

Growing Together



Winston-Salem Land Banking and Lasting Affordability **Action Plan**



**GROUND
ED
SOLUTIONS
NETWORK**

strong communities
from the ground up

Introduction

This Action Plan is the final product of Grounded Solutions Network's ForEveryoneHome initiative in Winston-Salem. It builds on our earlier work producing an Anti-Displacement and Inclusive Growth Needs Assessment and a Policy Agenda for the City. Those earlier reports documented the need to protect tenants, produce more affordable units, and preserve the units we have, and recommended specific actions the community could take to achieve those goals. One of the recommendations included in the proposed Policy Agenda is the establishment of a land bank. This report fleshes out that recommendation in detail, exploring what a land bank is, why Winston-Salem needs a land bank, Winston-Salem's authority to implement a land bank, and what organizational form the land bank might take. We also provide a case study of the Eugene, Oregon land bank that may serve as a useful model of the approach Winston-Salem might follow. Finally, we conclude with an action plan to help the city move toward establishment of a land bank.

ForEveryoneHome is a two-year collaborative effort aimed at helping mixed-market cities get ahead of the curve on growth pressures. Grounded Solutions Network led this effort in Winston-Salem, Indianapolis and San Antonio as part of its commitment to building equitable and inclusive communities that are rich in opportunity for all.

The ForEveryoneHome team in Winston-Salem included:

- ▶ Mayor Pro Tempore **Denise D. Adams**
- ▶ Community Development Director **Marla Newman**
- ▶ Planning and Development Services Director **Aaron King**
- ▶ Winston-Salem Urban League President **James Perry**
- ▶ Community Engagement Consultant **Paula McCoy**



What is a land bank?



Land banks are typically nonprofit or public authorities that acquire, hold, dispose of and sometimes redevelop property in order to support the needs and priorities of the communities in which they operate. Common

goals of land banks are to stabilize neighborhoods by countering the negative effects of vacant and deteriorating properties, and to increase the community's supply of affordable housing.

Why would Winston-Salem benefit from a land bank?

Land banks are important tools in “mixed market” cities like Winston-Salem where housing prices are increasing in some parts of town, while other parts of town struggle to secure investment and combat decline. In areas where housing markets are heating up, land banks can acquire and hold strategically valuable properties until the community can develop them as affordable housing. In areas where housing markets are weaker, land banks can help stabilize the neighborhood by acquiring abandoned or tax-delinquent properties, clearing title, and returning the properties to productive use. By attaching lasting affordability requirements to these properties, land banks can ensure that the neighborhoods in which they are investing will remain accessible to low- and moderate-income residents even as the housing markets in the area strengthen.

In November 2019, the Center for Community Progress (“CCP”) completed a study of Winston-Salem’s approach to vacant and abandoned properties.¹ Among other things, CCP found:

- ▶ 950 properties in the City were tax delinquent five years or more, and collectively owed more than \$850,000 to the city.
- ▶ 988 residential properties had been deemed unsafe and condemned.
- ▶ 40 demolitions had been completed in the last 5 years.
- ▶ 497 properties were deemed “chronic violators,” such that the city hired a contractor to mow the properties approximately twice per month during the mowing season, at taxpayer expense.



CCP recommended that the City establish a land bank in order to strategically acquire and manage some of these properties. It noted that the City was already performing some of the core functions of a land bank:

The reality is that City staff, with the support of private contractors, are already managing a significant inventory of privately-owned properties that qualify as chronic violators. The City has also expended a significant amount of monies for the demolition of privately-owned derelict structures. The City simply needs to acknowledge what it's already doing, and carefully think through where best to institutionalize this capacity and oversight, such that it's no longer a reactive job to address private owner neglect, but a proactive response to meet community need.

In effect, the City is bearing the burdens of ownership for many properties -- investing in and caring for them -- without enjoying the benefits of ownership, especially the opportunity to return the property to productive use for the public good. Establishing a land bank would fill this gap, bringing structure and strategic thinking to activities the city is already doing.

The urgency for establishing a land bank has only increased since CCP issued its report. Indeed, 2020 saw a substantial uptick in subdivision approvals. Whereas the City approved 391 lots for single family homes in 2019, it approved 1,332 parcels in 2020 -- a 240% increase. This trend may continue in 2021 as COVID-19 restrictions are lifted and the economy continues to strengthen. In the face of this development push, it is important that the City act as soon as possible to bank land for lasting affordability in order to help build a more inclusive city for all.

Does Winston-Salem have authority to operate a land bank?

In many states, local governments operate land banks under an express grant of authority from their state legislatures. The North Carolina General Assembly has not adopted authorizing legislation for land banks. Nonetheless, a variety of statutes appear to grant local governments sufficient authority to perform a land bank's core functions.² Those functions include (1) Acquiring property, (2) holding and maintaining property, and (3) returning property to productive use.

1 Acquiring property

Land banks can acquire property in a number of ways. For purposes of this discussion, we will focus on three of the most common: (1) through the tax foreclosure process, (2) through blight and nuisance abatement efforts, and (3) on the open market. We will discuss Winston-Salem's authority to acquire property in each of these ways separately.

Acquiring property through tax foreclosure.

Land banks across the country most commonly acquire property through the tax foreclosure process. Winston-Salem may do so as well, provided that it submits the highest bid for a property in Forsyth County's tax foreclosure auction.

In North Carolina, if a property owner fails to pay property taxes over an extended period, the local taxing jurisdiction -- Forsyth County, in this case -- may put the property up for auction. Forsyth County does not set a minimum bid for properties it offers at auction. Accordingly, the County sells the property to the highest bidder, regardless of the amount bid. The amount collected in the auction goes to pay back taxes. If the bid exceeds the amount owed the government, other lien holders (e.g. financial institutions with mortgages on the property, contractors with mechanics' liens, etc.)

will receive payment. The original property owner would receive any excess funds after all of these liens and the costs of collection are paid. This is a rare occurrence, as properties that are valuable enough to exceed the amount owed in back taxes typically sell on the private market before the tax foreclosure occurs, with back taxes paid at the time of sale. The winning bidder in the tax auction takes title to the property free and clear of all tax and other liens.³

Under this system, Winston-Salem may acquire tax-foreclosed property by participating in the auction process. Notably, the city must compete in the process on a level playing field with all other bidders.⁴ The County may not offer the property to Winston-Salem at a discount, or give the City the opportunity to purchase the property outside of the auction process. Nor may the County specify that the property may only be used for affordable housing or some other purpose that Winston-Salem may prefer, in the hope of limiting who bids on the property or how much they offer for it.

Nonetheless, Winston-Salem has at least one advantage in the bidding process. When local governments submit the winning bid in a tax foreclosure, they must pay only the portion of the bid that exceeds the amount of back taxes and other government obligations owed on the property.⁵ Accordingly, for any tax-foreclosed property that Winston-Salem wishes to purchase at auction, it may bid an amount up to the amount owed in back taxes. If this sum is enough to win the auction, it will take title to the property without any additional cash outlays.

Regardless of who wins the initial auction, at least one “upset bid” period – and potentially more – will follow. The upset bid period is a ten day period following the closure of the auction during which others may offer a higher bid. To qualify, an upset bid must exceed the high bid by at least 5% or \$750, whichever is higher. The receipt of a qualifying upset bid triggers another 10 day upset bid period during which still higher bids may be submitted. This process continues until 10 days pass without the receipt of another upset bid. As above, if the City wins this bidding process, it need only pay the amount by which its bid exceeds the back taxes and other government obligations owed on the property.

Acquiring property through nuisance abatement or demolition foreclosure

Winston-Salem has become the default caretaker for many properties it does not own. Many of these are vacant lots that the City mows and keeps clear of debris. In some cases, the City has demolished a home or other structure on the property that was deemed hazardous. The City also has the authority to complete repairs on an existing structure when an owner fails to comply with an order to bring a property into compliance with the local minimum housing ordinance. In all of these cases, the City has the authority to collect the costs it incurs through the tax foreclosure process.⁶

In practice, many of these troubled properties will also have outstanding property tax liens on them, as owners have effectively abandoned the properties. Accordingly, foreclosing on the properties for the cost of nuisance abatement or minimum housing repairs may not be strictly necessary; the city could just wait for the County to complete its usual tax foreclosure process. Nonetheless, including these liens in the foreclosure action increases the total amount Winston-Salem is able to bid for a property without incurring out-of-pocket expenses. This makes it less likely that the City will be outbid for a strategic property.

Acquiring property on the open market.

Winston-Salem also may wish to acquire property for its land bank on the open market. For example, a property may be offered for sale in an area where the City wishes to increase affordable housing opportunities. The City could acquire the property and hold it in its land bank until responsible developers can be identified to establish affordable housing there.

The City has authority to acquire such property pursuant to G.S. 160D-1312.⁷ Under that statute,

Cities...are authorized to acquire “by voluntary purchase” real property that is “[b]lighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth”; “[a]ppropriate for rehabilitation or conservation activities”; ... or “[a]ppropriate for ... the guidance of urban development.”



Furthermore, the local government may “retain property so acquired for public purposes....” No particular notice or hearing requirements are prescribed.⁸

The City should consult its attorneys as to the authority conveyed by this statute. On its face, it appears that acquiring property through an arms-length transaction for the purpose of fulfilling a documented need for affordable housing falls well within the authority granted. The city likely should document the condition of the property at the time of acquisition, noting any need for rehabilitation. As discussed below, it will also be important to reference the housing affordability gap that Winston-Salem seeks to fill by acquiring the property and preserving or redeploying it as affordable housing.

② Holding Property.

After acquiring property, a land bank must hold the property until it can be returned to productive use. For vacant structures, this may require securing the properties against trespass, and making any necessary repairs to prevent damage from weather. For vacant land, properties must be mowed regularly and any debris that accumulates on the properties must be removed. The holding period for properties may vary significantly. Where there is a ready and willing buyer, properties may be resold relatively quickly. Often, however, Winston-Salem may have to hold property for months or even years. This may occur where the City is working to assemble several adjacent properties in order to create a more readily-developable site. Even in the case of a readily-developable site, the complicated financing that goes into affordable housing projects can take months to assemble. The City should thus be prepared to hold and maintain the properties it acquires for extended periods.

Winston-Salem already has and exercises its authority to care for property. It maintains city-owned property through its own staff, and has retained contractors to mow and clear debris from privately-owned “chronic violator” properties that otherwise are not maintained. Thus, as the Center for Community Progress observed, the activities associated with “holding property” are already functions that the City undertakes.

③ Disposing of Property

An important mission of the Winston-Salem land bank would be to foster the development of affordable housing in the community. Accordingly, when it disposes of property, it will often wish to specify that the property must be used to provide housing for low- and moderate-income households. It may also wish to offer the property at a discount to the buyer in order to make the affordable housing development financially feasible. Tyler Mulligan, local government law expert with the University of North Carolina, observes that ordinarily such sales would run afoul of several general rules that constrain local governments’ authority to sell property in North Carolina.⁹

Typically, local governments must dispose of property through a competitive bidding process established by statute. In that process, local governments usually must sell the property to the highest bidder, and may not impose conditions on the sale of property that would depress the price that a buyer would pay for the property. These general rules would not allow Winston-Salem to restrict the sale of land bank property only to bidders who agree to use the property for affordable housing. Another general rule is that public officials may not give away public assets for private benefit. Insofar as a discount on the price of land could be construed as such a gift, it would run afoul of this constitutional prohibition.

Happily, Mulligan observes, state law provides exceptions or exclusions to these general rules that would allow Winston-Salem to sell land bank property at a discount for use as affordable housing. Specifically, when a community faces a documented need for more housing for low- and moderate-income households, as Winston-Salem does, state law allows the community to leverage publicly-owned property to meet that need. The community may follow a “private sale” process to contract with another entity¹⁰ of its choosing to provide the needed housing, rather than offering the property for sale through the competitive bid process. Moreover, expenditures for services needed to advance a public purpose are not considered gifts, and the provision of needed housing for low- and moderate-income households is a well-recognized public purpose. Accordingly, Winston-Salem may offer a discount on the price of land bank property when it sells it for use as affordable housing.

Mulligan cautions that communities must adhere to certain legal requirements when exercising this authority. For example, they must take care to ensure that the sale of the property is conditioned on the buyer's promise to perform the public services that the city seeks to secure – that is, the provision of affordable housing. Accordingly, the sales agreement should address matters such as:

- ▶ Number of affordable housing units to be provided;
- ▶ Eligibility of households to reside in affordable housing units based on household income;
- ▶ Affordability level of housing units as a percentage of household income;
- ▶ Timing and phasing of construction of affordable units;
- ▶ Process for certification of eligible households and process for transfer from one eligible tenant or owner to another eligible tenant or owner;
- ▶ Control period in number of years during which units will remain affordable for LMI persons and whether property will be returned to local government at end of period.

It is also important that the City invoke the statutory authority under which it acts. In this case, by contracting with another entity in order to meet the community's need for affordable housing, the city would be exercising its powers under G.S. 160D-1311 to act as a housing authority. That statute authorizes a governing board to "exercise directly those powers granted by law to . . . local government housing authorities," and to do so "whether or not a . . . housing authority is in existence in such local government."



Importantly, such sales by housing authorities are subject to significant restrictions. Mulligan observes:

- ▶ Multi-family rental projects must include mandatory set-asides for low-income persons (G.S.157-9.4) and note that a "housing project" can include housing for "persons other than low or moderate income, as long as at least twenty percent (20%) of the units in the project are set aside for the exclusive use of persons of low income." (G.S. 157-3(12))
- ▶ Housing authorities (and local governments exercising the powers of an authority) must "fix the cost of dwelling accommodations for persons of low income at the lowest possible rates consistent with ... providing decent, safe, and sanitary dwelling accommodations." (G.S. 157-29) A municipality should therefore have oversight of the rental rate or sale price of affordable housing constructed with its property or appropriations.
- ▶ "No housing authority may construct or operate its housing projects so as to provide revenues for other activities of the city [or, by extension, other entities]." (G.S. 157-29) When property is conveyed to a third party, a municipality must exercise oversight of the budgets for construction and operation of the housing project to ensure that the municipality's subsidy is going to LMI persons and not toward other activities of the third party.

Accordingly, Winston-Salem possesses ample authority to operate a land bank. It may acquire property on the open market or by participating in foreclosure proceedings for tax and other liens. It may hold and maintain that property in much the same way it is already caring for municipal property and "chronic violator" property – by mowing land, clearing debris, and ensuring that the property does not pose a health and safety hazard to the community. When it is time to sell the property, it may do so through private sale procedures, contracting with a private entity of its choosing who promises to use the property to help Winston-Salem meet the community's need for more affordable housing. In entering into these agreements, the City must conform to the requirements imposed on housing authorities and must incorporate provisions that ensure the city's public purpose is accomplished.

How should the City operate a land bank?

With the authority of the City to operate a land bank established, we next consider how the City should operate a land bank. There are many ways of organizing a land bank. We considered three: (1) as a program or department within local government, (2) as a form of or in combination with a Redevelopment Commission, or (3) as an independent nonprofit. This report recommends the first option, as it is relatively simple to implement, provides significant flexibility, and is comparatively cost-effective.

A. The three options

Perhaps the simplest way to set-up a land bank in Winston-Salem would be to establish it as **a department or program within local government**. As a department, it would be relatively independent, having the same standing as any other department. It would be answerable to City Council and the City Manager, but not to any other department head. As a program, by contrast, the land bank could be embedded within an existing department. This would make the land bank answerable to the director of that department, and create some synergies with other activities already carried-out by that department. For example, the Community Development Department already administers code enforcement programs and affordable housing development programs. Housing the land bank in that department could enhance the coordination of the land bank with these other activities. Another alternative is the Engineering Division, which already houses the city's Real Estate Office. The Real Estate Office is already responsible for acquiring, selling, and managing city properties. A land bank would perform similar functions, but with a stronger mission to stabilize neighborhoods and increase the city's stock of affordable housing. Accordingly, operating a land bank within the Engineering Division – or even within the Real Estate Office – may build on functions and capacities already housed there. Ultimately, City Council action will be required to determine where in local government a land bank might be housed.

Another approach to embedding the land bank in local government would be to re-establish the **Redevelopment Commission** that once existed in Winston-Salem, and use it as a land bank.¹¹ State law authorizes local governments to establish Redevelopment Commissions for the purpose of conducting studies, formulating plans, and implementing redevelopment projects for blighted areas within the City. A Redevelopment Commission can acquire property in the same manner as the City, and with the permission of the City Council, can sell or transfer that property to a developer to develop it in accordance with the Commission-approved redevelopment plan.

In order to establish a Redevelopment Commission, City Council would have to adopt a resolution that, among other things, specifies the number of members that would comprise the commission – between five and nine. The Council would then appoint City residents to five-year terms on the Commission. The Commission would then be responsible for researching, developing and overseeing the implementation of redevelopment plans.

A third option would be to establish the land bank outside of local government, either as an independent **nonprofit corporation**, or as a program of an existing nonprofit that is willing to take on that role. The land bank in the Town of Chapel Hill, for example, takes this form. It was born from concern that the UNC Chapel Hill campus was driving displacement and gentrification pressures in the Northside neighborhood of Chapel Hill. The University provided a \$3 million zero interest loan to Self-Help, a local non-profit, to operate a land bank. The Town of Chapel Hill provided administrative support for the operation at start-up. It now operates independently, but in close consultation with, the city. The land bank largely functions as a rapid-acquisition tool, able to quickly acquire properties that come on the market, saving them from speculators and holding them until local nonprofits can assemble the financing and redevelopment plans necessary to preserve them as affordable housing.

If Winston-Salem were to follow this model, it could incorporate a nonprofit corporation and retain the authority to name the members of the nonprofit's Board of Directors. This would ensure some accountability of the land bank to the community. Alternatively, Winston-Salem could fund an existing nonprofit to play a land banking role, perhaps establishing by contract or grant agreement some control over which properties the nonprofit acquires with the funds. Perhaps local universities and others could be tapped to help fund the operation, as in Chapel Hill.

B. Choosing Among the Options

Each of the organizational forms of a land bank outlined above has its merits, and the City could reasonably pursue any of them. However, among the options considered, establishing a land bank as a department or program of the local government appears to be the strongest.

It rises above the Redevelopment Commission option for its simplicity and flexibility. Redevelopment Commissions are powerful but narrowly focused tools. They focus specifically on blighted areas of the community. This significantly limits their usefulness in promoting inclusive housing in stronger-market areas of town that are not blighted. Moreover, Redevelopment Commissions are cumbersome tools. The process of identifying blighted areas of the city and developing detailed redevelopment plans can take months or years, and often involves expensive analyses from expert consultants. Once the plans are established, the Commission must pursue redevelopment in accordance with those plans. This can significantly limit the Commission's ability to adapt quickly to new opportunities or challenges.

Redevelopment Commissions also face the stigma of history. They were the entities in North Carolina that typically led the Urban Renewal efforts in the middle of the last century that frequently led to the wholesale destruction and redevelopment of neighborhoods of color in the name of blight removal. Indeed, Winston-Salem's Redevelopment Commission led the Reynoldstown redevelopment plan that saw the construction of Highway 52

through one of the centers of the city's African American community.¹² The community still bears the scars and trauma of that effort, and any attempt to re-institute a Redevelopment Commission may face strong opposition.

A land bank that is a program or department of the local government also has advantages over one housed in or established as a nonprofit entity. One of its chief advantages is fiscal. This can be seen most clearly in the acquisition of tax-foreclosed properties. As discussed above, when a local government bids on tax-foreclosed property, it need only pay the amount by which its bid exceeds the amount owed in back taxes and other costs owed to the government. Publicly-owned land also is not subject to property taxation, significantly lowering the carrying costs of a land bank housed within the local government. Both of these factors can keep the out-of-pocket expenses of such a land bank low. A land bank operated by a nonprofit organization would not have these advantages.

Another fiscal advantage comes with regard to overhead. Staffing and operating a land bank will be costly regardless of where it is housed. However, if it is housed within local government, necessities such as office space, equipment and some operational support may be provided with little additional cost to the City beyond what is already in the budget. Outsourcing the operation to a nonprofit would mean having to find the additional resources for these overhead costs.

An in-house operation also has advantages over an external, nonprofit land bank with regard to public accountability. Whether established as its own department or as a program within an existing department, a land bank operation would be accountable to City Council and, ultimately, to voters. If established outside of local government, that accountability becomes diluted. Council may be able to appoint members to the nonprofit's board of directors, or may be able to shape how the nonprofit operates the land bank through a contract or grant agreement. However, this offers a less direct chain of accountability than a department or program within city government.

Case Study: Eugene, Oregon's Land Acquisition for Affordable Housing Program



Eugene, Oregon, provides a useful model of the kind of land banking program Winston-Salem could establish within local government. Eugene's Land Acquisition for Affordable Housing Program acquires land suitable for the

future development of housing that is affordable to low-income persons. The program has created a steady stream of appropriate sites and has actively sought to place affordable housing in areas of opportunity throughout the entire community. The Program is a cornerstone of Eugene's affordable housing program.

Since the purchase of the first site in 1979, over 91 acres have been acquired for affordable housing using a combination of federal and local funds. Thus far, 922 units of affordable housing units have been developed on Program parcels. These developments provide homes for very low-income people who earn less than 50 percent of Area Median Income. The homes are intentionally located throughout the entire city. The projects are indistinguishable from market rate developments and are often admired for their high-quality appearance, construction, and management.

History. In 1967, the City Council adopted the Eugene Community Goals and Policies which recognized a need to increase the supply of housing for low-income families. City Council formed the Joint Housing Committee,

composed of two City Councilors and three Planning Commissioners, to identify policies and programs to achieve the housing goal. In 1968, City Council adopted a broad platform through Resolution 1551, which formed an enduring foundation for Eugene's approach to affordable housing. The resolution included direction to purchase and landbank sites for low-income housing, to support the formation of nonprofit affordable housing developers, and to promote the dispersal of affordable housing throughout the community. The 1974 update to the Housing Dispersal Policy Plan also emphasized the importance of land banking and recommended "a continued policy of budgeting city funds to be used to assist in land acquisition or development costs in the high priority dispersal areas." The primary objective of the Housing Dispersal Policy Plan is to avoid concentrations of poverty.

Eugene suffered an economic downturn in the early 1980's, which resulted in limited development activity. Still, City leaders identified the availability of suitable land as a critical issue for future housing development. Given these concerns, the City of Eugene decided to formally adopt the Landbanking Program for Affordable Housing in 1983 through Resolution 3747. When the economy experienced an upturn, the City was uniquely positioned to offer the parcels that had been "banked" for future development. Initially, sites were available for development on a first-come first-serve basis. The City then moved to a competitive application process as developer capacity increased. The first development on a land bank site was completed in 1990.



Site Acquisition.

The City aims to continuously identify sites for future development. City staff take the lead in the identification and analysis of potential sites. Potential sites are vetted by the intergovernmental (city/county) Housing Policy Board (HPB), which is composed of elected officials and community residents. City Council makes the final decision to purchase specific sites based on the recommendation of the HPB.

The City carefully evaluates all parcels to ensure that they are suitable for housing affordable to low-income persons. Site assessment factors include: 1) location related to jobs, services, parks, schools, public transportation and other amenities; 2) dispersal of affordable housing; 3) site environmental conditions; 4) cost; 5) allowed density; 6) existing on-site structures and improvements; and 7) existing utility and street infrastructure.

Typical sites accommodate multifamily housing developments with 40 to 80 units. Access to public transportation is a critical selection factor for land bank sites. The City of Eugene is served by an extensive bus system that serves over 40,000 residents throughout the city and the surrounding county each day. Proactively siting affordable housing close to public transportation has allowed residents of affordable housing to also reduce transportation costs.

Over time, the City has used a number of strategies to acquire sites for future affordable housing. The land bank has purchased property from private individuals and corporations as well as institutional owners such as the University of Oregon and the Eugene School District. Several parcels were already owned by the City and transferred to the land bank at no cost. The City has tapped a variety of sources to purchase sites including local general funds, Community Development Block Grant, and Federal Revenue Sharing. Records show that almost \$5 million has been expended since 1979 to purchase sites.

Site Development.

The City offers sites, one at a time, for development by qualified partners through an open Request for Proposals (RFP). Other development subsidies including HOME Investment Partnership Program funds, system development charge¹³ grants, and local property tax exemptions are made available through the same RFP. Development proposals are evaluated by City staff, an evaluation committee of the Eugene-Springfield HOME Consortium, and the HPB based on project feasibility, target population and services, project concept and design, and a cost and benefit analysis. Ultimately, the City Council selects the development proposal deemed to be most appropriate for the site based on the recommendation of the HPB. With land and commitment of local subsidies in hand, developers have successfully leveraged highly competitive state and federal resources.

Impact. To date, affordable housing units have been developed on 24 sites by partners such as St. Vincent de Paul Society of Lane County, Cornerstone Community Housing, and the Housing and Community Services Agency of Lane County. These include 19 multifamily developments with a total of 895 units and 5 single-family homeownership developments with a total of 27 units.

The Land Acquisition Program for Affordable Housing has also positively impacted the local systems that produce and support affordable housing. By offering a steady stream of development opportunities, the program has fostered the development of a strong local network of affordable housing developers. Eugene is currently served by multiple experienced affordable housing developers who work on a citywide basis. Each entity has developed numerous affordable housing developments subsidized in part by the Program and other City resources.



To move forward with a land banking initiative within city government, we recommend the following action plan:

1. Establish an Advisory Committee

The first step in starting a land bank program in Winston-Salem is to form an advisory committee. The committee will be tasked with recommending where the land bank should be housed in local government, how it should be staffed and funded, and the policies and procedures it should follow to acquire, hold and dispose of property. In addition to local government officials and staff, the committee should include significant community representation. It is particularly important that the community members include those who are trusted voices and are able to speak to the lived experiences of households and neighborhoods of color in Winston-Salem. This will help ensure that the land bank operates in a way that serves the needs of such households and neighborhoods, which continue to face a racial equity gap in Winston-Salem. Specifically, the Advisory Committee should include:

- ▶ City council members
- ▶ Directors or staff from relevant city departments (e.g. Community Development and the Real Estate office)
- ▶ County officials familiar with the tax foreclosure process
- ▶ Representatives of the Housing Authority of Winston-Salem (HAWS)
- ▶ Nonprofit and for-profit developers of affordable housing
- ▶ Community members, especially those who are trusted voices and are able to speak to the lived experiences of households and neighborhoods of color.

2. Determine Where the Land Bank will be Housed

As discussed above, we recommend that Winston-Salem establish a land banking program housed within local government. Important questions remain to be resolved, however, as to where within local government it would live and how it would operate. Resolving these questions requires a close look at staffing and oversight capacity, mission “fit,” and the extent to which the land bank could tap other departments or programs to support some operations. How these questions are resolved will also influence the staffing and budget needed to operate a land bank. For example, if the City Attorney’s office has the capacity to provide the legal support needed to complete the real estate transactions that the land bank would undertake, then this could significantly reduce the program’s operating costs. The Advisory Committee should investigate these issues and make a recommendation to City Council.

3. Secure Funding

Land banks may be funded through a variety of sources, including revenue from the sale of properties, foundation grants, general fund appropriations, and federal and state grants. The Advisory Board should explore all of these options. However, land banks function best when they have a stable funding source. Accordingly, a particular focus of the Advisory Board’s efforts on funding should be ensuring a predictable, recurring source of funding for the land bank. For example, the Committee could

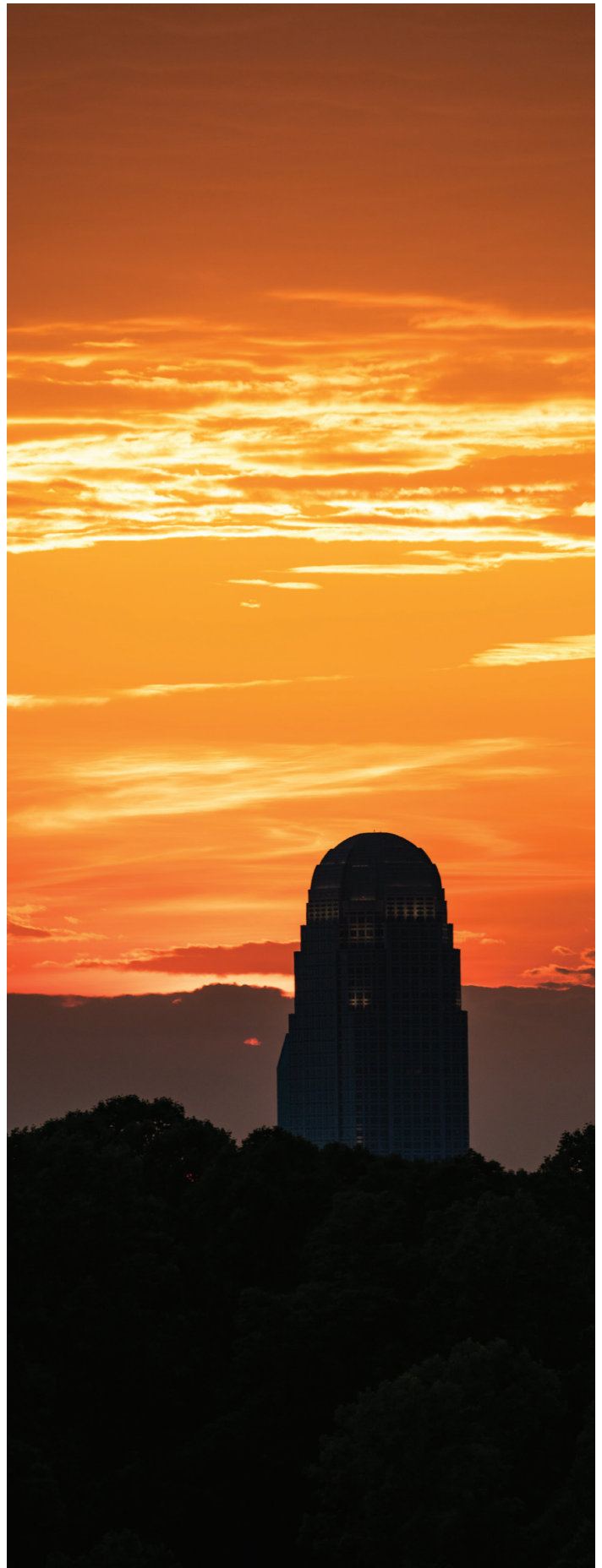
seek a commitment to use a portion of any future housing bond appropriations to support land bank operations. Another idea is to work with the county and other taxing jurisdictions to voluntarily dedicate a portion of all tax-delinquent funds collected each year to support land bank operations. The Tri-COG Land Bank, in Allegheny County, Pennsylvania, has successfully modeled this approach.¹⁴

It is important to note that the idea that a land bank may be self-sustaining is largely a myth. After a land bank is established, it may take months or even years before it sells its first land-banked property. The program will need funding to operate during this period. Even after it begins selling property, the land bank is unlikely to cover the costs of its operations. This is particularly true when the land bank offers property at a discount in order to support the establishment of affordable housing. Accordingly, in establishing a land bank, Winston-Salem must be committed to supporting its ongoing operation through general revenue and other funds.

4. Hire Staff

Operating a land banking program requires skilled staff. It is important that they have some understanding of tax foreclosure processes, real estate transactions, community development programs, land use regulations, and affordable housing finance and development. They also need to be able to assess the condition of vacant structures and their rehab potential. Successful land banks are also skilled at community engagement to ensure that the community understands and has a voice in the land bank's goals and how it is operated.

It is not necessary that a land bank have all of these skills in house. As discussed above, Winston-Salem may be able to reduce the cost of operating a land bank by allocating the time of staff in other departments that have the relevant skills in order to support land bank operations. The Advisory Board should look particularly to staff in the Real Estate Office, the Community Development Department, the City Attorney's Office and the Human Relations department to determine their capacity to support land bank operations.



5. Establish Operational Policies, Including Requirements for Lasting Affordability

The Advisory Board should work with new staff to establish policies governing the acquisition, maintenance and disposal of land bank property. In preparing these policies, the Advisory Committee will be aided considerably by the Center for Community Progress' excellent report, "Land Banks and Landbanking."¹⁵ Chapters 9 and 10 of that report, in particular, identify the considerations and competing concerns a land bank must balance as it seeks to address both the challenges presented by vacancy and abandonment, as well as the need and opportunity for affordable housing development.

Whenever possible, we urge Winston-Salem to incorporate requirements for lasting terms of affordability when it sells property. For many cities, this represents a real paradigm shift. Cities have long used federal programs such as the HOME Investment Partnership Program or the Community Development Block Grant (CDBG) Program to make housing affordable to renters and buyers. They have also relied on the federal Low Income Housing Tax Credits (LIHTC) program to make rental housing in their cities affordable. All of these programs come with affordability requirements, but all of those requirements expire after a limited period – typically between 10 and 30 years.

The result is something of a "housing hamster wheel" – new affordable housing goes into the city while the affordability requirements on previously subsidized housing expire. This can leave cities feeling as though they are running in place – or, worse, losing ground – when it comes to closing the city's affordability gap. Permanent affordability changes these dynamics.

Once established, housing with lasting terms of affordability remains affordable for the term of the requirement. Often that term is set at 50, 75, or 99 years, or simply "for the life of the structure." This means that, over time, the stock of affordable housing in a community steadily grows as cities use annual subsidy dollars to create additional housing units, rather than repeatedly working to replace units that have expired to market. The effects of this permanent affordability can be transformative:

- ▶ Lasting affordability provides stability for families. "Affordable" homes are, by design, homes that fit households' budgets. This affordability leaves families better positioned to pay for life's other necessities (e.g., health, food and transportation costs), to save for life's challenges (e.g. loss of employment, medical issues, vehicle repairs, etc.), and to take advantage of life's opportunities (education, training, making a down payment on a new home, etc.). The entire community benefits from this stability. Research shows that children in families that experience housing instability often suffer adverse impacts to their health, educational attainment, and income in adulthood. By requiring lasting affordability of housing on land acquired from the land bank, the city can ensure that families have the stable housing they need to lay the groundwork for children's lifelong success.
- ▶ Lasting affordability helps build inclusive communities that resist processes of displacement and gentrification. In Winston-Salem, as in many cities, home prices are increasing faster than local incomes. In some neighborhoods, this problem is acute – prices are skyrocketing well beyond the reach of residents who have long lived there. Often it is people of color who find themselves excluded from a neighborhood they could once afford as processes of gentrification take hold. Requirements for lasting affordability help communities resist these economic and cultural disruptions. Homes established through the sale of land bank property would remain affordable even as the cost of homes around them continue to increase. Their presence in a neighborhood could moderate forces of change, contributing to neighborhood stability, combating the negative effects of gentrification, and creating or preserving diverse, mixed-income neighborhoods.

References

- ¹ See Tarik Abdelazim and C. Tyler Mulligan. 2019. “Exploring Equitable, Effective, and Efficient Solutions to Vacancy and Abandonment in Winston-Salem, North Carolina,” Center for Community Progress, at p. 46, available at: <https://www.cityofws.org/DocumentCenter/View/16549/CCP-Report>
- ² For a much more detailed discussion of local governments’ authority to operate a land bank in North Carolina, see: Tyler Mulligan, “How a North Carolina Local Government Can Operate a Land Bank for Redevelopment.” Coates’ Canons, 18 Mar. 2014, <https://canons.sog.unc.edu/how-a-north-carolina-local-government-can-operate-a-land-bank-for-redevelopment/>
- ³ For a summary of Forsyth County’s tax foreclosure process, see Forsyth County – How the Tax Foreclosure Process Works. <https://www.co.forsyth.nc.us/article.aspx?NewsID=24089>. Accessed 8 Feb. 2021. See also, “Tax Foreclosure Tips.” Coates’ Canons, 28 July 2011, <https://canons.sog.unc.edu/tax-foreclosure-tips/>.
- ⁴ See “Tax Foreclosure and Redevelopment.” Community and Economic Development in North Carolina and Beyond, 19 Nov. 2013, <https://ced.sog.unc.edu/tax-foreclosure-and-redevelopment/>.
- ⁵ See G.S. 105-376b, available at https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_105/GS_105-376.pdf
- ⁶ Liens for minimum housing costs are treated like special assessments (G.S. 160D-1203(7)), which can be collected in the same manner as property taxes (G.S. 160A-228). Similarly, unpaid nuisance abatement costs – such as costs incurred for mowing and debris clearance – also become liens on the property. (G.S. 160A-193). Liens for minimum housing costs have priority over all other liens except other tax liens, while liens for nuisance abatement costs are inferior to other liens on the property (e.g. mortgage liens, mechanics liens, etc.). (https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_160A/GS_160A-193.pdf)
- ⁷ See https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_160D.html.
- ⁸ “How a North Carolina Local Government Can Operate a Land Bank for Redevelopment.” Community and Economic Development in North Carolina and Beyond, 18 Mar. 2014, <https://ced.sog.unc.edu/how-a-north-carolina-local-government-can-operate-a-land-bank-for-redevelopment/>. The article quotes the text of G.S. 160A-457, which has been repealed and replaced by G.S. 160D-1312. The relevant text remains the same.
- ⁹ Mulligan, Tyler. “Conveyance of Local Government Property for Affordable Housing.” Coates’ Canons, 20 Sept. 2016, <https://canons.sog.unc.edu/conveyance-local-government-property-affordable-housing/>.
- ¹⁰ Mulligan initially indicates that the entity with whom the City contracts should be a nonprofit corporation. However, he goes on to consider the possibility of contracting with a for profit entity. Citing an express exemption to normal property disposition procedures granted to housing authorities (and cities acting in the capacity of housing authorities), he concludes that cities may “convey property to any entity, whether nonprofit or for-profit, for less than fair market value, provided the subsidy goes toward the constitutional public purpose of making the housing affordable to LMI persons and does not amount to an unconstitutional gift to the recipient.”
- ¹¹ The Winston-Salem City Council abolished its Redevelopment Commission effective December 31, 1978.
- ¹² Cruise, Shane. Reynoldstown: Race, Blight, Disease, Highway Construction and the Transformation of Winston-Salem, North Carolina. North Carolina State University, 11 May 2011, <https://repository.lib.ncsu.edu/handle/1840.16/7117>.
- ¹³ “System development charges” are fees that Eugene applies to new development “to help offset the impact of development, redevelopment or an intensification of use. The fee is intended to recover a fair share of the costs of existing and planned infrastructure that provide capacity to serve new growth.” For more information, see: <https://www.eugene-or.gov/2247/Systems-Development-Charges>
- ¹⁴ For more information, see: https://reclaimingvacantproperties.org/wp-content/uploads/2016/10/Reliable-Recurring-Funding-for-Land-Banks_ALL.pdf
- ¹⁵ The report is available at: <https://www.communityprogress.net/m/land-banks-and-land-banking--pages-404.php>

