



**PPG**  
Steering Committee



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*PUSH Buffalo*

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*Coalition for  
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July 16, 2009

Carla Kosmerl  
Deputy Commissioner for Administration and Finance  
Office of Strategic Planning  
920 City Hall  
65 Niagara Square  
Buffalo NY 14202

Re: 2009-2010 Action Plan

Dear Ms. Kosmerl:

I am writing on behalf of the Partnership for the Public Good (PPG) to comment on the City of Buffalo's 09-10 Action Plan. PPG's mission is to help build a more just, sustainable, and culturally vibrant community through action-oriented research, policy development, and citizen engagement.

Our 2009 Community Agenda has been endorsed by over 50 organizations, including Belmont Shelter, Buffalo Urban League, Catholic Charities, Community Action, Habitat for Humanity Buffalo, Hispanics United of Buffalo, Homeless Alliance of Western New York, PUSH Buffalo, True Bethel Church, and the WNY Area Labor Federation.<sup>1</sup>

The Agenda includes the following statement on housing:

**Encourage Block – by – Block Revitalization**

Existing neighborhood revitalization programs at the City of Buffalo (such as HOME and Community Development Block Grant funds) and New York State (from agencies such as Division of Housing and Community Renewal and the Housing Finance Agency) should incorporate criteria for comprehensive community development, ensuring that communities and not just individual buildings are addressed.

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<sup>1</sup> For the full Agenda, PPG reports, policy statements, and other information, please visit [www.ppg-buffalo.org](http://www.ppg-buffalo.org).

Regarding the Action Plan, we offer the following recommendations.

1. Create a Clear, Impartial Funding Process
2. Stop Subsidizing Market Rate Housing
3. Spend Less CDBG Money on City Hall Salaries
4. Prioritize Rental Housing
5. Focus on Rehab of Existing Housing, not New Construction
6. Focus Homeownership Spending on Tax and Mortgage Foreclosure Prevention through Cash Assistance
7. Create an Effective and Coordinated Repair Program
8. Do a Better Job Marketing and Releasing City-Owned Homes and Lots
9. Start a Clean and Green Program for Vacant Lots
10. Demolitions: Faster, More Targeted, and Greener
11. Board-Up Vacant Houses more Effectively and Attractively
12. Reform BERC and BURA
13. Eliminate “Member Items”
14. Present the City’s Action Plan and Housing Policies More Clearly

**Create a Clear, Impartial Funding Process**

The City’s CDBG and HOME programs have suffered from a very loose structure. Buffalo distributes its HOME funds on an ad hoc basis throughout the year, without any written criteria or a formal application process. Essentially, developers approach the City and request support for a project and the City decides, based on staff recommendations and the priorities of the Mayor. There is no safeguard against favoritism and no mechanism for making sure that HOME funds are spent strategically, in accordance with the City’s

Comprehensive Plan. Much of the CDBG spending, except for grants to social service agencies, appears to be done in a similar fashion.

The City should institute formal application processes for all of its grants, similar to those used for state housing programs such as Low Income Housing Tax Credits. Projects should compete against each other based on published criteria reflecting the City's most urgent needs, including "green criteria" that reward projects for re-using buildings and materials, being energy efficient, using renewable energy, and diverting stormwater from the sewer system.

### **Stop Subsidizing Market Rate Housing**

According to the local HUD office, in 2006, the City borrowed \$6 million from Fannie Mae to create a Livable Communities Fund, to be repaid with CDBG dollars. HUD states that this money has gone into downtown market rate housing, including \$2 million for the Granite Works (846 Main St.) and \$2 million for the Warehouse Lofts (210 Ellicott St.).<sup>2</sup> Given Buffalo's extreme poverty, it is shocking that such large sums would be spent on market rate housing. CDBG and HOME funds should be targeted toward those with the lowest incomes, who are at the most risk for homelessness.

### **Spend Less CDBG Money on City Hall Salaries**

HUD criticized the city's 2008-2009 Action Plan for spending 58% of the block grant money on city employees' salaries and debt repayment. According to HUD, the city is spending over \$7.5 million of CDBG money on salaries.<sup>3</sup> The city's Four-Year Financial Plan (2008-2012) for the Buffalo Urban Renewal Agency (BURA) shows 60 BURA employees funded entirely with grant funds and 27 BEREC employees, of whom 24 are funded with grant funds and program income and 3 are funded with "city grants/funds." Almost all of these employees appear to be funded with CDBG and HOME funds.

### **Prioritize Rental Housing and Rehab of Existing Housing**

Like many cities, Buffalo focuses much of its housing funding on subsidizing the construction of new homes for homeownership and on programs to help renters become homeowners. But the foreclosure crisis has made more obvious a point long made by housing experts: homeownership has been oversold. The financial return for homeownership is historically not very high, and the risk is very high for people with low incomes, since it represents so much of their assets. In many years, renting has proven to be a better investment than owning, leading the Brookings

<sup>2</sup> Peter Koch, "Block Heads," *Artvoice*, 5/8/08. See also HUD, "Monitoring Report: Community Development Block Grant Program for City of Buffalo, New York."

<sup>3</sup> *Id.*

Institution to conclude that “the constant drum beat for expanded low-income homeownership should be carefully and discriminatingly evaluated.”<sup>4</sup>

To make the point in a Buffalo context, how much a favor to a low-income renter is it to saddle him or her with a huge investment in a home in a neighborhood where home values are declining, and re-sale may be difficult or even impossible? For many blighted neighborhoods, stable, well-managed, affordable rental housing makes much more sense. A good non-profit owner will be much less affected by declining property values in an area; the combination of tax credits and other subsidies, and rent payments, can make the housing work for the long term.

The Sycamore Village project is particularly questionable. Sycamore Village is new construction on a former brownfield east of downtown, with 20 market rate and 4 low or moderate-income homes. The City has poured enormous resources into a project that will be of limited benefit to anyone other than its developers and the buyers of the homes (if even to them: despite the massive subsidies, they may find that their housing values drop within a few years of the sale, if the surrounding neighborhood continues to depopulate and fall into blight).<sup>5</sup> It is hard to imagine suburbanites moving into Sycamore Village; more likely, the new residents will be moving from other parts of the city, leaving the question of what to do with the houses they leave behind.

Meanwhile, the need for affordable rental housing is urgent.

- According to 2000 Census data, 48.5% of renters in the city paid more than 30% of their income toward rent.
- The Buffalo metro region ranked ninth worst in the nation for number of households paying more than they can afford for housing.
- Over 20,000 families in Buffalo have extremely low incomes.
- Buffalo has over 2,000 people homeless on an average night.

Buffalo has plenty of structures, but they need to be rehabbed and made more energy-efficient with a financing scheme, such as Low Income Housing Tax Credits, to ensure their affordability. The City took a huge step forward in announcing a goal of 500 rehabs, but getting those rehabs done will require a new set of priorities.

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<sup>4</sup> Matt Fellowes and Mia Mabanta, “Borrowing to Get Ahead, and Behind,” Brookings Institution (2007), p. 2.

<sup>5</sup> See the Fix Buffalo blog for photographs and discussion of Sycamore Village at <http://fixbuffalo.blogspot.com/2008/11/sycamore-village-opening.html>.

### **Focus Homeownership Spending on Foreclosure Prevention**

Helping existing homeowners stay in their homes is cheaper and more beneficial than allowing them to lose their homes while spending money trying to create new homeowners. While mortgage foreclosures have been a bigger new story, in Buffalo tax foreclosures have also risen dramatically, from 1,074 in 2004 to 2,960 in 2008.

What most people in foreclosure – whether mortgage or tax foreclosure -- need is cash. Other cities and states have models of cash foreclosure assistance, particularly geared toward people whose financial problems were due to medical problems, lay-offs, or other factors outside of their control. The City should fund a non-profit to include cash assistance in its foreclosure prevention programs.

The City also needs to assess its tax foreclosure process to reduce the number of abandoned properties it creates. Franklin County, Ohio, allows residents to make 60 month repayment plans, and offers a free 10-hour financial education class and free financial counseling to those who complete the first year of the plan.<sup>6</sup>

Ohio has a Ohio Home Rescue Fund that can be used for mortgage or tax foreclosures, offering second mortgages at 0% interest. The Minneapolis foreclosure prevention program also covers tax foreclosures and can also include cash assistance in addition to counseling.

The Mayor's Anti-Flipping Task Force recommended that the city allow taxpayers to spread their property tax payments out into four payments over the course of the year, as every other town and village in the county does. The city rejected the proposal, however, citing a negative effect on cash flow and a lack of resources to make the change. The AFTF responds that this change has increased tax revenues in other municipalities.<sup>7</sup>

### **Create an Effective and Coordinated Repair Program**

Buffalo has some particular problems with housing repair because, among other things:

- The city's housing stock is the oldest in any major city, with 58% of the units built before 1940,<sup>8</sup>
- Due to the age of the housing, much of it includes lead paint, which is expensive to abate;
- High poverty rates make many owners unable to afford repairs;

<sup>6</sup> [www.co.franklin.oh.us/treasurer/dlqunt/paymentplans](http://www.co.franklin.oh.us/treasurer/dlqunt/paymentplans)

<sup>7</sup> Mayor's Anti-Flipping Task Force, First Year Report, p. 25.

<sup>8</sup> [www.dataplace.com](http://www.dataplace.com)

- Blight and abandonment make many investors and owner occupants unwilling to invest in repairs;
- The City lacks funding to employ a sufficient number of housing inspectors.

The City desperately needs a well-funded, effective repair program to keep housing from deteriorating. Ideally, this program should be coordinated with weatherization and lead-removal programs, so that all of a house's needs are addressed at once, and should be done in a targeted, block-by-block manner. The City could work with block clubs, community development corporations, Housing Court, and other groups to develop a housing inventory form that could be used to note the conditions and needs of each house in a target area, and then address all that target area's needs simultaneously.

### **Do a Better Job Marketing and Releasing City-Owned Homes and Lots**

The City owns between 7,000 and 8,000 properties, of which roughly 60% are vacant lots. The City owns about one out of twelve properties in the city, making it by far the biggest landowner. Thirty-five percent of Buffalo streets have at least one City-owned house or lot.<sup>9</sup> Many of these properties were acquired through tax foreclosure (800 properties in 2005,<sup>10</sup> 567 in 2006, 1,118 in 2007, and 232 in 2008.<sup>11</sup> The City has not found effective ways to quickly move properties to homeowners, responsible investors, or non-profits. In addition, the City lacks a policy and set of criteria for determining which housing has enough historic, aesthetic, community, or market value that it should be prioritized for preservation and "mothballed," which should be demolished, and which should be deconstructed.

One problem the City has in marketing properties is that City law requires that anyone acquiring a vacant lot for a side lot must not owe the city any money in taxes, fees, fines, etc. The City reports that at a recent land use meeting, there were 38 requests for side lots, but that 29 of the residents making the requests owed the City money (as a group, they owed a total of \$46,000).<sup>12</sup> The City's officially adopted vacant land policy includes the recommendation that the City grant amnesty to potential purchasers in exchange for neighborhood community service.<sup>13</sup>

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<sup>9</sup> Phil Fairbanks, "Forgotten but not gone," Buffalo News, 7/6/08 and Phil Fairbanks, "Tax sale puts houses on the block," Buffalo News, 10/20/08.

<sup>10</sup> National Vacant Properties Campaign, "Blueprint Buffalo Action Plan," p. 71.

<sup>11</sup> Corey Rossi, "Marketing City-Owned Properties" (2008), <http://bflo-housing.wikispaces.com>.

<sup>12</sup> Carla Kosmerl, City of Buffalo Office of Strategic Planning, personal communication.

<sup>13</sup> Cornell Cooperative Extension, "Vacant Land, Buildings and Facilities Asset Management Project" (2004), p. 61.

The vacant land policy also recommends giving vacant houses to pre-qualified investors for rehab with certain protections and conditions.<sup>14</sup> It states a goal of reducing the turnover to new ownership to 18 months or less, because most housing becomes unusable if vacant for two years or more.<sup>15</sup>

A major obstacle for the City has been a shortage of potential homeowners with sufficiently good credit to qualify for a home.<sup>16</sup> Perhaps the best response is to redevelop more housing for affordable rental run by non-profit or for-profit owners with proven management success, rather than chasing after homeownership.

An obstacle noted by the City is the state constitution's provision forbidding a city to "Give or loan any money or property to or in aid of any individual, or private corporation or association, or private undertaking."<sup>17</sup> One exception in the constitutional language itself is that "nothing in this constitution shall prevent a . . . city . . . from making such provision for the aid, care and support of the needy as may be authorized by law."<sup>18</sup> A series of court cases and Attorney General opinions also makes it clear that urban renewal and affordable housing programs are constitutional, even if they involve some benefit to private parties, because they serve a valid public purpose. For example, the Attorney General has opined that a city can donate property for an affordable housing program.<sup>19</sup>

The City should develop one set of criteria for the reuse of abandoned buildings, and one set for the reuse of vacant lots, to ensure that the new uses fulfill public purposes such as removing blight, protecting the environment, and fighting poverty. The City could then issue a quarterly RFP with a list of target properties and ask for submissions and then sell the properties to the winning applicants for one dollar, with easements or deed restrictions ensuring that the properties are used as specified. To ensure constitutional and legal validity, the city should pass a local law authorizing this process.

Ohio law, similar to New York law, requires that a city receive fair market value for its property. Cleveland, however, takes the view that its vacant property has only nominal value and offers non-buildable lots for one dollar and buildable lots for

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<sup>14</sup> Cornell Cooperative Extension, "Vacant Land, Buildings and Facilities Asset Management Project" (2004), p. 61-62.

<sup>15</sup> Cornell Cooperative Extension, "Vacant Land, Buildings and Facilities Asset Management Project" (2004), p. 63.

<sup>16</sup> Timothy Wanamaker, former director, City of Buffalo Office of Strategic Planning, personal communication.

<sup>17</sup> NYS Constitution, Article VIII, Section 1.

<sup>18</sup> NYS Constitution, Article VIII, Section 1.

<sup>19</sup> 1988 N.Y. Op. (Inf.) Att'y Gen. 141. See also *Murphy v. Erie County*, 28 N.Y.2d 80

\$100.<sup>20</sup> Cleveland sells about 500 properties per year to community development corporations.<sup>21</sup>

LISC-Buffalo has prepared a vacant property value calculator for the City which factors in the costs to the City in holding and maintaining a vacant property, showing that vacant properties typically have negative value for the City, making it cost effective to donate them rather than attempting to sell them.<sup>22</sup> Given that the City has thousands of unsold parcels and that each year hundreds more are added because no buyer bids on them at the City's In Rem sale, it appears true beyond a doubt that many of these parcels have zero or negative value, and that the system the City is using to calculate their value is flawed.

Syracuse has a new housing initiative that includes offering vacant homes to both non-profit and for-profit developers for one dollar through an RFP process. Syracuse has sought approval from the state legislature for a seven year, 100% property tax exemption for owners who renovate a vacant property or build on a vacant lot.

Troy has radically changed how it handles tax-foreclosed properties. The city and its non-profit partner, Troy Architecture Program, Inc. (TAP) photograph each property, prepare information sheets, display signs on the properties, offer detailed property descriptions on the city's web site, and generate local news coverage. They then solicit purchase proposals and evaluate them less based on price than on intended use. Only if the property fails to sell by proposal is it auctioned. According to Mayor Pattison, "We have realized that the process of foreclosing . . . is much more than a way to raise revenue. We now see it as an opportunity for community-building."<sup>23</sup>

The city of Baltimore began a program called SCOPE (Selling City-Owned Properties Efficiently) in 2003. Real-estate brokers get \$2,500 or 8% for selling city-owned properties. Buyers must renovate the home within 18 months and occupy it or sell to an owner occupant.<sup>24</sup> SCOPE has reduced the amount of time the city-owned homes stay on the market from 193 days to 53 and led to the sale of 150 properties for a total of over \$1 million. The properties are listed at [www.baltimorehousing.org](http://www.baltimorehousing.org).

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<sup>20</sup> Margaret Dewar, "Selling tax reverted land: lessons from Cleveland and Detroit," *Journal of American Planning Association*, 3/22/06.

<sup>21</sup> Allan Mallach, *Bringing Buildings Back*, National Housing Institute (2006), Chapter 11.

<sup>22</sup> Anthony Armstrong, "Vacant Property Calculator," available from author.

<sup>23</sup> National Trust for Historic Preservation, "Rebuilding Community: a Best Practices Toolkit," p. 16.

<sup>24</sup> Corey Rossi, "Marketing City-Owned Properties" (2008), <http://bflo-housing.wikispaces.com>.



### **Start a Clean and Green Program for Vacant Lots**

In 1996, a community development corporation in Philadelphia, the New Kensington CDC, began a program to deal with its neighborhood's over 1,100 vacant lots. With help from the Pennsylvania Horticultural Society, CDBG funds, and foundation funds, they created a vacant land management program. By 2004, they had reclaimed over 600 vacant parcels, stabilizing them, planting trees, creating side yards and gardens, including a three quarter acre urban farm run by Greensgrow Farms.<sup>25</sup> A University of Pennsylvania study of the program found that stabilizing and greening a vacant lot increased the value of the adjacent property by an average of 17% or \$14,059.<sup>26</sup>

An expanded version of this project, called Philadelphia Green and now run by the Pennsylvania Horticultural Society, has cleaned and greened and now maintains over 8,000 lots and has hired over 100 neighborhood residents. The Horticultural Society has created an excellent manual that can serve as a model for Buffalo: "Reclaiming Vacant Lots: a Philadelphia Green Guide." This guide has detailed instructions for reclaiming a vacant lot, including funding, costs, site control, assessment, design, preparation, planting, and maintenance.<sup>27</sup>

### **Demolitions: Faster, More Targeted, and Greener**

It is not clear how the City is doing at meeting its target of 1,000 demolitions per year. But with over 12,000 vacant properties in the City, it is clear that 1,000 per year is not enough. It may be that 1,000 per year is not even keeping pace, much less reducing the backlog. From 2000 to 2006, the Census estimates that the number of vacant units in the City rose from 22,793 to 32,647. From the fourth quarter of 2005 to the second quarter of 2008, the number of undeliverable addresses in Buffalo rose from 15,651 to 19,691, suggesting that the number of abandoned properties may be growing by more than 1,000 units per year.

If a building needs to be demolished, the City and its residents save large amounts of money and reap immense benefits from demolishing it sooner rather than later. Demolitions have immediate, tangible benefits far greater than many other ways the City uses CDBG dollars and other funds. For example, a study of Philadelphia found that being within 150 feet of an abandoned property took \$7,600 off a home's value.<sup>28</sup>

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<sup>25</sup> Alan Mallach, "From Eyesores to Assets: CDC Abandoned Property Strategies," available from [www.nhi.org](http://www.nhi.org).

<sup>26</sup> National Vacant Properties Campaign, "Blueprint Buffalo Action Plan," p. 77.

<sup>27</sup> <http://www.pennsylvaniahorticulturalsociety.org/garden/vacantmanual.html>.

<sup>28</sup> National Vacant Properties Campaign, "Vacant Properties: the True Costs to Communities" (2005).

Vacant structures are dangerous for many reasons. In 2006, 50 of the 334 firefighter injuries took place at vacant structures.<sup>29</sup> In 2008, the *Buffalo News* reported that six out of ten arsons in the past year were at abandoned buildings.<sup>30</sup> Twenty seven firefighters were injured battling those fires.<sup>31</sup>

The City is clearly attempting to better target its demolitions, but there is room for improvement in targeting demolitions to where they will have the most impact, doing them together, and coordinating them with other investments. The City also needs to green its demolitions by incorporating a recycling requirement (Chicago, for example, requires that 50% of construction/demolition debris be recycled) and identifying some structures for deconstruction and salvage rather than demolition. The City must also do a better job ensuring that demolition contractors adequately clear stones and rubble and plant durable, decent-quality grass.

### **Board-Up Vacant Houses more Effectively and Attractively**

In last year's comment, we identified the problem that the City boards only first stories of vacant houses. The City responded that there are safety concerns for the workmen boarding the houses. The boarding of multiple story buildings is so routine, that this explanation is not convincing. Failing to seal upper stories leaves buildings much more exposed to weather, vandals, and squatters, and presents a far more blighted appearance.

The City should also pursue the painted board method used in some buildings this past year. The vibrantly painted boards in the structure next to Artspace made an enormous difference on that block. The City also needs to find a way to board up houses that is harder for intruders to tear off. While the Fire Department was apparently concerned about making it too hard to exit the house in a fire, overall it seems safer to better prevent people from getting into the house in the first place.

### **Reform BERC and BURA**

As the HUD audit and recent news stories have shown, BERC and BURA are seriously adrift. One question is whether there are any compelling legal or policy reasons for them to exist, or whether their functions would be better served through normal City departments. Their separate incorporation, among other problems, makes their holdings, their loans, their staffing, and all their actions much harder for the average citizen to understand and follow. In reviewing the list of BURA employees, including 55 active and 48 inactive, one wonders in many cases why the employees are receiving BURA funding instead of purely city salaries. In many

<sup>29</sup> Maki Becker, "Arson fires: the firefighters' nightmare," *Buffalo News*, 6/15/07.

<sup>30</sup> Phil Fairbanks, "Forgotten, but not gone," *Buffalo News*, 7/6/08.

<sup>31</sup> Phil Fairbanks, "Buffalo wants them razed," *Buffalo News*, 7/7/08.

cases, it is hard to understand what the employee does and how much benefit the citizens are gaining from that employee's work.

Those concerns are even greater when it comes to BEREC. The amount of real service that BEREC provides to local businesses appears miniscule, and businesses that have tried to deal with BEREC often complain about endless red tape, unreturned phone calls, massive delays, etc. for minimal return. The Action Plan reports only 24 closed loans totaling \$1.4 million for the past fiscal year, despite the large amounts the City is spending on BEREC salaries and overhead. The money spent on BEREC salaries and programs would be much better spent demolishing and rehabbing vacant homes.

### **Eliminate "Member Items"**

While most Common Council members use their "member item" CDBG funds responsibly, the One Sunset debacle, in which Council Member Davis granted \$30,000 in CDBG funds to a totally unrealistic upscale restaurant/bar project outside his district, shows the inherent irrationality and potential for abuse in allocating CDBG funds via Council Members.<sup>32</sup> All funds should be administered centrally by professional staff with clear, public, competitive application processes.

### **Presentation**

The City has improved the clarity of its Action Plan narrative. However, it would still benefit greatly from simple presentations – with numbers and dollar amounts – so that the average resident can see things like:

- How much money is being spent, for what numeric results, on
  - market rate housing
  - affordable housing
  - home ownership
  - rental housing
  - new construction
  - rehab
  - green projects
  - demolitions
  - vacant lots
- What percent of federal dollars makes it to the street?
- What percent goes to bricks and mortar projects?
- What is accomplished by the City employees whose salaries are paid with CDBG dollars?

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<sup>32</sup> Patrick Lakamp and James Heaney, "City Hall's costly entry into the restaurant business," Buffalo News, 5/24/09.

Thank you for considering these thoughts.

Sincerely,

Sam Magavern  
Co-Director  
Partnership for the Public Good