



Cornell University  
ILR School

Cornell University ILR School  
**DigitalCommons@ILR**

---

Buffalo Commons

Centers, Institutes, Programs

---

12-3-2009

## Buffalo's In Rem Foreclosure Auction

Kathleen Feroletto

*University of Buffalo Law School*

Follow this and additional works at: <https://digitalcommons.ilr.cornell.edu/buffalocommons>

Thank you for downloading an article from DigitalCommons@ILR.

**Support this valuable resource today!**

---

This Article is brought to you for free and open access by the Centers, Institutes, Programs at DigitalCommons@ILR. It has been accepted for inclusion in Buffalo Commons by an authorized administrator of DigitalCommons@ILR. For more information, please contact [catherwood-dig@cornell.edu](mailto:catherwood-dig@cornell.edu).

If you have a disability and are having trouble accessing information on this website or need materials in an alternate format, contact [web-accessibility@cornell.edu](mailto:web-accessibility@cornell.edu) for assistance.

---

## Buffalo's In Rem Foreclosure Auction

### Abstract

The increase in tax foreclosure and property abandonment over the past five years has created an abundance of vacant properties in the City of Buffalo. In fact, Buffalo has the third highest vacancy problem in the nation, with between 12,000 to 18,000 vacant buildings. Buffalo trails only Detroit and New Orleans among the 100 largest cities. Although the subprime mortgage crisis did not hit Buffalo as hard as many other cities, tax foreclosures have risen over the past five years. As a result, the City's In Rem housing foreclosure auction has grown significantly. In October 2009, Buffalo held its largest foreclosure auction in city history.

### Keywords

Buffalo, Housing/Neighborhoods, Tax Foreclosures, Report, Other, PDF



BUFFALO'S IN REM FORECLOSURE AUCTION

KATHLEEN FEROLETO

University at Buffalo Law School

December 3, 2009

The increase in tax foreclosure and property abandonment over the past five years has created an abundance of vacant properties in the City of Buffalo. In fact, Buffalo has the third highest vacancy problem in the nation, with between 12,000 to 18,000 vacant buildings.<sup>i</sup> Buffalo trails only Detroit and New Orleans among the 100 largest cities.<sup>ii</sup> Although the subprime mortgage crisis did not hit Buffalo as hard as many other cities, tax foreclosures have risen over the past five years. As a result, the City's In Rem housing foreclosure auction has grown significantly.<sup>iii</sup> In October 2009, Buffalo held its largest foreclosure auction in city history.

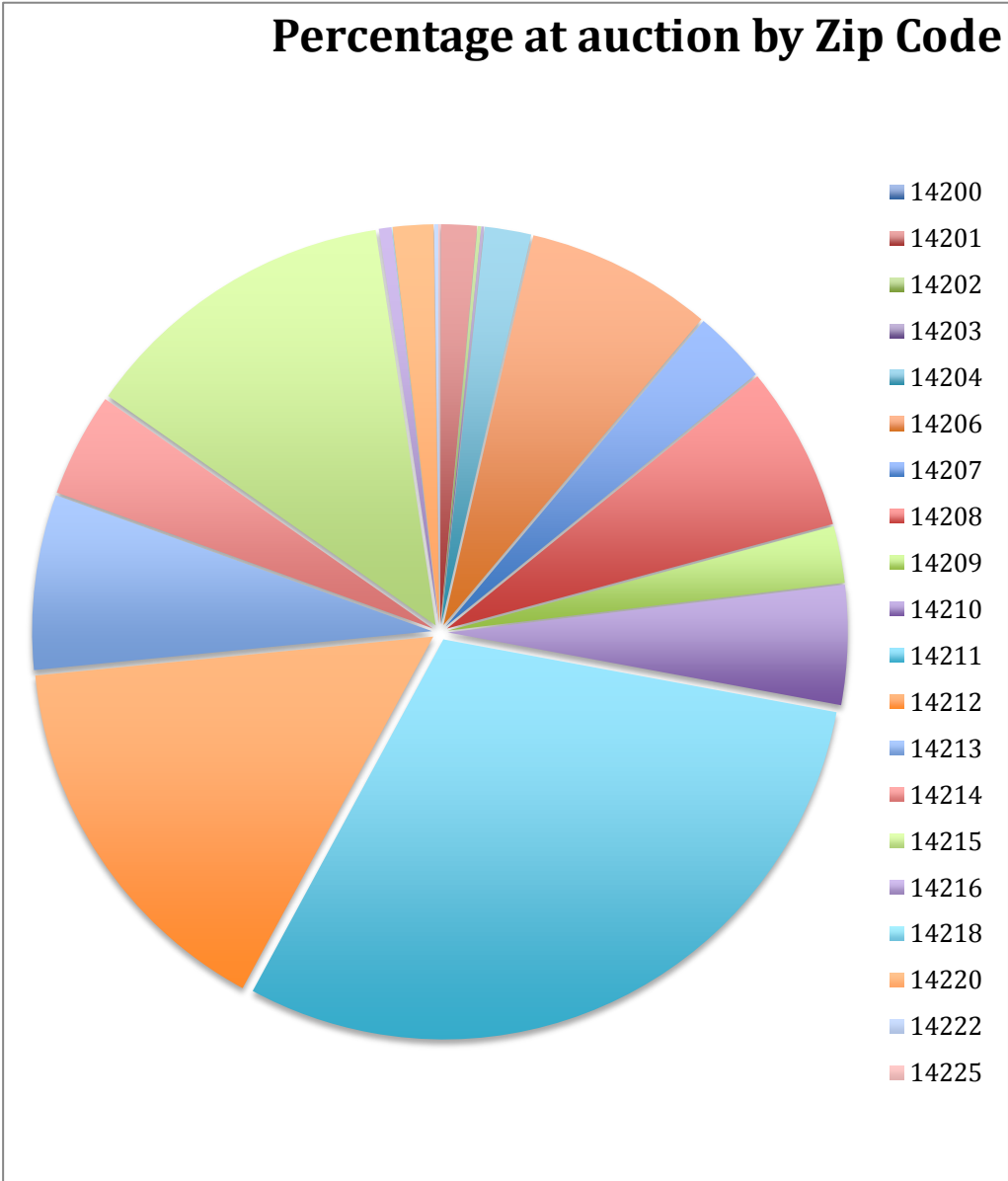
### In Rem Auction

The In Rem auction is run by the Department of Assessment and Taxation with the goal of recovering unpaid property taxes, garbage user fees, water utility bills, or sewer rents by selling the property with clean title at auction. Article §6-23 of the City Code sets out the duties for the director of the real estate department and allows for the sale of tax foreclosure properties.<sup>iv</sup> Article §15-41 allows for foreclosure on unpaid resident user fees.<sup>v</sup> Unfortunately, the auction is not enough to take care of the vacant housing crisis in Buffalo.

### Vacancy as a problem

---

The increasing inventory of vacant properties is creating a problem in the City of Buffalo. As New York Senator Chuck Schumer has said, “The vacant-housing crisis chokes rejuvenation, drags down property values in both the city and the suburbs, and puts a drain on our local resources.”<sup>vi</sup> This housing crisis is not evenly affecting all areas of Buffalo. Unfortunately, the vacant properties are concentrated in inner city neighborhoods with a high minority population. More than 57% of the properties on the 2009 auction list were located in just 3 of 20 zip codes within the city.<sup>vii</sup> These three zip codes have high crime rates, lower average income, and are predominantly populated by minorities. Six of the top ten emptiest neighborhoods in the state are located on Buffalo’s East Side.<sup>viii</sup> On some streets, vacancy rates hover near 40 percent.<sup>ix</sup>



The growing vacancy problem must be addressed, and the goals of the In Rem auction must shift to a long-term solution rather than a short-term goal of recovering back taxes. The Department of Assessment and Taxation must take major steps to alter the In Rem auction policies to reduce the number of vacant properties and regain long-term tax revenue. All too often, the starting price of

a property at auction is higher than the property is actually worth. The reality is, if more properties would sell at a lower price, the long term value to the city would be much greater than the short term loss of back taxes. The long-term value of selling a property so it becomes inhabited includes future tax payments on that property, reduced blight in the community, higher property values throughout the neighborhood resulting in higher taxes, and eliminating the cost of possible future demolition on that property.

### Unethical Flipping

The city implemented tough new guidelines three years ago aimed at discouraging flipping. People who buy properties at the auction must sign affidavits promising not to sell acquisitions for more than 120 percent of the bid price for at least six months. Bidders also receive stern warnings that they're responsible for fixing all code violations. Unethical flipping has been an issue in the past and is defined as the "quick and/or repeated resale of property at inflated value for profit".<sup>x</sup> The In Rem auction attracts property flippers because the sales are usually for very low prices. In auction sales from 2002-2005, 84% of the properties sold for under \$10,000, and 50% of those sold for under \$4,000.<sup>xi</sup> Out of state purchasers are often not held accountable for unethical flipping because of jurisdictional limits. Those purchasers who reside out of the jurisdiction of the City of Buffalo housing court often do not respond

to housing court summonses about property in unsafe conditions. Properties that are unethically flipped are usually vacant and contribute to community blight and an escalating pattern of property value decline. As a result, the City must spend money and use resources to respond to arson, hazardous environments, illegal activity and demolitions. Unfortunately, this contractual affidavit is difficult to enforce according to officials in Buffalo Housing Court.

### 2009 In Rem Auction

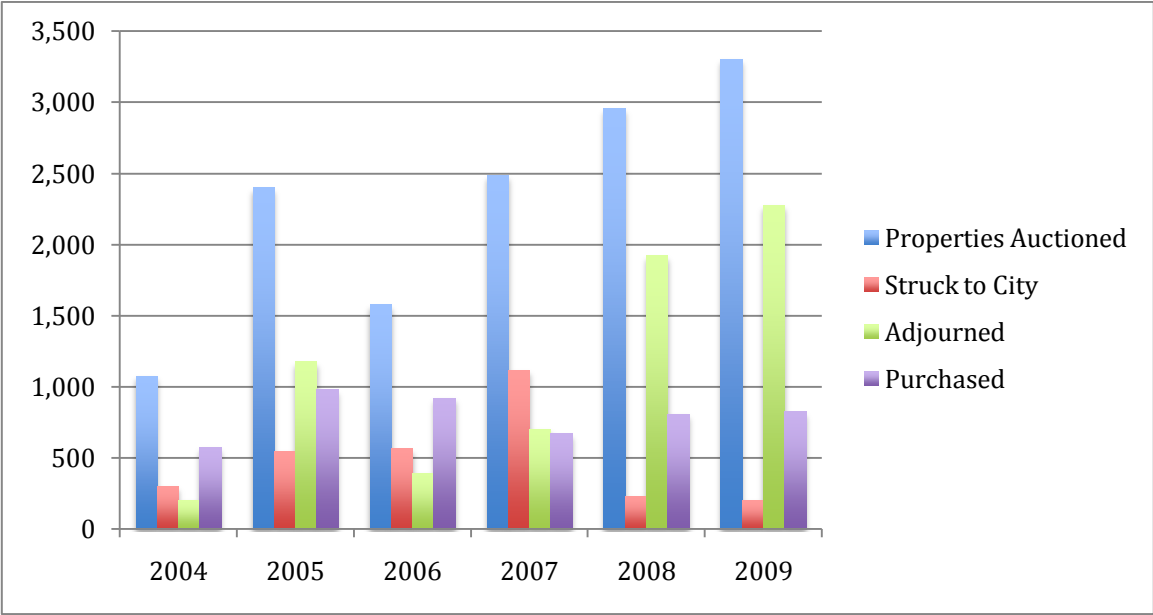
Property owners are notified through a series of letters from the city that their property is in danger of being foreclosed upon. Only a week before the 2009 auction, 4,700 properties were on the list, but about 1,400 people were able to make last minute payments or stop the sale.<sup>xii</sup> Thus, the 2009 auction had 3,304 properties. More than 1,600 of these properties had been offered at prior auctions but not sold. More than 1,500 of the properties were vacant lots.<sup>xiii</sup> Of the 3,304 properties offered, 826 properties sold. 2,278 were adjourned, and 200 were struck to the city.

### 2008 In Rem Auction

In 2008, there was an increase in the number of homeowners who were able to save their homes, but there was also an increase in the number of foreclosures. In 2008, 1,108 properties were removed from the auction list



before the auction began, compared to 441 in 2007, and 280 in 2006. A total of 232 properties were struck to the city in 2008, which means the city became legally responsible for the property. The City of Buffalo generated \$5,112,200 through the 2008 In Rem housing auction. While this figure may seem large, it does not come close to covering the annual cost of demolitions throughout the city. The Mayor of Buffalo’s goal is to demolish one thousand homes per year for five years. While this lofty goal has not been met, the cost would be \$16,000,000 per year to accomplish it.



Properties at auction in the City of Buffalo end up in one of three categories after the auction has concluded. These categories are (1) properties that are sold with clean title, (2) properties that are struck to the city with clean

title, and (3) properties that are not bid on resulting in adjournment and no clean title.

### Adjourned properties

In 2008, 1,847 properties were adjourned and in 2009, 2,278 properties were adjourned. The adjourned properties impair the surrounding neighborhoods because they are not transferrable. The liens would carry over to any new owners, with the liens often worth more than the property itself.

When a property is adjourned it reverts back to the original owner, who remains responsible for property taxes and upkeep of the property. It is then placed on the In Rem foreclosure auction list the following year if the taxes or bills are not yet paid. The adjourned properties are often those in the worst condition or in the most undesirable neighborhoods, which is why they do not sell. The owners of these properties have often already given up on maintenance and care due to financial problems or other contributing factors. This means the grass is never mowed, bushes are not kept up, and other maintenance is not performed. These factors create eyesores throughout the community. These properties often require demolition due to months or years of a lack of maintenance and security. These vacant properties become

attractive targets for looters, crime, and arson. In 2007, 60% of arsons were set at vacant properties and 27 firefighters were injured battling those fires. <sup>xiv</sup>

The properties that are adjourned to the following year's auction usually remain vacant and are not available to purchase. The once a year occurrence of the auction forces these properties to be stuck in limbo for an entire year.

During this time, the problems associated with vacant houses lead to further deterioration due to months or years of a lack of maintenance and security.

#### Properties Struck to the City

When a property is struck to the city, the city obtains a clean title to it. Currently, the City of Buffalo owns 7,000 to 8,000 properties.<sup>xv</sup> Those that are struck to the city are usually in such a deplorable condition, they are deemed unsalvageable and are put on the City's demolition list. Many of these properties remained vacant for too long and were adjourned from year to year at the annual in Rem auction. The property value decline on these properties due to the terrible condition of the house leads to lower tax revenue in the City of Buffalo when the value of the surrounding houses decrease. The City loses on both ends because not only did it not obtain the back taxes, but it must also cover the cost of demolition.

#### Demolition

Demolitions are a high cost to the city, averaging \$16,000 per demolition, and are often the result of long periods of vacancy. Unfortunately the City has thousands of properties on its demolition list and the wait period for a house to be taken down is three to five years. Vacant properties attract looters, criminal activity, arson, and are often not properly weatherized. The result of these factors includes blight, arson, and decreased property value throughout the neighborhood, lower tax revenue for the City of Buffalo, increased criminal activity, and the deterioration of the property. In addition, arsons come with a high cost to the safety of emergency personnel and the community. The vacant properties attract vandalism and are sometimes used as dumping grounds.

Buffalo's demolition efforts are often criticized. Grass roots organizations argue the City administration doesn't have the staff or strategy to deal with the problem and the scattered nature of the demolitions are unfocused. <sup>xvi</sup> Catherine Schweitzer of the Baird Foundation stated: "There's no plan. Their strategy is a demolition-only strategy. There's no sense of what should be saved. We are demolishing the very places that could revitalize the city."

### Actions By Other Cities

In Detroit, a city that is with Buffalo one of the three poorest large cities in the United States, has utilized Foreclosure auctions by a private company as a

method of reducing the number of abandoned properties and encouraging home buying. Hudson & Marshall, a private company, auctioned nearly 460 foreclosed homes on January 16 -18, 2009. Bidders were required to pay \$1,000 up front in cash or check for each property. Private auctions such as this may possibly minimize the expense for the City. In addition, this allows for the properties to be sold year round rather than just once annually.

In Rochester, NY, 50 to 60 vacant homes are acquired by the city every year. These homes are then fixed and resold to first-time homebuyers. Over the past seven years, Rochester has saved and sold approximately 360 homes. In comparison, Buffalo only repairs and sells an average of seven homes per year.

xvii

### Proposed Actions for Buffalo

Buffalo City Treasurer Michael A. Seaman has said officials are continuing to examine ways to improve such auctions including a special auction for bidders who commit to becoming owner-occupants. Following are some additional ideas for improving the auction process.

Pre-qualified bidders should be evaluated on financial stability, previous homeowner record, and residency. No one should be denied solely on one of these grounds, but each should be evaluated when qualifying bidders. A point system may be a good way to evaluate bidders and these pre-qualified could be

notified before the spring follow up auctions. A current glitch in the system prohibits any homeowner with a pending case in housing court from bidding on any house at the auction. While the intentions of this legislation were to keep unqualified homeowners from taking on more ownership responsibilities they could not handle, it is also restricting responsible homeowners from purchasing more properties. Pre-qualifying any responsible homeowner, regardless of housing court status, would rectify this problem and allow for a larger pool of bidders.

Residency should be another factor when pre-qualifying bidders. Past auctions have brought in out of state bidders who buy properties. This can become a problem for two major reasons. Out of state landlords are not available to maintain a property as needed. In addition, if inspectors issue tickets on properties belonging to out of state owners, jurisdictional issues arise when trying to enforce and collect on these violations. Preference should be given to local residents, but out of town residents should not be excluded solely on this fact.

Proof of financial security would be another factor in evaluating potential buyers pre-qualification. Financial stability could easily be shown using a certified bank letter stating the account balance or using language such as "John Smith has in excess of ten thousand dollars in his account." This factor

combined with an individual's housing violation record would be enough to prequalify a bidder.

Rather than simply being adjourned to the next year's auction, un-bought properties should be adjourned to a specified date in the spring of the following year. Announcing the adjournment date at the October public auction would be sufficient notice to the public as long as the date and location were announced. In addition, these un-bought properties should be listed at a low starting price, as low as \$1 so the properties are no longer the responsibility of the city or their current homeowners who are unable to

Spring auctions set up in small groups organized by neighborhood would be less time consuming and allow bidders to target properties in certain areas. In addition, this twice a year auction approach would allow for the properties to be purchased in the spring before construction season. No property should be added to the demolition list until after the spring auctions, to allow for any bidders or investors who may want to rehabilitate or demolish these structures on their own. After the houses adjourned from the October In Rem auction were auctioned, the City would then have an opportunity to auction its existing inventory within that neighborhood. This would allow bidder or investors interested in the specified neighborhood access to properties otherwise only offered for auction once a year.

At the neighborhood small auctions, all of the starting bid prices should be set at one dollar (\$1). While this may negatively impact City income due to a loss of unpaid taxes, the future benefits greatly outweigh the immediate loss. Many properties are not worth their unpaid taxes and fees resulting in a lack of interest by investors. Because of this, the properties often dilapidate incredibly forcing the City to eventually cover the very high cost of demolition. The unpaid back taxes combined with demolition costs and no current tax income are the unwanted consequences of vacant, overpriced, and unwanted property. The future benefits of a minimal starting bid include years of future tax payments and no money coming out of the City budget to demolish the structure. Additional benefits may be an increase in surrounding property value, less liability for the City, fewer hazardous properties for first responders, and a decrease in safe havens for criminal activity.

Implementing these neighborhood auctions would add up to a minimal cost to the city. If only a few houses are prevented from being demolished, the money saved by the city would easily cover the weekend hours spent by employees to conduct the auction. Even if no properties are auctioned off, the costs will still be minimal, and each property would be adjourned to the next October In Rem auction where they would otherwise be up for auction. An additional benefit to these small neighborhood auctions includes the encouragement of local bidders to invest in their community.



Of the properties that are struck to the city, like Rochester, Buffalo must focus on saving and reusing one of the city's best assets – its low-cost housing. If the City of Buffalo could salvage 50-60 homes per year that are strategically placed in targeted neighborhoods, this could make a significant impact on already improving communities. Mayor Byron Brown set a goal in 2009 of rehabilitating 100 vacant units each year for five years, but implementation of this goal is slow at best. Currently, organizations such as PUSH (People United for Sustainable Housing) and the Crescent Village project are targeting the lower west side of Buffalo, and signs of a turnaround are promising.

In conclusion, the City of Buffalo has a sizable task to reevaluate and restructure its plan for the vacant housing crisis facing the city. Those neighborhoods and communities that are still salvageable must be targeted, and the In Rem foreclosure auction must be revamped to allow for a more effective turn around of the foreclosed properties. While resources are limited, the Department of Taxation and Assessment must evaluate its options to improve this auction. With over 2,000 properties adjourned in 2009, the In Rem auction will only get larger. Although the auction is growing, the number of houses bought over the past six years has remained about the same.

- 
- i <http://www.buffalonews.com/433/story/386633.html>
- ii Id.
- iii <http://www.buffalonews.com/407/story/845787.html>
- iv [http://www.e-codes.generalcode.com/codes/1237\\_A/1237-Cha.pdf#xml=http://www.e-codes.generalcode.com/searchresults.asp?cmd=pdfhits&DocId=145&Index=C%3a%5cProgram%20File%5cdtSearch%5cUserData%5c1237%5fA&HitCount=3&hits=261bf+261c0+261c1+&hc=3&req=sale+of+property](http://www.e-codes.generalcode.com/codes/1237_A/1237-Cha.pdf#xml=http://www.e-codes.generalcode.com/searchresults.asp?cmd=pdfhits&DocId=145&Index=C%3a%5cProgram%20File%5cdtSearch%5cUserData%5c1237%5fA&HitCount=3&hits=261bf+261c0+261c1+&hc=3&req=sale+of+property)
- v Id.
- vi <http://www.buffalonews.com/cityregion/easternsuburbs/story/588518.html>
- vii <http://www.city-buffalo.com/applications/ForeclosureInremListing/default.aspx>
- viii <http://www.buffalonews.com/cityregion/buffaloerie/story/662598.html>
- ix <http://www.buffalonews.com/cityregion/buffaloerie/story/662598.html>
- x <http://www.buffaloflipping.com/Learn.htm>
- xi Id.
- xii <http://www.buffalonews.com/cityregion/buffaloerie/story/845765.html>
- xiii Id.
- xiv <http://www.buffalonews.com/433/story/386633.html>
- xv <http://www.buffalonews.com/cityregion/story/836599.html>
- xvi <http://www.buffalonews.com/433/story/386633.html>
- xvii <http://www.buffalonews.com/donnesmonde/story/763420.html>