

MEMORANDUM

TO: NEW JERSEY LAW REVISION COMMISSION

FROM: STAFF

DATED: MAY 7, 2001

RE: ABANDONED BUILDING REHABILITATION ACT

On April 19, 2001, the Commission approved a project to review the law on unfit buildings, particularly the power of local government to compel the rehabilitation of deteriorating or vacant residential and commercial properties. The project is the result of a proposal submitted to the Commission by Alan Mallach entitled "An Act Providing for Receivership of Residential Buildings." However, unlike the Mallach proposal, the Commission project includes qualifying commercial properties, considers private sector alternatives and prefers foreclosure as opposed to receivership.

This memorandum is a first attempt to identify New Jersey statutes related to municipal power to require the repair, rehabilitation or removal of unfit buildings. New Jersey has recognized the problem of economic decline and blighted neighborhoods and has enacted numerous statutes that give municipal government the legal authority and funding to reverse these conditions: (1) the Unfit Building Act, (2) the State Uniform Construction Code, (3) the Local Redevelopment and Housing Law, and (4) the power to abate nuisances are some examples. In addition, government has eminent domain power to take property. See, N.J.S.A. 20:3-1 et seq. The Memorandum also discusses the impact of the sale of tax certificates on the process of redevelopment efforts.

The plethora of statutes has developed over a lengthy period of time and suffers from a lack of overall design. The statutes were amended from time to time to address specific issues. Many statutes authorize the Commissioner of Community Affairs to adopt codes or rules to implement them. The result is a morass of statutes and regulations. The text of the statutes does not indicate the effectiveness of any law to correct the problem it is designed to solve. Empirical research is needed to identify which statutes among the many are effective and critical to the redevelopment process.

Existing New Jersey law does not provide an efficient method to transfer ownership of distressed buildings to parties interested and capable of rehabilitating them. In addition, the law requires systemization.

UNFIT BUILDING ACT

In 1942, New Jersey enacted a statute authorizing municipalities to adopt ordinances relating to the repair, closing and demolition of buildings unfit for human habitation, occupancy or use (hereafter Unfit Building Act). N.J.S.A. 40:48-2.3 through N.J.S.A. 40:48-2.12. The Legislature has amended the Act several times to address related problems and to delineate the municipal power to regulate buildings. E.g., N.J.S.A. 40:48-1.1 (giving municipality that has removed or demolished unfit building the statutory right to bring a legal action against the building's owner); N.J.S.A. 40:48-2.3a (deeming any building consisting only of walls inimical to public welfare); N.J.S.A. 40:48-2.5a (deeming building that is unfit for human habitation, occupancy or use as result of neglect, fire, accident or other calamities inimical to public welfare); N.J.S.A. 40:48-2.5b (authorizing municipality to accept gifts or grants from private or public agencies including loan agreements with any licensed casino to finance demolition activities); N.J.S.A. 40:48-12a (authorizing municipality to make, amend, repeal and enforce ordinances to regulate buildings and to prevent and abate harmful conditions). The Unfit Building Act derives from the state's police power codified at N.J.S.A. 40:48-2.

N.J.S.A. 40:48-2.3 provides:

It is hereby found and declared that the existence or occupation of any building or buildings, or parts thereof, in municipalities of this State which are so old, dilapidated or have become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation, or occupancy, or use, are inimical to the welfare and dangerous and injurious to the health and safety of the people of this State, and that a public necessity exists for the repair, closing or demolition of such building or buildings, or part thereof. Whenever any municipality of this State finds that there exists in such municipality any building or buildings which are unfit for human habitation or occupancy, or use, due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitation facilities, or due to other conditions rendering such building or buildings, or part thereof, unsafe or insanitary, or dangerous or detrimental to the health or safety or otherwise inimical to the welfare of the residents of said municipality, power is hereby conferred upon such municipality to exercise its police powers to repair, close or demolish, or cause or require the repairing, closing or demolition of such building or buildings, or part thereof, in the manner herein provided.

A municipality acts upon the statute by adopting a resolution finding that buildings meeting the specified conditions exist within the municipality, and then adopts an ordinance appointing a public officer to exercise the statute's powers and establishing procedures to rehabilitate or remove the building. N.J.S.A.

40:48-2.5. The statute permits a “public authority, or at least five residents of the municipality” to file a petition with the public officer claiming that a property is unfit for human habitation, occupancy or use. N.J.S.A. 40:48-2.5(b).¹ The public officer, if his preliminary investigation confirms the charge, serves the owner and other interested parties with a complaint containing the charges. Id. The owner has a right to file an answer and to be heard. The public officer then issues an order requiring the owner to repair the building or to remove it. N.J.S.A. 40:48-2.5(c)(1) & (2). In the event of non-compliance with the order, the public officer has the power to repair or remove the building. N.J.S.A. 40:48-2.5(d) & (e). The costs constitute a municipal lien against the building.

In 1962, the Legislature expanded the power of municipal government to regulate the construction and maintenance of buildings to ensure the public health and safety. N.J.S.A. 40:48-2.12b. These amendments gave municipal government the authority to “abate a nuisance, correct a defect, or put the premises in proper condition,” expend municipal funds and obtain a lien on the property to recover costs. N.J.S.A. 40:48-2.12f. That section provides:

Any ordinance adopted pursuant to this act may also provide that the municipality, by resolution of its governing body, may abate a nuisance, correct a defect, or put the premises in proper condition so as to comply with the requirements of any municipal ordinance or State law applicable thereto, at the cost of the owner or lessor, and expend municipal funds for such purpose and charge the same against the premises, and the amount thereof as determined by the governing body of the municipality shall be a lien against the premises and collectible as provided in this act

Significantly, the 1962 amendments provide for the appointment of a receiver to carry out the purposes of section 40:48-2.12f. N.J.S.A. 40:48-2.12g provides:

Any ordinance adopted pursuant to this act may also provide for the appointment of a custodian of any such building or structure on behalf of the municipality, who may be either an officer of the municipality or any other person specially designated to enter into and take charge of the premises and supervise abatement of the nuisance, the correction of the defective condition, or the maintenance of the premises in a proper condition so as to conform to the requirements of municipal ordinances and State laws applicable thereto. In any such case, the compensation of

¹The public officer, on his own initiative, may bring a complaint against the owner of an unfit building. N.J.S.A. 40:48-2.5(b).

the custodian shall be as provided in the ordinance and the costs and expenses shall be collectible as provided in this act.

The receiver has the right to apply to the Superior Court to for an order allowing the receiver to collect rents and income from the property and to apply the proceeds to the costs incurred in putting the premises in proper order. N.J.S.A. 40:48-2.12h and N.J.S.A. 40:48-2.12 i. The 1962 amendments do not further define the powers of the receiver.

In 1978, and later in 1991, the Legislature amended the Act to include the following provision:

Whenever any municipality, pursuant to law or pursuant to any ordinance, code, rule or regulation adopted pursuant to law, undertakes the removal or demolition of any building or structure which is dangerous to human life or the public welfare or which constitutes a fire hazard, the governing body of the municipality, in addition to assessing the cost of such removal or demolition as a municipal lien against the premises, may enforce the payment of such assessment, together with interest, as a debt of the owner of the premises and may authorize the institution of an action at law for the collection thereof. The Superior Court shall have jurisdiction of any such action.

The amendment gives the municipality the right to sue for collection of its costs incurred in removing an unfit building. In 1992, the Legislature further amended the Act, adding new sections N.J.S.A. 40:48-2.5a and N.J.S.A. 40:48-2.5b and adding new subsections to existing N.J.S.A. 40:48-2.4. The 1992 amendments permitted the public officer discharging the repair or removal statute to accept funding from the Casino Reinvestment Development Authority or any licensed casino.

Municipal government also may regulate specific housing, building and property issues. E.g., N.J.S.A. 40:48-2.12n through N.J.S.A. 40:48-2.12r (requiring landlord of seasonal property convicted three times of listed offenses to post bond and, upon subsequent complaint, to risk forfeiture of the security); N.J.S.A. 40:48-2.13 (authorizing municipality to adopt ordinances requiring property owners and tenants to remove brush, weeds, obnoxious growths et cetera from their real property and, upon the failure to act, to remove the debris and impose penalties); N.J.S.A. 40:48-2.13a (authorizing municipality to adopt ordinances requiring property owners or tenants to remove solid waste from property and providing penalties for violation of the ordinance); and N.J.S.A. 40:48-2.12m (requiring owner of residential property to obtain certificate of occupancy upon new tenancy or sale of property). The cost of removing debris or solid waste constitutes a lien against the property. N.J.S.A. 40:48-2.14.

STATE UNIFORM CONSTRUCTION CODE

In 1975, the Legislature enacted the State Uniform Construction Code. N.J.S.A. 52:27D-119 et seq. The Uniform Construction Code preempted municipalities from adopting construction codes inconsistent with the Act. The Commissioner of Community Affairs is the public official charged with implementing the statute. N.J.S.A. 52:27D-123. Subsection (a) of that section provides:

The commissioner shall after public hearing pursuant to section 4 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-4) adopt a State Uniform Construction Code for the purpose of regulating the structural design, construction, maintenance and use of buildings or structures to be erected and alteration, renovation, rehabilitation, repair, maintenance, removal or demolition of buildings or structures already erected. Prior to the adoption of said code, the commissioner shall consult with the code advisory board and other departments, divisions, bureaus, boards, councils or other agencies of State Government heretofore authorized to establish or administer construction regulations

The Code is divided into sub-codes, including but not limited to a building code, plumbing code, electrical code, energy code and fire prevention code. The sub-codes generally are adoptions of the codes of the Building Officials and Code Administrators International Inc., the National Electrical Code and the National Standard Plumbing Code. However, the Commissioner consults with a code advisory board prior to adopting any code, and any political subdivision of the State may recommend a code change proposal.

The State Uniform Construction Code governs the "structure, design, construction, maintenance and use of all existing buildings and buildings to be erected" in New Jersey. N.J.S.A. 52:27D-123.1. Municipal officials enforce the Act at the local level. N.J.S.A. 52:27D-126. The Act provides a comprehensive set of rules regulating the approval of applications, inspections and penalties for violation of the Act.

In 1975, the Legislature enacted the "Maintenance of Viable Neighborhoods Act," N.J.S.A. 52:27D-142 through N.J.S.A. 52:27D-150.2, and the "Neighborhood Preservation Housing Rehabilitation Loan and Grant Act of 1975." N.J.S.A. 52:27D-152 through N.J.S.A. 52:27D-161. The former Act authorizes the Commissioner to "make grants to political subdivisions to help finance activities, approved by the commissioner in accordance with the act, which will promote the restoration and rehabilitation of threatened but still viable neighborhoods." N.J.S.A. 52:27D-146. The latter Act establishes a fund to finance neighborhood preservation projects. Subsequently, in 1977, the Legislature enacted the "Depressed Rural Centers Aid Act" that redistributes tax money to qualifying municipalities to stem economic decline in urban cities. N.J.S.A. 52:27D-162 through N.J.S.A. 52:27D-169.²

² The Tax Increment Financing Act of 1984 followed as an additional method of paying redevelopment costs, N.J.S.A. 52:27D-250 through N.J.S.A. 52:27D-273, but the Legislature repealed that Act in 1996.

In 1995, the Legislature authorized the Commissioner to establish a housing rehabilitation code. N.J.S.A. 52:27D-123.7. Under this Act:

a. The Commissioner of Community Affairs is hereby directed to develop a building code specifically designed to foster cost-effective housing rehabilitation, while ensuring through its provisions that necessary health and safety requirements are met. The code shall be designed for use throughout the State but shall have particular application to the older cities of the State, and the housing types characteristic of those cities. The code shall supplement the State Uniform Construction Code, adopted pursuant to P.L.1975, c.217 (C.52:27D-119 et seq.). The commissioner may promulgate this code as a separate document from the State Uniform Construction Code, or may, if he finds it feasible and useful, incorporate its provisions directly into, and make them an integral part of, that code. b. In developing the code, the commissioner is directed to investigate any model codes, such as Chapter 34, "Existing Structures," of the "BOCA National Building Code/1993" and experiences of other code enforcement jurisdictions, to consult with individuals and organizations experienced in the rehabilitation of low and moderate income housing in New Jersey's urban areas, and conduct research as may be relevant to the purposes of this act. c. The commissioner is further directed to undertake a study of the desirability of authorizing a procedure under which, in adopting the provisions of the standard or model codes upon which the State Uniform Construction Code is based, discretion may be accorded to the commissioner to modify, amplify or otherwise depart from any such provisions, without exceeding any of them in stringency, for the purpose of accommodating this State's construction code to the needs of the State and its various regions, particularly with respect to encouraging the provision of housing affordable to persons and families of low and moderate income. d. The commissioner shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), promulgate the code prescribed in subsection a. of this section within six months of the effective date of this act; or, if he finds it impracticable to do so, shall make a written report to the Legislature setting forth the grounds of the impracticability and making such recommendations for further legislative action as he may deem likely to remove those grounds. Within the same period of time the commissioner shall also make his report and recommendations to the Legislature on the study directed by subsection c. of this section.

The stringent and onerous requirements of the State Uniform Construction Code had impaired incentives to rehabilitate existing buildings, thus the need to relax its standards and adopt a separate construction code for older residential buildings.

LOCAL REDEVELOPMENT AND HOUSING LAW

In 1992, the Legislature enacted the Local Redevelopment and Housing Law Act (hereafter Redevelopment Act). N.J.S.A. 40A:12A-1 et seq. The Redevelopment Act claims to “codify, simplify and concentrate prior enactments relative to local redevelopment and housing, to the end that the legal mechanisms for such improvement may be more efficiently employed.” N.J.S.A. 40A:12-1(d). Notwithstanding that assertion, the Redevelopment Act gives municipal government the authority to identify areas in need of rehabilitation, adopt redevelopment plans, create redevelopment agencies and authorizes those agencies to sell bonds and notes to finance redevelopment projects. The statute contains ornate procedures regulating the redevelopment of blighted areas and creates bureaucratic agencies with executive directors, commissioners and other officers. For example, N.J.S.A. 40A:12A-11 provides:

a. The governing body of a municipality may by ordinance create a body corporate and politic to be known as the ". Redevelopment Agency," inserting the name of the municipality creating the agency. The agency shall be an instrumentality of the municipality creating it. A redevelopment agency shall be created pursuant to the procedures of the "Local Authorities Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.). There shall be seven commissioners of a redevelopment agency. The commissioners shall be appointed by the governing body, in the manner generally required for appointments by the form of government under which the municipality is governed. Commissioners shall each serve for a term of five years; except that the first of these appointees shall be designated to serve for the following terms: one for a term of one year, one for a term of two years, two for terms of three years, one for a term of four years, and two for terms of five years. No more than two commissioners shall be officers or employees of the municipality. Each commissioner shall hold office for the term of his appointment and until his successor shall have been appointed and qualified. Any vacancy occurring in the office of commissioner, from any cause, shall be filled in the same manner as the original appointment, but for the unexpired term. The municipal governing body may provide by ordinance that not more than two of the commissioners shall be members of the governing body. A commissioner who is a member of the governing body shall serve for a

term of one year. That ordinance shall provide for the terms of the other commissioners to be appointed to staggered terms in substantial accord with the provisions of this section. Any redevelopment agency created pursuant to the "Redevelopment Agencies Law," P.L.1949, c.306 (C.40:55C-1 et seq.) and in existence until the repeal of that law by this act, shall continue notwithstanding that repeal, but shall exercise its powers pursuant to the provisions of this act. The five commissioners appointed by the governing body of the municipality shall continue in office until the terms for which they were appointed expire and their successors are appointed and qualified. The terms of those agency commissioners who were appointed by the mayor or the Commissioner of the Department of Community Affairs shall cease and determine 90 days after the effective date of this act.

The planning board of a municipality is the initial catalyst of change. The planning board, after being suitably authorized by municipal resolution, undertakes a preliminary examination of the municipality to identify areas in need of development satisfying the criteria of the Act. N.J.S.A. 40A:12A-6(a). The planning board's determination is subject to a public notice and hearing. An area determined to be in need of redevelopment is deemed a "blighted area" for the purposes of Article VIII, Section III, paragraph 1 of the Constitution. N.J.S.A. 40A:12A-6(c). The municipality then may exercise any power given it under the Act to redevelop the "blighted area."

LOCAL BOARDS OF HEALTH

Title 26 establishes a board of health in every municipality and enumerates its specific powers and duties. N.J.S.A. 26:3-1 and N.J.S.A. 26:3-31. A local board of health may enact and amend health ordinances and impose penalties for violations of its ordinances. N.J.S.A. 26:-64 and N.J.S.A. 26:3-70. In addition, the local board may remove or abate any nuisance:

A notice by any health officer or registered environmental health specialist to remove and abate any nuisance shall be taken as a notice from the board. If the owner or persons notified fails to remove and abate the nuisance complained of, the board may cause it to be removed and abated in a summary manner, giving written directions to its representative in relation thereto, and he shall proceed according to the directions so given.

The local board may recover by civil action the expenses incurred in removing or abating the nuisance. N.J.S.A. 26:3-53. Alternatively, the local board, in the name of the State, may institute a summary proceeding in Superior Court seeking injunctive relief. N.J.S.A. 26:3-56. However, a local board of health

cannot exercise this power to compel an owner at his expense to demolish unfit buildings; the appropriate way to accomplish this result is to proceed under the State Uniform Construction Code. Newark Health & Welfare Dep't v. Rogers, 179 N.J. Super. 389 (Ch. 1981)(holding that the Newark Board of Health could not compel owner to raze fire-gutted vacant building under abatement statute). See, Twp. Of Howell v. Waste Disposal, Inc., 207 N.J. Super. 80 (App. Div. 1986)(stating that a public nuisance is abatable only by a suit brought by the Attorney General on behalf of the State or by an individual who sustains special damage over and above that suffered by the general public).

MUNICIPAL SALE OF TAX LIENS

Tax sales are governed generally by Title 54, Chapter 5. Unpaid taxes, along with interest, penalties and costs of collection are a lien on property immediately from the time that the taxes are unpaid. N.J.S.A. 54:5-6. At the end of the fiscal year, the tax collector must enforce the lien with a tax sale. N.J.S.A. 54:5-19. The governing body of the municipality may authorize the municipality to bid for the property at the sale. N.J.S.A. 54:5-30.1. The sale is subject to redemption by the property owner. N.J.S.A. 54:5-32. The statute assumes that the property will be redeemed, and the bid is based on the interest rate on the redemption amount. *Id.* The purchaser receives a tax sale certificate as evidence of ownership of the land subject to the right of redemption. N.J.S.A. 54:5-46. The owner, holder of prior tax sale certificates, mortgage holder, and occupants of the property all have the right of redemption. N.J.S.A. 54:5-54. That right continues until it is cut off by foreclosure. *Id.* A private party that holds a tax sale certificate may foreclose the right of redemption after two years. The municipality may foreclose the right of redemption after 6 months (or immediately if the property is a danger to public health, safety or welfare). N.J.S.A. 54:5-86; 54:5-77.

CONCLUSION

This memorandum is not a complete examination of the New Jersey statutes related to the problem of distressed real property. However, despite substantial legislative activity, the law does not provide a streamlined method to terminate the rights of an owner of distressed property unwilling to address its condition and to put that property in the hands of a party committed to rehabilitation.