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Cover Page Footnote

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NEIGHBORHOOD PRESERVATION IN NEW YORK CITY

*Phillip Weitzman**

I. Introduction

America is the home of the throwaway economy. Until recently, abundant resources and pressures for ever-expanding production have given us little incentive to ask what happens to commodities after they are produced and purchased. Residential neighborhoods are no exception. The push to the suburbs, financed in large part by federal mortgage guarantees and highway construction moneys and bolstered by exclusionary zoning, has generated forces which tend to leave old urban neighborhoods in shambles.

The syndrome of housing deterioration is well known. New housing is built for the relatively affluent who are able to afford the high costs. As buildings in a neighborhood begin deteriorating they filter down the income ladder. One frequent result is that the area no longer remains attractive to the racial or ethnic groups which populate it, and becomes occupied by more recent and less affluent urban in-migrants. Changes in ethnicity and income levels often prompt an outflow of capital from the area. Absentee landlords and real estate speculators begin to milk buildings for high short-term profits. Banks fear that instability and deterioration endanger their investments, and proceed to "red line" the area, depriving it of mortgage refinancing and property improvement loans. The municipal government finds its ability to raise revenues is impaired, while the demand for city services in these areas rises dramatically. The deterioration process soon becomes visible to remaining tenants and landlords, and the flight of people and capital accelerates. The result is decay, blight, abandonment, and the destruction of a community. Poverty, despair, and unscrupulous landlords are the sole survivors.¹

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1. A number of sources discuss various aspects of housing and related neighborhood deterioration. See, e.g., D. NETZER, *ECONOMICS AND URBAN PROBLEMS* 23-48 (2d ed. 1974); W. TABB, *THE POLITICAL ECONOMY OF THE*

The dilemma of the deteriorating neighborhood is heightened in a city such as New York, where a large proportion of its population lives in old multiple family buildings. During the 1950s and 1960s, urban renewal projects in the central cities often contributed to the decline of other neighborhoods; forced relocation of tenants often induced overcrowding, increased wear and tear on housing and public facilities, and caused changes in the racial or ethnic character of neighborhoods²—the most visible signs that they would no longer be what they once were. Yet, these “gray areas”³ of transition may serve the important purpose of providing housing and services for the poor and for in-migrants to the cities. Thus, there is an acute need in these areas for programs designed to arrest neighborhood deterioration without forcing massive relocation or destruction of community ties or values.

After almost forty years marked by a succession of programs designed to eliminate slums and blighted areas,⁴ New York City has concluded that its older neighborhoods must be protected from the devastation of the deterioration process so that they can be recycled

BLACK GHETTO 12-19 (1970); W. THOMPSON, A PREFACE TO URBAN ECONOMICS 309-20 (1965). See also COMPREHENSIVE PLANNING WORKSHOP, NEW YORK CITY PLANNING COMMISSION, NEIGHBORHOOD PRESERVATION IN NEW YORK CITY 7-22 (1973) [hereinafter cited as NEIGHBORHOOD PRESERVATION].

2. See generally M. ANDERSON, THE FEDERAL BULLDOZER (1964); S. GREER, URBAN RENEWAL AND AMERICAN CITIES (1965); J. WILSON, URBAN RENEWAL (1966).

3. “[Gray areas] are typically areas of aging and unattractive but nonslum housing. They are the suburbs of the past, built in the first three decades of this century and now obsolete. Built under a policy of maximum site coverage, they have no room for lawns and shrubs and trees and wide open spaces. Typical are two-family row houses, frame walkups, and four-to six-story apartment houses. Decades ago when they were built, these areas were served by brand new transit systems (railroads and streetcars), and they were eagerly sought after by the first generation of children of the pre-World War I wave of immigrants from abroad. Now their children have in turn left for the newer suburbs of single-family homes, leaving the old people behind, who are least able or willing to move.” H. KOHLER, ECONOMICS AND URBAN PROBLEMS 79 (1973).

4. For an historical profile of one building in East Harlem and the city’s attempt to save it over a forty year period, see W. KLEIN, LET IN THE SUN (1964).

for use by new generations of urban dwellers.⁵ On May 23, 1973 the Mayor of the City of New York created the Neighborhood Preservation Program,⁶ the first truly comprehensive effort in the nation aimed at preserving sound urban neighborhoods. The purpose of this article is to examine how the program is designed to operate, and analyze how well its objectives have been, and potentially may be, achieved.

II. Predecessor Programs of Neighborhood Preservation⁷

New York City and State have been in the forefront of local efforts to improve housing conditions for those whose economic resources are insufficient to guarantee them decent, safe, and sanitary housing. In 1867 the city enacted the first Tenement House Law,⁸ requiring each building occupied by four or more families to have a water supply, toilets, fire escapes, and ventilation systems. The first comprehensive municipal zoning code in the country was enacted for New York City in 1914.⁹ The first movement toward publicly assisted housing came with the Limited Dividend Housing Companies Law,¹⁰ which enabled municipalities to grant tax abatement for property improvement and limited a participating builder's return on investment to six percent. An unimplemented section of that law provided for direct municipal low cost mortgage loans for developers.¹¹

5. "The task of the next twenty years in most of our large cities is more properly one of renovating and preserving the old houses in order to prolong their usefulness during a period when they will be needed." B. FRIEDEN, *THE FUTURE OF OLD NEIGHBORHOODS* 4 (1964).

6. NEW YORK, N.Y., EXEC. ORDER No. 80 (May 23, 1973), in 101 *The City Record* 2066 (1973).

7. For a brief history of New York City's efforts in the housing area, see *COMMUNITY RENEWAL PROGRAM, NEW YORK CITY PLANNING COMMISSION, NEW YORK CITY'S RENEWAL STRATEGY/1965*, at 3-8 (1965) [hereinafter cited as *RENEWAL STRATEGY/1965*], and *COMMUNITY RENEWAL PROGRAM, NEW YORK CITY PLANNING COMMISSION, BETWEEN PROMISE AND PERFORMANCE* at 15-23 (1968) [hereinafter cited as *BETWEEN PROMISE AND PERFORMANCE*].

8. Law of May 14, 1867, ch. 908, [1867] N.Y. Laws 2265.

9. Law of Apr. 20, 1914, ch. 470, [1914] N.Y. Laws 1943.

10. Law of May 10, 1926, ch. 823, [1926] N.Y. Laws 1507 (codified at N.Y. PRIV. HOUS. FIN. LAW §§ 70-97 (McKinney 1962), *as amended*, (Supp. 1974)).

11. *Id.*

In 1935 the City of New York sponsored the first publicly built housing project in the nation. Significantly, the First Houses Project,¹² as it is commonly known, was not the product of the massive slum clearance and redevelopment that has become the federal pattern; rather, it involved major rehabilitation of existing slum housing, along with some demolition to create open spaces.¹³ The 1942 Redevelopment Companies Law,¹⁴ forerunner of federal urban renewal legislation, allowed the city to condemn property in slum areas and resell it for housing development. This program sought to achieve on a scale of square blocks what the 1949 Federal Housing Act¹⁵ later attempted in terms of square miles.¹⁶ Despite these innovative programs, urban renewal in New York City has been noted for using sites for luxury housing and cultural facilities, bulldozing structurally sound buildings without providing for adequate relocation of tenants, and planning renewal without citizen participation.¹⁷

A. The Community Renewal Program

The first movement to broaden the scope of urban renewal to include conservation and rehabilitation of existing housing was the Community Renewal Program,¹⁸ which the city began in 1959. One of its major innovations was to conceive of the entire city as a series of communities with individual needs. Public programs had to balance local interests with those of governmental and private groups. In line with this concept, the city established a ten year \$1.1 billion program for Preventive Renewal Areas which required attention

12. This housing project was recently designated a historic landmark. N.Y. Times, Nov. 14, 1974, at 49, col. 3.

13. BETWEEN PROMISE AND PERFORMANCE 20-21.

14. Law of May, 1942, ch. 845, [1942] N.Y. LAWS 1855 (codified at N.Y. PRIV. HOUS. FIN. LAW §§ 100-26 (McKinney 1962), *as amended*, (Supp. 1974)).

15. Housing Act of 1949, ch. 338, 63 Stat. 413 (1949).

16. BETWEEN PROMISE AND PERFORMANCE 21-22.

17. Renewal Strategy/1965, at 5.

18. This program was established pursuant to the Housing and Community Development Act of 1959, § 103(d), 42 U.S.C. § 1453(d) (1970). Further funding under this section was cut off in the Housing and Community Development Act of 1974, § 116(a), 42 U.S.C.A. § 5316(a) (Supp. 1975).

because of "the presence of an aging population and early evidence of housing deterioration."¹⁹ The basic strategy in these areas was "to *preserve* the relatively sound stock of housing and community facilities—one that cannot be replaced quickly,"²⁰ in order to "offer older middle-class residents a satisfactory physical environment and the retention of social ties as well as provide a decent residential alternative to core ghettos for a newly emerging middle-income group of Negroes and Puerto Ricans."²¹

The program sought to encourage limited profit housing for middle income families, to use public housing sparingly, and to concentrate housing code enforcement and building rehabilitation in these areas.²² Despite the continued current designation of these neighborhoods as Preventive Renewal Areas for purposes of obtaining federal aid, the program and its innovations were never implemented.

B. The Neighborhood Conservation Program

The true precursor of the current preservation effort was the Neighborhood Conservation Program, launched in 1959

as an attempt to halt and reverse housing deterioration and meet and ameliorate social problems affecting essentially sound though troubled neighborhoods. The project was designed for "gray" areas; communities which neither needed nor wanted assisted urban renewal treatment, but required housing and social improvements to redress adverse trends and promote sound family life in what could become stable and vital neighborhoods.²³

19. BETWEEN PROMISE AND PERFORMANCE 135.

20. *Id.* at 136.

21. *Id.*

22. *Id.* In 1965 it was estimated that about forty percent of the city's housing stock was located in Preventive Renewal Areas with less than ten percent requiring extensive rehabilitation or replacement, but almost sixty percent requiring minor to moderate rehabilitation. Ninety percent of the residents were able to purchase their housing needs without public subsidies. *Id.*

23. HOUSING AND REDEVELOPMENT BOARD, NEW YORK CITY, NEIGHBORHOOD CONSERVATION IN NEW YORK CITY 11 (1966), [hereinafter cited as NEIGHBORHOOD CONSERVATION]. The Neighborhood Conservation Program was financed by a demonstration grant under section 314 of the Federal Housing Act of 1954, 42 U.S.C. §§ 3301-13 (1970). New York City was not the first city to have a project of this nature. Detroit had a similar neighborhood conservation program in the late 1950s, but it was focused on

Concentrated in seven small Manhattan neighborhoods, the program emphasized housing code enforcement, relocation of families from overcrowded facilities, upgrading of buildings through management assistance and rehabilitation funds, tax exemption and abatement, and programs of street lighting, tree planting, traffic rerouting, and improvement of community facilities and social programs.²⁴ A key innovation was administration of the program from decentralized district site offices with housing code enforcement personnel assigned to them. The program required a responsible neighborhood group in each area to sponsor local projects, raise funds, employ staff, and provide policy direction. The city's primary role was as adjunct to the local group.²⁵ There is evidence that this emphasis on neighborhood participation, combined with decentralized city services, made the program generally successful; some of the areas are now considered among the most desirable in Manhattan.²⁶ The program lapsed in the mid-1960s due to inadequate funding.²⁷

Until the establishment of the Neighborhood Preservation Program, the City of New York was without a comprehensive strategy to combat deterioration in its transitional neighborhoods. Most of

attracting federal money for rehabilitation, property improvement, and public improvements into areas containing primarily single family homes. M. PARKINS, *NEIGHBORHOOD CONSERVATION: A PILOT STUDY* (1958). New York's transitional neighborhoods contain heavy concentrations of multiple family dwellings with absentee owners.

24. *NEIGHBORHOOD CONSERVATION* 82-165.

25. *RENEWAL STRATEGY*/1965, at 88.

26. Address by Clara Fox, Women's City Club, Dec. 16, 1974 (text on file in the office of the *Fordham Urban Law Journal*).

27. *NEIGHBORHOOD PRESERVATION* 64.

28. The Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. § 3301 (1970), popularly known as the Model Cities Act, was still another federal attempt to provide financial and technical assistance for comprehensive planning and demonstration programs "to rebuild or revitalize large slum and blighted areas." *Id.* Although funding under the Act was discontinued by Congress, New York City still proposes to use the Model Cities framework and bureaucracy for the expenditure of community development block grant funds under the Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633 (codified in scattered sections of 5, 12, 15, 20, 40, 42, 49 U.S.C.A. (Supp. 1975)).

the city's energies were channeled into urban renewal, public housing, and Model Cities.²⁸ Although there were already programs which could be utilized for preservation, attention was diverted elsewhere by resource constraints, the lure of federal funding, and national interest in urban poverty. Only the limited Neighborhood Conservation Program, with its emphasis on decentralized programs and partnerships with local groups, seems to have been moderately successful. But that, too, was deemphasized in the scramble to clear and rebuild the worst areas of the city.

As New York City's housing stock has aged and social change and market forces have taken their usual course, housing deterioration and abandonment have outpaced the city's financial ability to deal with them. There are approximately one-half million substandard housing units in New York City. Replacement would cost between \$14 billion and \$36 billion, while rehabilitation would require approximately \$8 billion—this in addition to the repairs needed on deteriorating but basically sound housing.²⁹ Absent a radical restructuring of national priorities or a massive redistribution of income, it is clear that the city must maximize the effectiveness of its own very limited resources in order to maintain its existing viable neighborhoods.

III. The Neighborhood Preservation Program

A. Concept

The Neighborhood Preservation Program endeavors to prevent the spread of housing undermaintenance and blight by concentrating efforts to improve housing quality in key areas. By encouraging housing maintenance and rehabilitation on building-by-building and block-by-block bases in transitional areas, the city seeks to reinforce property maintenance and neighborhood stability in nearby sound areas and attract capital back into the gray areas. Since transitional areas often serve as buffers between slums and

29. The estimates are derived from 2 FUND FOR THE CITY OF NEW YORK, TRANSITION PAPERS COVERING THE CHANGE OF CITY ADMINISTRATION 1973-74, at HDA8, HDA11 (1974), and HOUSING AND DEVELOPMENT ADMINISTRATION, NEW YORK CITY, NEIGHBORHOOD PRESERVATION/REHABILITATION PROGRAM: PROGRAM DESCRIPTION 1 (undated report on file in the office of the *Fordham Urban Law Journal*) hereinafter cited as [PROGRAM DESCRIPTION].

sound neighborhoods, a successful preservation program can retard the spread of slums and insulate sound areas.

Implicit in this approach is the idea that none of the city's previous programs has served to revitalize its slums nor prevent other areas from deteriorating. Since municipal resources are extremely limited,³⁰ the only hope (aside from federal funds) is to persuade private lenders to reinvest in areas from which they are beginning to withdraw. Furthermore, the city cannot direct housing programs entirely from City Hall; its agents must be in the field continuously to promote community involvement and keep abreast of current developments.³¹

B. Designation of Neighborhood Preservation Areas

Although implementation of the Neighborhood Preservation Program is left to the city's Housing and Development Administration, authority to designate a neighborhood preservation area is vested in the City Planning Commission. There are four criteria³² used in

30. New York City was recently so short of cash that it was having trouble meeting its payroll. *N.Y. Times*, Feb. 21, 1975, at 35, col. 8.

31. The goals of the Neighborhood Preservation Program are thus consistent with the Federal Housing and Community Development Act of 1974 § 116(a), 42 U.S.C.A. § 5316(a) (Supp. 1975), which recognized that preservation efforts must be given major attention if other programs of slum clearance and redevelopment are not to become self-defeating. The Housing and Community Development Act of 1974 has as its objectives: (1) "the prevention of blighting influences and the deterioration of property and neighborhood and community facilities," *id.* §§ 101(c)(1)-(2), 42 U.S.C.A. § 5301(c)(1) (Supp. 1975), and "conservation and expansion of the Nation's housing stock," *id.* § 101(c)(3), 42 U.S.C.A. § 5301(c)(3) (Supp. 1975). The goals of the Neighborhood Preservation Program are "(a) To prevent the deterioration and abandonment of housing in transitional neighborhoods. (b) To preserve, coordinate and concentrate maintenance efforts by the City in designated neighborhoods. (c) To promote private investment in housing in those neighborhoods. (d) To coordinate governmental and community activities for neighborhood preservation through decentralized neighborhood offices and to provide adequate public investment to support coordinated improvement programs. (e) To promote community involvement in all such activities." *NEW YORK, N.Y., EXEC. ORDER No. 80, § 1 (May 23, 1973).*

32. Despite the presence of these criteria, designation of Neighborhood Preservation Areas is obviously susceptible to, and strongly influ-

making these designations, based on whether: (1) the existing housing stock is essentially sound and attractive but private financial institutions and property owners have recently begun to withdraw financing;³³ (2) the housing stock has deteriorated but is generally only in need of moderate rehabilitation;³⁴ (3) there have been recent increases in adverse housing indicators;³⁵ and (4) existing unique community resources distinguish the neighborhoods.³⁶

On August 1, 1973 the City Planning Commission designated five neighborhood preservation areas: Bushwick and Crown Heights in

enced by, political considerations. For an illustration of how the criteria may be manipulated to achieve political ends, see NEIGHBORHOOD PRESERVATION 108-32.

33. NEW YORK, N.Y., EXEC. ORDER No. 80, § 2(3)(i) (May 23, 1973). The Planning Commission has little difficulty in determining which areas show signs of capital withdrawal and has an assortment of relevant data at its disposal. See PROGRAM DESCRIPTION 5. Available data include areas with high building code violations, large numbers of vacant buildings, large amounts of property tax arrearage, lack of mortgage activity or high numbers of purchase money mortgages, high numbers of emergency vacate orders or Emergency Repair Program activity, large numbers of city-owned buildings or large numbers of buildings involved in in rem tax foreclosure proceedings. *Id.* The Department of Rent and Housing Maintenance can order any dwelling unit to be vacated if deemed unfit for human habitation. NEW YORK, N.Y., ADMIN. CODE ANN. § D26-56.01 (1970). The Emergency Repair Program, *see id.* § 556-10.0, is discussed at text accompanying notes 100-01 *infra*.

34. NEW YORK, N.Y., EXEC. ORDER No. 80, § 2(3)(ii) (May 23, 1973). Such rehabilitation can be done for less than \$10,000 per dwelling unit. Moreover, relocation of tenants is unnecessary. PROGRAM DESCRIPTION 6-7. Moderate rehabilitation includes major repair/replacement of subsystem components; major replacement of accessories; repair/replacement of carpentry items as necessary; and cleaning, patching and painting. R. O'Block & S. Cohen, Financing Rehabilitation in New York City, Figure 1 (Discussion Draft No. 3, Feb. 1970). See also Comment, *Receivership of Problem Buildings in New York City and its Potential for Decent Housing of the Poor*, 9 COLUM. J.L. & SOCIAL PROB. 309, 312 n.12 (1973).

35. NEW YORK, N.Y., EXEC. ORDER No. 80, § 2(3)(iii) (May 23, 1973).

36. *Id.* § 2(3)(iv). These resources include active citizen and tenant groups and chambers of commerce, good parks and public transportation, and evidence of positive effects of other public programs. NEIGHBORHOOD PRESERVATION 116, 123, 129.

Brooklyn, Clinton (formerly known as Hell's Kitchen) and Washington Heights in Manhattan, and West Tremont in the Bronx.³⁷

C. Strategy

Even though only five neighborhood preservation areas have been chosen, the city cannot hope to rehabilitate and revitalize them completely. For example, there are approximately 190,000 residents in 75,000 dwelling units in the Washington Heights program area.³⁸ It has been estimated that complete replacement of all housing units would cost over \$3 billion, while rehabilitation at an average of \$4,000 per unit would still amount to \$300 million—well beyond the city's financial resources.³⁹ Those directing the program recognize that because of resource limitations there is little hope of achieving more than a large scale holding action which at best will "serve to stem landlord disinvestment, encourage tenant enthusiasm, and thus establish a basis for neighborhood preservation."⁴⁰ The \$7 million in municipal loan funds expected to be available for the Washington Heights area in fiscal year 1975 translates at most into publicly sponsored rehabilitation of between 770 and 1400 units per year.⁴¹

A system of clear priorities is imperative. Concentration on the better areas within the Washington Heights neighborhood would do little to convince private lenders to invest in marginal blocks. Similarly, concentration on the most deteriorated areas would yield scant hope that private capital would be attracted. A set of specified target areas, each comprised of four or five visibly transitional blocks, will be selected for maximum public assistance. The premise is that if there is a demonstrable area of municipal involvement and success, it can serve as a rallying point for community interest, to

37. NEIGHBORHOOD PRESERVATION 108-32. Although the Neighborhood Preservation Program is much more limited in scope than the Community Renewal Program, these same neighborhoods were also designated as Preventive Renewal Areas in 1968. BETWEEN PROMISE AND PERFORMANCE 82.

38. DEPARTMENT OF DEVELOPMENT, NEW YORK CITY, HOUSING AND DEVELOPMENT ADMINISTRATION, DRAFT NEIGHBORHOOD PROGRAM STRATEGY FOR CPD 12, Aug. 8, 1974, at 1 [hereinafter cited as CPD 12 STRATEGY].

39. *Id.*

40. *Id.* at 2.

41. *Id.* at 5.

the benefit of other nearby blocks.⁴² Other areas of high priority would be blocks where private institutional lenders have expressed interest in increasing loan commitments. Thus, neighborhood preservation resources would complement private efforts.⁴³ Other possible targets include large corner buildings and residences associated with active block associations.⁴⁴

The Neighborhood Preservation Program as it is emerging is built around a strategy of flexibility. Local housing offices will attempt to develop tenant and investor confidence by working closely with them, and by using city funds to encourage and, if necessary, coerce private activities. To these ends there is a battery of tools incorporated into the program.

D. Tools of Neighborhood Preservation

1. Publicly Financed Rehabilitation Loans

The Municipal Loan Program⁴⁵ is the major weapon in the city's neighborhood preservation efforts, with a total of \$45 million reserved for use during fiscal year 1976.⁴⁶ These loans will provide below market interest rate financing to rehabilitate multiple dwellings. The program also provides for mortgage loans of up to thirty years with an interest rate approximately the same as the city's own bonds. The loans must be used to upgrade deteriorated buildings which house lower income tenants.⁴⁷ The city may also refinance existing mortgages on such buildings for up to fifty percent of the post-rehabilitation value.⁴⁸ It may also provide tax exemption and

42. *Id.* at 8; Interview with Steve Trynosky, Project Development Coordinator, Washington Heights Area Housing Office, in New York City, Feb. 14, 1975 [hereinafter cited as Trynosky Interview].

43. CPD 12 STRATEGY 17-18.

44. *Id.* at 13.

45. The Municipal Loan Program is authorized under N.Y. PRIV. HOUS. FIN. LAW §§ 401-02 (McKinney 1962), *as amended*, (Supp. 1974).

46. 103 The City Record, Feb. 10, 1975, at 13.

47. N.Y. PRIV. HOUS. FIN. LAW §§ 401-02 (McKinney 1962), *as amended*, (Supp. 1974). The low income provision is not overly restrictive, and applies (1) to families which would be paying more than one-sixth of their income (or one-seventh in the case of a family with more than three dependents) for housing, or (2) to a person occupying a building who requires relocation during the rehabilitation. *Id.* § 401(3).

48. *Id.* § 402(2). In addition, the total of all loans and encumbrances

tax abatement benefits.⁴⁹ Federal rent supplement assistance may be available, enabling low income families to pay for any rent increases necessitated by the rehabilitation.⁵⁰

The city has committed its limited municipal loan funds for use primarily in neighborhood preservation areas.⁵¹ Before a loan is issued, the city's rehabilitation experts determine what repairs are required to upgrade the building, and survey tenants to determine their ability to pay increased rentals.⁵² Every building rehabilitated under the loan program must remain under the city's rent control laws for the period of the loan, the duration of any tax relief granted, or ten years, whichever is longest.⁵³ Under a relatively new policy, at the time a building is rehabilitated the city may remove it from any other rent control law provisions and formulate an entirely new set of rents for each apartment to guarantee the owner an eight percent return on equity.⁵⁴ Needless to say, if the building cannot

may not exceed ninety percent of the value of the rehabilitated property. *Id.*

49. *Id.* § 405 (McKinney 1962), as amended, (Supp. 1974); see text accompanying notes 61-65 *infra*.

50. "For the purpose of aiding lower-income families in obtaining a decent place to live and of promoting economically mixed housing, assistance payments may be made with respect to existing, newly constructed, and substantially rehabilitated housing . . ." Housing and Community Development Act of 1974, § 201(a), 42 U.S.C.A. § 1437 (Supp. 1975), amending Housing Act of 1937, ch. 896, § 8(a), 50 Stat. 888. See also 103 The City Record, Feb. 10, 1975, at 13.

51. Office of Housing Rehabilitation, New York City Housing and Development Administration, Article Eight Housing Rehabilitation Loans, May, 1973 (Form No. OHR-M4).

52. Trynosky Interview.

53. N.Y. PRIV. HOUS. FIN. LAW § 405(1) (McKinney Supp. 1974). Such buildings are regulated under the rent control laws regardless of whether or not they were so regulated prior to rehabilitation. *Id.*

54. NEW YORK, N.Y., ADMIN. CODE ANN. § Y51-5.0g(1)(m) (1971) allows an adjustment of rents "[w]here the rehabilitation or improvement of sub-standard or deteriorated housing accommodations have been financed under a governmental program providing assistance through loans, loan insurance tax abatement or has been undertaken under another rehabilitation program not so financed but approved by the administrator." The city rent regulations have been modified to take the "appropriate" rent adjustment out of the hands of the city rent agencies and into those of other

support the new rent level, the loan will not be made. The new rent schedule does not become effective until the city approves all the rehabilitation work.⁵⁵

Other rehabilitation loan programs have limited applicability to neighborhood preservation efforts. Loans authorized under section 312 of the Federal Housing Act of 1964⁵⁶ are for rehabilitation of owner-occupied housing in specified areas. Financing is available at a rate of three percent, for a maximum of twenty years.⁵⁷ This program fills one of the gaps left by the state legislature in the Municipal Loan Program by providing rehabilitation loans to owners of one and two family dwellings.⁵⁸ In areas such as Crown Heights, Bushwick, and West Tremont, these loans may well be critical to stabilizing the quality of the housing stock.⁵⁹

Housing and Development offices. See New York City Rent Regulations § 33.9 (Rasch 1973). See also NEW YORK, N.Y., ADMIN. CODE ANN. § Y51-5.0a(4) (Supp. 1974).

55. Trynosky Interview.

56. Housing Act of 1964, § 312, 42 U.S.C. § 1452(b) (1970). For a description of federal rehabilitation loan programs before 1964 and a discussion of the problems involved in administering them, see Comment, *Conservation and Rehabilitation of Housing: An Idea Approaches Adolescence*, 63 MICH. L. REV. 892 (1965). The Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633 (codified in scattered sections of 5, 12, 15, 20, 40, 42, 49 U.S.C.A. (Supp. 1975)), extended the life of this program at least one more year. One commentator rated rehabilitation loans under section 312 and similar provisions as "most effective" among federal housing subsidies. A. DOWNS, *FEDERAL HOUSING SUBSIDIES: HOW ARE THEY WORKING?* 36-43 (1973).

57. Housing Act of 1964, § 312, 42 U.S.C. §§ 1452b(c)(2)-(3) (B) (1970).

58. N.Y. CONST. art. 8, § 1 provides: "No county, city, town, village or school district shall give or loan any money or property to or in aid of any individual, private corporation or association . . ." However, the Municipal Loan Program is permitted under N.Y. CONST. art. 18, § 2, which states: "For and in aid of such purposes, notwithstanding any provision in any other article of this constitution, but subject to the limitations contained in this article, the legislature may . . . authorize any city, town or village to make loans to the owners of existing multiple dwellings for the rehabilitation and improvement thereof for occupancy by persons of low income as defined by law."

59. In its application for Community Development Block Grant Funds under the Housing and Community Development Act of 1974, Pub. L. No.

2. Tax Abatement and Exemption

It has long been recognized that one of the major deterrents to private property improvement and rehabilitation is the resulting higher assessments and real estate taxes.⁶⁰ In 1955 the city established the J51 Tax Exemption-Tax Abatement Program⁶¹ to mitigate this problem. Real estate taxes on property may be abated by up to eight and one-third percent of the reasonable cost of the rehabilitation for a period of nine to twenty years.⁶² In effect, the city

93-383, 88 Stat. 633, (codified in scattered sections of 5, 12, 15, 20, 40, 42, 49 U.S.C.A. (Supp. 1975)), the city is requesting section 312 funds for these preservation areas. 103 *The City Record*, Feb. 10, 1975, at 13. Another public program of rehabilitation finance which may be of use in neighborhood preservation is the state Mitchell-Lama Program for rehabilitation and cooperative conversion, N.Y. PRIV. HOUS. FIN. LAW §§ 10-37 (McKinney 1962), *as amended*, (Supp. 1974), which provides for state and municipally financed loans at below market interest rates to limited profit housing companies for acquisition and rehabilitation of housing. The maximum length of the loans is fifty years or the economic life of the building. The law also contains provisions for tax exemption and abatement on such structures and the housing must be for use by low or moderate income families. The Mini-Municipal Loan Program of the City of New York, N.Y. PRIV. HOUS. FIN. LAW §§ 450-55 (McKinney Supp. 1974), provides for low interest unsecured loans of up to \$15,000 or \$2,500 per dwelling unit, whichever is less, for up to seven years for rehabilitation of buildings for occupancy by persons of low income. Section 115 of the Housing Act of 1949, 42 U.S.C. § 1466 (1970), provided for direct rehabilitation grants to low income homeowners. The Housing and Community Development Act of 1974, § 116(a), 42 U.S.C.A. § 5316(a) (Supp. 1975), terminated new funding under this program as of January 1, 1975. For a general discussion of federal rehabilitation programs and their intended impact on private decision-making, see Berger, Goldstein & Rothrauff, Jr., *Slum Area Rehabilitation by Private Enterprises*, 69 COLUM. L. REV. 739 (1969).

60. See G. STERNLIEB, *THE TENEMENT LANDLORD* 203-24 (1969).

61. NEW YORK, N.Y., ADMIN. CODE ANN. § J51-2.5 (1971), *as amended*, (Supp. 1974). For a discussion of this program before its recent revision, see Comment, *Receivership of Problem Buildings in New York City and its Potential for Decent Housing of the Poor*, 9 COLUM. J. L. & SOCIAL PROB. 309, 322-23 (1973).

62. This is subject to the limitation that the total moneys saved does not exceed ninety percent of the cost of rehabilitation. See NEW YORK, N.Y., ADMIN. CODE ANN. §§ J51-2.5(b), (c) (Supp. 1974).

pays for the amortization of the rehabilitation loan principal while the owner can capitalize the expenditure, depreciate it on his federal tax return,⁶³ and, at the same time, escape increased taxation on the value of the improvement. Tax exemption and abatement benefits are generally limited to rehabilitation made under the municipal loan program.⁶⁴ They are also restricted to rehabilitation of structurally sound housing undertaken in conformity with a local program of urban renewal or neighborhood improvement.⁶⁵ This latter provision gives the city leverage in determining what kinds of private rehabilitation may be undertaken within neighborhood preservation areas. The absence of any tax increase despite increased property value from rehabilitation, plus the ability to write off most of the costs of the loan over a period of up to twenty years, provide strong inducements to undertake rehabilitation of buildings, if financing is available.

3. Private Rehabilitation Financing

One piece of legislation expressly designated to implement the Neighborhood Preservation Program is the statute creating the New York City Rehabilitation Mortgage Insurance Corporation (REMIC).⁶⁶ Established in 1973 as a public benefit corporation,⁶⁷ REMIC is designed to provide mortgage insurance for rehabilitation financing within neighborhood preservation areas. REMIC insures two types of private loans. The first is a "preservation loan," used to refinance existing mortgages.⁶⁸ Its purpose is to encourage banks to refinance existing mortgages as they become due, instead of withdrawing capital. REMIC can insure no more than twenty percent

63. See INT. REV. CODE OF 1954, § 167(k).

64. Exceptions include rehabilitation of certain cooperatively owned buildings and conversion of single room occupancy buildings to standard multiple dwellings. NEW YORK, N.Y., ADMIN. CODE ANN. § J51-2.5(d) (Supp. 1974).

65. *Id.* § J51-2.5(g) (Supp. 1974).

66. N.Y. PRIV. HOUS. FIN. LAW §§ 700-19 (McKinney Supp. 1974).

67. *Id.* § 703(1). A significant advantage of the use of the public benefit corporation rather than a governmental agency is that it permits insurance on one and two family owner-occupied dwellings. *Id.* § 706. See note 58 *supra* and accompanying text.

68. N.Y. PRIV. HOUS. FIN. LAW § 702(20) (McKinney Supp. 1974).

of the outstanding principal of such loans.⁶⁹ The second type of loan is a "rehabilitation loan," for repairs, alterations, or improvements designed to raise the housing standards of buildings.⁷⁰ REMIC is empowered to insure up to ninety percent of the principal of such loans, provided the total insurance does not exceed fifty percent of the total indebtedness on the building;⁷¹ lending institutions must assume the risk for the remainder of the principal.

Despite statutory authorization to insure up to \$150 million in loans,⁷² not one loan has been issued under the REMIC program in its two years of existence.⁷³ The reasons are not difficult to discern. Interest rates on insured loans cannot be above the limit set by the state's usury law—currently eight and one-half percent.⁷⁴ The general scarcity of loan funds caused by tight money policies over the past two years is an additional factor. Finally, a participating financial institution must agree to submit for review its entire portfolio of mortgages within the neighborhood preservation area and agree to make a preservation loan renewal to *any* current mortgagor if the building meets certain specified conditions.⁷⁵

The financial community has been unwilling to disclose informa-

69. *Id.* § 706(1).

70. *Id.* §§ 702(21)-(22). A multiple dwelling under the city's rent control laws would presumably be entitled to an adjustment in its entire rent schedule to ensure profitability if its rehabilitation loan is insured by REMIC. See note 54 *supra* and text accompanying notes 54-55 *supra*.

71. N.Y. PRIV. HOUS. FIN. LAW § 706(1) (McKinney Supp. 1974).

72. *Id.* § 706(5).

73. Interview with Neal Hardy, Executive Director of REMIC, in New York City, Feb. 18, 1975.

74. N.Y. BANKING LAW § 14-a(2) (McKinney Supp. 1974); N.Y. PRIV. HOUS. FIN. LAW § 706(2) (McKinney Supp. 1974). To remedy this, legislation is now pending to exempt REMIC insured loans from the state's usury laws. Interview with Neal Hardy, Executive Director of REMIC, in New York City, Feb. 18, 1975.

75. N.Y. PRIV. HOUS. FIN. LAW § 705(3) (McKinney Supp. 1974). These conditions are: (1) annual income of the building is at least 105% of operating expenses including reserves for amortization of the mortgage; (2) the useful life of the building must be greater than the term of the mortgage, which in turn must be for ten to thirty years; and (3) the building does not contain any substantial housing code violations or the owner submits a satisfactory plan to eliminate them. *Id.* § 706(2).

tion concerning its mortgage involvement in neighborhood preservation areas, perhaps because suspicions about the role of banks in transitional areas might be verified, or perhaps because banks continue the practice of "red-lining."⁷⁶ As a result of the banks' reluctance to participate in the REMIC program, the act was amended in 1974 to permit any association or entity owned and controlled by any bank to participate in the program.⁷⁷ Since that time, a group of major commercial and savings banks established the New York City Community Preservation Program, creating a corporation⁷⁸ to operate a mortgage pool in the Crown Heights and Washington Heights neighborhood preservation areas.⁷⁹ Inasmuch as this corporation began without any pre-existing mortgage portfolio, it effectively circumvents the disclosure and refinancing provisions of the law.

Part of the preservation strategy is to arrange private financing for the best buildings in each area, and take care of more troublesome buildings under the Municipal Loan Program.⁸⁰ In that way it is hoped that private financing and thus total investment can be maximized. However, there is no assurance that REMIC will be able to prevent a net outflow of private capital from the neighborhood preservation areas.

4. Housing Code Enforcement⁸¹

One reason for deterioration of sound housing is a belief on the part of owners that they will be unable to recoup their investment on maintenance and capital repairs because owners of surrounding

76. See sources cited in note 1 *supra* and accompanying text.

77. Law of June 10, 1974, ch. 873, [1974] N.Y. Laws 2143 (codified in scattered sections of N.Y. PRIV. HOUS. FIN. LAW (McKinney Supp. 1974)).

78. The Community Preservation Corporation is owned by a consortium of banks to administer a pool of mortgage funds for two Neighborhood Preservation Areas.

79. 103 The City Record, Feb. 10, 1975, at 13. The city has suggested that federal rent supplements receive priority in buildings financed by the Community Preservation Corporation. *Id.*

80. CPD 12 STRATEGY 16-17.

81. For a general overview of possible legal approaches to housing code enforcement and a discussion of the New York City experience, see National Commission on Urban Problems, Legal Remedies for Housing Code Violations (Research Report No. 14, 1968).

buildings will permit those buildings to deteriorate. It is the familiar story of the "prisoner's dilemma," where each owner has the incentive to undermaintain his property because he fears other owners will do likewise. If there were some mechanism to coordinate decision making, it might be in each owner's interest to maintain his building.⁸² Concentrated code enforcement, combined with some procedure for making repair moneys available, is considered a necessary tool to prevent deterioration in fundamentally sound areas. Should a building owner refuse to maintain housing standards, public authorities can repair any defects or otherwise assume management of the dwelling and thereby encourage owners of nearby buildings to maintain their property.⁸³

The city began its first large scale program designed to encourage building preservation under the federally assisted Code Enforcement Program.⁸⁴ In 1965 the City Planning Commission proposed that all Preventive Renewal Areas⁸⁵ be included in the federal program, but only three of them (including the current Crown Heights Neighborhood Preservation Area) were so designated.⁸⁶

Code enforcement is the primary tool for increasing preventive maintenance in Neighborhood Preservation Areas. In the preservation program, building inspectors are put at the disposal of the area housing offices. These offices can direct the inspectors to blanket a small target area with code inspections. The office can then conduct

82. An excellent economic analysis of this phenomenon appears in Davis & Winston, *The Economics of Urban Renewal*, 26 LAW & CONTEMP. PROB. 105 (1961).

83. The experience with code enforcement in the Neighborhood Conservation Program indicated that it is generally ineffective where deterioration has progressed so far that major rehabilitation was necessary. NEIGHBORHOOD CONSERVATION 92.

84. Housing Act of 1949, § 117, 42 U.S.C. § 1468 (1970).

85. See text accompanying notes 19-21 *supra*.

86. NEIGHBORHOOD PRESERVATION 68. The federal effort included provisions for low interest home improvement loans and direct rehabilitation grants, but these were generally restricted to owner-occupied buildings with less than four dwelling units. *Id.* at 68-69. For an evaluation of the federal program and the many questions it raised, see Bryan, *Concentrated Code Enforcement—What's Been Happening Under Section 117 in the Last Five Years?*, 27 J. HOUSING 300 (1970). The program, however, has been terminated.

follow-up consultations with building owners, offer help in obtaining loans for repairs, and if necessary, proceed with available statutory or judicial remedies.⁸⁷ One voluntary procedure used with moderate success is the Housing Repair and Maintenance Agreement, whereby an owner agrees to remove existing code violations within a certain time. The city monitors compliance, and may require the establishment of an escrow account. Landlords benefit by avoiding unnecessary litigation, and gaining sufficient time to make the necessary repairs.⁸⁸

Should the area housing office find it necessary to seek owner compliance through judicial proceedings, it can refer cases to the Housing and Development Administration (HDA) attorneys assigned to the Neighborhood Preservation Program. The city has a number of legal tools to compel owner compliance.

Injunctive Actions. The city may apply to the Housing Court⁸⁹ for an order to the owner of the building to correct all violations, or to authorize the city to correct them.⁹⁰

Section 309 Receiverships. Whenever the Department of Rent and Housing Maintenance certifies that conditions in a building constitute a public nuisance, it may, after appropriate notice and administrative hearing, order the owner to correct the nuisance within a twenty-one day period.⁹¹ Should the owner fail to comply, the HDA may apply to the Housing Court to appoint the HDA

87. Trynosky Interview.

88. Housing and Development Administration, New York City, A Guide to Building Treatment and Rehabilitation Programs 6-7 (undated report on file in the office of *Fordham Urban Law Journal*).

89. The Housing Court was established by NEW YORK CITY CIVIL CT. ACT § 110 (McKinney Supp. 1974). For an analysis of the general powers of the court as applicable to these or other housing actions, see Comment, *New York City Housing Court: New Remedy for an Old Dilemma*, 3 FORDHAM URBAN L.J. 267 (1975).

90. N.Y. MULT. DWELL. LAW § 306 (McKinney 1974); see NEW YORK, N.Y., ADMIN. CODE ANN. § D26-53.01 (1970). This is an infrequently needed remedy; only approximately 120 such injunctions were issued during 1974. Failure to obey the order may result in the owner being held in contempt and assessed civil penalties. The first occasion of a landlord being imprisoned for refusal to correct violations was in late 1974. See N.Y. Post, Dec. 28, 1974, at 3, col. 6.

91. N.Y. MULT. DWELL. LAW § 309(5)(c)(3) (McKinney 1974). The term

Administrator receiver of the building.⁹² Once the receiver is appointed, the city may use its funds and the building's rent moneys to make improvements.⁹³ The city retains lien priority for its expenses over all other mortgages, liens, and encumbrances, with the exception of taxes.⁹⁴

Article 7A Receiverships. Upon petition by either the HDA or at least one-third of the tenants of a multiple dwelling, the HDA Administrator may be appointed receiver.⁹⁵ He is authorized to remedy existing code violations by using rent moneys deposited in court pursuant to court order.⁹⁶

Article 19A Actions. The city may acquire title to a dwelling which has been abandoned by its owner.⁹⁷ The city may declare an occupied multiple dwelling abandoned if the landlord, for a period of at least three consecutive months, has failed to demand rent or institute summary nonpayment proceedings, and the building has become a danger to life, health, or safety as a result of the owner's failure to assume responsibility for its condition.⁹⁸ An unsealed or

nuisance embraces common law public nuisance, *id.* § 309(1)(a), or "[w]henever the department shall certify that any multiple dwelling . . . is in a condition or in effect dangerous to life or health" *Id.* § 309(1)(b). For a discussion of the usefulness of the various receivership programs, see Note, *The New York City Housing Receivership and Community Management Programs*, 3 FORDHAM URBAN L.J. 637 (1975).

92. N.Y. MULT. DWELL. LAW §§ 309(5)(c)(3) (McKinney 1974).

93. *Id.*

94. The receiver may seek a discharge after a full accounting to the court or after abatement of the nuisance, with reimbursement to the receiver for all moneys expended. *Id.* § 309(4).

95. N.Y. REAL PROP. ACTIONS & PROCEEDINGS LAW § 778 (McKinney Supp. 1974). These conditions are "that there exists . . . a lack of heat or of running water or of light or electricity or of adequate sewage disposal facilities, or any other condition dangerous to life, health or safety, which has existed for five days, or an infestation of rodents." *Id.* § 772.

96. *Id.* § 778. The receiver is discharged upon removal of the conditions and a full accounting to the court. *Id.* §§ 778-79.

97. *Id.* art. 19-A, §§ 1970-74.

98. *Id.* § 1971(1)(a). Such failure may be shown by failure to make repairs, supply janitorial service, purchase fuel, or any utility bills. *Id.* The city's Department of Housing initiates the procedure for transfer of title by making and certifying a finding that the building is abandoned. *Id.* § 1971. See also *id.* §§ 1972-74.

unguarded vacant dwelling unit may be declared abandoned if there is a vacate order which prohibits current occupancy or if taxes have not been paid for one year.⁹⁹ In the event the city is successful in the action, title passes and the city may either manage the building or resell it to a third party such as a tenant cooperative. Because abandoned buildings represent advanced deterioration with rehabilitation unlikely, proceedings of this nature will only be instituted under extreme circumstances, to prevent the rapid spread of blight likely when abandonment occurs.

Emergency Repairs. Under various provisions of the city's administrative code,¹⁰⁰ the Departments of Health, and of Housing and Buildings have authority to order the removal or repair of conditions dangerous to life or health. If necessary to ensure compliance, the city may enter the premises and correct the conditions. Expenses incurred as a result of emergency repairs constitute a lien against the building which may be enforced by an action against the owner, a levy on the rents, or ultimately by appointment of the city as receiver.¹⁰¹

The remedies discussed above can be most valuable within Neighborhood Preservation Areas if action can be taken against isolated problem buildings before they generate negative external effects. Used in this way, these remedies can have maximum impact on private decision making in neighborhoods. As a corollary, they cannot be considered major weapons for restoring and rehabilitating entire areas in which property owners have already lost confidence.

E. Program Decentralization

One of the key ideas behind the Neighborhood Preservation Program is the system of decentralized housing offices in each program area.¹⁰² The city believes that the presence of adequate staffs in decentralized offices, with housing code enforcement personnel at their disposal, permits coordination of all housing programs on a neighborhood level and thus helps to maximize the impact of the program.

99. *Id.* § 1971(1)(b).

100. NEW YORK, N.Y., ADMIN. CODE ANN. §§ 564-18.0-20.0, 556-10.0 to -11.0, D26-54.01 (1970); *id.* § 643a-13.0 (Supp. 1974).

101. *Id.* §§ 564-23.0 to -24.0 (1970).

102. See NEW YORK, N.Y. EXEC. ORDER No. 80 (May 23, 1973).

At the Washington Heights Area Housing Office in early 1975 there were twelve full-time staff: three rehabilitation inspectors to follow each municipally funded rehabilitation project at every stage to ensure that the work is completed properly; five project managers to oversee all of the city's efforts in the neighborhood and serve as ad hoc liaison officers with local residents who have complaints about code violations, rent control, etc.; and four clerical workers.

The chief operational functions of the area housing office are to keep in close contact with neighborhood organizations, direct code inspection personnel to specific buildings consistent with area strategy, and monitor housing conditions on a building-by-building basis. They also contact landlords and tenants to suggest strategies for property upkeep, and inform them of financing opportunities. All applications for municipal loans from within preservation areas are screened and processed at the area housing offices to ensure coordination of citywide efforts, although the offices are not responsible for final approval.¹⁰³

Adequately staffed decentralized housing offices are necessary for a neighborhood preservation program in a city with eight million people. As in any such program, sufficient resources must be allocated; but at the present time, there is no evidence that area housing offices have been given adequate resources to do their work properly.

IV. Federal Efforts

With the possible exception of the federally assisted Code Enforcement Program,¹⁰⁴ the federal government has not previously concerned itself with measures to prevent deterioration on a neighborhood basis. The New York City Neighborhood Preservation Program was set up without major reliance on specific federal aid or programs.¹⁰⁵ However, the Department of Housing and Urban De-

¹⁰³ Trynosky Interview.

¹⁰⁴ See text accompanying notes 84-86 *supra*.

¹⁰⁵ However, the city is proposing to use a substantial proportion of its housing block grant money under the Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633, U.S. CODE CONG. & AD. NEWS 3265 (1974), (codified in scattered sections of 5, 12, 15, 20, 40, 42, 49 U.S.C.A. (Supp. 1975)), in the Neighborhood Preservation Program. 103 *The City Record*, Feb. 10, 1975, at 13.

velopment (HUD) has recently acknowledged that America's housing needs cannot be met solely by new housing construction; thus, preservation and rehabilitation of existing housing must become prime objectives.¹⁰⁶

Federal entry into this field came on July 23, 1974, when the Urban Reinvestment Task Force¹⁰⁷ was organized. Financed under a HUD demonstration grant, its purpose is to "produce residential rehabilitation, including home improvement lending and mortgage lending on existing housing, in a neighborhood context."¹⁰⁸ Like the New York City Neighborhood Preservation Program, it is designed primarily for "a neighborhood in which the housing stock is basically sound but beginning to show signs of deterioration."¹⁰⁹ But in contrast to New York City's efforts in transitional neighborhoods, the federal program is directed at areas with a high degree of home ownership.¹¹⁰

For each such area a Neighborhood Housing Service program¹¹¹ will be established, through which participating financial institutions agree to reinvest in the neighborhood by making loans at market rates to all creditworthy borrowers. In addition to this general commitment, the program provides for a "high risk" Revolving Loan Fund to be set up with contributions from foundations, interested corporations, and the Urban Reinvestment Task Force, to make loans at flexible rates and terms to those who do not meet commercial credit standards. Local governments must agree to coordinate their efforts with the Neighborhood Housing Services by

106. Address by Michael H. Moskow, Assistant Secretary for Policy Development and Research, U.S. Dep't of Housing and Urban Development, to the National Association of Housing and Rehabilitation Officials, Denver, Colo., July 15, 1974.

107. The Task Force is codirected by the Secretary of Housing and Urban development and the Chairman of the Federal Home Loan Bank Board.

108. 39 Fed. Reg. 26796 (1974).

109. *Id.* See also Gerard, *Neighborhood Preservation Program: Federal Role Subordinated to Local Effort*, 5 HUD CHALLENGE 6 (1974).

110. 39 Fed. Reg. 26796 (1974).

111. For a description of three such organizations already in existence, see U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, *EXAMPLES OF LOCAL AND STATE FINANCING OF PROPERTY REHABILITATION* 50-55 (1974).

making public improvements and by increasing code enforcement in the area.¹¹² The initial goals of this program are very modest: to improve a total of 2,500 dwelling units per year in twenty cities. No federal funds have been appropriated beyond fiscal year 1975.¹¹³

The federal government is currently engaged in research to learn more about the process of neighborhood decline and its early causes. It is also gathering information on the current state of the art of neighborhood preservation programs operating throughout the country.¹¹⁴

Clearly the federal effort is still in its infancy, and seems to be more preoccupied with the problems of neighborhoods containing one and two family homes than it is with deteriorating multiple family absentee landlord dwellings of the kind found by New York City.¹¹⁵

V. Conclusions

The New York City Neighborhood Preservation Program is a major experiment in restoring confidence in high density neighborhoods and preventing and reversing landlord and bank disinvestment in areas threatened with progressive physical deterioration. With its reliance on coordinated public and private efforts to preserve existing housing on a neighborhood basis, it marks a clear break with past emphases on wide-scale demolition and new construction.

In concept, the program has virtually all of the elements which should be included in any comprehensive effort of neighborhood preservation: on the demand side it provides for housing income maintenance so that tenants can pay for good quality housing; on the supply side, it provides for a revolving loan fund, tax credits and abatements for private rehabilitation, and mortgage portfolio

112. 39 Fed. Reg. 26796 (1974).

113. *Id.*

114. Address by Michael H. Moskow, *supra* note 106.

115. However, a low density primarily single-family home area in Jamaica, Queens will participate in the federal program. Initial operating funds will be donated by four commercial and two savings banks, while the high risk loan fund will be financed by matching grants from the Federal Home Loan Bank Board and private foundations. N.Y. Times, Nov. 3, 1974, § 1, at 125, col. 1.

insurance, so that owners are encouraged to keep properly maintained buildings on the housing market.¹¹⁶ In addition, legal support services are readily available to enforce housing codes and, if necessary, place buildings into receivership and force changes in ownership.

There is, however, good reason to believe that New York City cannot alone stem the tide of private market forces. There is the inevitable red tape which has been a chronic problem since commencement of the program.¹¹⁷ Only miniscule resources and staff can be allocated to the program during this period of economic downturn.¹¹⁸ Recession, inflation, and a general lack of confidence in the economy make it difficult to attract new private investment into those areas first showing signs of deterioration. Tight money and traditional lending practices have induced local financial institutions to refrain from participating in the insured lending programs which were to have been the keystone of the preservation effort.

A serious gap in the program is an inability to monitor the flow of private capital in preservation areas. Banks have continued to resist public disclosure of their mortgage portfolios. It is evident, however, that public policy demands public accountability by those who have it in their power effectively to destroy entire neighborhoods. Notable also is the absence of any formal city effort to develop criteria for systematic evaluation of the results of the program.

Of course, withdrawal of capital from money markets may well be only a symptom of more pervasive economic and social forces confronting a city.¹¹⁹ The exodus of manufacturing and retailing activity to the suburbs not only encourages capital to flow into

116. Note, *A Federal Strategy for Neighborhood Rehabilitation and Preservation*, 11 HARV. J. LEGIS. 509, 531 (1974).

117. After more than a year of operation, the Neighborhood Preservation Program had processed only six buildings containing more than 100 apartments, although nearly sixty buildings with 1800 apartments had received preliminary approval for loans in preservation areas. N.Y. Times, Nov. 11, 1974, at 33, col. 8.

118. The City Budget Bureau has projected that fewer municipal loans will be given out in 1975 than in 1974. N.Y. Times, Feb. 23, 1975, § 1, at 38, col. 8.

119. For one optimistic assessment of the future of New York City, see E. GINZBURG, *NEW YORK CITY IS ALIVE AND WELL* (1974).

newly profitable areas, but also undermines confidence in the central cities themselves. The Neighborhood Preservation Program is concerned basically with only one problem—preserving the existing stock of housing. It is not clear that this emphasis on the physical quality of neighborhoods is sufficient to restore dwindling private confidence in the long-term viability of these neighborhoods.

The city recognizes that its efforts at physical preservation can only provide a *basis* for preservation. In that sense, the program is at best only a holding action. It thus becomes imperative not only to begin to understand the phenomenon of neighborhood decline within the context of metropolitan and national economic forces, but also to arrive at a conscious national decision that high density urban working and middle class neighborhoods are worth saving. This will require a strong national commitment and the development of alternative sources of capital.¹²⁰ Without them, it is fanciful to believe that a municipality is capable of saving neighborhoods which economic forces have decided to abandon.

120. One such proposal specifically directed at the need for generating alternative sources of capital for New York City's housing problems has been put forward by Emmanuel Tobier, Chairman of the New York City Rent Guidelines Board. He has recommended that the state should establish its own bank, offer individual depositors short-term, tax free bonds in low denominations, and invest the proceeds in mortgages. See Kramer, *Borrowing Trouble: The Bank's Mortgage Cop-Out*, NEW YORK MAGAZINE, Feb. 24, 1975, at 10, 11.