every percentage point increase in the homeownership rate.

2. Impact on Neighborhood Calls for Service

***Community Impact 11:** The presence of tax delinquent properties correlates with an increase in police and fire calls to the area surrounding those properties.*

Another concern identified through the community interviews is that tax delinquent properties may contribute to an increased number of calls for service to the police or fire departments. Here we are concerned not only about the number of calls to the property itself, but the number of calls in the vicinity surrounding the property. We built statistical models to test this hypothesis and used data on police calls from 2011 and 2012 to build these models. Generally, we found that:

Overall calls for service increase as the number of tax-delinquent properties on a block increases. The coefficient is higher for ATFS tax delinquent properties; note, however, that the difference likely has more to do with characteristics of the properties on which ATFS holds liens than with any influence (or lack of influence) that ATFS exerts over the property.

Chapter 3 Tax Lien Procedures Utilized in New York Municipalities

This chapter describes the delinquent real estate tax enforcement process used in Rochester and in selected other municipalities in New York State. We have reviewed the tax enforcement processes in each of the nineteen (19) municipal tax districts in New York State that have opted out of Article 11 of the Real Property Tax Law (the “RPTL”) and that of Schenectady which was given special legislative permission to sell liens in bulk while still subject to the RPTL (“Opt-Out Municipalities”). Out of these twenty (20) tax districts, six (6) municipalities were selected for inclusion in this report because each of the six (6) had engaged in some form of the sale of tax liens to third party investors. In addition, one municipality outside New York State, Waterbury, CT, is discussed. To the extent that information is available either as a matter of public record, or through interviews with key participants in the municipalities, we identify some of the advantages and disadvantages in the experience of these municipalities. Of those municipalities that formerly sold tax liens pursuant to bulk tax lien sales agreements there is a summary of why those municipalities discontinued selling liens in bulk.¹⁹

Key Observation: *Rochester is the only New York municipality, outside of New York City, currently engaged in the bulk sale of tax liens. Other municipalities in New York that previously engaged in the bulk sale of tax liens have elected to end such bulk sale agreements.*

A. Property Tax Enforcement Methods Utilized in Rochester

The following property tax enforcement procedures are set forth in the Charter of Rochester:

1. **Sale of delinquent tax liens** - Charter Article IX § 6-123: This chapter sets forth the authorization for the bulk sale as property tax liens.
2. **In rem foreclosures** - Charter Article IX § 9-121: This chapter sets forth the primary tax enforcement procedure for tax liens held by the City.
3. **Collection actions and supplemental proceedings** - Charter Article IX § 9-153 and § 9-154: This chapter sets forth an alternative enforcement mechanism, but is one which is rarely if ever used as it is predicated on personal liability and personal jurisdiction of defendants.
4. **Receiverships** - Charter Article IX § 9-91-94: The chapter of the Charter of Rochester provides the basis for an independent judicial appointment of a receiver for management and control of the property.
5. **Judicial foreclosures** - Charter Article IX § 9-101: This chapter sets forth the authorization for a judicial foreclosure of a delinquent property tax lien.

Prior to the 2009 ATFS contract for the sale of its tax liens in bulk, Rochester elected to utilize the authorization for annual *in rem* foreclosures. The entire operation was performed by or under the supervision of City staff. Properties were identified for foreclosure by the Treasurer; corporation counsel performed title searches, noticing and court proceedings. Redemptions and payment plans were processed by the Treasurer’s office. Properties on which delinquent tax liens were not paid went to sale. During the period from 1992 through 2008 the

¹⁹ Key portions of the local tax laws utilized by various New York municipalities are included in Reference Documents R-1 through R-7.

collection rate on real estate tax delinquencies fell from 65.55% to 38.63%, and fewer properties were sold at a tax foreclosure sale.

Rochester's first bulk lien sale was sent out to bid in February 2009. For two (2) years after the first bulk lien sale in 2009, there were a total of 162 foreclosures conducted by Rochester, and only three (3) such foreclosures were conducted by ATFS. Through the end of 2012, ATFS had completed 194 property tax foreclosures. At these 194 foreclosure sales, 107 properties were sold to third parties, 83 properties were sold to ATFS and subsequently resold to third parties, and as of December 31, 2012, four (4) were still held by ATFS under the name REOCO, LLC.

ATFS declined purchase of numerous subsequent tax liens on vacant or particularly distressed properties. A slight bump in the current collections rate that correlated with the initial bulk sales in 2009 leveled off by 2011. From 2002 to 2008, *current* collection rates began a slow but steady increase. For fiscal 2002 the current collections rate was 90.93%. By fiscal 2008 the current collections rate had increased almost a full percent to 91.91%. The current tax collection rate increased from 91.91% for fiscal 2008 to 92.43% for fiscal 2010. The current collections rate for fiscal 2011 fell back to 92.10%.

The erosion of the initial benefit of bulk tax lien sales is more evident in the numbers and percentage of delinquent tax parcels. With the exception of the outlier year 2003, the number of tax delinquent parcels was steady, averaging in the low 9,000s from 2002 through 2008. While the first bulk tax lien sales in 2009 coincided with an increase to 9,739 delinquent tax parcels, that number held stable over a two (2) year period. However, in 2011, there was a dramatic increase in the number and percentage of delinquent parcels continuing into 2012, together with a decrease in the current collections rate.

B. Tax Enforcement Methods Utilized in New York Opt-Out Municipalities

The primary methods of property delinquent tax enforcement utilized among the various Opt-Out Municipalities include: (1) Sales of real estate for taxes; (2) Individual sales of tax liens; (3) *In rem* foreclosures and sale of real estate; and (4) Bulk tax lien sales including securitizations.

1. Sales of real estate for taxes

The largest percentage of the nineteen (19) Municipalities that opted out of Article 11 of the RPTL use a yearly auction of individual parcels of tax delinquent real estate to enforce delinquent taxes. The terminology varies; some refer to the *sale of liens*, others to the *sale of certificates* and others to the *sale of real estate*. The common thread is that each provides for the individual auction sale of an interest bearing instrument that represents an interest in a tax delinquent parcel. If that instrument is not paid in accordance with its terms (i.e. if the taxes are not redeemed by the end of the post-sale redemption period), the holder of that instrument may request the issuance of a Treasurer's Deed to the property. The following municipalities utilize some form of this tax enforcement procedure:

- Auburn - Treasurer's Deed after 2 year redemption period
- Canandaigua - Treasurer's Deed after 1 year redemption period
- Glen Cove - Treasurer's Deed after 2 year redemption period

- Long Beach - Treasurer's Deed after 1 year redemption period. Lien holder has an option to foreclose for which see Section 4.1 - Long Beach below.
- Middletown - Treasurer's Deed after 2 year redemption period
- Norwich - Treasurer's Deed after 2 year redemption period
- Oneida - Treasurer's Deed after 2 year redemption period
- Port Jervis - Treasurer's Deed after 2 year redemption period
- Poughkeepsie - Treasurer's Deed after 2 year redemption period
- Sherrill - Treasurer's Deed after 2 year redemption period
- Syracuse - Treasurer's Deed after 1 year redemption period
- Watertown - Treasurer's Deed after 2 year redemption period

2. Individual sales of tax liens

Yonkers sells individual tax liens at an annual auction in order to enforce delinquent taxes. Yonkers sends only one notice to taxpayers: the notice of tax due. That notice includes the amount due, when payable, interest accrual after payment date, and date of the tax lien sale if not redeemed prior to sale. The only other notice is intended to advertise the lien sale and is published in newspapers and on the Yonkers website. Publication occurs in early January with the sale soon thereafter. Participants at the auction bid down the interest rate on the lien. The lowest interest rate bid takes the lien. The lien purchaser may initiate foreclosure by judicial process, anytime commencing 21 months after the sale if no interest is paid at the bid interest rate, and after three (3) years if the then accrued bid rate interest has been paid but full redemption has not been paid.

3. *In rem* foreclosures and sale of real estate

Johnstown and Mount Vernon use a yearly *in rem* foreclosure proceeding as the primary method of delinquent tax enforcement. All tax delinquent properties that do not redeem are sold at foreclosure auction to the highest bidder. The process is very similar to that used in Rochester.

4. Bulk tax lien sales including securitization

New York City is the only New York municipality other than Rochester that currently sells its tax liens in bulk. The bulk tax lien sale by New York City is to a special purpose entity that in turn sells investment certificates secured by the tax liens to third party investors. New York City retains the services of specialized collection agents to handle all taxpayer communications and payments and to manage and supervise the activity of foreclosure attorneys. The only legal enforcement method available to the special purpose entity is judicial foreclosure.

C. Tax Enforcement Methods in Selected Municipalities

1. Syracuse, NY

Syracuse entered into two transactions for the bulk sale of property tax liens, the first in 2006 and the second in 2008. The lien purchaser paid Syracuse approximately 87% of the lien value. This percentage was greater than Syracuse's own collection rate on its delinquent taxes. The initial results after the bulk lien sale were similar to Rochester in that delinquent collections

stabilized and current collections increased slightly. However, various concerns arose; one of which included the lack of enforcement of tax liens on vacant lots and other distressed properties. Syracuse ceased further tax lien sales thereafter.

The primary tax enforcement tool currently utilized by Syracuse is the sale of delinquent real properties for taxes. Syracuse conducts up to four tax deed sales per year. The sale process begins by sending notice to owners of record. There is no title search at this time. The owner is given two months to pay. If there is no redemption by this date, then a title report is acquired. The City has arranged for three title companies not only to perform the searches, but to provide title insurance upon transfer of property title. The cost per search is \$150. A 30-day foreclosure notice is sent to all parties indicated on the title search in compliance with due process requirements. Redemption is permitted up to the moment of the sale. The rate of current tax collections in Syracuse today is 94%.

Until 2012 Syracuse regularly solicited developers and investors to consider rehabilitation and development projects associated with tax delinquent properties. Upon locating a buyer or investor Syracuse placed the property at issue into the next sale of real property for taxes. An integral part of this program is Section 19-48.1.Subsection (10) (a) of the Syracuse Tax and Assessment Act which permits Syracuse to qualify bidders. This bidding qualification process allows Syracuse to maintain control over its community development objectives by selectively qualifying bidders to purchase particular parcels of property sold at tax sale.

In 2012 the City of Syracuse and Onondaga County land bank was created pursuant to the New York Land Bank Act. The Greater Syracuse Property Development Corporation (“GSPDC”) reflects a partnership between Syracuse and Onondaga County and both contribute funding, staffing and expertise to GSPDC. Syracuse and Onondaga County have earmarked \$250,000 for land bank operations. To supplement this amount, GSPDC has also received funding from an outside source, Home Headquarters, a nonprofit housing agency on a proceeds sharing arrangement. The land bank is believed to have sufficient funding to begin the acquisition of properties and development projects.

In order to fund GSPDC and to work aggressively to address the roughly 9% of properties in Syracuse that are currently vacant and blighted, Syracuse (which enforces taxes both for Syracuse and for Onondaga County) has made a policy decision to move all eligible tax delinquent properties to tax sale. There are approximately 7,000 tax parcels in Syracuse eligible to be sold for taxes, of which 5,000 are vacant lots. Syracuse began enforcement proceedings on the first 1000 parcels, including notice of the impending tax sale to delinquent owners, and almost 25% of the first 1000 have been redeemed. All properties that are not redeemed will be sold at tax sale to the qualified single bidder. Private developers and builders must then work with GSPDC to acquire properties for development.

2. Schenectady, NY

Schenectady did not opt out of Article 11 of the Real Property Tax Law. As such its tax enforcement method is limited to *in rem* foreclosures that may be commenced after a two year redemption period. However, the state legislature in June 2004 granted permission to Schenectady to conduct tax lien sales to private companies. Later in 2004, and again in 2009, Schenectady entered into a bulk tax lien sale agreement. By 2012, approximately \$11 million of

unpaid subsequent taxes had accumulated on 721 properties bearing liens sold to the tax lien purchaser, and the purchaser refused to purchase these subsequent tax liens.

In an attempt to create a tool to address the blight, vacancy and tax delinquency, Schenectady received approval for the creation of a local land bank, the Land Reutilization Corporation of the Capital Region (LRCCR). Schenectady planned to foreclose tax liens that the tax lien purchaser declined to purchase using the RPTL's *in rem* foreclosure procedure, take title to those properties that failed to redeem before judgment, sell acquired properties for which there was a ready buyer and transfer the bulk of the properties to LRCCR. After Schenectady filed its first *in rem* action on a lien attached to a property bearing earlier liens owned by the tax lien purchaser, the purchaser filed suit claiming breach of contract and interference with the purchaser's payment plan arrangements with delinquent taxpayers.

Schenectady plans to sell as many as possible of its tax delinquent properties in the *in rem* foreclosure sale process. With its strong local economy, Schenectady expects to sell the majority of the properties that are not redeemed before sale. Those properties which do not sell in foreclosure sale will be transferred to the land bank.

3. Middletown, NY

Middletown sold tax liens in bulk beginning in 1999 pursuant to a time limited provision that expired in 2012. There was one tax lien purchaser for the entire time that Middletown sold liens in bulk and liens were sold to the purchaser at the redemptive balance of the tax due. Prior to bulk tax lien sales, over half the tax delinquent properties redeemed before the sale date. This changed during the years when liens were sold in bulk as owners of tax delinquent properties entered into two year payment plans. Middletown's current collections rate decreased during the period tax liens were sold in bulk.

In 2012 Middletown returned to the process authorized in its Charter of selling individual tax liens at a yearly auction in order to enforce delinquent taxes. The Treasurer prepares the list of delinquencies each December. Immediately after the approval of the Town Council the Treasurer publishes a notice of the impending sale and sends each owner notice that their property will be sold for failure to pay taxes. On the scheduled sale date the lien is sold to the highest bidder. The highest bidder receives a certificate that sets out his purchase price and the redemption period. On the sale day the bidder pays only the amount to satisfy the tax and costs of sale including any staff overtime paid. At the end of the post-sale redemption period, the tax lien purchaser may seek a treasurer's deed for the property.

Prior to 1999 all liens put up for auction sold and Middletown issued very few Treasurer Deeds at the end of the redemption period. However those sales took place in the midst of strong real estate markets and Middletown officials are concerned that this year's sale will have a different result. In addition, in previous tax lien sales Middletown generally recouped all the costs of the sale process by adding any costs to the price of each tax liens. However this year's sale will include numerous properties excluded from previous bulk lien sales that are unlikely to sell at tax sale. The Treasurer believes it will be ineffective to add costs to liens that will likely not sell and is unsure how costs will be recouped on such liens.

As bulk tax lien sales are no longer conducted in Middletown, three key challenges stemming from the previous bulk tax lien strategy arise. First, between 1999 and 2012 there was

little coordination between Middletown and the tax lien purchaser regarding delinquent tax payment activity and recording of releases upon full redemption. Now that Middletown is managing the enforcement of delinquent liens, the lack of proper records of previous tax payments and redemptions leaves Middletown vulnerable in attempting to enforce a delinquent lien that has already been satisfied. Second, Middletown presently lacks sufficient staff to conduct delinquent property tax sales. Middletown officials hope to be able to schedule a sale in April of 2013. The third challenge Middletown faces in the transition between bulk lien sales and individual tax liens sales stems from the fact that the tax lien purchaser was given broad latitude to reject liens. Middletown simply set aside the liens the tax lien purchaser decided not to purchase and took no action to enforce those delinquent liens. In the interim, many of the properties associated with those liens have simply deteriorated in the hands of delinquent taxpayers or owners that have long since abandoned the property.

4. New York City, NY

New York City (“NYC”) securitizes all delinquent real estate tax liens and uses the services of private sector specialized tax collection agents for the tax collection process. NYC has modeled its real estate tax lien enforcement on RPTL Article 11, Title 5 which permits the sale of property tax delinquencies to a municipal bond bank agency which is authorized to enforce collection by means of judicial foreclosure. NYC sells all its tax liens (with few exceptions) through this securitization program. NYC sells each pool of tax liens to a special purpose entity which issues securities to third party investors secured by the liens. The special purpose entity selects a servicer, which is a specialized tax collection agent, to conduct collection activity in compliance with the rules and regulations of NYC, state and federal law. The servicer also coordinates, manages and monitors all foreclosure attorneys.

NYC has experienced a high rate of redemption following the notice of intent to sell the liens to the special purpose entity. Penalty charges are added to the tax lien upon transfer, which can be avoided by the taxpayer by redeeming prior to the sale. Most taxpayers whose liens are sold to the special purpose entity establish and successfully complete a payment arrangement. A small percentage of liens are placed into judicial foreclosure proceedings. Only a small fraction of those go to foreclosure sale, where most often the property is sold to a third party.

Most of NYC’s annual budget of almost \$70 billion is paid through the collection of real property taxes. In NYC’s robust economy its tax lien securitization program has proven successful. Requiring the special purpose entity to utilize the judicial foreclosure process has not overwhelmed the program or led to a high degree of unrecoverable expenses. The strong economy and demand for real property incentivizes taxpayers to finance the amounts needed to redeem their taxes prior to foreclosure proceedings. The expectations of the third party investors in the securitized tax lien trust have been achieved.

5. Yonkers, NY

Yonkers has relied on yearly auction sales of individual tax liens which, until recently, had met Yonkers’ tax collection needs. Taxpayers receive notice of tax due from the Yonkers tax collector. That notice includes the amount due, when payable, interest accrual after payment date, and date of the tax lien sale if not redeemed prior to sale. The only other notice is intended to advertise the lien sale and is published in newspapers and the Yonkers website. Typically

publication occurs in early January with the sale soon thereafter. Bidders bid down the interest rate due on the tax lien. The bidder with the lowest interest rate bid pays the entire amount of the taxes plus fees and must wait for three (3) years before commencing a judicial foreclosure if the taxpayer pays interest at the bid interest rate. Otherwise, the earliest a foreclosure may be commenced is 21 months after the sale date.

Yonkers' current collection rates from the early 1990s through 2008 averaged 96.3%. The amount of unsold and therefore uncollected tax liens began to balloon in 2009 as illustrated in Table 3.1 below. Yonkers officials estimate approximately \$107 million of outstanding unpaid delinquent taxes occurring between 2002 and 2011.

T 3:1 Yonkers, NY Delinquent Taxes 2002-2011

Year	Tax Principal Uncollected	Total Net Actual Collected	Actual % Collected as of 6/30/2012
2002	\$7,006,335	\$188,323,665	96.41%
2003	\$9,732,477	\$195,297,523	95.25%
2004	\$5,879,689	\$209,291,481	97.27%
2005	\$9,823,062	\$235,328,108	95.99%
2006	\$8,004,295	\$246,831,875	96.86%
2007	\$10,186,026	\$249,727,832	96.08%
2008	\$10,652,301	\$261,704,546	96.09%
2009	\$12,087,230	\$276,825,466	95.82%
2010	\$15,457,308	\$281,735,226	94.80%
2011	\$18,644,688	\$287,055,138	93.90%

6. Long Beach, NY

Long Beach relies on the yearly individual auction sale of tax liens that ripen into tax deeds if there is no redemption. Long Beach puts the obligation and cost to perform the due process noticing onto the tax lien purchaser. The Treasurer will issue a deed to the tax lien purchaser after the expiration of the one year redemption period and proof of service of notice to all parties in interest.

Long Beach recovers all the costs of the tax sale including any staff overtime by adding them to the lien that is sold. There are no costs after sale except perhaps the preparation and drafting of the treasurer's deed for which the real estate buyer pays a nominal amount. There is a

provision in the Long Beach Charter that permits a real estate buyer to foreclose the lien instead of taking a treasurer's deed, but there is no institutional memory in the Long Beach Treasurer's office of either the issuance of a treasurer's deed or a lien foreclosure. Most properties redeem prior to the sale date. All liens that have been sold have redeemed soon after the sale.

7. Waterbury, CT

In 1993 Connecticut passed legislation permitting municipalities to sell tax liens individually or in bulk. Two years later, in response to problems arising in the sale of tax liens, the Connecticut state legislature empowered a state agency task force to investigate improved municipal tax collection processes. Several municipalities, including Waterbury, were permitted to explore two competing approaches including: (a) creating a mechanism for a private delinquent tax collection process, whereby a licensed collection agency would earn a contingent fee paid by the delinquent taxpayers, or (b) privatizing all delinquent collections by selling all tax accounts that were not paid in full by their due date.

In 1998, Waterbury attempted the second option, the bulk sale of all its delinquencies, and the result of that bulk sale was viewed by Waterbury officials as unsuccessful. The company that purchased Waterbury's delinquent tax liens filed a petition in bankruptcy 18 months after the sale. A specialized tax collection agent was brought in during the bankruptcy proceeding to take over the servicing of the Waterbury delinquent pool for the benefit of the bankrupt lien purchaser's secured lenders.

As a result of the bankruptcy of the tax lien purchaser, Waterbury was forced to make a transition away from bulk tax liens sales. Instead of hiring additional staff to handle delinquent tax liens, Waterbury began the use of private collectors. Today, Waterbury uses constables, marshals (sheriffs) and a private collection agency for all its delinquent tax collection. The agreement with the collection agency includes other non-real property tax municipal debts such as motor vehicle taxes and motor vehicle parking and moving violation fines. As authorized by Connecticut Statute, the collection agents are paid by the addition of 15% to every delinquency as a penalty. As a result of the use of tax collection agents, Waterbury employs 3½ persons to manage all delinquent tax collections (real property, motor vehicle and personal property of approximately \$75 million annually). Waterbury's use of third party tax lien servicers resulted in the increase of collection rates for both delinquent and current taxes. Waterbury's collection of the current tax assessment in 1997 was 90%. The rate of collection on the currently billed taxes for the year ending June 30, 2012 was 96.9%. The total amount of real estate taxes considered delinquent as of June 30, 2012 was \$17.6 million. This amount includes interest and fees on tax principal for delinquencies going back the full 15 year life span of a Connecticut municipal tax.

Chapter 4: Alternatives to Current Bulk Tax Lien Sale Strategy

A. Contracted Lien Servicing

An alternative to the bulk sale of tax liens that the City may consider is to hold onto tax liens and contract with a company to service these liens. In this section, we compare the cash flows the City received from the lien sales to the cash flows that might have been achievable from this alternative strategy for the same tax years (2009-2012). ATFS supplied the research team with detailed information on the payback performance of the tax liens it purchased, which we use as the basis for this analysis.

Our analysis regarding whether the City could improve its financial outcomes through a lien servicing strategy requires us to make a number of assumptions. The key assumptions that inform our analysis are as follows:

- First, we need to make an assumption about the repayment rate of liens under such a strategy. We assume that to date a contracted tax servicer could have achieved the same flow of repayments as achieved by ATFS.
- Second, there is the question of lien servicer costs. In jurisdictions where there is no statutory authority to add costs of collection to a delinquency, a servicer is typically paid a fee calculated as a percentage of assets managed. The market rate for real estate tax lien servicing is usually an *Asset Under Management Fee* which ranges from 75 to 100 basis points per year paid on a quarterly basis in arrears. For purposes of the analysis, a 100 basis point serving fee was used that would be paid at 25 basis points per quarter on the outstanding principal amount at the end of each quarter of the model.
- Third, most of the tax liens serviced by ATFS have neither redeemed nor been taken to foreclosure. On their face, these liens have an outstanding balance of approximately \$34.1 million. We need to estimate the remaining value in these liens. To do so, TaxServ employed a Standard and Poor's style tax lien valuation model which assigns a *Collectability Ratio* to each property based on the property type code; the assessed value; the lien to value ratio; an estimate of bankruptcy filings; and the number and age of the liens on the property. In this model we have an overall 63% *Collectability Ratio* which means that of the \$34.1 million it is estimated that 63% of the amount due is estimated to actually be collectable. Before we discount the cash flows back to present value, this model produces an estimate of \$29.0 million in total net income (that is, total recapture of the remaining liens). After discounting, the model estimates the present value of these outstanding liens at between \$19.2 and \$21.3 million, depending on the discount rate selected. We proceed with the low-end value estimate of \$19.2 million.²⁰

²⁰ Note that 5% of the properties in the lien pool are assumed to go to foreclosure, with assumptions including:

- Judicial foreclosure of the properties remaining in the pool after three (3) years with costs estimated at approximately \$3,500 per property;
- Costs and fees of holding property as REO for one year estimated at \$2,000 per property
- Costs of current and future taxes
- Costs and fees to sell REO properties including title, attorney, and broker fees and costs.

T4:1 Estimate of present value of remaining outstanding lien balances

Discount rate	ATF Current Value of Liens	Lien Sale Percentage	Present value of remaining liens	Total Net Income ⁽¹⁾
15.00%	\$34,054,152	62.50%	\$21,283,845	\$28,992,958
17.50%	\$34,054,152	59.25%	\$20,177,085	\$28,992,958
20.00%	\$34,054,152	56.25%	\$19,155,461	\$28,992,958

Note: (1) Total net income is the amount remitted to the lienholder (which could be the City) from the lien servicer over the three (3) years of collections servicing including liquidation through judicial foreclosure of any remaining properties at the end of three (3) years.

- Fourth, when applying the above assumptions using the model as described, we need to select a discount rate to adjust future cash flows to present value. Given the risk associated with these assets, we select an annualized discount rate of 20 percent. Because a discount rate of 15-20% is standard, this assumption is conservative.

Table 4:2 presents the key figures needed to compare whether the City might be better off contracting a lien servicer instead of selling liens. The information presented is as follows:

- Column A provides the amount received by the City in exchange for selling tax liens to ATFS.
- Column B takes the actual cash flows that ATFS has received from lien purchase through the present and converts them into a one-time present value, using a 20 percent discount rate. For example, for Cohort 1, an investor with a 20 percent hurdle rate would be indifferent between taking the cash flows ATFS has actually received on that cohort (spread out over time) and taking a one-time lump sum payment of \$5,082,606 in Q1 2009.
- Note that we can make a very crude comparison between Column A and Column B to begin to get an idea of whether the City would have been better off holding on to the liens. With Cohort 2, note that the present value of cash flows to date (again, discounted at 20 percent) is slightly greater than the sale price. With other cohorts the present value of cash flows to date has yet to hit the sale price. However, we have not yet factored in the value in the liens that are still outstanding, nor the servicing costs.
- Column C provides a total gross estimated present value to the City of holding on to the liens including both the cash flows actually received and the estimated residual value of the remaining outstanding liens as calculated by the TaxServ model.
- Column D presents an estimate of servicing costs, again discounted back to a present value.
- Column E is equal to Column C minus Column D. This is the estimated value to the City of holding on to liens, to be compared to Column A.
- Column F is equal to Column E minus Column A. This is the net gain to the City of holding on to liens.

T4:2 Returns from lien sale versus potential returns from lien servicing contract

	A. Sale Price received by City on lien sale	B. Present value of redemptions to date	C. Present value including valuation estimate of remaining liens	D. Present value of servicing costs	E. Estimated net present value to City of tax lien servicing strategy alternative	F. Gain (loss) vs. lien sale
Cohort 1 – liens sold Q1 2009	\$6,036,829	\$5,082,606	\$7,677,854	\$371,077	\$7,306,776	\$1,269,947
Cohort 2 – liens sold Q3 2009	\$4,981,986	\$5,004,758	\$7,064,344	\$289,387	\$6,774,957	\$1,792,971
Cohort 3 – liens sold Q4 2010	\$5,342,778	\$3,175,984	\$6,306,909	\$198,414	\$6,108,494	\$765,716
Cohort 4 – liens sold Q1 2012	\$4,578,407	\$1,163,414	\$5,660,333	\$92,349	\$5,567,984	\$989,577
All cohorts	\$20,940,000	\$14,426,762	\$26,709,439	\$951,228	\$25,758,211	\$4,818,211

The results suggest that the City might be substantially better off if it moved away from tax lien sales and towards a servicing strategy, even with the substantial discount rate we select. As can be seen the total fiscal benefit were the City to have held on to the liens, across all four lien sales, is estimated at \$4.8 million (again – this is a one-time, discounted net present value sum). We remind the reader of several key caveats:

1. We are including a present-value estimation of the value of outstanding lien balances in Column C. There are no guarantees around how much the City could actually recoup from these remaining balances.
2. While this analysis suggests that the City's strategy to sell tax liens may not be the most remunerative over the long haul, selling tax liens generates a lump-sum, risk-free, up-front payment of cash.

Key Observation: *We recommend that the City evaluate the possibility of a contract with a private third party for servicing of the delinquent tax lien digest. If the City chooses to explore this option, it should consider the possibility of issuing Requests for Proposals for delinquent tax lien servicing, either to handle servicing of liens excluded from bulk tax lien sales or as a complete alternative to bulk tax lien sales.*

When the City of Waterbury, CT was forced to abandoned bulk tax lien sales, Waterbury turned to private tax collection specialists rather than rebuilding the administrative infrastructure to handle delinquent collections. Similarly, New York City uses private collection agencies to collect its non-real estate taxes and other municipal debt. New York City also requires that its securitized real estate tax lien trust use experienced real estate tax lien servicers. Waterbury pays for the tax lien servicers by the addition to the tax of a collection fee (15% of the outstanding redemptive balance). New York City pays for the tax lien servicers through the addition of penalty interest on all taxes and delinquency penalties added to real estate taxes that are not redeemed prior to sale to a securitized trust. The experience in New York City and Waterbury, CT illustrate several possible advantages of tax collection servicing over bulk tax lien sales including:

- a. Direct municipal control over collection efforts so as to meet non-tax related priorities.
- b. Greater return to municipality over time because municipality keeps proceeds of delinquent collections including all accrued interest.
- c. Meaningful improvement in current collections (in Waterbury the current collections rate has risen from 90% to 96.9%).
- d. Municipal control of all payment information and thus higher likelihood that database will remain the accurate and official record.
- e. Systematic improvement in the collection system itself with the benefit of third party servicer's strategies, techniques and technologies that government employees do not have the time or incentive to consider

B. Optimizing Lien Sale Outcomes by Utilizing a Lien Valuation Model

Yet another alternative the City could consider is to continue with tax lien sales, but to try to optimize both the fiscal and community impacts of these sales by selecting which liens to sell. For example, the City could pursue a strategy in which it sold only those liens that have a high likelihood of repayment, while holding on to those liens that are likely to end in foreclosure anyway, in order to efficiently pursue bulk foreclosure processes on such properties. Such a strategy might yield better pricing from investors, depending on the priorities and valuation models of those investors.

To assist the City in this regard, we conduct an exploratory statistical analysis to identify property or neighborhood characteristics that may predict the probability that a tax-delinquent property will repay (redeem) its outstanding liens within one year. We conduct this analysis at the individual lien level.

We first ran some basic statistics and found that:

- Only 18 percent of liens sold to ATFS paid off within one year of sale.
- At the time ATFS purchased a lien, the average lien was on a property owing tax liens worth 35 percent of its assessed value (this is counting all liens on the property, not just the one purchased). The median lien was on a property owing 16 percent of its assessed value.

Table 4:3 summarizes the relationships we found through this analysis. Not surprisingly, the lien-to-value ratio is the most powerful predictor of whether a lien will repay. Vacant building status, investor ownership status, bankruptcy, neighborhood poverty levels, and code violation status also appear to have some predictive power. Interestingly, investor ownership is associated with a somewhat higher likelihood of the lien repaying, although keep in mind that the homeowners of sold liens might often be in substantial financial trouble.

T4:3 Lien to Value Ratio and Likelihood of Redemption Within 1 Year

Variable	Co-efficient	Interpretation: probability of a lien repaying within 1 year...	Significance (p value)	Interpretation of stat. significance
Lien to Value Ratio < 16%	0.219	goes up 22 percent if the lien-to-value ratio on a property is less than 16 percent	0.00	highly significant
Lien to Value Ratio 16-30%	0.064	goes up 6 percent if the lien-to-value ratio is between 16 and 30 percent	0.00	highly significant
Vacancy Status	-0.082	goes down 8 percent if the property is a vacant building	0.00	highly significant
Single Family Status	-0.022	goes down 2 percent if the property is a single-family home	0.15	not significant
Small Multi-Family Status	-0.009	goes down 1 percent if the property is a 2- or 3-unit residential building	0.55	not significant
Apartment Status	0.045	goes up 5 percent if the property is an apartment building	0.08	somewhat significant
Vacant Land Status	-0.057	goes down 6 percent if the property is vacant land	0.09	somewhat significant
Parking Lot Status	0.037	goes up 4 percent if the property is a parking lot	0.52	not significant
Downtown Status	-0.031	goes down 3 percent if the property is a multistory mixed-use row building	0.17	not significant
Community Use Status	-0.040	goes down 4 percent if the property is a community use	0.43	not significant
Investor Status	0.075	goes up 8 percent if the property is investor-owned	0.00	highly significant
Bankruptcy Status	-0.062	goes down 6 percent if a bankruptcy is involved	0.09	somewhat significant
Code Violation Status	-0.024	goes down 2 percent if the property has an outstanding code violation	0.00	highly significant
High Poverty Status	-0.033	goes down 3 percent if the property is located in Census Tract with a poverty rate of > 40%	0.00	highly significant

We caution extreme care in the use of these exploratory model results. They are informative about how recent tax liens have behaved but may not ultimately be predictive of how future tax liens will behave.

Key Observations: *The statistical analysis contained in Section 4B demonstrates that the inclusion of a valuation of liens (according to property characteristics and redemption probabilities) in the negotiation of a bulk tax lien contract would likely yield a high net payment and cash flow to Rochester. In order to optimize this cash flow, properties bearing tax liens with low probability of redemption should be excluded from the contract for sale. In addition, the contract should require the tax lien purchaser to purchase all subsequent tax liens on the same properties, or immediately return the prior tax lien (that was purchased) to the City at the applicable purchase price for that prior lien. The contract should require that the tax liens purchasers either proceed with judicial enforcement proceedings within 24 months of transfer of the tax lien or return the lien to the City at the applicable purchase price for that lien. All properties excluded from a bulk tax lien, or for which liens are returned to the City, should be aggressively pursued with in rem foreclosure (and land bank acquisition if authorized).*

A Note on Land Banking: *The City should consider the advantages of land bank acquisition of properties not redeemed prior to a foreclosure sale. A land bank could be an option for an entity that is solely focused on acquiring limbo properties and those properties considered a liability.*

CONCLUSION

At the request of the City and pursuant to the Contract Agreement between *Community Progress* and the City dated November 20, 2012, we have undertaken an analysis of the current delinquent tax enforcement strategies employed in Rochester, NY. We reviewed the fiscal, community and policy impacts of the bulk lien tax sale and *in rem* foreclosure strategies, compared those strategies to the systems employed in other municipalities, and presented our findings and recommendations for alternative strategies in the four chapters comprising this report.

Upon our review of data obtained from the City, from ATFS, and from interviews with stakeholders throughout the City, we concluded that the bulk tax lien sale to ATFS generated \$1.5 million in increased cash flows to the City between 2009 and 2012. Our data also demonstrates, however, that the bulk tax lien sale and those properties that remain tax delinquent correlate with and contribute to a series of negative community impacts including the creation of Limbo Properties that deteriorate and remain outside of City control as long as they bear ATFS liens. Moreover, our data and analysis indicates that the bulk tax lien sale strategy may not be the most cost-efficient delinquent tax enforcement strategy available to the City. Alternative strategies including tax lien servicing contracts and the optimization of lien to value are discussed in detail in Chapter 4.

We hope that the observations and recommendations contained in this report provide a helpful basis for further discussions and analysis among Rochester City leadership and stakeholders throughout the community.