



ZOMBIE & VACANT PROPERTY REMEDEIATION INITIATIVE: 2021 PROCEDURAL REPORT

2 LISC grant rounds
completed from
2017-2021

Town of Amherst, NY

Reduced total # of
vacant properties from
165 to 110

Over 100 households referred
to housing counseling
services

Reduced total #
of zombie
properties from
51 to 21

Established action plan and
remediation toolkit for all
properties in distress



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Background

After the 2008 housing crisis and the resulting 2016 bank settlement, funds were made available to municipalities in New York State to take stock of and address the unprecedented number of zombie and vacant properties in their jurisdictions. As defined by LISC, zombie properties are vacant properties, with a mortgage lien that is stuck in the foreclosure process. The unprecedented foreclosure crisis highlighted the weaknesses and disconnect between the mortgage industry and local government. In response, the Town of Amherst adopted a resolution on May 8, 2017 to establish a Zombie & Vacant Property Task Force. This Task Force consists of members from town offices including, Building Department, Village of Williamsville representation, Planning Department, Town Attorney, and Assessor's Office. The Task Force requested the additional assistance of two members within the Town to represent the community, one of which has vast experience as an Attorney and the other as a Real estate agent.

The Town was awarded two separate rounds of grant funds from LISC between 2017 and 2021 to first gain an accurate scope of the issue within the Town and to then develop and implement an action-oriented foreclosure prevention protocol to serve the residents who are or neighbors of those going through the foreclosure process. By establishing a database and registering all distressed and foreclosure properties, the Task Force was able to study what indicators led to specific issues and what neighborhoods they would occur in. With this information, the Task Force was able to prevent zombie properties from being vacant and distressed all together in most cases. The Task Force met quarterly and developed a formalized procedure for zombie and vacant property remediation including a centralizing data source for strategized decision making. Over the course of the two grant cycles, the Task Force learned that the most effective approach to property remediation is to maintain a proactive procedure. In other words, the earlier a property is addressed in the foreclosure process and informed of the services and options available, the more likely the occupant will be able to stay in their home and remediate any code violations. This report takes this lesson as the basis of a proactive strategy and has been effectively put into practice.

Purpose

The Task Force was formed to assist and coordinate action among all town department and the residents of the Town of Amherst in an effort to prevent neighborhood blight caused by vacant and zombie properties. The Task Force worked to develop and implement creative ways to better serve the residents who are or neighbors of those going through the foreclosure process using legal interventions, organizational partnerships, zoning tools, Geographic Information Systems (GIS), and workflow software. Ultimately, the goal was to collaborate interdepartmentally to streamline a procedure of remediation so that these properties are handled efficiently and ethically with respect to the neighborhood.

This report compiles a specific *Action Plan* and strategy formulated through the execution of the LISC Zombie Property Grant between 2017 and 2021. Over the duration of the first and second round of the LISC Zombie Grant, the Task Force has researched and tracked over 600 foreclosures and has



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coordinated with over 100 households to receive counseling and or financial assistance from one of our nonprofit partners. A majority of these households were successfully able to keep their home. Using the procedure and Property Toolkit described in this report, the Task Force has reduced the number of zombie properties in the Town from 51 in 2017 to 21 in 2021 and reduced vacant properties from 165 to 110 in the same time.

Leadership & Collaboration

The success of this initiative is due in large part because of the cross-municipal collaboration with LISC which helped communities share knowledge, best practices, and data to support better decision making. With institutional guidance from LISC, the Town of Amherst Zombie & Vacant Property Task Force was able to emerge as a regional leader in New York State in this effort to remediate zombie and vacant properties with its contributing lessons and insights. For instance, by collaborating with the Erie County Zombie Task Force, the Erie County Clerk began listing the loan servicer on the mortgage documents in addition to the bank that owned the mortgage. The Amherst Zombie & Vacant Property Task Force found that in most cases, the loan servicers are more responsible to the loan and the property than the bank owner and is therefore, the more efficient contact for when there are issues at the property or there is evidence of abandonment. By sharing this insight with Erie County, this policy created an additional layer of accountability saved valuable time.

Another example of Amherst Zombie & Vacant Property Task Force's contribution to this issue was the unexpected discovery that probate court barriers were found to be a common bottle-neck in the zombie property crisis. Whereas much of the focus was on delinquent mortgages, the Task Force found that isolated elderly populations needed legal services to establish a proper Will. These residents would pass leaving no one to maintain the property or establish the estate creating a new category of zombie property within Probate. By utilizing this procedure and collaborating within departments, the Task Force discovered a crucial service gap that was able to be addressed throughout the State.

Unfortunately, during the second round of the Zombie Grant, the entire world was hit with the COVID-19 Pandemic. Lockdowns and social distance requirements quickly became the new daily reality. This created a number of challenges both from a human and economic perspective. One challenge was how to adjust Town governance into response and recovery under the essential lockdown. At a critical moment, questions were being asked nationally about how to assist homeowners about unpaid mortgages due to the Pandemic. However, the Town of Amherst already had an outreach mechanism and decision-making procedure in place, based in the most comprehensive data sources to address this problem in the Zombie & Vacant Property Task Force. The Task Force when called upon by the Emergency Operations Center was able to quickly and accurately scope the problem and set a strategic outreach strategy for residents in forbearance due to the Pandemic.



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Action Plan

- I. The **Planning Department** will assign a **Property Database Manager** who will update the Property Database quarterly and utilize available public records to monitor foreclosures
- II. The **Property Database Manager** will identify perform historical title and legal research to determine risk of vacancy
- III. The **Property Database Manager** will identify Moderate to High risk properties and enter complaints into the IPS system
- IV. The Building Department will assign a **Code Enforcement Officer** from the Property Maintenance Division to respond to complaints entered into IPS by performing a basic property inspection for occupancy and code violations
 - a. In doing so, the **Code Enforcement Officer** will A. confirm vacancy or occupancy while providing a photo on IPS via the complaint B. Cite any visible code violations C. post information on foreclosures and available counseling services to the front door of the property
- V. The **Code Enforcement Officer** and the **Property Database Manager** will collaborate in regards to findings and potential for foreclosure while assigning an updated property status based on the inspection.
 - a. Confirmed vacant properties that are not confirmed by NYS Department of Financial Services (DFS) in the vacant property database must be reported to DFS by the **Town Attorney**
- VI. The **Task Force** will meet quarterly to discuss zombie and distressed property matters as well as update the zombie list and provide procedural guidance to the **Property Database Manager**, **Code Enforcement Officer**, and **Town Attorney** with new properties and housing or supreme court cases
- VII. The **Town Attorney** will follow through with housing court cases as necessary and provide updates to the Task Force
- VIII. The **Property Database Manager** will periodically (at least once every quarter) for new lis pendens filings and other public records to find potential Moderate to High risk vacant properties

Part I-II: Database Management & Property Research

Building the Property Database was the first step for the Task Force to understand and quantify the Zombie/vacant issue, as well as outline contributing factors, and develop a proactive procedure. A core collection of resources was used to build the Database, including the DFS Vacant Property Database, Erie County's Lis Pendens, neighbor/code enforcement complaints, and field verification. Database development allowed staff to reach out to other departments and learn how they might play a role in remediation. The proactive approach allowed for a more concise understanding in critical moments so that an expedited and comprehensive remediation process can be set with the most accurate and up to date information. The core resources and departmental referrals are reviewed monthly to update the current Database for legal status, property transfers, and code violations. Along with regular updates to the Database, risk assessments are done with regard to their respective neighborhood, legal status, and



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physical condition. As a result, the Database has a prioritized list of zombie properties that can be addressed by the Task Force in a specific workflow based on property risk. This step should be a periodic task for a member of the Planning Department as a *Property Database Manager* so that the database is updated and contains the most accurate foreclosure information.

[Part III-V: Inspections & Assistance Outreach](#)

Once properties are identified and researched, properties going through a foreclosure or are suspected of being vacant are inspected by a *Code Enforcement Officer* within the Property Maintenance division of the Building Department. Indicators of vacancy may be property maintenance violations, death certificates of the owner, or a lingering active foreclosure case. To do so, the *Property Database Manager* within the Planning Department will enter the complaints in IPS for the Code Enforcement Officer to document the inspection for vacancy and or code violations. If possible, the CEO will direct the owner to contact Community Development within Planning for direct assistance or contacts for housing counseling and assistance.

The Town of Amherst Planning Department has contracts with two community non-profit housing counseling agencies. The Town of Amherst has a strong working relationship with Belmont Housing Resources and Buffalo Urban League. These strategic partners have HUD certified Foreclosure counselors who assist in educating the homeowner as to the foreclosure process and what services can assist them. These agencies attempt to reach out to all potential foreclosure candidates through mailings. Under this grant we have also implemented a process to mail a letter when the Lis Pendens is filed with the County Clerk. This letter reiterates that if you are in risk of foreclosure you should seek assistance.

In some cases, properties may be vacant with code violations that put the property and the neighborhood at risk. It is important to report these properties to the NYS Department of Financial Services. If there is a property that is found to be vacant and is not in the NYS DFS vacant property database, it needs to be reported to them through their complaint system. The Town Attorney's office can file the complaint but the directive should come after the Building Department confirms vacancy. The DFS registry has proven to be successful. This has reduced the amount of time it takes to locate a property servicer and potential service company. By getting in touch with the servicer and service company at the same time we have reduced the amount of time it takes for the service company to get approval from the servicer to complete work related to code violations on the property.

[Part VI-VII: Task Force Property Intervention Toolkit](#)

Most properties in the Town of Amherst will self-remediate with a strong housing market; however, some neighborhoods don't have the market dynamics that promote owner occupied home ownership. In fact, some neighborhoods struggle with foreign investors, property wealth extraction, and neglect due to adverse market dynamics. Therefore, other intervention procedures are required. Outreach and service coordination however, is the most effective and lowest risk item.

During the Task Force quarterly meetings, a review of the Zombie Property is conducted and each property is given a recommended action using the Property Toolkit developed by the Task Force during



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the second round of the LISC Zombie Grant. The Property Toolkit is comprised of outreach & assistance, legal remediation, and zoning tools. Something to be considered when utilizing the Toolkit is that each item is designed to both keep owner occupants in their home and encourage absentee owners of all kinds to sell to an owner occupant. Having owner occupied housing, even in a rental situation, is supremely beneficial from a neighborhood blight and code enforcement perspective. Owner occupants have a greater stake in the property and ultimately the neighborhood which means they will be more likely to invest in the property and maintain it resulting in more stable neighborhoods.

A) Outreach & Assistance

Legal Services

Description:

Town contracts with Belmont and Buffalo Urban League is a free service for all residents

Contextual Use:

Properties that have an indication of a legal crisis such as tax delinquency or a Lis Pendens filed with the County.

CDBG

Description:

If a property is found to be vacant, abandoned, and or distressed, The Planning Dept can utilize CDBG program to purchase properties in foreclosure to rehab and put back on the market as an affordable housing option for the community.

Contextual Use:

Good to moderate condition in HUD designated neighborhoods. Properties that are not necessarily distressed but in neighborhoods that need revitalization and affordable housing options.

HOME

Description:

HOME funds provide home purchase or rehabilitation financing assistance to eligible homeowners and new homebuyers; build or rehabilitate housing for rent or ownership; or for "other reasonable and necessary expenses related to the development of non-luxury housing," including site acquisition or improvement, demolition of dilapidated housing to make way for HOME-assisted development, and payment of relocation expenses.

Contextual Use:

Good to moderate condition. Properties that are not necessarily distressed but in neighborhoods that need revitalization and affordable housing options. There are no neighborhoods that this funding can't be used in, but beneficiaries must be income qualified by HUD.



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B) Acquisition Rehab & New Home Construction

BENLIC

Description:

The Land Bank of Erie and Niagara County is another resource for property remediation and acquisition. BENLIC and their mission is to support municipalities and regional revitalization efforts by acquiring, improving, assembling, and selling distressed, vacant, abandoned, and/or tax-delinquent properties.

Contextual Use:

Where properties have been abandoned and vacant and the legal owner is unavailable or unwilling to fix, occupy, or turnover the property.

Habitat for Humanity

Description:

If a property is found to be vacant, abandoned, and or distressed, the Town can collaborate with Habitat Humanity to acquire, rehab, and sell the property as an affordable housing option for the community. Keep in mind that Habitat for Humanity does not income qualify and should not be used as a HUD related projects.

Contextual Use:

Where properties have been abandoned and vacant and the legal owner is unavailable or unwilling to fix, occupy, or turnover the property.



C) Legal Remediation

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**Receivership
NYS RPA
Article 19-A**

Description:

Article 19-A is a tool for municipalities to obtain title to an abandoned building and either cleanup the property, sell the property, work with a local land bank to improve the property or demolish the property. Please note that Article 19-A applies only to residential properties and shall not apply to a one-family or two-family dwelling occupied by the owner.

Contextual Use:

Moderate to highly distressed properties where the legal owner is unavailable or is unwilling to fix or turnover the property.

**Zombie
Property
Remediation
Act**

Description:

Once the municipality has proven vacancy, contacted the attorneys and the overseeing judge, the mortgagee will then be legally responsible to maintain the property and complete the foreclosure. If the note is in default, the mortgagee shall commence a foreclosure procedure within three months and shall meet all deadlines to ensure the case is ready to be moved to judgment within a reasonable time period but not to exceed one year.

Contextual Use:

Good to moderate condition in HUD designated neighborhoods. Properties that are not necessarily distressed but in neighborhoods that need revitalization and affordable housing options.

**Breach of
Fiduciary
Duty**

Description:

A breach of fiduciary duty occurs when a principal fails to act responsibly in the best interests of a client. Under this law, the Bank, Loan Servicer, and Property Servicer have a fiduciary duty to the owner of the property. If the property is not maintained or managed under the best interest of the owner and the property, the Town may pursue legal action which proves that there was a breach of fiduciary duty and that the Bank, Loan Servicer, and Property Servicer are legally responsible.

Contextual Use:

Moderate to highly distressed properties where the legal owner is unable to remediate the issues and is not living in the house currently.

Demolition

Description:

When a property is highly distressed and is neglected by the legally responsible entity, the Municipality will leverage the vacant status and unsafe building classification to threaten the demolition of the asset unless rehabbed and sold back to a responsible owner.

Contextual Use:

Highly distressed properties where the legal owner is showing no intent to fix the property. The threat should only be used if there is market confidence in the lot.



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D) Zoning Tools

Incentive Zoning

Description:

Incentive zoning is a planning tool that local governments use to entice developers to provide a public good (e.g. affordable housing, open space, community amenities) by offering incentives (e.g. increased density, expedited approvals). The incentives seek to offset the cost to developers of the public goods. Often times, distressed properties and or older homes have significant challenges to rehab. Therefore, projects may take years to complete. There are some incentives that can be implemented to expedite these projects however, including but not limited to expedited permit reviews, density bonuses, floor area allowances, and payments in lieu.

Contextual Use:

This tool in particular is required to be vetted by the Planning Department and Town Board through proper zoning review. To gain a scope of potential uses, please refer to the Incentive Zoning Research in the appendix of this report which was compiled by the Task Force which outlines potential uses and considerations. Ideal for properties where an owner is known and willing to invest in the property and neighborhood.



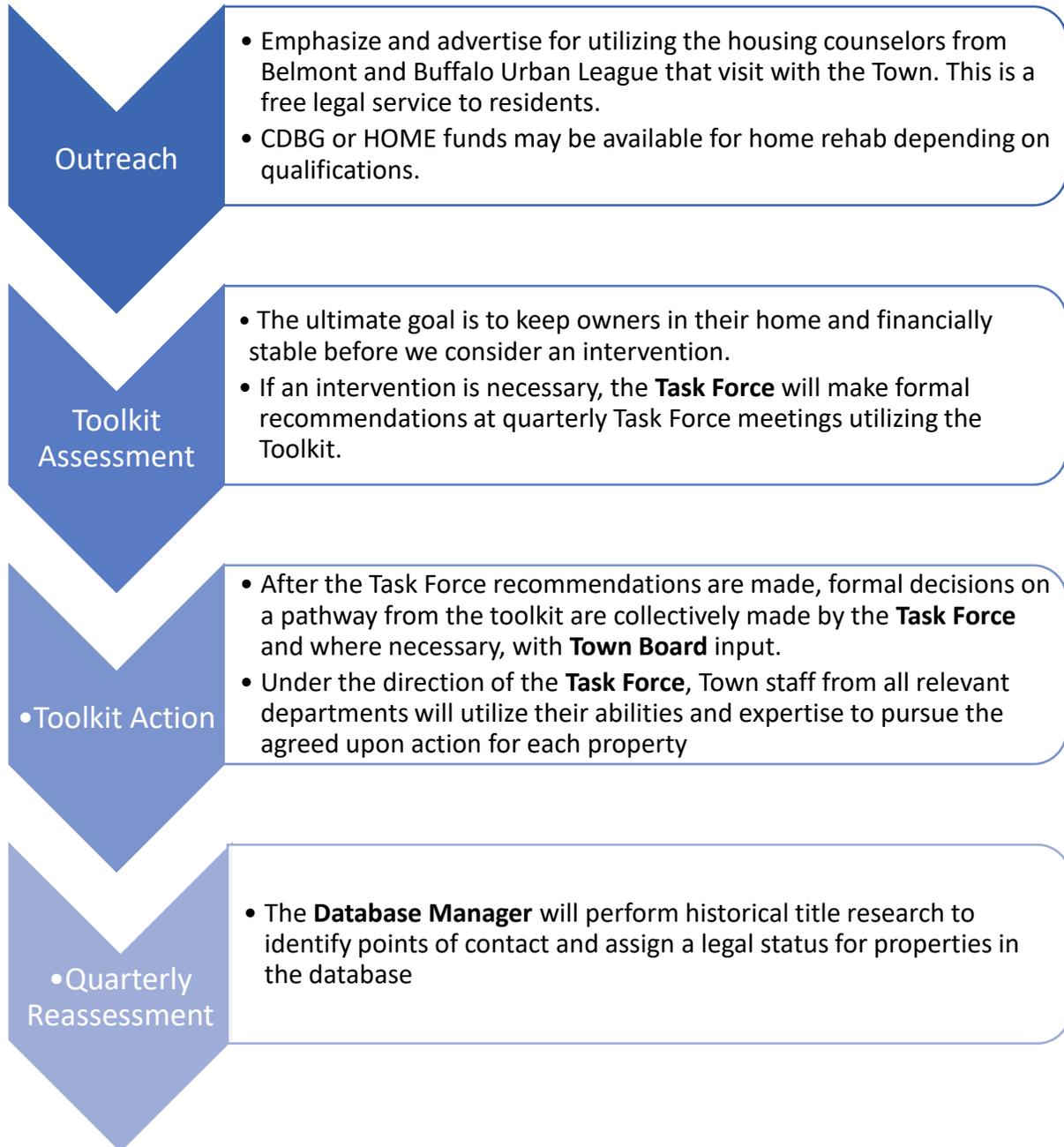
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Action Plan: Procedural Flowchart





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Discussion

Prior to the work of the Task Force, the Town did not have centralized data, a monitoring protocol, or decision-making mechanism that centralized data and enabled efficient identification and planning for action. Departments functioned independently and their actions were often disjointed and the information was difficult to find when required. Typically, by the time the Town was fully aware of a vacant or zombie property, it was too late to make any meaningful actions that would save the home or expedite the foreclosure. The procedure described above is designed to centralize foreclosure data from the County Clerk records and NYS Department of Financial Services foreclosure registry so that it can be used in tandem with the Town's Integrated Property System (IPS) and property maintenance procedures for an expedited response using the most accurate essential data.

A municipality's greatest tool in this housing issue is proactive and persistent documentation. Keeping an accurate timeline of vacancy, property violations, and legal actions are essential to keeping courts moving and holding financial institutions responsible for the properties they foreclose on. Additionally, consistent property research provides an easy mechanism for the Town to survey who may need assistance before a crisis arises. Timely outreach was found to be a significant factor in keeping people in their homes during a foreclosure. This not only increased the likelihood of the individual or household receiving counseling but also ensured that the property was maintained during the counseling period. This procedure is collaborative and interdepartmental with Planning and Building Departments as project leaders whereas the Community Development and Property Maintenance divisions work in tandem with the Attorney's Office to remediate properties.

Ultimately, the Task Force has established a proactive service-based procedure so that the Town has greater control of neighborhood stability and preventing blight. However, going forward more can be done to enhance and improve this process. For instance, establishing a stronger relationship with the Town Housing Court so that property maintenance and Task Force cases have more impactful timeframes. Prior to this work, housing court cases would have little remediation impact due to the uncertainty of the cases and therefore, lenient remediation timeframes. Placing Town Housing Court officials into this procedure will only ensure that the knowledge and insights from the Task Force are properly channeled to Court Judges who can have a greater impact on neighborhood blight and stability.



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Appendix

Incentive Zoning Research

As part of the Zombie Property Remediation Initiative LISC Grant, the Zombie & Vacant Property Task Force has researched incentive zoning tools that Town of Amherst neighborhoods could potentially benefit from. Incentive zoning was system developed as late as the 1950's (Morris, 2000). Today, incentive zoning is considered an effective tool to manage the neighborhood growth and meet community objectives (Morris, 2000). The Zombie & Vacant Property Task Force's objective is to remediate vacant and zombie properties within the Town while supporting market stability of the overall housing stock. Incentive zoning is of particular interest to the Task Force because it has been successfully utilized by municipalities to encourage neighborhood improvements and investment within a market-based approach, all while increasing municipal capacity & control over development. Ultimately, incentive zoning is a degree of code flexibility such as additional allowable floor area or accessory space in return for public goods such as a parks or affordable housing (Homsy & Abrams, 2015). Incentive zoning is not a new concept to municipalities and is used even within New York State (2015). However, there are many different applications to incentive zoning and there are implications to how and where it is practiced. As part of the LISC Grant activities, the Task Force has investigated various forms of this practice to be considered by the Town in their current planning procedures. This investigative report provides case studies of specific examples of incentive zoning that match needs of the Town and ultimately a recommendation of ways in which the Town can use the market-driven zoning tool.

The Town of Amherst is currently in a critical stage of growth where development build-out is nearing capacity and the housing supply is aging without being replaced. Additionally, the real estate market continues to be of extremely limited supply creating a massive regional affordability issue. On the other hand, major developments are on the horizon, both public and private, such as Amherst Central Park and the Boulevard Mall that require significant private investment. If the Town of Amherst is interested in boosting its economic base, it has no choice but to redevelop from within and leverage the development that will occur to maximize public return. Unfortunately, the real estate market still favors suburban sprawl (Clark, 2008). In other words, it is cheaper to build and easier to find land in the outer urban periphery than it is to find an affordable and suitable home in the core and inner ring suburbs such as Amherst. In order to counter this free market trend, the Town should consider using incentive zoning to enhance public return on residential and commercial development. In doing so, the Town should consider what kinds of public goods should be supported and what neighborhoods should be targeted for redevelopment incentives. This report cannot speak to these questions, as it should be a larger discussion, but the Town of Amherst Zombie & Vacant Property Task Force has researched several case studies of incentive zoning that could be considered by the Town in the future.



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Case Studies

In essence, this report is a recommendation of incentive zoning practices that could potentially be adopted by the Town of Amherst Planning Board in conjunction with the Comprehensive Plan. These case studies were chosen specifically because they provide potential models for implementation that enhance municipal capacity and incentivize economic growth within a market-based approach to development.

Affordable Housing

The City of Ann Arbor, Michigan wanted to build more affordable units (Hosey & Abrams, 2015). However, the current zoning laws limited their ability to incorporate more affordable units in their developments. Affordable housing is a major concern for the City and residents alike, but the market would not correct this problem on its own. Rent control and inclusionary zoning have been made illegal by the state (Fanzeres, 2019), making incentive zoning the only market-driven pathway to encourage public benefiting developments. In this instance, the Ann Arbor incentive zoning would allow a developer to gain a 100%-150% (district dependent) Floor Area Ratio so long as they dedicated 15%-30% (depending on district) of the building dedicated to affordable housing (Moran, 2019). The concern from the City and from the residents was that requiring affordable housing was politically risky and had the potential to stop development all together (Moran, 2019). The incentive zoning legislation was a subtle market-driven encouragement to developers to introduce more affordable housing in targeted neighborhoods.

In a similar practice, Seattle Washington used incentive zoning to leverage developers to build affordable housing within their development plans (Hosey & Abrams, 2015). Interestingly, if developers wouldn't or simply couldn't accomplish the affordable housing desired, they would have to contribute to a fund for the City to be able to build their own (2015). In this situation, the City is not impeding development, but providing a minimum requirement for developers to contribute to the public good. In this case, the strong market gave the City enhanced leverage in demanding that developers contribute to the public good in a meaningful and tangible way.

Public Good

Another use of incentive zoning is to leverage development into a funding mechanism for specific municipal needs or projects. For instance, Hartfield Pennsylvania had difficulties purchasing land at market rate to dedicate for community facilities (Hosey & Abrams, 2015). As a means of enhancing their municipalities capacity in the real estate market, Hartfield provided a density bonus in exchange for free open space so that the municipality could develop their own public facilities and space. This legislation successfully helped the Township develop an interlinked trail network utilizing their newly acquired open space which was part of the incentive zoning policy (Montgomery County, 2005).

While the City of Ann Arbor, Michigan used incentive zoning to leverage more downtown affordable housing, they also provided an incentive to support pedestrian improvements (Moran, 2019). Ann Arbor also offers 10 extra square feet of FAR for each square foot of pedestrian improvements up to a



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maximum of 8,000 square feet of additional FAR. Ultimately, this policy enhanced the City's development capacity to improve streetscapes and pedestrian access through the City (Moran, 2019). Utilizing the market-driven zoning tool provided a mechanism for more amenities that ultimately reinforce the existing economy.

Strong Market: Strong Position

In real estate, more often than not, developers argue that they simply cannot financially work out how to build enough units to rent them at the rates that are considered affordable. However, in strong real estate markets development seems to proceed despite the legislation. For instance, the Village of Ossining New York, which not only requires affordable housing development with any residential development more than six units, but also provides an incentive to leverage public goods in the process (Hosey & Abrams, 2015). Specifically, the Village considered waterfront access, public parks, historic preservation, and public artwork. The Ossining Planning Board would allow a density bonus of 10% for all development of 10% of developments be affordable. An additional 5% would be added if the developer included housing for residents making less than 60 percent of Westchester County Average Median Income (Ossining E-code, 2021). This led to an increase in development of affordable units filling a need within the Village. Ossining also utilized incentive zoning density bonuses to leverage public goods such as parkland & trails, historic preservation, and pedestrian amenities (Hosey & Abrams, 2015). Again, the success of this policy is due to the presence of a strong real estate market. The strong market ultimately provides the municipality with more leverage over the developer in negotiating major developments. Ossining, NY was successful in introducing more affordable housing and creating more public goods within their municipality as a direct result of the incentive zoning program.

Discussion

Although incentive zoning has a wide variety of uses and in some cases can be seen as "spot zoning," the Tasks Forces recommendation is that there are some specific practices such as density bonuses, floor area allowances, or payment in lieu that can enhance the Town's leverage to push developers to contribute to the public good in the strong real estate market without conflicting with the goals of the Town Comprehensive Plan. Internally, the Task Force is aware that the Town needs affordable housing, enhanced real estate acquisition capacity without HUD limits, and the preservation of open space for public facilities. The Town's real estate market is strong and the Town could Incentive zoning practices provide a practical market-driven mechanism which leverages development demand in exchange for public necessities.



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