



Lockport, New York

Preliminary Assessment of Vacant Properties and Strategies for Coordinating with NORLIC

Memorandum

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DATE: June 10, 2024

RE: Preliminary assessment of vacant properties in Lockport, New York, and strategies for coordinating with the Niagara Orleans Regional Land Improvement Corporation

This Memorandum summarizes key takeaways, observations, and recommendations for the City of Lockport (City) to consider, alongside its partner, the Niagara Orleans Regional Land Improvement Corporation (NORLIC), in their efforts to equitably, efficiently, and effectively address vacant, abandoned, and deteriorated (VAD) properties.

Last fall, the Center for Community Progress (Community Progress) selected two General Motors (GM) communities outside of Michigan and provided no-cost technical assistance with the expressed goal to help improve the community's approach to addressing VAD properties. These two technical assistance scholarships were made possible by generous support from GM. Community Progress initiated conversations with NORLIC about this opportunity, and there was mutual agreement that a focused engagement on increasing communication and collaboration between NORLIC and the City of Lockport could generate impactful outcomes for the residents of a community with a rich GM legacy. The proposal had strong support from Lockport officials, and the project launched in February 2024 with an anticipated completion date of May 31, 2024.

Community Progress is the only national nonprofit dedicated to tackling vacant properties and driving change by uncovering and disrupting the unjust systems that perpetuate entrenched vacancy and property deterioration. Since 2010, our team of experts has provided communities battling systemic vacancy with policies, tools, and resources to address the full cycle of property revitalization. Community Progress administers the National Land Bank Network, a member-based community of practice that supports over 300 land banks and land banking programs across the United States. We have also provided technical support and guidance to the New York State Land Bank Association for nearly a decade, helping land banks use their unique powers to put VAD properties back to productive use according to community goals

NORLIC is one of twenty-nine land banks in New York State. A primary focus for NORLIC is addressing the harmful effects of brownfield properties that plague its member communities by turning them into valuable assets. NORLIC has leveraged Niagara County's successful track record of attracting EPA funding, through the Niagara Brownfields Development Corporation, to advance its work on brownfields. In Lockport alone, NORLIC and the County have supported assessments and/or cleanup activities on nearly 30 properties (see Appendix B for the full list of properties). NORLIC also addresses residential and commercial VAD properties in its member communities. In Lockport, NORLIC was instrumental in addressing a well-known property that became an extremely dangerous nuisance after being damaged

by a fire. NORLIC funded and managed the property's demolition and is working to transfer the resultant vacant lot to the adjacent property owner through its Side Lot Program.

While these successful partnerships are noteworthy, there was consensus among City leaders that NORLIC could be leveraged more strategically to address problem properties in Lockport and support longer-term planning and reuse.

The goal of this engagement was two-fold:

1. Conduct a preliminary assessment of the City's approach to addressing VAD properties and provide observations and recommendations to move the City toward a more equitable, efficient, and effective approach; and,
2. Strengthen the relationship between the City and NORLIC through a coordinated strategy to address VAD properties, including brownfields, in Lockport.

National experts at Community Progress led the engagement. The assessment team included Tarik Abdelazim and Liz Kozub, both of whom have deep roots in New York. The assessment included a review of available data, programs, policies, relevant state laws, and was informed by virtual and in-person interviews. On May 6–7, Community Progress conducted a two-day site visit which included individual and group interviews.

This memorandum shares key takeaways, observations, and recommendations related to (1) Data Management and Coordination, (2) Housing and Building Code Enforcement, and (3) Tax Enforcement. These three systems at the City's disposal are critical to address the harms imposed by VAD properties and provide the most impactful opportunities for partnership with NORLIC. A summary of the recommendations include:

Data Management and Coordination

1. Expand the PMC to include the IT/Network Coordinator and leadership from NORLIC and hold monthly committee meetings.
2. Share and visualize relevant parcel data in advance of PMC meetings to identify overlap of problem properties and pair properties with existing and future resources.
3. Immediate (60 days) action items for the PMC could include identifying properties eligible for NORLIC's stabilization funding.
4. Short-term (3-6 months) action items for the PMC could include identifying properties for stabilization and/or demolition to inform NORLIC's 2025 application for state land bank funding.
5. Medium-term (6-12 months) action for the PMC could include proactively coordinating investments to address brownfields and/or developing a targeted block approach to neighborhood stabilization.

Housing and Building Code Enforcement

1. Consider expanding the nuisance abatement program to include activities of trash removal, boarding, and other abatement activities on vacant properties.
2. Consider implementing a Vacant Property Registration Ordinance (VPRO) that includes residential
3. Consider restoring the Fire Prevention Officer position to oversee the VPRO program and the triennial inspection program.
4. Consider moving from rental registration to a proactive rental inspection and licensing program.
5. NORLIC might consider requesting grant funds to retain a local law firm to carry out Article 19A proceedings on behalf of municipalities in its service area.

Tax Enforcement

1. An Immediate (60 days) action item for the Treasurer to consider is coordinating with the PMC and NORLIC to identify *in rem* properties that fit NORLIC's stabilization program funding.
2. Restart auction process, with a minimum bid that encompasses all delinquent taxes and other expenses owed to the City, along with other charges allowable under the new reform bill. If no bids are received, consider transferring to NORLIC at no or nominal cost.

Observations and Recommendations

Data Management and Coordination

Key takeaways:

- The PMC is an asset to the City. It can be more impactful by shifting its approach from being reactive to proactively addressing VAD properties and neighborhood stability.
- Data is currently siloed in departments. Collaboration between departments to share, aggregate, analyze, and visualize (map) parcel data sets would benefit the PMC.
- The PMC and the City should leverage NORLIC's expertise, acquisition powers, and grant funding to advance their goals and priorities.

Observations

An effective and comprehensive approach to addressing problem properties and working towards community stability requires a culture of sharing, integrating, mapping, and analyzing parcel data. Compiling and analyzing parcel data *across* various departments needs to be the foundation for a coordinated and strategic approach to addressing VAD properties. Having a comprehensive understanding of VAD property count, location, and trends gives decision-makers knowledge needed to coordinate various legal tools, like code enforcement and delinquent tax enforcement, and an understanding of where investments could be targeted to have the greatest impact.

The City already has a key asset to deploying a coordinated approach to addressing VAD properties: the Property Management Committee (PMC). Department heads and staff from the Building Inspection Department, Community Development Department, and Treasurer's Office currently make up the PMC. Members have been meeting on an as-needed basis and in response to specific problem properties.

While each PMC member possesses deep knowledge about problem properties relative to their purview, data is not systematically shared across departments or visualized through GIS mapping. In addition, some of the existing data software does not allow for reporting in a way that can be easily understood, let alone mapped and analyzed. This was particularly evident with the water utility data that was shared in a DOS file. Understanding water shut-off or no water usage at specific properties is a powerful source of information to determine property vacancy. In addition, we heard PMC members discuss actions their departments had taken individually to address the properties and were unaware of actions taken by other departments.

The lack of sharing, mapping, and analyzing parcel-level data is not uncommon among local governments. However, as seen elsewhere, this current approach undermines the PMC's ability to strategically prioritize certain problem properties or neighborhoods where enforcement and investment may be needed. The City's data coordination is currently running through the IT/Network Coordinator, who has been primarily charged with managing public safety and infrastructure data. It is critical that this position also support other vital City services that directly impact neighborhood safety, such as code

enforcement, tax collection and enforcement, and community development. For that to occur, additional capacity is needed, specifically through data management and GIS mapping.

The City has an opportunity to better leverage NORLIC's expertise, funding, and acquisition and disposition powers. Positioning NORLIC as a vital partner in addressing VAD properties and including their leadership in the PMC could yield high impacts for the City.

NORLIC has a proven track record of receiving state and federal grant awards to address VAD properties. NORLIC has approximately \$140,000 in state grant funding to complete two residential stabilization projects in Lockport by November 2024. NORLIC will submit another grant application before the end of this year to tap the \$50 million in new land bank funding included in the state's 2024–2025 budget. Now is the time for City leaders to prioritize properties that could use land bank interventions and funding over the next two years. In addition to driving investments in residential properties, NORLIC has an impressive record, in partnership with the Niagara Brownfields Development Corporation, of securing millions in brownfield assessment and clean-up grants that are achieving positive outcomes throughout the county, including Lockport.

- Key data sets from each department on PMC
- The Building Inspection Department: vacant properties, chronic violations
 - Treasurer's Office: Tax Delinquency
 - Community Development Department: applications to home repairs, currently redevelopment
 - Water Administration Office: Water shut offs
 - Police: Frequent public safety calls
 - Fire: Fire and other public safety calls

Recommendations:

1. **Expand the PMC to include the IT/Network Coordinator and leadership from NORLIC and hold monthly committee meetings.**

The work of collecting and integrating parcel data for better analysis and decision-making must not be the sole responsibility of one staff person, but instead a committed group of leaders whose work touches problem properties in Lockport. Institutionalizing the PMC through recurring meetings will enable the City to take immediate action on problem properties causing harm and strategically plan for future interventions and investments. The IT/Network Coordinator, or designee with GIS capacity, could help coordinate and visualize key data points in advance of PMC meetings (see recommendation #2). NORLIC leadership could be invited as a member of the PMC and be leveraged for its expertise in property acquisition and access to state and federal resources.

2. **Share and visualize relevant parcel data in advance of PMC meetings to identify overlap of problem properties and pair properties with existing and future resources.**

On a monthly basis, PMC members should share relevant datasets with the IT/Network Coordinator, or designee with GIS capacity, to map problem properties. The data should be joined with the use of one common geocoded data point (such as a Parcel ID number or Tax ID number). Relevant data for an initial map may include:

- a. Vacant properties (Building and Inspections)
- b. Water shut offs or no water usage (Water Administration Office)
- c. Properties with chronic code violations and/or multiple abatement orders (Building and Inspections)
- d. Properties moving through the tax enforcement and foreclosure process, including current foreclosure list and *in rem* lists (Treasurer's Office)

Future iterations of the map could also include:

- a. Properties on the waitlist for the home repair grant program (Community Development)
- b. Fire and police responses to properties (Police and Fire Departments)
- c. Building permits to track investment trends across neighborhoods

3. Immediate (60 days) action items for the PMC could include identifying properties eligible for NORLIC’s stabilization funding.

PMC members should prioritize identifying properties eligible for NORLIC’s stabilization funding by reviewing the Treasurer’s list of properties where the City holds the tax foreclosure judgement and could quickly acquire a deed. Building Inspections should review the list and identify any vacant properties causing harm that would be good candidates for stabilization. NORLIC’s grant funding must be expended by November 2024, so a timely decision is critical. Were a property or properties identified, any transfer to NORLIC would need to contemplate the state’s recent reform bill compelled by the U.S. Supreme Court ruling in *Tyler v Hennepin County* (March 2023). For more detail on the *Tyler* ruling and implications for Lockport and its partnership with NORLIC, see the Tax Enforcement section.

4. Short-term (3-6 months) action items for the PMC could include identifying properties for stabilization and/or demolition to inform NORLIC’s 2025 application for state land bank funding.

The PMC could identify future properties for stabilization and/or demolition where the Treasurer holds the tax foreclosure judgment. PMC could consider targeting this investment in a certain neighborhood, like the South Street neighborhood, or another area of the city where VAD properties are concentrated. NORLIC’s grant application to the state will likely occur in October 2024; identification and budgeting should occur in late summer 2024.

5. Medium-term (6-12 months) action for the PMC could include proactively coordinating investments to address brownfields and/or developing a targeted block approach to neighborhood stabilization.

Given its rich industrial past, Lockport has several brownfield sites that must be addressed as part of a comprehensive approach to neighborhood stabilization and revitalization. The City should consider expanding opportunities to leverage the County’s brownfield funding for assessments, cleanups, and potential acquisition of tax liens to transfer to new responsible owners—see the Tax Enforcement section for more information on how NORLIC uses tax liens to transfer brownfields for redevelopment.

A second proactive approach for the PMC to consider is coordinating code enforcement activities and investment in targeted blocks or neighborhoods with the highest rate of property vacancy and deferred maintenance. Community Development could consider targeting limited resources, including Home Repair funding and First time Homebuyer funding, to specific geographical areas. The City could also consider additional programming, such as Blitz the Block and

In the City of Syracuse, leaders with support from HomeHeadquarters host an annual Blitz the Block event to address maintenance issues of up to 50 homes in a single neighborhood. Typical activities include supporting home repairs, landscaping, and painting. The event solicits sponsorship from a wide range of corporate, philanthropic, and nonprofit partners.

neighborhood cleanup days, within focused graphical areas recommended by the PMC.

To secure additional funding for home repair grants and other community stabilization activities, additional capacity is needed at the City. Grant writing *and* grant management requires a significant amount of administrative time. The City could explore shared staffing agreements or contracting out with mission-aligned organizations, such as Belmont Housing, for a grant writer and manager. NORLIC could also consider hiring a staff person, whose time and expenses could be split with other municipalities in Niagara and Orleans counties, to support this much needed service.

Housing and Building Code Enforcement

Key Takeaways:

- The City has only ~15 vacant residential properties; however, vacant commercial and industrial properties present a bigger challenge.
- The City's greatest challenge is deteriorating occupied properties—both owner and tenant occupied.
- The City has a successful nuisance abatement program for high grass/weeds and snow/ice clearance on sidewalks; however, criminal code enforcement is being pursued for other common nuisance violations on vacant properties, such as missing doors and windows and excessive trash/debris.

Code enforcement is often a community's first line of defense against the harmful effects of VAD properties. Code enforcement can also be leveraged to compel the transfer of vacant properties causing significant harm to new, responsible owners.

VAD Property Conditions

According to leadership in Building Inspection Department, the number of vacant properties has been decreasing over the past five years. Leadership reported that the height of vacancies occurred between 2012-2018, with many Zombie properties¹ stuck in the mortgage foreclosure system during that time. This experience is congruent with existing data from the 2017 *South Street Neighborhood Needs Assessment and Action Plan*, which identified 33 vacant and abandoned properties in the South Street neighborhood alone.² Today, the Building Inspector counts about 15 vacant, residential properties *citywide*. Even though vacant residential properties are not a widespread challenge for the City, individual properties can place a heavy demand on city services and create public safety hazards for residents of Lockport.

When discussing vacant properties, we heard most often the challenges of vacant and abandoned commercial and industrial properties. While there are anchor properties causing significant harm, like the East Niagara Hospital and the shuttered tuberculosis hospital, there are also various warehouses and commercial properties whose ownership status is in limbo and stick out as boarded eyesores for the community. Lockport, as a central city on the Erie canal, has a rich history as a place of thriving industry. That history brings with it the potential for environmental contamination at these vacant properties, which creates additional barriers to finding new ownership and reuse opportunities.

¹ Zombie properties are vacant and abandoned residential property (1-4 units) where a valid mortgage lien exists against the property. The NY Real Property and Proceedings Law § 1309 provides additional requirements for what qualifies as "Zombie Property."

² South Street Neighborhood Needs Assessment and Action Plan (2017)

Some leaders shared the City had been considering a Vacant Property Registration Ordinance (VPRO) under the previous administration. VPROs can be used to require owners of vacant properties to register with the City by providing specific contact information and paying a fee. Many ordinances also require owners to take certain actions above and beyond basic property maintenance codes, such as making sure plywood boarding is painted to match the color of the building and/or providing Fire Inspectors access to better understand the potential fire load and safety hazards within a boarded-up structure. A downside of a VPRO is often the worst offenders do not come forward to voluntarily register their properties. Therefore when setting up a VPRO program, the City also needs to create a proactive strategy for identifying vacant properties and dedicate the resources to bring enforcement actions when owners fail to register, comply, or adequately maintain them.³

Every stakeholder we spoke with cited that one of the biggest challenges for the City is deteriorated occupied properties. Leaders reported that owner-occupied properties had the highest rates of deterioration, specifically those properties owned by older and lower-income residents. Many of these residents have limited financial resources and often defer maintenance, sometimes for years, causing unsafe living conditions. This reality is reflected in the Community Development Department's 100-person waitlist for the Home Repair grant program. This program, which has primarily been advertised by word-of-mouth, gives financial resources to residents to repair unsafe living conditions.⁴ In 2023, the program was able to support repairs to 16 properties through \$530,000 of grant funding. This program is admirable—and demonstrates the need for home repair far outpaces the City's current resources.

In addition to owner-occupied properties, we heard concerns with conditions at tenant-occupied properties. The City's rental registration program has about a 50 percent compliance rate, which is on par with rates in other communities. As with VPROs, the worst offenders of rental property conditions rarely comply with the registration requirement. Concerns around rental property conditions paralleled concerns about the lack of quality, affordable rental units in Lockport. The shortage of quality, affordable housing might be dissuading residents from actively reporting code enforcement violations in their rental units because there is a lack of alternative housing options.

Department Capacity

The Building Inspections Department oversees Planning and Zoning, new construction permits, and property maintenance standards. In this memorandum, we use "code enforcement" to refer more specifically to the process of enforcing property maintenance standards on existing buildings and properties. At its highest capacity, the Building Inspections team had five inspectors, and at its lowest capacity had just one inspector. Today, the Building Inspections team has three employees.

Historically the Fire Department played an important role in fire safety inspections of multi-unit properties. However, the Fire Department has also seen a decrease in capacity following the elimination of the Fire Prevention Officer position. Understandably, the removal of this position has impacted the City's ability to carry out state-mandated inspections once every three years of apartment buildings with three or more units. These triennial inspections are critical in ensuring shared spaces in apartment buildings comply with fire safety codes.

³ "Reevaluating Code Enforcement: A New Approach to Addressing Problem Properties," Washington DC: Center for Community Progress, 2024, www.communityprogress.org/code-enforcement-report.

⁴ Most often repairs are targeted to activities that will keep occupants "warm and dry" e.g. repairing roofs and replacing furnace systems.

Process

Our understanding is that the code enforcement process has two tracks and is dependent on the type of violation observed at the property.

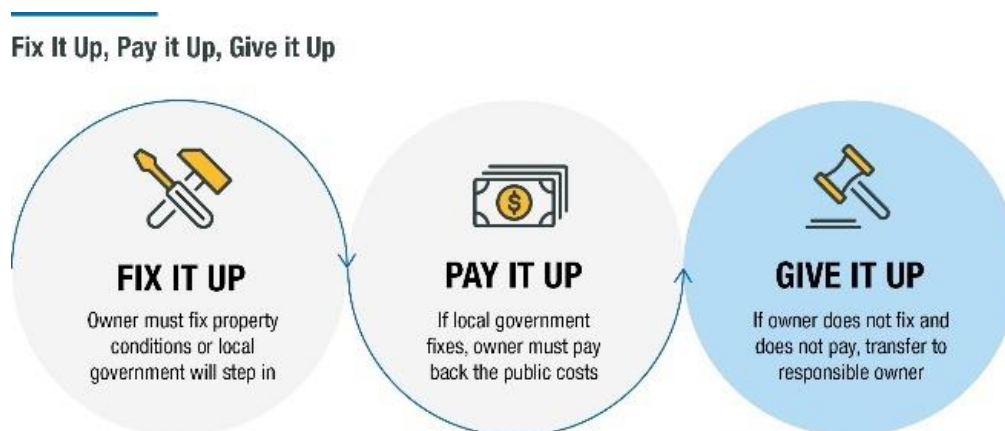
1. Criminal Enforcement for violations of trash/debris and open properties that require boarding:
 - When a violation is observed, the property owner is cited and given a specified amount of time to remedy the condition. The citation is sent via certified mail.
 - If the owner does not comply, they are given an arraignment date by the Court. The arraignment date usually occurs 3-5 weeks after the request is made by the City.
 - If the owner does not show up to court, a warrant is issued.
 - The owner is given a second court appearance date.
 - If the judge finds the owner guilty, they are given a sentencing date and fine.

2. Nuisance abatement for violations of grass and sidewalk (snow and ice):
 - When a violation is observed, the owner is cited and given a specified amount of time to remedy the condition. The citation is sent via certified mail.
 - If the violation is not remedied, the City will send out third party contractors to address the violation. The owner is billed for the expense of that abatement activity.
 - If the owner does not pay, the bill is rolled into their tax bill. Subsequent collection actions are pursued through the tax collection and enforcement process.

This practice of nuisance abatement, where the unpaid costs are transferred to the Treasurer’s Office to be applied to the tax bill, is permitted and common across New York.

Community Progress describes this code enforcement tactic on vacant properties as a “Fix it Up, Pay it Up, Give it Up” approach, and advocates for its use in lieu of criminal enforcement. The approach includes: 1) Give the owner a chance to fix property conditions or the local government will step in, 2) If the local government fixes the issue, make the owner pay back the public cost, and 3) If the owner doesn’t pay back the City, enforce the code lien like delinquent taxes and use the foreclosure process to transfer the property to a new, responsible owner.

“Fix it Up, Pay it Up, Give it Up” is the most effective practice to protect residents from the immediate harms caused by vacant and abandoned properties. Moreover, this approach provides the City an opportunity to either recoup the public investment in a vacant property or compel transfer to a responsible owner.



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Most states also grant municipalities some code enforcement mechanism to acquire an abandoned property in a timelier manner than a tax foreclosure. In New York, that tool is called Article 19A, the Abandonment Proceedings Act. Local officials shared the City of Lockport has used Article 19A a couple times in the last decade. That is not surprising. This legal tool is used sparingly across the state, but some communities have deployed it successfully in lieu of waiting three to five years to foreclose on delinquent property taxes. For example, the City of Rochester carried out about 25 Article 19A cases in a year with state grant funding. The Greater Mohawk Valley Land Bank also used state grant funding to provide specialized legal service to carry out these cases to more than a dozen municipalities in its multi-county service area.

Recommendations

1. Consider expanding the nuisance abatement program to include activities of trash removal, boarding, and other abatement activities on vacant properties.

The City has a successful nuisance abatement program that follows the “Fix it Up, Pay it Up, Give it Up” approach, an optimal practice when it comes to harmful vacant properties. The City should consider expanding this practice on vacant properties to include trash removal and boarding: it is the quickest way to address the harmful effects of VAD properties and results in either the collection of public debts owed or a transfer to new ownership.

2. Consider implementing a Vacant Property Registration Ordinance that includes residential and commercial properties.

The highest utility of a VPRO would be the registration of commercial properties in the City. There is a strong desire by senior public safety officials to better understand commercial vacancy, specifically the fire load in commercial buildings in order to protect the safety of first responders and residents. While the number of residential vacant properties may not necessitate the need for a VPRO, it can still serve as a useful tool to monitor vacant residential properties and hold owners accountable for unsafe conditions. There are dozens of municipalities in New York State that implement a VPRO, and many offset a portion or most of the program implementation costs with annual registration fees and fines.⁵

3. Consider restoring the Fire Prevention Officer position to oversee the VPRO program and the triennial inspection program.

The City faces challenges meeting the state’s requirement to conduct inspections once every three years of the common spaces in multi-dwelling properties that have three or more units. This is due to diminished capacity with the loss of the Fire Prevention Officer position some years back. The City might consider restoring this position, if and only if the union agrees to a modified job description that made the Fire Prevention Officer responsible for implementing both the vacant property registration program and the triennial inspection program. Given the size of Lockport, it seems this position could handle both programs and be a worthy investment that met both public safety goals and neighborhood stabilization goals.

4. Consider moving from rental registration to a proactive rental inspection and licensing program.

A proactive rental inspection and licensing (PRIL) program would require that all rental properties in the City be subject to a recurring health and safety inspection. Frequency of the inspection would need to be dictated in local ordinance and should be based on department capacity and

⁵ Dutchess County created a [guide](#) on model VPROs for the municipalities within the county contemplating this policy tool.

number of rental units. Many smaller cities that have a rental inspection program require an inspection every three years or so. Some cities implement performance-based programs, meaning responsible landlords that regularly keep units in compliance are inspected less frequently and problematic landlords whose units routinely have health and safety violations are inspected more frequently. PRIL programs promote healthy and safe living conditions for tenants and reduce the likelihood of rental properties becoming deteriorated and abandoned.

5. NORLIC might consider requesting grant funds to retain a local law firm to carry out Article 19A proceedings on behalf of municipalities in its service area.

Land banks can and should become the clearinghouse of expertise and focus for addressing VAD properties in their service area, particularly in rural counties or areas where local governments may lack capacity. Thus, NORLIC might want to seek grant funding to pilot an “Article 19A Partnership Program” and market it to the municipalities within its service area. The Greater Mohawk Valley Land Bank⁶, could serve as a useful model and mentor, and NORLIC could expand its reputation of excellence in addressing all types of problem properties using a variety of legal and policy tools and best practices.

Delinquent Tax Enforcement

Key Takeaways:

- The number of properties subject to tax foreclosures are decreasing, consistent with state and national trends, due to the appreciating real estate markets.
- The City is not using a minimum bid for foreclosed properties brought to the tax auction, limiting the City’s ability to recoup the total amount of public debt owed by the owner, including code liens and abatement costs.
- As a result of the U.S. Supreme Court’s decision in *Tyler v. Hennepin County, et al.*, 143 S. Ct. 1369 (2023), a *de facto* moratorium on delinquent property tax foreclosures has been in effect in New York since March 2023. In April 2024, the legislature amended the NYS Real Property Tax Law in [A8805/S8305](#) to provide local governments a new tax foreclosure process by which they can avoid ongoing *Tyler* liability, effectively ending this moratorium. Local officials will need to study and learn the new process, which does preserve the ability of the City to partner with NORLIC in addressing and resolving tax-foreclosed VAD properties.
- There are immediate and long-term opportunities to transfer properties to NORLIC that have completed the tax foreclosure process (*in rem* lists) but have yet to be auctioned for stabilization. This process *must* be done in compliance with the new reform bill mentioned above.

Observations

Property taxes are often the primary revenue source for local governments and are critical to funding the essential community services and amenities that create healthy, safe, and equitable communities. When property owners fail to pay their taxes, it signals potential problems at the properties and can cause a financial strain for the City. Tax delinquency is the number one predictor of vacancy and abandonment. The property tax enforcement system, therefore, is a strong legal tool that local governments can and should leverage to address these properties and transfer them to new, responsible owners.

⁶ More information on the Greater Mohawk Valley Land Bank’s efforts to address VAD properties regionally can be found here: <https://www.timestelegram.com/story/news/2021/02/25/greater-mv-land-bank-helps-villages-towns-abandoned-properties/4549042001/>

Fortunately, New York State has a relatively effective and efficient real property tax law that local foreclosing government units (FGUs) can follow (or “opt-out” and design their own under home rule authority). Most FGUs, including the City of Lockport, follow the property tax collection and enforcement regime outlined by state law (Real Property Tax Law, Article 11), which prescribes the enforcement of delinquent property taxes through an *in rem* judicial foreclosure process, an approach that Community Progress considers optimal.

Lockport is incredibly fortunate to have skilled and knowledgeable leadership and senior staff in the Treasurer’s Office. The department follows a standardized process of enforcing delinquent properties and prioritizes keeping people in their homes. The City also rolls unpaid nuisance abatement expenses and unpaid water bills to the tax bill, which are enforced through the same mechanism as delinquent taxes. The City collects City taxes and Niagara County taxes⁷ and is financially responsible for paying the County its entire tax levy.

When a property owner becomes delinquent on their taxes for two years, the Treasurer initiates the foreclosure process. The property owner has a two-year redemption period to pay the delinquent taxes and fees owed to the City. After the redemption period, the City will seek a foreclosure judgement on the property, and subsequently bring the property to a public auction.⁸ Historically the City has not set a minimum bid for properties brought to auction. This practice is hindering the City’s ability to recoup taxpayers’ dollars that have been invested in these privately-owned, problem properties. Ideally, the minimum bid is reflective of all the debt and public costs that have gone into a property, including delinquent taxes, water bills, and nuisance abatement costs.

Over the last few years, the volume of properties going to tax auction has decreased. This is a national trend as housing markets rise and states grapple with a May 2023 Supreme Court ruling in *Tyler v. Hennepin County* (*Tyler* decision).⁹ At its highest, leaders in Lockport reported 35-50 properties would be sent to tax auction. The most recent tax auction was held in August 2023. This was the first time the City used an online bidding system, and all 29 properties sold.

The *Tyler* decision in March 2023 necessitated legislative reforms to New York State’s tax law. The City of Lockport and nearly all other FGUs in New York State had a *de facto* moratorium on foreclosures until the state legislature reformed RPTL Article 11 in response to the *Tyler* decision. The City reported a backlog of three years of delinquent properties. About 30 properties have completed the foreclosure process and have yet to be offered for auction, and another 45 are currently moving through the foreclosure process (though the number of actual foreclosures will likely be much lower, since many owners will pay before the redemption period expires).

In April of 2024, the New York State Real Property Tax Law was amended and provides guidance to cities on how to determine surplus funds that property owners are entitled to claim after the FGU takes the property. Given the passage of that amendment, foreclosing governmental units that utilize RPTL Article 11, such as Lockport, are now able to move forward with foreclosures and public auctions. We strongly encourage studying and understanding the new reforms before proceeding.

⁷ School taxes are paid to M&T Bank.

⁸ Even after the lapse of the redemption period, the Treasurer’s Office, on a case- by-case basis, will allow property owners to pay debts owed and redeem their property, demonstrating their strong preference to keep residents in their homes.

⁹ The *Tyler* decision determined that local governments can recover only what they are owed in a tax foreclosure. This decision requires that property owners need to be given a mechanism to recover any value in the property that exceeds the amount owed. While the majority of states already had such a mechanism in place, New York State did not. Therefore the New York State legislature was charged with reforming the Real Property Tax Law to comply with the *Tyler* decision. Read *Policy Brief: Tyler v. Hennepin County Analysis and Policy Reform Options for State and Local Governments (2023)* to learn more about the case and its impact nationally.

Amendments to the NYS Real Property Tax Law (RPTA) (A8805/S8305) give local governments different ways to value a tax-foreclosed property at the conclusion of the tax foreclosure in order to determine whether there are surplus proceeds due to the former owner or interested parties. These options include:

1. **Public Sale via Auction.** The highest bid at the auction sets the value of the property. However, if no bidder offers the minimum bid, the changes to the RPTL clarify that there are no surplus proceeds due.
2. **Retention by FGU for Public Use.** If there is no public sale because, for example, the foreclosing governmental unit wants to retain or ‘purchase’ the property for public use (which may include transferring to a land bank), then the enforcing officer at their discretion can accept one of the following estimations of the property’s “full value.”
 - A. Appraisal from a licensed NYS appraiser
 - B. Assessed value from the most recent tax roll
 - C. Any other method determined by the enforcing officer that will result in “just compensation” to the former owner or interested party

Notably, some of the options for determining “full value,” particularly 2.B. given research demonstrating inaccuracies of assessed value, may carry greater risk of a future *Tyler* claim.

The Treasurer’s Office also reported there are brownfield properties with long-standing tax delinquencies. The City has not pursued these properties through foreclosure because of the real or perceived potential liability exposure that could come with being in the chain of title. This was a prime example of how NORLIC, with its EPA funding and its acquisition powers, could serve as an essential partner to the City. NORLIC’s targeted focus and deep expertise in addressing brownfields has allowed them to create a systematic process for transferring these types of properties without getting in the chain of title.¹⁰ The City could transfer the tax lien to NORLIC. NORLIC could then conduct an assessment and/or clean-up of any known contaminants. NORLIC can then transfer that lien to an interested developer, with a reverter clause to prevent the owner from sitting on the property and making little to no progress.

Recommendations

1. **An Immediate (60 days) action item for the Treasurer to consider is coordinating with the PMC and NORLIC to identify *in rem* properties that fit NORLIC’s stabilization program funding.**

Lockport historically has not set minimum bids at public auctions and accepts any amount at the sale. Thus, most properties sell, making acquisition of such properties a difficult proposition. While acquiring such properties is the cleanest way to avoid a future *Tyler* claim, the RPTL does outline a process by which Lockport could strategically acquire properties without subjecting them to public auction and to set aside potential dollars to pay a potential claim from former owners or interested parties.

NORLIC has approximately \$140,000 in grant funding for property stabilization that needs to be spent before November 2024. The Treasurer, in partnership with the PMC and NORLIC, could identify up to two residential properties that have completed the foreclosure process but have yet to be auctioned and transfer them to NORLIC. If properties are identified, the City should immediately have the property appraised¹¹ by a third-party NYS licensed inspector in order to

¹⁰ NORLIC enters an agreement from New York State Department of Environmental Conservation to protect the land bank from potential liabilities, in addition to not taking title to the property.

¹¹ The cost of the appraisal is an allowable “charge” in the NYS Real Estate Tax Law, and should be used in the calculation to determine surplus.

determine the value and to extent to which there might be surplus proceeds.¹² The City should then place in escrow a dollar amount equal to at least the surplus proceeds (difference between the appraised value, and amount owed to city including all the charges and fees), and then seek to have a deed issued by the enforcing officer to NORLIC.

If NORLIC has grant funds to cover the full appraised value, the City should transfer the deed to NORLIC for that amount and place the amount equal to surplus proceeds in escrow (and then notify the owner and interested parties how to claim it consistent with the new reform bill).

However, if NORLIC does not have the grant funds to acquire the property at the appraised value, then the City and NORLIC could consider an agreement wherein the property is transferred to NORLIC for a nominal amount. The City would be responsible for placing into escrow an amount equal to surplus proceeds upon the transfer to NORLIC (and again notify the owner and interested parties how to claim it consistent with the new reform bill). NORLIC would be responsible for stabilizing and selling the property. After the sale, NORLIC would use a portion of the sale proceeds to pay back what would have constituted minimum bid (since by law, the City would have to put any auction proceeds above the minimum bid in escrow and provide a mechanism for the prior owner to claim these surplus proceeds). In other words, since tax auctions can no longer be seen as a way to generate revenue above what is owed, the City shouldn't ask from NORLIC for more than the minimum bid if it promises to drive investment in the property, transform them from liabilities to neighborhood assets consistent with community goals, and return them to tax-producing status.

2. Restart auction process, with a minimum bid that encompasses all delinquent taxes and other expenses owed to the City, along with other charges allowable under the new reform bill. If no bids are received, consider transferring to NORLIC at no or nominal cost.

Community Progress strongly advocates that FGUs set a minimum bid at auction that encompasses all the delinquent taxes, unpaid water bills, unpaid abatement expenses, and allowable administrative expenses of carrying out the foreclosure. Fortunately, the newly passed reform bill law allows governments to recapture the full administrative costs of implementing the foreclosure process. Setting a minimum bid is a must. If the property does not receive any bids for the minimum price, then the City has the legal authority to transfer the property to NORLIC at any cost, including one dollar. Thus, before every tax auction, the PMC and NORLIC should identify those properties on the auction list that they would want to acquire if no bids are received.

Conclusion

Vacant residential and commercial properties can destabilize communities, significantly strain local government budgets, and pose health and safety concerns for residents. The City of Lockport has made many strides towards addressing VAD properties over the years. The City is well positioned to advance those efforts by institutionalizing a strategic and coordinated approach to proactively address VAD properties and target its limited resources for maximum impact. NORLIC is a strategic partner that brings with it expertise in addressing VAD properties, powerful acquisition tools, state and federal grant funding, and flexible disposition powers to put VAD properties back into productive use in line with

¹² There is risk that foregoing the public auction could result in a former owner or interested party challenging the adequacy of the City's appraisal or valuation mechanism and the City should be prepared to defend its process.

community goals. Community Progress hopes this memorandum helps the City and NORLIC identify immediate opportunities for success and provides guidance on longer-term efforts to equitably, efficiently, and effectively address VAD properties. Community Progress remains available as a partner and resource to both the City and NORLIC as it explores these recommendations, and we thank all those who contributed to the success of this engagement.

Appendix A: Interviewees

Name	Title	Organization
John Lombardi	Mayor	City of Lockport
Steven Abbott	Police Chief	City of Lockport
Jason Dool	Chief Building Inspector	City of Lockport
Kitty Fogle	Alderman	City of Lockport
Kathleen Kugler	Corporation Counsel	City of Lockport
Heather Peck	Director, Community Development Department; Presidents & CEO	City of Lockport; GLDC
Scott Previte	Network Coordinator	City of Lockport
Luca C.P. Quagliano	Fire Chief	City of Lockport
Matthew Chaves	Program Officer	Niagara Orleans Regional Land Improvement Corporation
Andrea Klyczek	Deputy Commissioner/Assistant Director	Niagara County Department of Economic Development
Amy Schifferli	Brownfield Program Manager	Niagara County Department of Economic Development
Jeff Kline	Director	Lockport Housing Authority
Jessica Kisloski	Tenant Relations Clerk	Lockport Housing Authority
Eric Schiffman	Senior Housing Program Management	Belmont Housing
Joseph Fisher	Senior Rehab Specialist	Belmont Housing

Appendix B: Brownfields in the City of Lockport that Received EPA Funding Through Niagara County

Property Name	Address	Activity	Action	Date
30 Walnut Street	30 Walnut Street	PI ESA	No issues	2022
33 State Road	33 State Road	PI ESA	No issues	2006, 2012
401 Davison Road	401 Davison Road	PI ESA	No issues	2020
41 State Road	41 State Road	PI ESA	No issues	2014
500 Park Lane Circle	500 Park Lane Circle	PI ESA	No issues	2020
84 Lake Avenue	84 Lake Avenue	PI ESA, PII ESA	No issues	2013, 2015
128 Walnut Street	128 Walnut Street	PI ESA, PII ESA, Cleanup	Remediated	2018, 2019, 2020
13 West Main Street	13 West Main Street	PI ESA, PII ESA, Cleanup	Remediated	2019, 2020, 2022
50 Elmwood Avenue	50 Elmwood Avenue	PI ESA, PII ESA, Cleanup	Remediated	2018, 2019, 2022
Palace Theater	2 East Avenue	PI ESA	Remediated (asbestos)	2017
Washington Hunt School	50 Rogers Avenue	PI ESA	Remediated (asbestos)	2014
302 Park Avenue	302 Park Avenue	PI ESA	More assessment needed	2010
73 State Road	73 State Road	PI ESA	More assessment needed	2016
450 West Avenue	450 West Avenue	PI ESA	More assessment needed	2016
Plaslok Property	225 Mill Street	PI ESA	More assessment needed	2007
Dale Sites - 1	4 Lock Street	PI ESA	Asbestos Found	2014
Dale Sites - 2	33 Ontario Street	PI ESA	Asbestos Found	2014
120 Main Street	120 Main Street	PI ESA	Cleanup needed	Draft 2024
2 Clinton Street	2 Clinton Street	PI ESA, PII ESA, Supplemental PII ESA	Cleanup needed	2013, 2014, 2016
55 Main Street	55 Main Street	PI ESA, PII ESA	Cleanup needed	2022, 2024
641 West Avenue	641 West Avenue	PI ESA, PII ESA	Cleanup needed	2016, 2019
Dussault Foundry	2-10 Washburn Street	PI ESA, PII ESA, Supplemental PII ESA, Cleanup	Additional cleanup needed	2009, 2012
F&M Building	116 Main Street	PI ESA	Cleanup needed	Draft 2024

Kohl Cycle Site	71 Gooding Street	PI ESA, PII ESA, Supplemental PII ESA	Cleanup needed	2013, 2014, 2016
Commerce Square		PI ESA, PII ESA	Cleanup needed	2006, 2010
White Transportation -1	30 Mill Street	PI ESA	Cleanup needed	2002
White Transportation -2	34 Mill Street	PI ESA	Cleanup needed	2002
White Transportation -3	38 Mill Street	PI ESA	Cleanup needed	2002
White Transportation -4	40 Mill Street	PI ESA	Cleanup needed	2002