

Putting Out Fires Before They Start: Community Organizing and Collaborative Governance in the Bronx, U.S.A.

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Abstract

This Article summarizes how community-based organizing and local government are breaking with hierarchical systems and are engaged in novel forms of problem-solving under an evolving experimentalist and pragmatist framework. To illustrate, the Article traces the co-evolution of the New York City Department of Housing Preservation and Development (HPD), a public regulatory agency with a mandate to preserve low-income and affordable rental housing and enforce a local housing code, and of the Northwest Bronx Community and Clergy Coalition (Northwest Bronx), a Saul Alinsky-style grassroots community-based organization founded to organize marginalized neighborhoods in response to urban housing decay and abandonment. HPD's hierarchical control of the buildings it owned gave way to a new system of early detection and prevention of deterioration in privately owned housing. This new system relies on local, street-level information pooled by seasoned community-based organizations like Northwest Bronx with an objective of building neighborhood-based, countervailing power.

The argument is that this new relationship between local government and community-based organizations makes public

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problem-solving more workable because community-based organizations like Northwest Bronx are one natural focal point for the development of stakeholder participation and the elaboration of pragmatic solutions to public problems. The case study will illustrate how community-based organizations are moving beyond demanding public sector reform and towards a novel form of conflictual participation in the design, revision and implementation of the policies and regulations of local government.

Introduction

During the second game of the 1977 World Series between the Yankees and Dodgers, Howard Cosell of ABC News directed the cameras away from the baseball game and towards a burning building near Yankee Stadium in the South Bronx.¹ Cosell then announced to the nation, "there it is, ladies and gentlemen, the Bronx is burning."² In the 1970s and 1980s, the Bronx exemplified the urban decay of American neighborhoods. The Bronx was particularly affected by a tide of arson and property abandonment that created a housing crisis.³ By the 1990s, however, the Bronx was rebounding.⁴ Today, the Bronx is in many ways a model of urban growth.

A key piece of this turnaround story concerns the co-evolution of two entities: the New York City Department of Housing Preservation and Development (HPD), a public regulatory agency which has directives to preserve low-income and affordable rental housing and to enforce a local housing code, and the Northwest Bronx Community and Clergy Coalition (Northwest Bronx), a Saul Alinsky-style⁵ grassroots community-based organization (CBO) founded to organize marginalized neighborhoods in response to urban housing decay and property abandonment.⁶ Through this

1. JONATHAN MAHLER, *LADIES AND GENTLEMEN, THE BRONX IS BURNING: 1977, BASEBALL, POLITICS, AND THE BATTLE FOR THE SOUL OF A CITY* 330 (2005).

2. *Id.*

3. See generally JILL JONNES, *SOUTH BRONX RISING: THE RISE, FALL AND RESURRECTION OF THE SOUTH BRONX* (2002); *Arson Destroying New York Housing at a Record Rate*, N.Y. TIMES, Nov. 10, 1980, at A1; David Reiss, *Housing Abandonment and New York City's Response*, 22 N.Y.U. REV. L. & SOC. CHANGE 783, 787 (1996) (describing the deterioration of the Bronx).

4. See generally JONNES, *supra* note 3 (detailing in context the present status of the Bronx).

5. See *infra* note 102-111 and accompanying text.

6. See *infra* Section III. Though HPD and Northwest Bronx are situated in New York City, this new form of governance is developing in communities throughout the United States. See KAVITHA MEDIRATTA, INSTITUTE FOR EDUCATION

ongoing co-evolution, HPD focuses less on owning and administering public housing and more on detecting and preventing the deterioration of the existing stock of affordable rental housing.⁷ Part of this transformation, in turn, involves increasingly close cooperation with Northwest Bronx in identifying and fixing at-risk housing.⁸ The HPD is finding new ways to monitor and increase compliance with public laws and preserve affordable housing by integrating stakeholders like Northwest Bronx into its problem-solving process.⁹ At the grassroots level,¹⁰ Northwest Bronx relies less on purely adversarial tactics to impose its preferences on public authorities and more on its grassroots knowledge to find and administer innovative solutions to city-wide housing problems, while gaining public power and holding local government accountable.¹¹ Cooperating with local government has not limited Northwest Bronx's ability to use, when necessary, its independent countervailing power to criticize and pressure HPD.¹² The result of this ongoing joint transformation is a less hierarchical public administration and a less confrontational, but not more docile, community organization.

The mutual changes in the HPD and Northwest Bronx are not unique. On the contrary, they arguably illustrate a broad movement away from command-and-control governance, with all the familiar adversarial politics that go with it, toward a set of more collaborative "experimentalist" practices.¹³ The traditional

AND SOCIAL POLICY, CONSTITUENTS OF CHANGE: COMMUNITY ORGANIZATIONS AND PUBLIC EDUCATION REFORM 17 (2004), available at <http://www.nyu.edu/iesp/publications/cip/ConstituentsofChange.pdf> (illustrating this new form of engagement between community-based organizing and government agencies in education reform efforts throughout the United States).

7. See *infra* Section I.

8. See *infra* Section III.

9. See *infra* Section III.

10. Throughout this Article, "community-based organizing" and "grassroots organizing" will be used interchangeably.

11. See *infra* Section II. Another example of this type of innovative CBO is the Industrial Areas Foundation (IAF) in the Southwest. See Paul Osterman, *Organizing the US Labor Market: National Problems, Community Strategies*, in GOVERNING WORK AND WELFARE IN A NEW ECONOMY 240, 251 (Jonathan Zeitlin & David M. Trubek eds., 2003). Similarly to Northwest Bronx, the IAF is rooted in the organizing principles of Saul Alinsky, emphasizing civic participation and distribution of power. *Id.* at 251-53. The IAF is addressing low-income labor markets by developing new forms of job training programs through an initiative called Project Quest. *Id.* at 254. Project Quest brings together government and local community groups in building worker capacity. *Id.* at 254-64.

12. See *infra* Section III.

13. See generally Joshua Cohen & Charles Sabel, *Directly-Deliberative Polyarchy*, 3 EUR. L.J. 313 (1997); Michael C. Dorf & Charles F. Sabel, A

command-and-control system is marked by a centralized authority that set specific rules and prescribed inputs for regulated public goods with little or no local stakeholder feedback except through the traditional forms of local politics.¹⁴ Under this model, government-set rules are presumed to be at least workably definitive.¹⁵ In contrast, under an experimentalist regime, government procedures explicitly allow public agencies and stakeholders such as Northwest Bronx to revise norms in the light of lessons jointly learned, in the process, creating and revising standards for measuring performance to discipline the public good and ensure accountability.¹⁶ This case study will demonstrate how local government and CBOs are engaging in these new practices, creating new spaces for stakeholder participation.

This Article is divided into four sections. Section I summarizes the evolution of local housing regulation and preservation in New York City. Beginning in the 1970s, in response to a housing abandonment crisis that swept New York City, HPD began taking possession of delinquent and neglected private housing units in *in rem* foreclosure proceedings. HPD soon accumulated an unmanageably vast inventory of distressed properties and properties in code violation and had to rethink its housing preservation and anti-abandonment strategies. By the 1990s, faced with its inability to directly manage the city's housing stock, HPD divested itself of most properties and began developing an elaborate system of property anti-abandonment that directly linked stakeholders like Northwest Bronx with the HPD bureaucracy.

Today's HPD emphasizes prevention. Information pooling and process changes eliminate and reduce the possibility of property abandonment by identifying and tackling the problem when the quality of housing starts to deteriorate, rather than when the housing becomes unlivable and is abandoned. HPD, in collaboration with private intermediaries and CBOs, is creating an early warning anti-abandonment system that tracks landlord delinquencies, makes information on problem landlords available to CBOs, and emphasizes new building-wide inspection programs

Constitution of Democratic Experimentalism, 98 COLUM. L. REV. 267 (1998); Charles F. Sabel & William H. Simon, *Destabilization Rights: How Public Litigation Succeeds*, 117 HARV. L. REV. 1015 (2004) (literature on democratic experimentalism).

14. Sabel & Simon, *supra* note 13, at 1019.

15. *Id.* at 1021.

16. *Id.* at 1019-20.

coordinated with interested CBOs that have a more comprehensive, local understanding of the problem's dynamics.

Section II describes the transformation of Northwest Bronx. Northwest Bronx was founded in reaction to New York City's 1970s housing crisis as a decentralized coalition of parishes and neighborhood associations with a mission of building street-level countervailing power. As part of its mission, the organization demanded from public authorities greater oversight of delinquent landlords and increased community investment. Saul Alinsky organizations like Northwest Bronx typically used adversarial, zero-sum tactics in their approach to politics and organizing.

With time, Northwest Bronx developed an elaborate political and leadership training system that helped impart a sophisticated knowledge of complex housing issues to its membership base. Northwest Bronx also became a housing preservation innovator, increasingly partnering with HPD while demanding a seat at the table with its administrators. Northwest Bronx has created a community-driven system of building-monitoring through which organizers develop lists of specific problem landlords and appraise building conditions. This monitoring system has influenced HPD's policies and norms as it focuses on preventing the deterioration of existing private housing stock. Meanwhile, Northwest Bronx has periodically reconfigured its internal politics and procedures to accommodate its changing roles and practices, becoming more democratic. Today, Northwest Bronx preserves its original mandate of organizing tenants and developing local leadership while pioneering a model of community-based organizing in which the organization is directly involved in solving housing problems, not just demanding public sector reform.

Section III describes how Northwest Bronx and HPD are exercising their evolving roles in relation to one another and engaging in ongoing deliberative practices that have the potential to further transform the internal and external dynamics of both institutions. Their mutual though incomplete restructuring has allowed HPD and Northwest Bronx to engage in a process of information diffusion and absorption that elaborates new norms of problem-solving. Northwest Bronx's and HPD's recent interactions in dealing with lending institutions, landlords, and code enforcement illustrate this pattern. Northwest Bronx has a trademark strategy of targeting and publicly exposing banks that finance problem landlords. HPD increasingly is aware of how vital Northwest Bronx's practices of monitoring banks and landlords are to its own regulatory and administrative practices. It is telling

that in recent years HPD has taken steps to defend Northwest Bronx when landlords attempt to enjoin Northwest Bronx from organizing tenants and registering property conditions.

Although such collaborations in targeting problem landlords are promising, Northwest Bronx insists that HPD is not doing enough to penalize delinquent landlords who fail to comply with the housing code. Code enforcement remains an issue of great contention between the city and Northwest Bronx. Over the last two years, HPD has slowly responded to Northwest Bronx's demands and has taken steps toward directly involving Northwest Bronx in creating new policies to resolve the persistent difficulties with housing code enforcement. Specifically, HPD and Northwest Bronx have been creating a community-driven tenant petition inspection program and a comprehensive system of monitoring building quality. The new policy incorporates stakeholders like Northwest Bronx directly into the housing code compliance process, creating the possibility for the mutual transformation of HPD's and Northwest Bronx's working practices and internal and external politics.

Section IV summarizes how the co-evolution of HPD and Northwest Bronx illustrates a movement away from command-and-control governance toward new experimentalist and pragmatic approaches to public administration, with grassroots organizations playing an integral role in instigating reform and in informing policy results. In the context of housing policy reform in New York City, for example, policy and regulatory reforms have been prompted by both political and organizing efforts, without public law litigation playing a significant role. This Section claims that the way CBOs and local government are breaking with old systems and linking under this evolving experimentalist framework makes public problem-solving more workable. The government is not solely relying on data and figures and reacting to crisis but is relying on street-level indicators and local knowledge in its efforts to prevent housing abandonment and code violations. Under this evolving model, CBOs like Northwest Bronx, manifesting post-Alinsky characteristics, are one natural focal point for the development of stakeholder participation and the elaboration of pragmatic solutions to public problems. This model also gives local government more legitimacy since it directly involves the citizens it represents.

This Article asserts that grassroots organizations like Northwest Bronx are using their organizing and mobilizing power to effect regulation and policy in novel ways. Regular citizens,

instead of demanding government's intervention in fixing problems, increasingly are engaged in pooling information in order to solve specific problems and inform norms. These are experimentalist practices that have the potential to change the democratic process and heighten public accountability.

This Article presents evidence that local government and CBOs are undergoing co-evolutionary changes, breaking from the past in significant ways and unsettling past methods in response to old organizational and governance problems. Although this case study highlights certain empirical details of a break with old systems and the emergence of new experimentalist and pragmatic approaches to organizing and public administration, tensions and inconsistencies between the new and old approaches remain. Indeed, the CBO and government agency highlighted here fell more or less reluctantly into this joint innovation and are not likely to characterize this process exactly the way I do here.¹⁷ This Article is a preliminary attempt at both describing and conceptualizing an ongoing transformation and an emergent system.

I. HPD and Signs of an Evolving Public Institution

A. *An Overview of Old Strategies: 1960s-1990s*¹⁸

In the late 1960s and 1970s, New York City began experiencing a housing abandonment crisis. An exodus of residents and a massive wave of disinvestment swept urban New York.¹⁹ Arson, terrible building conditions, and property abandonment became severe problems as rents plummeted, landlord costs rose, and units went vacant.²⁰ A unique combination of factors triggered this housing crisis.²¹ Government policies that subsidized mortgages and accelerated development of alternative housing outside of highly concentrated urban areas created a massive demographic shift that replaced longtime

17. For example, I describe the Northwest Bronx as manifesting post-Alinsky characteristics, yet certain members of the Northwest Bronx do not agree with this categorization.

18. Much of this Section was obtained from interviews and research conducted by Douglas Jaffe.

19. Christopher J. Allred, *Breaking the Cycle of Abandonment* 1 (2000), available at http://www.nyc.gov/html/hpd/downloads/pdf/bgc_winner.pdf.

20. See Reiss, *supra* note 3, at 786-87; *Arson Destroying New York Housing at Record Rate*, *supra* note 3.

21. See Allred, *supra* note 19, at 1.

residents, the stable backbone of the urban communities, with large numbers of lower income residents.²² The new residents were less able to absorb increases in rent, and when landlords were squeezed by rising costs from skyrocketing heating oil prices and inflation, buildings became unprofitable.²³ As a result, by the mid-1970s, New York City faced a property abandonment crisis, with more than a fifth of the city's multifamily residential properties in arrears and many properties facing foreclosure.²⁴

The Bronx was one of the most devastated New York City boroughs.²⁵ As long-time residents left, rent rolls declined, and the operating costs of the buildings began to exceed the income they generated.²⁶ Coupled with racist redlining practices²⁷ and vast disinvestment, the result was a dramatic decline in the Bronx's real estate market.²⁸ Landlords began to defer maintenance, resulting in the deterioration of building conditions.²⁹ As the exodus continued, landlords eventually stopped paying property taxes, often abandoning the buildings altogether.³⁰ In some cases, buildings were burned in an attempt to recover insurance money.³¹ A major wave of arson swept from the south to the north Bronx in the 1970s, and as late as the 1980s, arson continued to be a serious problem in the Bronx.³²

The city's response was to step in as landlord and attempt to manage the abandoned housing stock.³³ The New York City Council passed Local Law 45 in 1976 authorizing *in rem* tax foreclosure by the city against delinquent properties.³⁴ In 1976,

22. See David W. Dunlap, *Bronx Housing Devastation Found Slowing Substantially*, N.Y. TIMES, Mar. 22, 1982, at A1.

23. Allred, *supra* note 19, at 1.

24. Reiss, *supra* note 3, at 787.

25. See Dunlap, *supra* note 22, at A1; Reiss, *supra* note 3, at 788-89.

26. See Reiss, *supra* note 3, at 786.

27. See Dmitri Mehlhorn, *A Requiem for Blockbusting: Law, Economics, and Race-Based Real Estate Speculation*, 67 FORDHAM L. REV. 1145, 1169-70 (1998) (arguing that the Federal Housing Administration's redlining policies provided loan subsidies to White neighborhoods at the expense of Black and Latino neighborhoods from the 1940s through the 1970s).

28. See Allred, *supra* note 19, at 1.

29. *Id.*

30. *Id.*

31. *See Destroying New York Housing at a Record Rate*, *supra* note 3, at A1.

32. *Id.*; Dunlap, *supra* note 22, at A1.

33. Reiss, *supra* note 3, at 787-88. Because local governments have power over land use issues, they have tremendous influence over housing development policy. See Tim Iglesias, *Housing Impact Assessments: Opening New Doors for State Housing Regulation While Localism Persists*, 82 OR. L. REV. 433, 446 (2003).

34. Reiss, *supra* note 3, at 787; see N.Y.C., NY ADMIN. CODE § 11-412 (1976).

the city also created the Department of Housing Preservation and Development to replace the Housing Development Administration as the city's principal housing administrator.³⁵ HPD soon acquired jurisdiction for the daily administration of all residential city-owned properties.³⁶

These steps had mixed results. As back taxes and code violations accumulated, the city took possession of the delinquent buildings in *in rem* foreclosure proceedings, rapidly swelling the city-controlled housing stock.³⁷ The city was unable or unwilling to properly rehabilitate and manage all of these neglected units, and the crisis for the remaining residents grew.³⁸ Like the landlords that it was supposed to be regulating, the city was struggling with its own vast inventory of distressed properties and properties in code violation.³⁹ Abandonment remained a chronic problem throughout the 1980s, and HPD continued to accumulate properties.⁴⁰

In 1988, New York City owned and managed approximately 9,500 buildings with 100,000 units under its authority.⁴¹ The city recognized that tremendous capital resources were needed to rehabilitate these buildings. By 1994, city ownership of *in rem* properties lasted for an average of nineteen years,⁴² "while the foreclosed properties had an average tax delinquency of \$36,000 at vesting, the City spent an average of \$2.2 million to acquire, manage, repair, and dispose of each vested building."⁴³ Cumulatively, New York City was burdened with an estimated total cost of \$10.6 billion for these properties, excluding the foregone tax revenues from tax delinquencies.⁴⁴

In addition to housing stock challenges, by the 1990s the city

35. Reiss, *supra* note 3, at 788.

36. *Id.*

37. Allred, *supra* note 19, at 2.

38. *Id.*

39. *Id.*

40. *Id.*

41. Eric Hirsch & Peter Wood, *Squatting in New York City: Justification and Strategy*, 16 N.Y.U. REV. L. & SOC. CHANGE 605, 610 (1987-88); *see also* Allred, *supra* note 19, at 2-3 ("By 1994, the City owned and managed 5,458 buildings – most were dilapidated multi-family housing occupied by a low-income population . . . [New York City's] *in rem* stock . . . consist[ed] of 51,672 units . . . of which [seventy-five] percent were occupied."). Today, the city's housing stock consists of approximately 3,300 units. Interview with Bill Traylor, former Deputy Commissioner for Development, HPD, in New York, NY (Mar. 3, 2004).

42. Allred, *supra* note 19, at 3.

43. *Id.* New York City retained the consulting firm of Arthur Anderson to audit the value of the stock. *Id.*

44. *Id.*

also faced tremendous pressure from the federal government when the Department of Housing and Urban Development (HUD) eliminated the issuance of new Section 8 subsidies in the form of certificates and vouchers.⁴⁵ The city used Section 8 both to stabilize rent increases and to subsidize the operation of HPD programs.⁴⁶ Section 8 subsidies also prevented displacement from rent increases resulting from capital improvements to occupied, privately owned properties.⁴⁷ Faced with these circumstances, HPD was forced to reinvent itself.⁴⁸

B. New Strategies and the Quest to End the City's Landlord Status

1. Legislation and the Third Party Transfer Initiative

New York City began its new intervention efforts in 1986 when Mayor Edward Koch announced a ten-year, \$4.2 billion rehabilitation program.⁴⁹ Koch's initiative was criticized for being underfunded and for not generating enough new units.⁵⁰ In 1994, the HPD administration gathered a group of policy experts to determine a more comprehensive, effective strategy to deal with the challenges of affordable housing and the city's ownership and management of large numbers of tax delinquent residential properties.⁵¹ The group "recommended that the city sell the liens on all tax delinquent properties" except for distressed properties, which would be transferred to new ownership.⁵² The group began formulating the plan that would become HPD's Third Party Transfer Initiative, a policy to alter the process by which the city

45. Alex Schwartz, *New York City and Subsidized Housing: Impacts and Lessons of the City's \$5 Billion Capital Budget Housing Plan*, 10 HOUSING POL'Y DEBATE 839, 866-68 (1999).

46. *Id.* at 866. Included amongst these housing projects were programs targeting the homeless. *Id.* at 867.

47. *Id.* at 867 ("Tenants unable to afford rents that must be increased to amortize city-subsidized capital improvements were provided Section 8 certificates or vouchers to prevent their displacement.").

48. *Id.* at 868.

49. LOCAL INITIATIVE SUPPORT CORPORATION, NEW YORK CITY CASE STUDY SUMMARY THIRD PARTY TRANSFER INITIATIVE: A SOLUTION TO PROPERTY ABANDONMENT 2, available at http://www.lisc.org/resources/assets/asset_upload_file414_1064.pdf; see Hirsch & Wood, *supra* note 41, at 611.

50. Hirsch & Wood, *supra* note 41, at 611.

51. Allred, *supra* note 19, at 3.

52. *Id.*

foreclosed on tax delinquent properties.⁵³

In 1996, at the ten-year mark of Koch's rehabilitation initiative, New York City adopted Local Law 37, which amended the New York City administrative code "in relation to tax lien foreclosure by action *in rem*."⁵⁴ The legislation transformed the property tax foreclosure authority.⁵⁵ According to Local Law 37,

[w]henver it shall appear that a tax lien or *tax liens* has or have been due and unpaid for a period of at least one year from the date on which the tax, assessment or other legal charge represented thereby became a lien, such tax lien or *tax liens*, . . . may be summarily foreclosed in the manner provided in this chapter, notwithstanding the provisions of any general, special or local law and notwithstanding any omission to hold a [tax] sale of a *tax lien* or *tax liens* prior to such foreclosure.⁵⁶

The law allowed HPD to transfer distressed properties, those in tax arrears and those with various code violations, directly to new owners.⁵⁷ Unlike New York's previous *in rem* foreclosure policy, the city transferred the property, lien-free, to a pre-qualified third party, avoiding city ownership along with "the cost of managing the properties and preparing them for sale."⁵⁸ This became HPD's Third Party Transfer Initiative, under which, after the city obtained a final judgment against the property, owners were granted four months to resolve the tax arrears.⁵⁹ After the fourth month, subject to New York City Council review, the city had the power to convey title to unredeemed properties to qualified third parties.⁶⁰

In the context of the Third Party Transfer Initiative, the Local Initiative Support Corporation (LISC) and the Enterprise Foundation, non-profit intermediaries operating with both public and private funds, channeled resources to community development projects and created Neighborhood Restore, another non-profit

53. *Id.*

54. N.Y.C., NY, Local Law 37 of 1996, Int. 679-A (May 14, 1996), available at http://www.nycouncil.info/pdf_files/bills/int679a.htm; see David T. Kraut, *Hanging Out the No Vacancy Sign: Eliminating the Blight of Vacant Buildings from Urban Areas*, 74 N.Y.U. L. REV. 1139, 1156-58 (1999).

55. See Local Law 37 of 1996, *supra* note 54.

56. See *id.*, § 4.

57. Allred, *supra* note 19, at 3; see also BRIAN P. KAVANAGH, JONATHAN SPRINGER & SARAH STEVENSON, UNIVERSITY NEIGHBORHOOD HOUSING PROGRAM, NO TITLE: PREVENTING ABANDONMENT WITHOUT CITY OWNERSHIP UNDER NYC LOCAL LAW 37 OF 1996, available at <http://www.unhp.org/prevent.html> (examining attempts to prevent deterioration of housing stock through Local Law 37 of 1996).

58. See Allred, *supra* note 19, at 3.

59. See Local Law 37 of 1996, *supra* note 54, § 13; Allred, *supra* note 19, at 4.

60. See Local Law 37 of 1996, *supra* note 54, § 13.

which assumed interim ownership of the properties.⁶¹ Neighborhood Restore then transferred ownership to for-profit and non-profit organizations, which included community-based groups and community development corporations (CDCs) chosen by HPD through a Request for Qualifications process.⁶² New owners and managers worked with Neighborhood Restore, HPD, and participating lending institutions to develop the scope of rehabilitation work for each building and to secure financing.⁶³

The passage of Local Rule 37 enabled HPD's Third Party Transfer Initiative program and the subsequent restructuring of HPD around the Division of Anti-Abandonment (DAA), which was charged with reviewing properties and the qualifications of bidders.⁶⁴ HPD's Office of Development then oversaw the transfer and rehabilitation of properties.⁶⁵ To identify new owners, the

61. Allred, *supra* note 19, at 4; see also William Simon, *The Community Economic Development Movement*, 2002 WIS. L. REV. 377, 397 (2002) ("An elaborate structure of intermediaries has grown up in recent years to support community-based non-profit housing developers. Some of these institutions are government-sponsored entities (GSEs), corporations specially chartered by a legislature with boards wholly or partly publicly-appointed. There is, for example, the Federal Neighborhood Reinvestment Corporation and, typical of many state examples, the Massachusetts Housing Finance Corporation. Other such institutions are non-profits operating across many communities. The Enterprise Foundation and the Local Initiative Support Corporation are especially notable examples. Such institutions channel public funds or private charitable donations to provide financial and technical assistance to community-based developers. Sometimes they participate as equity partners; sometimes they make loans or grants for specific projects. They often make loans or grants for general organizational support. Sometimes they act as financial intermediaries in pooling and/or reselling securities issued in connection with affordable housing development."). Other community development intermediaries have also been actively involved in housing development, including the Housing Partnership Development Corporation and the Parodneck Foundation. See CAROLINE K. BHALLA ET AL., *FURMAN CENTER FOR REAL ESTATE AND URBAN POLICY, STATE OF NEW YORK CITY'S HOUSING AND NEIGHBORHOODS 2004*, at 23, available at http://www.law.nyu.edu/realestatecenter/CREUP_Papers/state_of_the_city/SOC_intro.html.

62. Allred, *supra* note 19, at 4. In 2003, LISC committed approximately \$15.5 million, and the Enterprise Foundation invested \$106 million and participated in the development and renovation of 1,737 affordable homes. BHALLA ET AL., *supra* note 61, at 23; see Interview with Michael Bosnick, HPD Deputy Commissioner, Anti-Abandonment Division, in New York, NY (Mar. 4, 2004). For a review of the history of CDCs in housing development, see Paul S. Grogan, *Proof Positive: A Community-Based Solution to America's Affordable Housing Crisis*, 7:2 STAN. L. & POL'Y REV. 159 (1996).

63. See Interview with Michael Bosnick, *supra* note 62.

64. Interview by Douglas Jaffe with Jerilyn Perine, former HPD Commissioner, 2000-2004, in New York, NY (May 7, 2004).

65. See THE CITY OF NEW YORK DEPARTMENT OF HOUSING PRESERVATION & DEVELOPMENT, ABOUT HPD, available at <http://www.nyc.gov/html/hpd/html/about/office-descr-property-services.shtml> (describing division functions).

DAA established a competitive process, including outreach to CBOs.⁶⁶ The DAA targeted communities where the New York City Police Department had registered high levels of crime and chose CBOs that were familiar with housing issues.⁶⁷ Each year, through a competitive bidding process, community groups sought to manage property and administer housing programs that had traditionally been administered by government agencies.⁶⁸ Through the Third Party Transfer Initiative and accompanying programs, HPD began developing new relationships with CBOs.

2. Federal Incentive Programs

The city's Third Party Transfer Initiative was complemented by federal legislative measures, which had been initiated in the late 1980s and 1990s to support community and private developers. Specifically, HPD and its intermediaries were significantly assisted by investment incentives provided by the Low-Income Housing Tax Credit (LIHTC) program created by Congress under the auspices of the Internal Revenue Service in the 1986 Tax Reform Act.⁶⁹ Through LIHTC, corporate investors received a federal tax credit in return for providing funds to non-profit and profit developers to help build or renovate housing for affordable and low-income rental housing.⁷⁰ The LIHTC functioned as a block grant managed at the state level. Each state

66. Allred, *supra* note 19, at 17; Interview with Michael Bosnick, *supra* note 62.

67. Interview with Bill Traylor, *supra* note 41.

68. Interview with Michael Bosnick, *supra* note 62; Interview with Lydia Tom, Deputy Director, N.Y. Enterprise Foundation, in New York, NY (Apr. 6, 2004).

69. Tax Reform Act of 1986, Pub. L. No. 99-514, § 252, 101 Stat. 2189. LIHTC differed from other federal housing programs in that it was administered by the IRS and not by HUD, which had been traditionally charged with funding housing programs for the poor. Megan J. Ballard, *Profiting From Poverty: The Competition Between For-Profit and Non-profit Developers for Low-Income Housing Tax Credits*, 55 HASTINGS L. J. 211, 223-24 (2003). For more detail on how LIHTC works, see Charles J. Orlebeke, *The Evolution of Low-Income Housing Policy, 1949 to 1999*, 11 HOUSING POLY DEBATE 489, 511-15 (2000), available at http://www.fanniemaefoundation.org/programs/hpd/pdf/hpd_1102_orlebeke.pdf.

70. As of 1997, the LIHTC tax credit had generated approximately 100,000 housing units annually, or ninety-four percent of all low-income rental apartments in the United States. PARTNERSHIPS THAT PERFORM: THE LOW-INCOME HOUSING TAX CREDIT, available at <http://www.enterprisefoundation.org/policy/monographs/pubpoll.asp>. The initial idea for creating a tax credit program with specific benefits for non-profit organizations appeared to have emerged from non-profits involved in providing affordable housing, which were involved in the legislative process. Both the Local Initiatives Support Corporation and the Enterprise Foundation, which, as discussed, are active housing development intermediaries, during the Congressional hearings, testified to the benefits of community-managed housing programs. See Ballard, *supra* note 69, at 221.

was permitted to allocate a certain amount of tax credits annually based on its population. Priority was given to projects sponsored by non-profits, including community-based organizations, and state housing agencies were required to designate at least ten percent of the LIHTC credits to projects sponsored by non-profit developers.⁷¹

Other federal initiatives followed. The Housing Act of 1990 created the HOME program in 1992, which made housing block grants directly available to city agencies like HPD.⁷² HOME provided federal funds for housing development to both renters and lower income owners but transferred selection power from federal bureaucrats to local officials.⁷³ HOME mandated that fifteen percent of allocations within each jurisdiction must be designated to "Community Housing Development Organizations."⁷⁴ These non-profit development organizations were defined as organizations engaged in affordable housing development that practiced accountability "through significant representation on [their] organization's governing board[s] and otherwise, accountability to low-income community residents and, to the extent practicable, low-income beneficiaries" of its activities.⁷⁵ HOME funds could be used for a variety of purposes including providing operating support for non-profit organizations.⁷⁶

Other federal housing programs also designated non-profits as preferred purchasers and developers. In 1990, for example, HUD created a program targeting privately owned housing and designated non-profits as "priority purchasers."⁷⁷ Further, under a 1992 provision to the Housing Act of 1990, residents' councils could apply to HUD to have management of property transferred from local housing agencies under the condition that any new managers had to be non-profits or joint ventures with non-profit input.⁷⁸

In New York City, HPD partnered with intermediaries like

71. 26 U.S.C. § 42(h)(5) (2000). Non-profit sponsorship meant that a non-profit organization had an interest in the development and "materially participate[d]" in the development and operation of the property. *Id.*; Ballard, *supra* note 69, at 224.

72. See Orlebeke, *supra* note 69, at 491.

73. *Id.*

74. 42 U.S.C. § 12771(a) (2000); Simon, *supra* note 61, at 396.

75. Simon, *supra* note 61, at 396.

76. *Id.*

77. 12 U.S.C. § 4110(b) (2000); Simon, *supra* note 61, at 396.

78. 42 U.S.C. § 1437w(c), (f) (2000); 42 U.S.C. § 1437m (2000); Simon, *supra* note 61, at 396.

Neighborhood Restore and used the federal funding and incentive programs to assist CBOs in becoming property developers and managers.⁷⁹ Strict federal compliance requirements, which included deadlines for completion of rehabilitation and financing and specific requests on property conditions, forced HPD, the intermediaries, and CBOs to coordinate and collaborate in ways they had not done so in the past.⁸⁰

3. Developing Local Partnerships

HPD supplemented the federal and local legislative initiatives with a new systemic approach to dealing with property abandonment which directly depended on local community information. HPD's goal was to target buildings that were headed for abandonment and intervene at the source of the problem by assembling detailed, street-level information, in an effort to curtail the "end of the pipe" regulatory practices of the past.⁸¹ HPD began the process by identifying early warning indicators and adopted an information-driven system which evaluated the level of tax arrears, lien-to-market value ratio, and the extent of delinquency with respect to housing code violations.⁸² HPD created borough field offices in the five New York City boroughs (Bronx, Manhattan, Brooklyn, Staten Island, and Queens) to monitor properties, coordinate the information gathering efforts, and intervene when necessary. Indeed, this was not the first time HPD created neighborhood planning offices. In the 1980s, HPD created neighborhood offices which were merged and later abandoned in the 1990s during the mayoral tenure of Rudolph Guliani.⁸³ In contrast to the planning offices of the past, HPD's new borough field offices highlighted prevention and data gathering. CBOs, in collaboration with the HPD field offices, served to triage properties in the preventive process,⁸⁴ and communicated to tenants and owners HPD's changing system.⁸⁵

79. LOCAL INITIATIVE SUPPORT CORPORATION, *supra* note 49, at 2.

80. Interview with Lydia Tom, *supra* note 68.

81. Interview with Michael Bosnick, *supra* note 62; Interview with Jerilyn Perine, *supra* note 64. The term "end of the pipe" is often used in the context of describing conventional environmental regulation. See, e.g., Bradley C. Karkkainen, *Information as Environmental Regulation: TRI and Performance Benchmarking, Precursor to a New Paradigm?*, 89 GEO. L.J. 257, 293 (2001).

82. See Allred, *supra* note 51, at 17.

83. Telephone Interview with Mary Dailey, former Executive Director, Northwest Bronx, in New York, NY (Aug. 2, 2005). Mary Dailey resigned as Executive Director in May 2005. James Mumm is the current Executive Director.

84. Interview with Michael Bosnick, *supra* note 62.

85. *Id.*

One way CBOs began to take on this new role was through DAA's neighborhood preservation consultant program.⁸⁶ Although there had been neighborhood-based contracts with community groups in the past, during the Guliani tenure, the preservation consultant programs focused more on gathering information on distressed properties in order to feed the Third Party Transfer and tax lien mechanisms.⁸⁷ Arguably, this shift was part of HPD's agenda to assist problem landlords.⁸⁸ DAA contracted CBOs to serve as neighborhood preservation consultants for each of the field offices.⁸⁹ DAA, in conjunction with Neighborhood Restore and other intermediary non-profits, appraised the community group's possibility of receiving a contract by evaluating whether the group could comply with the program's fixed deliverables: conducting building surveys, referring owners for loan applications, recommending owners for voluntary repair agreements, conducting workshops for tenants and landlords, organizing mailings discussing HPD and neighborhood preservation consultant services, and intervening to resolve problems with and between tenants and landlords.⁹⁰ The neighborhood preservation consultants were HPD's street-level monitors and administrators. Among other things, the consultants evaluated and surveyed the conditions of particular properties and then met with HPD's field officers, who determined the next steps.⁹¹ With the pooled information gathered by the neighborhood preservation consultants, the DAA had a more comprehensive view of local variations and property trends and was able to more directly track conditions and control against abandonment.⁹² Through this

86. According to the former HPD commissioner, the idea was to make DAA the hub for preservation activities within HPD, including the information gathering efforts by the grassroots organizations. See Interview with Jerilyn Perine, *supra* note 64. The DAA also gathered information about which properties were at risk from sources such as code violations, calls to the customer service center, and Department of Finance records. See *id.*; Interview with Bill Traylor, *supra* note 41.

87. Interview with Mary Dailey, *supra* note 83. According to Mary Dailey, ironically the old neighborhood-based contracts often were more supportive of tenant organizing. *Id.*

88. *Id.*

89. Interview with Michael Bosnick, *supra* note 62.

90. *Id.* "Definitions of the Eight Neighborhood Preservation Consultants Program Deliverables," from Michael Boswick, HPD Deputy Commissioner, Anti-Abandonment Division to author (July 25, 2001) (on file with author); see Appendix 2.

91. Interview with Michael Bosnick, *supra* note 62.

92. *Id.* For a review of how information pooling is used in the context of environmental regulation, see Charles Sabel, Dara O'Rourke & Bradley Karkkainen, *Beyond Backward Environmentalism*, BOSTON REV. (Oct. 1999),

progress, CBOs, for their part, developed their own expertise on housing standards and became part of the city-wide prevention efforts.

Informed and sustained by community involvement, New York City's property rehabilitation, anti-abandonment, and third-party transfer initiatives had significant results. By the late 1990s, the city no longer had the landlord status that had at one point defined it. HPD's transformation, however, was incomplete. Compelling landlords to remedy violations of the housing code remained a problem and community-based groups like Northwest Bronx continued to demand HPD's reform.⁹³

II. Northwest Bronx and the Evolution of an Adversarial Methodology

A. Northwest Bronx's Origins and Initial Targets

1. The Alinsky Origins

Although Paul Brant, one of Northwest Bronx's founders, described the organization as "the largest sustained Alinsky-style organizing effort in the United States,"⁹⁴ Northwest Bronx had modest beginnings.⁹⁵ In 1974, Northwest Bronx residents began responding to the crisis that was advancing toward them from the South Bronx, where approximately ten blocks a year fell to abandonment and arson.⁹⁶ That year, local parishes in the Northwest Bronx organized a three-day conference on "Strategies for Ministry in the Urban Struggle."⁹⁷ Out of the three-day conference, the Northwest Bronx Community and Clergy Coalition

available at <http://www.bostonreview.net/BR24.5/sabel.html>.

93. One of the critiques was that HPD lacked effective tools to compel landlords to remedy violations where the building did not have long-term tax delinquency and was therefore not eligible for a third party transfer. Comments by Jim Buckley from the Meeting of Northwest Bronx, UNHP, and FBHC Leadership (May 20, 2004) [hereinafter May 20 Meeting]. To housing organizers like Northwest Bronx, it often appeared that HPD was too willing to commit resources to assisting borderline landlords rather than to pursuing litigation for housing code violations. *Id.*

94. JONNES, *supra* note 3, at 375.

95. Margaret Groarke, *Organizing Against Overfinancing: The Northwest Bronx Campaign Against Freddie Mac*, (Dec. 2002) § 2, available at <http://comm.org.utoledo.edu/papers2003/groarke.htm>; see JONNES, *supra* note 3, at 349.

96. See David Gonzalez, *Bronx Community Groups Find Strength in Unity*, N.Y. TIMES, July 17, 1994.

97. Groarke, *supra* note 95, §2, ¶ 2; see JONNES *supra* note 3, at 349.

was created.⁹⁸ The new organization was maintained by church collections and a \$15,000 contribution by Dollar Savings Bank.⁹⁹ The seed money was used to hire six organizers to help form tenant associations.¹⁰⁰ Northwest Bronx's mission was to organize residents to demand better services from landlords, city agencies, and mortgage lenders.¹⁰¹

Northwest Bronx was founded as a Saul Alinsky organization. Some of its first organizers had been trained in the Alinsky school and brought with them the methodology of the Alinsky organizations of the day.¹⁰² Alinsky-defined organizations used political pragmatism and aggressive realpolitik in dealing with government power and stressed the importance of organizing around the self-interest of specific geographic communities.¹⁰³ Alinskyism was recognized for its adversarial, zero-sum approach to community organizing.¹⁰⁴ Direct action and "hits" were a signature of Alinsky organizations.¹⁰⁵ Although Alinsky's activities were often based in communities of color, race, gender, and ethnicity politics were seen as a distraction from the issue-based organizing.¹⁰⁶

Indeed, Saul Alinsky is widely acknowledged as the father of

98. See Groarke, *supra* note 95, §2, ¶ 2; JONNES, *supra* note 3, at 349.

99. JONNES, *supra* note 3, at 348.

100. *Id.*

101. *Id.* at 350.

102. *Id.*

103. Osterman, *supra* note 11, at 262, 267; see SAUL ALINSKY, RULES FOR RADICALS: A PRAGMATIC PRIMER FOR REALISTIC RADICALS 53 (1971). Saul Alinsky's texts were charged with self-interest analysis:

From the great teachers of Judeo-Christian morality and the philosophers, to the economists, and to the wise observers of the politics of man, there has always been universal agreement on the part that self-interest plays as a prime moving force in man's behavior. The importance of self-interest has never been challenged; it has been accepted as an inevitable fact of life.

Id.; see RICHARD WOOD, FAITH IN ACTION: RELIGION, RACE AND DEMOCRATIC ORGANIZING IN AMERICA, 174-75 (2002).

104. RINKU SEN, STIR IT UP: LESSONS IN COMMUNITY ORGANIZING AND ADVOCACY xliv-xlix (2003).

105. A direct action, for example, consisted of dozens of busloads of people appearing at an elected official's or a bureaucrat's office with a bullhorn and a demand for the target to meet with the organization. See Groarke, *supra* note 95, §6, ¶ 9. A hit is a surprise visit to a target, usually one who has ignored the organization's requests for a meeting, or failed to keep commitments. *Id.*

106. See WOOD, *supra* note 103, at 104; SEN, *supra* note 104, at xviii; Susan Stall & Randy Stoecker, *Community Organizing or Organizing Community? Gender and the Crafts of Empowerment*, 7-8, available at <http://comm-org.utoledo.edu/papers97/>; Francis Calpotura, *The View from the Ground: Organizers Speak Out on Race*, COLOR LINES, 17-18 (Summer 2000).

contemporary community-based organizing because he was the first to devise and document a model of organizing that could be replicated.¹⁰⁷ Saul Alinsky chronicled his organizing theories in two important books, *Rules for Radicals*, published in 1971, and *Reveille for Radicals*, published in 1946.¹⁰⁸ In *Rules for Radicals*, Alinsky began with the following introduction:

What follows is for those who want to change the world from what it is to what they believe it should be. The Prince was written by Machiavelli for the Haves on how to hold power. Rules for Radicals is written for the Have-Nots on how to take it away.¹⁰⁹

The concept of “organizing” that Saul Alinsky propounded was based on three general principles: win real, immediate, and concrete improvement in people’s lives; give people a sense of their own power; and alter the relations of power.¹¹⁰

Alinsky founded in the 1940s the oldest existing organizing network, the Industrial Areas Foundation. Other national networks emerged based on varying forms of the Alinsky model, including the Community Service Organization (CSO) in Los Angeles founded in 1949, the Association of Community-based Organizations for Reform Now (ACORN) in the Midwest founded in 1970, the People’s Institute for Community Organizing (PICO) in Oakland, the National People’s Action (NPA) in Chicago founded in 1972, and the Midwest Academy and the Citizen Action Network in Chicago founded in 1979.¹¹¹

Like other Alinsky organizations, Northwest Bronx began as an organization with a broad-based agenda focused on redistributing power, developing local leadership, and criticizing public actors. Northwest Bronx’s initial campaigns targeted and reacted to the neighborhoods’ immediate problems. Where crime was a major concern, Northwest Bronx organized block patrols and

107. See SEN, *supra* note 104, at xlv.

108. See *id.*

109. ALINSKY, *supra* note 103, at 3.

110. KIM BOBO, JACKIE KENDALL & STEVE MAX, ORGANIZING FOR SOCIAL CHANGE: MIDWEST ACADEMY MANUAL FOR ACTIVISTS 11-12 (2001); see Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443, 461 (2001). Of course, although Saul Alinsky is often associated with modern organizing, there were earlier incarnations of the practice, with certain scholars tracing its origins to the 1880s. See Robert Fisher, *Neighborhood Organizing: The Importance of Historical Context* (1995), available at <http://comm-org.utoledo.edu/papers96/fishercon.htm>.

111. See SEN, *supra* note 104, at xlvi; National People’s Action, <http://www.npa-us.org/whats.html>. The National People’s Action helped develop the Northwest Bronx Community and Clergy Coalition in the 1970s. See MEDIRATTA, *supra* note 6, at 9, Table 2.

meetings with police.¹¹² Where housing services was the main problem, Northwest Bronx petitioned for building inspections and organized rent strikes.¹¹³

Northwest Bronx was particularly critical of the city's lack of interest in developing and preserving housing in the northwest Bronx area. Northwest Bronx's relationship with the city's Housing Development Administration, which in 1976 became HPD, was contentious from the start. Northwest Bronx's Housing Committee targeted the Housing Development Administration with almost daily visits to its headquarters with little success.¹¹⁴ At an event at Fordham University in the Bronx in 1975, organizers confronted Housing Development Administration Commissioner Roger Starr for refusing to meet with them.¹¹⁵ When federal funding was denied to the area in 1976, the Bronx's worst year for conflagration, Northwest Bronx's leadership wrote an open letter to Commissioner Starr: "[w]hat contempt City government exhibits towards neighborhoods and committees such as ours! In our view this is only the most recent in a series of evasions, deceptions, broken promises and buck-passing . . ."¹¹⁶

2. Northwest Bronx's Winning Campaigns and New Pragmatism

The Reagan years were marked by dramatic reductions in governmental programs,¹¹⁷ and Northwest Bronx responded by demanding private sector investment.¹¹⁸ Northwest Bronx was at the forefront of New York community groups using the Community Reinvestment Act (Reinvestment Act) to pressure banks to invest more in the Bronx.¹¹⁹ Enacted by Congress in 1977, the Reinvestment Act ascribes to any bank that receives federal deposit insurance a "continuing and affirmative obligation to help meet the credit needs of the local communities in which [it

112. JONNES, *supra* note 3, at 350.

113. *Id.*

114. *Id.* at 354.

115. *Id.* at 354-55.

116. *Id.* at 355, 363. The Bronx registered 35,380 property fires in 1976. See Michelle O'Donnell, *Neighborhood Report: Melrose - What Began in Fire, Ends in Ice*, N.Y. TIMES, section 14, Feb. 9, 2003 (discussing the decline of Bronx fires: 35,380 in 1976; 21,339 in 1988; 16,428 in 1995; and 10,810 in 2002).

117. See JONNES, *supra* note 3, at 371; see also MICHAEL B. KATZ, IN THE SHADOW OF THE POORHOUSE 285-89 (1986); JOEL F. HANDLER, THE POVERTY OF WELFARE REFORM 61-62 (1995) (describing federal government cuts to social service programs during the Reagan administration).

118. See JONNES, *supra* note 3, at 371.

119. 12 U.S.C. §§ 2901-2908 (2000); see JONNES, *supra* note 3, at 369.

is] chartered.”¹²⁰ The obligation applies to the “entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institutions.”¹²¹ Northwest Bronx supplemented its knowledge and usage of the Reinvestment Act with adversarial tactics that included organized direct actions against the board of directors of banks and corporations.¹²² Northwest Bronx’s strategies had results, and it soon was able to attract federal community development funds. Northwest Bronx’s geographic area was designated a “Neighborhood Strategy Area” with millions pouring into major projects such as subway and park renovations.¹²³ Soon, the federal incentive programs allowed Northwest Bronx to spin-off community development corporations (CDCs) to manage and finance housing.¹²⁴ Each CDC was an independent, non-profit corporation with its own Board of Directors and staff.¹²⁵ Northwest Bronx, through these federal incentive programs, became involved, albeit indirectly, in property development and management.¹²⁶

By the late 1970s Northwest Bronx had become involved in city-wide organizing campaigns including participating in anti-arson and anti-redlining coalitions.¹²⁷ During the 1980s Northwest Bronx participated in three significant campaigns, including Project Reclaim, which was aimed at rehabilitating vacant buildings and keeping rents affordable for Northwest Bronx families.¹²⁸ Through this campaign, Northwest Bronx took on both the city and private lenders. Northwest Bronx also launched ONTOP, a city-wide campaign to increase non-profit ownership, repairs, and rehabilitation at affordable rents.¹²⁹ Finally, Northwest Bronx organized its neighborhood associations in a city-wide campaign against Major Capital Improvement rent

120. § 2901(a)(1).

121. §§ 2901(a)(3), 2903(a)(1).

122. See JONNES, *supra* note 3, at 371. For example, in 1983, after a direct action at a Chase Board of Directors meeting, the Chase Chairman decided to cooperate with Northwest Bronx and, through HPD, made available millions in loans to weatherize properties. *Id.*

123. *Id.* at 369-70.

124. *Id.* at 370.

125. See MEDIRATTA, *supra* note 6, at 9, Table 2.

126. See JONNES, *supra* note 3, at 370. Members of Northwest Bronx’s senior staff became directors of the new CDCs. *Id.*

127. Interview with Mary Dailey, *supra* note 83.

128. See Groarke, *supra* note 95, § 2, ¶ 5; Interview with Mary Dailey, *supra* note 83.

129. Interview with Mary Dailey, *supra* note 83.

increases.¹³⁰

Through the Major Capital Improvement Campaign, Northwest Bronx became aware of suspect financing that involved increases in system replacements matched by declines in regular building maintenance.¹³¹ This was soon linked to the Federal Home Loan Mortgage Corporation's (Freddie Mac) lending practices.¹³² By conducting title searches, organizers began to notice a pattern of inflated Freddie Mac mortgages.¹³³ Mary Dailey, then organizer for the Mosholu Woodlawn South Community Coalition, one of the member neighborhood associations of Northwest Bronx, found that almost every building she researched had a large Freddie Mac mortgage.¹³⁴ Northwest Bronx's investigation revealed, for example, that, as of 1989, Freddie Mac controlled \$663 million in multi-family mortgages in more than 700 buildings in the area.¹³⁵

Northwest Bronx scheduled a workshop on overfinancing that explained to tenants the links between a lender's overfinancing, shortage of adequate services, and property abandonment and arson.¹³⁶ The connection between the large mortgages, declining services, and increasing rents became obvious to tenants and organizers.¹³⁷ Landlords were spending a large percentage of their rental income on repaying mortgages and had fewer funds available to maintain properties and service tenants.¹³⁸ A real estate boom in the mid-1980s inflated property values throughout New York City.¹³⁹ When property values began to decline, landlords found themselves without the sufficient capital to cover debts, a problem that could lead to a repeat of the property abandonment crisis of the 1970s.¹⁴⁰

130. See Groarke, *supra* note 95, § 2, ¶ 5. Rent increases are granted to landlords who make building-wide capital improvements such as new windows or new boilers. *Id.*

131. Interview with Mary Dailey, *supra* note 83.

132. *Id.*; see Groarke, *supra* note 95, § 3; Freddie Mac, http://www.freddiemac.com/corporate/about/who_we_are/regulation.html (last visited Jan. 26, 2006). The Federal Government established Freddie Mac to buy mortgages and repackage them as securities, thus freeing the assets of the banks and mortgage companies to make new mortgages. *Id.*

133. See Groarke, *supra* note 95, § 3, ¶ 4.

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.* § 3, ¶ 5.

138. *Id.*

139. *Id.*

140. *Id.*

Northwest Bronx's campaign against Freddie Mac had the Alinsky brand: organizers distributed flyers which equated Freddie Mac to Freddie Krueger,¹⁴¹ members went to Freddie Mac's offices in Virginia and demanded a meeting with the CEO,¹⁴² and, using the proxies of a religious order that held shares in Freddie Mac, members attended Freddie Mac's stockholders' meeting and demanded that Freddie Mac sell its foreclosed properties to responsible owners.¹⁴³

Throughout this campaign, Northwest Bronx educated tenants about housing standards and the mortgage market.¹⁴⁴ Tenants learned about the secondary mortgage market and the incentives for seller, servicers, and property owners to overvalue their properties to Freddie Mac.¹⁴⁵ Freddie Mac bought mortgages from financial institutions who lent directly to borrowers.¹⁴⁶ These institutions not only sold the mortgages to Freddie Mac for fees but also tended to service the mortgages after the purchase.¹⁴⁷ Freddie Mac relied on appraisal information submitted by the seller/servicer institutions and did not conduct its own independent inquiry as to the financial and physical conditions of the properties.¹⁴⁸ The result was that the seller/servicer information was often inaccurate and incomplete because the seller/servicers earned fees based on the number and size of the mortgages, as well as the servicing.¹⁴⁹

Northwest Bronx's housing agenda took shape out of concerns that were raised when a new group of tenants was introduced to the Freddie Mac problem:

If Freddie Mac gave my landlord so much money, shouldn't some of the money be spent on the building? If they have money invested here, don't they care that the building is deteriorating? What will happen if the landlord abandons the building, or Freddie Mac forecloses? Since the federal government sponsors Freddie Mac, shouldn't they have a special responsibility to ensure that the buildings they finance

141. *See id.* § 4, ¶ 2.

142. *See id.* § 6, ¶ 8.

143. *Id.* § 8, ¶ 3.

144. *See id.* § 4, ¶ 2.

145. *Id.*

146. *See* U.S. GEN. ACCOUNTING OFFICE, FEDERAL HOME LOAN MORTGAGE CORPORATION: ABUSES IN MULTIFAMILY PROGRAM INCREASE EXPOSURE TO FINANCIAL LOSS 3 (1991), available at <http://archive.gao.gov/t2bat7/145014.pdf>.

147. *See id.*

148. *See id.* at 2.

149. *See id.* at 4-8.

provide decent, affordable housing?¹⁵⁰

Through Northwest Bronx's campaign, tenants learned about mortgage enforcement and the implications of a mortgage's "good repair clause."¹⁵¹ Tenants went on to use the clause to demand inspections, repairs, and foreclosures from owners, the government, and lenders.¹⁵²

In its efforts to reform Freddie Mac's lending practices, Northwest Bronx led a multi-pronged campaign which targeted everyone from Freddie Mac board members to city and federal representatives.¹⁵³ The campaign had results. In September 1990, New York congressional representatives requested an audit by the General Accounting Office (GAO) of Freddie Mac's lending practices.¹⁵⁴ GAO reviewed thirty-five properties in the Bronx that Northwest Bronx had identified as overfinanced.¹⁵⁵ Addressed to United States Senators and Representatives from New York, the GAO Report read:

You expressed concern about Freddie Mac's mortgages for [thirty-five] Bronx properties, which a *community group* had charged were overfinanced and were allowed to deteriorate.

As agreed, for the [thirty-five] properties, we examined whether Freddie Mac accepted overvalued appraisals when it purchased the mortgages, which resulted in overfinancing (for purposes of this report, we defined overfinancing as a mortgage purchase that exposed Freddie Mac to more risk of loss than it had knowingly accepted); had in effect a loan servicing process in the years after the mortgage purchase that protected it against additional risk; and has new procedures to address the problems that resulted in overfinancing and servicing problems.¹⁵⁶

GAO examined the financing of the thirty-five properties, and, in 1991, released a report titled "Abuses in Multifamily Program Increase Exposure to Financial Losses," criticizing Freddie Mac's lending practices and requesting a formal investigation by the United States Attorney.¹⁵⁷ Prompted by Northwest Bronx organizers, the GAO investigation forced Freddie Mac to change its practices nationwide.¹⁵⁸ The GAO Report

150. Groarke, *supra* note 95, § 4, ¶ 2.

151. *See id.* ¶¶ 2-3.

152. *Id.*

153. *Id.* § 5, ¶ 1.

154. *Id.* § 7, ¶ 1.

155. *Id.*; U.S. GEN. ACCOUNTING OFFICE, *supra* note 146, at 1.

156. U.S. GEN. ACCOUNTING OFFICE, *supra* note 146, at 1-2 (emphasis added).

157. *Id.* at 2.

158. *See* Groarke, *supra* note 95, § 7.

concluded:

Because of weak controls, Freddie Mac did not detect patterns of inaccurate and incomplete information in the appraisals and reports on the physical and financial condition of the properties that were provided by seller/servicers. As a result, Freddie Mac overfinanced [twenty-seven] of the [thirty-five] properties by about [twenty] percent of its total investment in them, or \$5.4 million, and increased opportunities for fraud and program abuse to occur. In this regard, we have referred certain matters discussed in this report to the [United States] Attorney for appropriate action The internal control weaknesses we identified have also been found in other reviews of Freddie Mac's multifamily program nationwide. In response to these weaknesses as well as to its financial losses, Freddie Mac suspended purchases in its major multifamily program in September 1990. It is currently developing new procedures for the multi-family program and will resume purchases when it determines that these procedures are adequate to prevent problems in the future [U]nless Freddie Mac develops additional controls to ensure that it makes decisions on the basis of accurate and complete information, it will continue to be exposed to program abuse and avoidable financial losses.¹⁵⁹

Northwest Bronx's campaign and subsequent action by Congress and the GAO forced Freddie Mac to become more selective about financing. Freddie Mac altered its underwriting criteria, lowering the loan to value ratio, and instituted more stringent certifications and reporting requirements.¹⁶⁰ In 1990, also in response, Freddie Mac established a comprehensive Mortgage Fraud division.¹⁶¹ The numerous foreclosures that resulted from Freddie Mac's change in enforcement led to a new campaign, whereby community groups negotiated with Freddie Mac to sell foreclosed properties directly to tenants, CDCs or, at a minimum, reputable landlords.¹⁶² In response to Northwest Bronx's ongoing pressure and direct actions, in 1992 Freddie Mac created its own "exclusionary list" of problem landlords.¹⁶³ The success of the campaign required an understanding of complex housing issues: how a distant government-financed entity, Freddie Mac, affected the quality and affordability of apartments in the Bronx. The Freddie Mac campaign provided new strategic and leadership-building tools to Northwest Bronx and served as a

159. See U.S. GEN. ACCOUNTING OFFICE, *supra* note 146, at 10-11.

160. *Id.*

161. Groarke, *supra* note 95, § 9, ¶ 3; Kenneth Howe, *Home-Loan Fraud Hits the Big Time*, S.F. CHRON., Aug. 24, 1992, at B1.

162. See Groarke, *supra* note 95, § 6.

163. *Id.* § 6, ¶ 5.

model for future engagement with government agencies like HPD.

*B. Northwest Bronx Redefines Organizing*¹⁶⁴

Mary Dailey, Northwest Bronx's former Executive Director, highlighted the lessons learned from the various campaigns.¹⁶⁵ According to Dailey, effective community organizing is measured by evaluating the grassroots leaders' expertise on the policy applications of those issues that first attracted them to a given group.¹⁶⁶ With this framework, Northwest Bronx has developed tenant leaders to address complex real estate issues.¹⁶⁷ According to Dailey, organizing becomes a "process that distills issues from a broader problem and identifies decision makers who have influence or control over policies that can be changed to improve or reverse aspects of the broader problem."¹⁶⁸ Indeed,

while only a small percentage of the tenants that an organization like Northwest Bronx interacts with will develop this level of expertise, the organization's ability to win is anchored in its ability to demonstrate that real people with real problems can name solutions. Therefore, the organizing process is dependent upon constantly searching for new members who have both the inclination and potential to become respected and knowledgeable leaders.¹⁶⁹

Northwest Bronx's evolution in its organizing practices paralleled changes in its internal politics and organization. For most of the 1970s and 1980s, Northwest Bronx's governance structure resembled that of a corporation with a centralized Board of Directors and executive committee.¹⁷⁰ Northwest Bronx's governance body consisted of ten neighborhood associations and six clergy seats.¹⁷¹ The most important level of identification was the neighborhood association's relationship to Northwest Bronx.¹⁷² Each neighborhood association operated largely independently from the others and from Northwest Bronx's Board of Directors and Executive Director.¹⁷³ Each neighborhood association sent one

164. The facts in this Section are from various interviews with Mary Dailey.

165. Mary Dailey, hand-out, *Lessons from Northwest Bronx Freddie Mac Campaign for Today*, Oct. 14, 2003.

166. *Id.*; Telephone Interview with Mary Dailey, former Executive Director, Northwest Bronx, in New York, NY (July 22, 2005).

167. Interview with Mary Dailey, *supra* note 166.

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

representative to the Board.¹⁷⁴ The association representative operated within a traditional framework, serving as liaison between the Board and the neighborhood association.¹⁷⁵ The neighborhood association carried on most of its business without regard to the larger platform or agenda of Northwest Bronx as a coalition.¹⁷⁶ Although designed to be committees of the Board of Directors, the issue committees of Northwest Bronx functioned as independent committees and operated in whatever way the more powerful neighborhood associations and congregations saw fit, with some neighborhood associations contributing to many issue committees and others contributing to few or none.¹⁷⁷

The organization was competitive internally and there were often tensions between representatives of the neighborhood associations on the Northwest Bronx Board and the neighborhood association presidents.¹⁷⁸ These two parties saw their roles as opposed to one another.¹⁷⁹ Issue campaigns operated largely by putting neighborhood associations in tandem rather than through a collective planning process.¹⁸⁰ Staff organizers identified the issues and created temporary committees to deal with problems as they emerged.¹⁸¹ The representative looked to maximize and buy into the broader Northwest Bronx agenda and activities, while the neighborhood association president looked to maximize the amount of resources that could be drawn from Northwest Bronx into individual neighborhoods.¹⁸² The Northwest Bronx Board, on the other hand, was left to deal with organizational problems, including conflicts between the staff, leadership, and membership.¹⁸³

In contrast, the Northwest Bronx of today is a closely-knit federation of ten neighborhood associations, over twenty local congregations, and a youth affiliate, Sistas & Brothas United (SBU).¹⁸⁴ The membership totals over 4,000 Bronx residents.¹⁸⁵

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. Interview with James Mumm, current Executive Director of Northwest Bronx, in New York, NY (June 30, 2005).

Northwest Bronx serves a population of approximately 400,000 with half of that population being immigrants.¹⁸⁶ In New York, Northwest Bronx is second to ACORN in community organizing scale and is one of the largest neighborhood-based community organizing groups in the country, with an organizing budget of over one million dollars.¹⁸⁷ Although Northwest Bronx has expanded its reach and now addresses education, land use, and immigration reform issues, housing organizing continues to be its focus.¹⁸⁸ As in the past, Northwest Bronx's mission in housing organizing is to target a group of major problem owners and to seek reforms in both industry standards and HPD's code enforcement and intervention practices.

In the 1990s, the organization also began to reconsider its focus on leadership.¹⁸⁹ In 1995, during a strategic planning session, the Board of Directors decided to take affirmative steps to make decision-making more transparent and integrate more members into the decision-making process.¹⁹⁰ In the late 1990s, the Board and senior staff created a core leadership team to guide the organization, bringing in both the representatives and presidents of the neighborhood associations, as well as other leaders from outside the traditional hierarchy of the affiliated associations and groups.¹⁹¹ The executive director and staff recommend individual members to the core leadership team.¹⁹² Further, Northwest Bronx holds strategic planning meetings three to eight times a year, and during the sessions the executive director seeks recommendations from the staff.¹⁹³ Currently, the core leadership team consists of about thirty members.¹⁹⁴ The elastic nature of the core leadership team has allowed for greater buy in and more solidarity between neighborhoods and individual leaders, and across issue areas.¹⁹⁵ The principle behind the core leadership team matched Northwest Bronx's evolving philosophy

186. *Id.*

187. *Id.*

188. Interview with Rinku Sen, Publisher, Color Lines/Applied Research Ctr., in New York, NY (Sept. 3, 2003). The Bronx remains the borough with the lowest ownership rate in New York City. BHALLA, ET AL., *supra* note 93, at 11, Table 11-2.

189. Interview with James Mumm, *supra* note 185; Interview with Mary Dailey, *supra* note 166.

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

of increasing and diversifying responsibilities, as well as developing new leadership.¹⁹⁶ Northwest Bronx's message—"The Coalition is the neighborhoods – the neighborhoods are the Coalition"—was easier for members to experience and exercise through the open structures that allowed for cross-neighborhood training and problem-solving.¹⁹⁷ The core leadership team evaluated the organization as a whole and looked at issues of participation and representation.¹⁹⁸ The organization created problem-oriented committees to deal with both the external and internal dynamics of the organization.¹⁹⁹ When needed, task forces from the core leadership team, not just members of the Board, defined and solved organizational problems, allowing for a greater balance of interests and skills and for diverse combinations of experiences and politics.²⁰⁰

One internal issue that the leadership team has had to address is the adequacy of representation across racial and ethnic lines within the leadership of the organization.²⁰¹ Despite the fact that the vast majority of the membership base is Black and Latino, Northwest Bronx has struggled to integrate people of color into its leadership and senior staff. In 2004, the core leadership team recommended that the neighborhood associations that comprise Northwest Bronx change their governing bylaws to incorporate a representation clause where each affiliate's Board of Directors had to reflect the diversity of the neighborhood it served.²⁰² The bylaws set forth that "[i]n electing the Board of Directors the general membership will strive to nominate members who represent the diversity of the broader community."²⁰³ In post-Alinsky character, the recommended bylaws mandated a mission statement for the neighborhood associations which affirmatively integrated racial justice: "We choose to address issues that we believe promote social, economic, environmental, and racial justice

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

200. Telephone Interview with Mary Dailey, former Executive Director of Northwest Bronx, in New York, NY (Aug. 3, 2005).

201. Northwest Bronx is not unlike other Alinsky organizations. Although the membership base has often been made up of people of color, Alinsky organizations historically have been led by White staff and White leaders. See SEN, *supra* note 104, at xlix.

202. Interview with James Mumm, *supra* note 185.

203. Template for Revisions of Neighborhood Association, Sample By-Laws at 4 [hereinafter Sample By-Laws] (on file with author).

for our families, our communities, and ourselves.”²⁰⁴ The bylaws also incorporated language about guaranteeing translation services when needed in an attempt to address the needs of immigrants.²⁰⁵

Under Northwest Bronx’s present structure, hierarchy and strict lines of accountability are less well defined but actual accountability is stronger. Under this system, Northwest Bronx consists of a greater web of relationships, holding a coalition together and sharing a common vision for building it. Northwest Bronx’s center incorporates the leadership team, staff, and Board which, much like HPD’s DAA, has become the hub of information pooling and dissemination. Northwest Bronx’s core leadership team guides the organization and develops procedures for holding the staff and members accountable when issues of hierarchy and representation need to be addressed.²⁰⁶ The neighborhood associations and congregations that report to and sustain the center are linked by issues and interests, not solely by geography.²⁰⁷ While each affiliate does not have the same structure, some are neighborhood associations and others are congregations, each organization is accountable to the others through the constant focus on information sharing via the core and the dynamic nature of the issues that concern and affect the membership.²⁰⁸

Northwest Bronx’s capacity to learn and adapt to both internal and external realities has allowed it to evolve into a grassroots organization that, in post-Alinsky character, integrates a pragmatic ideology into its organizing practices and collaborates and innovates with government in public problem-solving while developing independent systems of accountability to deal with its internal and external realities. However, similar to its target, HPD, Northwest Bronx’s transformation is not yet complete. Although Northwest Bronx’s internal changes have allowed it to become a more pragmatic and democratic organization, questions persist concerning the adequacy of representation and the distribution of skill and training to the general membership.²⁰⁹ While members of the staff and leadership have become

204. *Id.* at 1. Arguably, such direct attempts at addressing the adequacy of racial and ethnic representation would never have been imagined by Saul Alinsky.

205. *See id.* at 2.

206. *See id.*

207. *See id.*

208. *See id.*; Northwest Bronx Organizational chart (on file with author).

209. Interview with James Mumm, *supra* note 185.

sophisticated organizers and negotiators, the general membership remains to be fully integrated into and informed of the organization's new practices and evolving relationships with targets and partners. Ironically, Northwest Bronx's evolving relationship with HPD might force it to more fully and materially involve its base in various complex levels of problem-solving.

III. Northwest Bronx's and HPD's Deliberative Practices and Possibilities

A. Northwest Bronx and HPD at the Cross-Roads

HPD's and Northwest Bronx's dealings are complex and ongoing. Throughout their co-evolution there have been moments of contention as well as agreement. Over the years, HPD's and Northwest Bronx's breaks from past practices have allowed for new forms of collaboration and problem-solving. HPD's restructuring around DAA, the creation of the Third Party Transfer Initiative and the neighborhood preservation consultant program, in combination with federal incentive programs, have all played out at the grassroots level. In order to fulfill HPD's charge with regard to tax lien sales and Third Party Transfers, for example, DAA created systems for data collection which explicitly relied on CBOs.²¹⁰ Local government learned that it needed local knowledge to exercise its new roles. Throughout this process, Northwest Bronx has been undergoing its own transformation. HPD's hesitant openness to Northwest Bronx's feedback and ideas has allowed Northwest Bronx to build stronger and more motivated tenant leaders as the leaders get to witness more results for their efforts.²¹¹ The result is a new form of engagement which integrates more deliberative practices, generates norms which are informed by both government and interested and motivated stakeholders, and produces a more comprehensive understanding of the factors behind public problems.

The CDCs are examples of government-led community development programs that facilitated greater interaction and incentivized a new form of engagement between government and community groups. In the 1980s, members of the Northwest Bronx used federal funds to create independent CDCs to build and maintain affordable housing in the Northwest Bronx.²¹² These

210. Interview with Mary Dailey, *supra* note 83.

211. *Id.*

212. Randy Stoecker, Community Development and Community Organizing:

CDCs have financed, acquired, rehabilitated, and managed distressed properties that would otherwise have languished in the city's *in rem* stock.²¹³ The most active of these Northwest Bronx CDCs are Fordham Bedford Housing Corporation, Mount Hope Housing Company, and the University Neighborhood Housing Program.²¹⁴ Fordham Bedford Housing Corporation and Mount Hope Housing Company, for example, have become close allies of the Enterprise Foundation, the non-profit intermediary. In 2002, the Enterprise Foundation worked with these two CDCs to rehabilitate nine buildings (a total of sixteen apartments) through a Neighborhood Homes Program.²¹⁵ By providing a loan against the proceeds from the eventual sale of the house, the Enterprise Foundation helped Northwest Bronx and its affiliated CDCs meet their pre-development and construction costs.²¹⁶ Intermediaries like the Enterprise Foundation have provided Northwest Bronx's affiliated but independent CDCs with the technical assistance and management training to maintain property and comply with local and federal compliance requirements.²¹⁷ Intermediaries also assisted Northwest Bronx with restructuring CDCs as limited liability corporations, formed to hold property, with the CBO

Apple and Oranges? Chicken and Egg?, in *FROM ACT UP TO THE WTO: URBAN PROTEST AND COMMUNITY BUILDING IN THE ERA OF GLOBALIZATION* 387 (Benjamin Shepard & Ronald Hayduk eds., 2002). The developments in national housing policy, particularly the turn toward public-private partnerships, helped fuel the CDCs throughout the 1980s and 1990s. See JONNES, *supra* note 3, at 389-97. As money became available through legislative incentives such as the Low Income Housing Tax Credit program, foundations and non-profits with government sponsorships sprung up around the country to channel private funding and technical assistance to community-based housing organizations, like the CDCs created by Northwest Bronx. *Id.* at 397.

213. Northwest Bronx's creation of distinct entities to hold and manage housing stock is similar to the arrangement by the Industrial Areas Foundations (IAF) of Project Quest, a job training program in San Antonio, Texas. As discussed by Paul Osterman:

The IAF does not want to be in the service-providing business and QUEST was organized as a distinct entity with its own staff. The board of QUEST comes from the IAF organizations, as well as members of the local business community, and the IAF organizations play a central role in obtaining continued funding for QUEST and in promoting it and protecting it. [IAF organizations] were very careful not to treat QUEST as a patronage operation or source of jobs for their members as has happened with some other efforts organized by community-based groups.

Osterman, *supra* note 11, at 254.

214. May 20 Meeting, *supra* note 93.

215. BHALLA ET AL., *supra* note 61, at 408.

216. *Id.*

217. Interview with Lydia Tom, *supra* note 68.

sometimes serving as a general partner and overseer.²¹⁸ Typically, Northwest Bronx strategizes and negotiates with the CDCs on how to implement housing projects, assessing how best to leverage Northwest Bronx's organizing tactics to achieve the goal.²¹⁹ The CDCs, in turn, hold the contractual arrangements with government, private parties, and intermediaries to develop and maintain the properties and projects.²²⁰

The development of independent CDCs is just one example of how Northwest Bronx has chosen to deal with its evolving, multifaceted relationship with the government.²²¹ As noted, Northwest Bronx and the independent neighborhood associations that comprise the coalition also served as neighborhood preservation consultants to HPD.²²² Through the neighborhood preservation consultant contracts, HPD's intermediary non-profits like Neighborhood Restore have equipped Northwest Bronx with the basic technical assistance to survey and assess property conditions.²²³ The neighborhood preservation consultant contracts linked Northwest Bronx and its various components directly with HPD's bureaucracy. Under these arrangements, Northwest Bronx organizers participated in identifying and solving street-level housing problems: organizers gathered data on the conditions of property, distributed information, negotiated with tenants and owners, and intervened as representatives of HPD. Through such programs as the neighborhood preservation consultant contracts and the CDC initiatives, Northwest Bronx has found itself increasingly involved in HPD's traditional government business, all the while garnering power, identifying new problems, and negotiating with HPD clearer solutions.²²⁴

B. Deliberative Possibilities and "Mortgagizing"

HPD and Northwest Bronx have discovered they have

218. *Id.*

219. Interview with Mary Dailey, *supra* note 83.

220. *Id.*

221. Throughout this process, Northwest Bronx has learned to maintain its focus on housing organizing even when incentivized by local and federal housing authorities to become a landlord and service-provider. *Id.* Indeed, Northwest Bronx feared that becoming a landlord would compromise its ability to represent the interests of its membership and maintain its organizing focus. *Id.*

222. NPCP List (April 2003) (on file with author).

223. See BHALLA ET AL., *supra* note 61, at 405 (noting the assistance provided once buildings are transferred to Neighborhood Restore).

224. See Interview with James Mumm, *supra* note 185; Interview with Mary Dailey, *supra* note 166; Appendix 1.

overlapping interests; yet, contracts and formal arrangements have not been the sole vehicle for the development of their interactions.

Northwest Bronx has led a charge to persuade HPD and lenders into disciplining problem landlords who refuse to properly maintain their buildings, a campaign which organizers have termed "mortgagizing."²²⁵ Similar to the Freddie Mac campaign, Northwest Bronx argues that the "good repair" clause in mortgage contracts allows banks to threaten foreclosure for those landlords who do not maintain their buildings.²²⁶ Presumably, banks are not eager to be publicly associated with known problem landlords, and the banks must be concerned about the trouble that CBOs can cause under the provisions of the Reinvestment Act.

Beyond the issues of the banks' reputations and the community goodwill that aids them in Reinvestment Act reviews, the deeper and more fundamental policy concern that Northwest Bronx has exposed is the possibility that banks have been ignoring building conditions during a speculative real estate bubble at their own peril and the peril of the housing finance market. While inflation-adjusted prices have increased by more than sixty percent for Bronx multi-family units since 1995, rents have increased at a much more modest rate.²²⁷ However, plummeting interest rates have allowed financing expenses to remain relatively constant even as prices and borrowing have soared, allowing landlords to avoid significant cash flow problems.²²⁸ This creates a precarious situation given that mortgage rates have already started to rise and are set to rise further.²²⁹ Landlords who have adjustable rate financing will face a cash flow squeeze as their mortgage expenses rise and the housing market dips. Only corresponding increases in rent will keep the net operating income stable, which leaves two unpleasant alternatives. Either rents will have to rise with mortgage expenses, pricing out those most in need of affordable housing, or landlords will face pressure to defer

225. Interview with Luisa Pacheco, Housing Organizer, Northwest Bronx, in New York, NY (Feb. 20, 2004).

226. *Id.* In 2004, for example, Northwest Bronx lobbied senior executives of Washington Mutual and held demonstrations outside of senior management meetings to bring attention to problem landlords whose properties are financed by the bank. *Id.*

227. JAMES BUCKLEY & CATHERINE O'LEARY, UNIVERSITY NEIGHBORHOOD PROGRAM, A REAL ESTATE BUBBLE IN THE BRONX?: A STUDY OF TRENDS IN BRONX MULTIFAMILY HOUSING PRICING, 1985 TO 2001, Appendix Charts 1 & 2 (2003), available at <http://www.unhp.org/pdf/bubble.pdf>.

228. *See id.* at Appendix Chart 3.

229. May 20 Meeting, *supra* note 125.

maintenance and tax expenditures in order to maintain the same net operating income. The available data does little to support the notion that the rental market in the Bronx can support significant increases in mortgage expenses.²³⁰ Such insight should be valuable to lenders and HPD, especially given its anti-abandonment and prevention mandates.

HPD increasingly is aware of Northwest Bronx's vital role as a street-level monitor of building conditions and market trends. One telling example of how HPD acknowledges Northwest Bronx's importance is HPD's recent interventions on behalf of Northwest Bronx. Northwest Bronx recently was sued by Stephen Tobia, alleged owner of various buildings in the Northwest Bronx area, for trespass, libel, and tortious interference with Tobia's bank dealings.²³¹ Tobia asserted that Northwest Bronx's tenant organizing efforts attempted to damage his relationship with HPD and the banks in the hope that Northwest Bronx may ultimately assume ownership of the properties.²³² In recent years, Northwest Bronx began organizing tenants in the various buildings allegedly held by Tobia's realty companies, but which Northwest Bronx contends are really owned by Frank Palazzolo, listed as one of New York City's worst landlords, with the buildings linked to him having a total of 19,000 violations.²³³ Northwest Bronx contacted the banks, urging them to inspect the properties and force repairs

230. See BUCKLEY & O'LEARY, *supra* note 227, at 8-9 ("[T]he lowest income households pay the highest percentage of income on rent."); BHALLA ET AL., *supra* note 61, at 315 (noting that the Bronx has the lowest modern household income of any borough in New York); Michael H. Schill & Glynis Daniels, *State of New York City's Housing and Neighborhoods: An Overview of Recent Trends*, Fed. Reserve Bank of N.Y. ECON. POL'Y REV. 5, 12 (June 2003) (discussing financial distress in the context of tax delinquencies). In a report analyzing data through 2001, University Neighborhood Preservation Program (UNHP), one of the CDCs created by Northwest Bronx to manage and finance housing, observed that average rents in the Bronx were the lowest in New York City, but Bronx residents have the highest median rent-to-income ratio in the city, which means that Bronx residents spend a large proportion of their income to maintain a roof over their heads. BUCKLEY & O'LEARY, *supra* note 227, at 8. The Bronx has the highest severe rent-to-income burden with 29.1% of households spending more than fifty percent of their income on rent. *Id.* at 9. As of 2002, tax delinquency rates in the Bronx were beginning to rise after years of decline. See May 20 Meeting, *supra* note 125. Long-term property tax delinquencies and high lien-to-value ratios are clear indicators of potential fiscal distress and property abandonment. *Id.*

231. Verified Complaint at 4-8, *New Line Realty V Corp. v. United Comms. of Univ. Heights*, No. 03-20393 (N.Y. Sup. Ct. Dec. 19, 2003) (on file with author).

232. Affidavit of Stephen Tobia at 3, ¶ 5, *New Line Realty V Corp. v. United Comms. Of Univ. Heights*, No. 03-20393 (N.Y. Sup. Ct. Dec. 9, 2003) (on file with author).

233. David Gonzalez, *The Landlords, or Somebody, Striking Back*, N.Y. TIMES, Mar. 23, 2004, at B1.

before refinancing their mortgages at a lower rate.²³⁴ Ultimately, according to Tobia, Northwest Bronx's efforts forced the lender to deny Tobia's request to refinance the mortgages at a lower rate.²³⁵ Northwest Bronx's target was Frank Palazzolo.²³⁶ Yet, in his claim, Tobia alleged that he, not Palazzolo, was sole officer, shareholder, and director of the property holding corporations.²³⁷ According to Tobia, Palazzolo did not have an ownership interest in the properties but held a pledge of stock of the corporations based on loans advanced.²³⁸ Tobia further alleged that organizers for Northwest Bronx held themselves out as representatives of HPD, without HPD's consent.²³⁹

Both HPD and Northwest Bronx insisted that Palazzolo was the controlling party behind the properties Tobia alleged were his because Palazzolo represented the realty corporations in dealings with the banks.²⁴⁰ HPD, who has sued Palazzolo in the past for extensive code violations, took the unprecedented step of issuing a vast subpoena against Palazzolo seeking countless corporate details related to the properties in order to assess control and ownership of the realty corporations.²⁴¹ HPD submitted affidavits in support of Northwest Bronx detailing their contractual relationships, and Michael Bosnick, HPD's Assistant Commissioner for Anti-Abandonment, has provided statements on Northwest Bronx's behalf.²⁴²

Despite this promising collaboration in bringing information about problem landlords to the attention of local government and lenders, and Northwest Bronx's various arrangements and entanglements with HPD, Northwest Bronx continues to demand reform. Northwest Bronx is critical of what it deems to be HPD's lax enforcement of the housing code, of HPD's hesitancy to coordinate with other city agencies to stop providing rental subsidies to the worst landlords, and its practice of allowing problem landlords to sign voluntary repair agreements instead of

234. *Id.* at B6.

235. Tobia Affidavit, *supra* note 232, at 17, ¶ 38.

236. *See* Gonzalez, *supra* note 233, at B6 ("The groups also painted Mr. Palazzolo as the borough's leading slumlord.").

237. *See* Verified Complaint, *supra* note 231, at 3, ¶¶ 5-12; Tobia Affidavit, *supra* note 232, at 4, ¶ 6.

238. Tobia Affidavit, *supra* note 232, at 4, ¶ 6; *see* Gonzalez, *supra* note 233, at B6 (discussing how Palazzolo helped acquire the property).

239. *See* Tobia Affidavit, *supra* note 232, at 6, ¶ 11a.

240. Gonzalez, *supra* note 233, at B6.

241. *Id.*

242. Interview with Michael Bosnick, *supra* note 62.

pursuing litigation.²⁴³

C. *Deliberative Practices and Code Enforcement's Incomplete Reform*²⁴⁴

1. Overview of HPD's Code Enforcement Rules and Norms

HPD's changing and complex relationship with community groups and its evolving role as an administrator and regulator cannot be fully understood without understanding how HPD executes and enforces the housing code through its Department of Code Enforcement. Indeed, an overview of its approach to code enforcement illustrates some of HPD's complicated dealings with CBO's and its own internal inconsistencies.

The New York City Charter charges HPD with enforcing the housing maintenance code. The code states:

The sound enforcement of minimum housing standards is essential: to preserve decent housing; to prevent adequate or salvageable housing from deteriorating to the point where it can no longer be reclaimed; and to bring about the basic decencies and minimal standards of healthful living in already deteriorated dwellings, which, although no longer salvageable, must serve as habitations until they can be replaced.²⁴⁵

Violations of the code are referred to as class "A," "B," or "C" violations, corresponding to non-hazardous, hazardous, and immediately hazardous conditions, respectively.²⁴⁶ Once a housing inspector from HPD determines that there is a violation, HPD must serve the landlord with a written notice of violation (NOV). Non-hazardous or "A" violations must be corrected within ninety days of the NOV.²⁴⁷ Examples of "A" violations include the lack of a peephole in the entrance door and an improper seat for a water closet.²⁴⁸ Hazardous or "B" violations must be corrected within

243. May 20 Meeting, *supra* note 93; Interview with Mary Dailey, *supra* note 83. Indeed, Northwest Bronx is pursuing an entire new administrative law process that would allow the city to directly place liens for housing maintenance violations instead of relying exclusively on housing court litigation. Interview with Mary Dailey, *supra* note 83.

244. Much of this Section was obtained from interviews and research conducted by Douglas Jaffe.

245. N.Y.C., NY, HOUSING MAINTENANCE CODE § 27-2002 (1999), *available at* <http://www.housingnyc.com/html/resources/hmc/hmc.htm>.

246. *See id.* § 27-2115(d) (mandating the categorization of violations).

247. *See id.* § 27-2115(c). Failure to correct non-hazardous violations within ninety days is punishable by a fine of ten dollars to fifty dollars. *Id.*

248. OFFICE OF THE COMPTROLLER, AUDIT REPORT OF THE NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT'S ENFORCEMENT OF THE HOUSING MAINTENANCE CODE (1995), Summary of the Three Classes of

thirty days of the mailing of the NOV.²⁴⁹ Examples of "B" violations include inadequate lighting for public areas and unlawful bars or gates on windows opening to fire escapes.²⁵⁰ Immediately hazardous or "C" violations include lack of heat and hot water, rodents, and peeling lead paint where children reside.²⁵¹ Landlords who have corrected any violation are required to certify to HPD that the corrections have been made.²⁵²

The majority of HPD's code enforcement inspections are in response to individual tenant complaints.²⁵³ Tenant complaints can be registered by calling the city's Citizen Service Initiative or by calling HPD's hotline.²⁵⁴ Upon receiving a call, an HPD specialist gives the tenant a complaint number and routes the complaint to the proper Borough Code Enforcement Office.²⁵⁵ Other complaints are lodged by tenants who complain directly to the Borough Code Enforcement Office.²⁵⁶ In either case, the Department of Code Enforcement is charged with dispatching an inspector to the premises to identify violations and write NOVs.²⁵⁷

A Tenant Petition Inspection (TPI) is an additional means for requesting code enforcement action. TPIs have been available to organized tenants associations and community-based organizations like Northwest Bronx throughout HPD's history.²⁵⁸ While the form changes slightly with each incarnation, generally a TPI is a tenant petition process initiated by the filing of a

Housing Code Violations 1, available at <http://www.tenant.net/Oversight/Codeenf/codetoc.html> [hereinafter 1995 AUDIT].

249. *Id.* Failure to correct hazardous violations with thirty days is punishable by a fine of twenty-five dollars to one hundred dollars, plus ten dollars per day for every day beyond thirty. HOUSING MAINTENANCE CODE § 27-2115(a); § 27-115(c).

250. 1995 AUDIT, *supra* note 248, at Summary of the Three Classes of Housing Code Violations 2.

251. ASSOCIATION FOR NEIGHBORHOOD AND HOUSING DEVELOPMENT, INC., INEQUITABLE ENFORCEMENT: THE CRISIS OF HOUSING CODE ENFORCEMENT IN NEW YORK CITY 15, available at http://pubadvocate.NYC.gov/policy/pdfs/InequitableEnforcement_000.pdf. These violations must be corrected within twenty-four hours or a penalty of \$50 to \$150, plus \$50 to \$125 per day that the violation goes uncorrected. HOUSING MAINTENANCE CODE § 27-115(a); § 27-115(c).

252. 1995 AUDIT, *supra* note 248, at Summary of the Three Classes of Housing Code Violations 2.

253. ASSOCIATION FOR NEIGHBORHOOD AND HOUSING DEVELOPMENT, *supra* note 251, at 4.

254. *Id.* at 15.

255. *Id.*

256. *Id.*

257. *Id.*

258. *See id.* at 20 ("For many years HPD had a policy of responding to tenant initiated petitions.").

complaint.²⁵⁹ The petition results in HPD conducting a roof to cellar inspection of the entire building, as opposed to the more typical inspection of a single unit for specific violations.²⁶⁰ In both cases there is often disagreement between HPD officials and CBOs on whether code inspectors should look for and write up violations not included in the initial complaint.²⁶¹ In a typical inspection, inspectors are only required to check for the violations reported and five additional violations: illegal obstructions of fire escapes, lack of child-proof window guards, doors requiring a key to exit from the inside, lead-based paint hazards, and smoke-detectors.²⁶² Once the NOV is written, it is sent to the building owners who must correct the violation in the statutorily allotted time.²⁶³ Once the violation is remedied, the owner must certify that the repair has been made.²⁶⁴ When owners fail to make required repairs, the matter may be referred to HPD's Housing Litigation Division.²⁶⁵ The Litigation Division or the tenants may bring an action in housing court seeking orders forcing the landlord to comply and make repairs.²⁶⁶ Throughout this process, DAA is available to assist landlords with technical matters, financing, and compliance requirements.²⁶⁷ Only if conditions become severe and the landlord is uncooperative does the Litigation Division ask a court to appoint a receiver to collect rents and operate the building while necessary repairs are made.²⁶⁸

2. The Ongoing Critique

Over the past decade, HPD's code enforcement processes have been heavily criticized. A series of three reports sheds light on HPD's continuous code enforcement problems. The first report, *Audit Report of the New York City Department of Housing*

259. *Id.* at 19.

260. *Id.*

261. *See id.* at 16.

262. *Id.* at 15

263. *Id.* at 15-16.

264. *Id.* at 16. Code inspectors then have seventy days to perform follow-up inspections before it is deemed corrected. If the landlord has falsely certified corrections, then an additional penalty applies. *Id.* In cases where the violation requires immediate attention, the Emergency Repair Program (ERP) may be called upon to execute repairs at the owner's expense. *Id.* Once HPD's Department of Finance bills the owners, they have sixty days to make payment before a lien is placed on the property. *Id.*

265. *Id.*

266. *Id.*

267. *Id.* at 19.

268. *Id.* at 16.

Preservation and Development's Enforcement of the Housing Maintenance Code, was issued in 1995 by Comptroller Alan Hevesi, an independently elected city official.²⁶⁹ In June 2002, Comptroller William C. Thompson issued a follow-up report to assess the progress made on the recommendations of the Hevesi audit.²⁷⁰ In 2004, the Association for Neighborhood and Housing Development (ANHD), of which Northwest Bronx is a member, issued another report analyzing HPD's code enforcement practices.²⁷¹

The most disturbing finding of the 1995 Audit was that HPD did not have any procedures in place to measure whether it was effectively enforcing the code.²⁷² HPD was tracking the raw number of inspections conducted and not the outcomes of those inspections.²⁷³ For example, while HPD was measuring the number of complaints received, inspections performed, and violations written, it was not tracking basic outcome measurements.²⁷⁴ Housing organizers like Northwest Bronx expected HPD to include in its code enforcement system indicators such as the percentage of violations corrected and the average time for correction.²⁷⁵ When the Comptroller's office surveyed a sample of immediately hazardous or "C" violations from the prior year (excluding heat and hot water complaints) only fifty-seven percent had been corrected.²⁷⁶ The 1995 Audit concluded that because HPD had no formal process for monitoring the outcome after violation notices were issued, HPD wasted resources by continually reinspecting the same properties.²⁷⁷ Pressured by the 1995 Audit, Northwest Bronx, and other housing groups, HPD increased reinspections by forty-six percent between 1995 and 2001, from 275,901 to 403,591.²⁷⁸ Furthermore, reinspection rates of violations, as certified by building owners, increased from

269. 1995 AUDIT, *supra* note 248.

270. OFFICE OF THE COMPTROLLER, FOLLOW-UP AUDIT REPORT ON THE ENFORCEMENT OF THE HOUSING MAINTENANCE CODE BY THE DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT (2002), available at http://www.comptroller.nyc.gov/bureaus/audit/pdf_files/mH01_176F.pdf [hereinafter 2002 FOLLOW-UP REPORT].

271. ASSOCIATION FOR NEIGHBORHOOD AND HOUSING DEVELOPMENT, *supra* note 251.

272. See 1995 AUDIT, *supra* note 248, at Findings and Recommendations 1.

273. *Id.*

274. *Id.*

275. *Id.*

276. *Id.* at Findings and Recommendations 10.

277. *Id.* at Findings and Recommendations 15-16.

278. 2002 FOLLOW-UP REPORT, *supra* note 270, at 18.

approximately ten percent in 1995 to 43.7% in fiscal year 2001.²⁷⁹ Even if HPD had adopted the recommendations of the reports to add better outcome measures, there were additional findings that pointed to enforcement problems. The owner correction certification process, for example, was completely inadequate, as evidenced by a false certification rate of more than twenty-eight percent.²⁸⁰

While not addressed in the Comptroller's office audits, the ANHD report also looked at disparities in enforcement patterns across neighborhoods.²⁸¹ The ANHD report found that while other boroughs were experiencing decreases in the number of maintenance deficiencies per building, the Bronx saw an increase of 13.4%.²⁸² The report described HPD's failure to adopt a systemic and targeted enforcement regime to preserve housing quality across all neighborhoods,²⁸³ specifically criticizing its lack of systemic approaches to a) ensure uniform enforcement throughout the city and b) deal with problem landlords who have histories of multiple buildings with many uncorrected violations.²⁸⁴ Northwest Bronx organizers argued that code enforcement failures should be of great concern to anti-abandonment officials at HPD,

279. *Id.* While significant increases in reinspection helped in assessing outcomes, HPD's published indicators still did not provide an accurate picture of code enforcement outcomes. The reason for this, as explained in the 1995 audit, was that HPD had many violations from previous years in its database and reinspections could clear old violations as well as current ones. See 1995 AUDIT, *supra* note 248, at Findings and Recommendations 15-16. It was impossible, therefore, to tell how many removed violations were recently issued violations versus years-old violations that were removed during new inspections.

280. ASSOCIATION FOR NEIGHBORHOOD AND HOUSING DEVELOPMENT, *supra* note 251, at 22-23. Owners who falsely certified corrections were not significantly deterred due to low rates of prosecution and insubstantial penalties. False certification carried a penalty of no more than \$250 above the normal accumulation of daily fines for uncorrected hazardous violations. The 1995 recommendation to increase penalties, as of today, has not been acted on by the New York City Council. The ANHD report also found HPD's fine collection practices to be inadequate. While HPD publishes the amount of fines it collects, it does not publish the amount of uncollected fines. HLD pursues litigation in order to adjudicate fines under the Housing Maintenance Code. As a result of low staffing numbers at HLD only some violators are pursued. Moreover, ANHD found that HPD collects only fifty percent of the fines awarded in default judgments. While housing departments in other cities, and other departments in New York City government, have the capacity to administratively adjudicate fines for violations, the state legislature has resisted calls to grant HPD such authority. While inadequate HPD reporting masks the size of this enforcement problem, clearly the cost of litigating uncorrected violations in housing court is a significant obstacle to enforcement. *Id.*

281. *Id.* at 9.

282. *Id.*

283. *Id.*

284. *Id.*

particularly given the possibility of a bursting real estate bubble and rising interest rates.²⁸⁵ Code enforcement was not only essential for HPD to preserve its mandate as regulator, but as the shift toward anti-abandonment and elimination of the *in rem* stock took place, code enforcement became an important source of information for DAA.²⁸⁶ For CBOs like Northwest Bronx, indicators of code violations are currency to track building conditions and are the only tangible evidence of delinquency that they can use in housing court.²⁸⁷

For HPD officials, however, housing code violations might be viewed as simply another data point in determining which buildings should undergo assessment. On one view, once DAA is aware that a building is distressed, writing additional violations is a needless expenditure of resources.²⁸⁸ Under HPD's recent anti-abandonment focused strategy, housing code violations were not essential for HPD to meet its goals.²⁸⁹ In fact, Northwest Bronx housing leaders have pointed out that HPD has decades-old open violations in its system that have never been closed because there is no effective process to clear violations as they are remedied.²⁹⁰ HPD instead has relied on the building assessments performed by DAA inspectors to determine the course of action for particular properties.²⁹¹ As is apparent from its code enforcement practices, HPD is still learning how to integrate its various parts.

3. Elaborating New Code Enforcement Norms

Given HPD's incomplete restructuring, Northwest Bronx

285. May 20 Meeting, *supra* note 125.

286. *Id.*

287. *Id.*; see ASSOCIATION FOR NEIGHBORHOOD AND HOUSING DEVELOPMENT, *supra* note 251, at 21.

288. Interview with Jerilyn Perine, *supra* note 64. In the 1995 Audit, HPD was criticized for repeatedly inspecting and writing the same NOV's without getting the underlying condition corrected. 1995 AUDIT, *supra* note 248, at Findings and Recommendations 15-16. In one example, the auditors found the same condition was inspected and NOV's were written fourteen times over a four and a half year period. *Id.*

289. May 20 Meeting, *supra* note 125.

290. *Id.*

291. Interview with Jerilyn Perine, *supra* note 64; Interview with Michael Bosnick, *supra* note 62; May 20 Meeting, *supra* note 125; see also Northwest Bronx Community and Clergy Coalition, Background on Northwest Bronx Proposal Re: TPIs, presented to Shaun Donovan, HPD Commissioner at meeting with Northwest Bronx housing leaders (May 27, 2004) ("Northwest Bronx's experience shows that the Division of Anti-Abandonment is most effective when working with cooperative, well-intentioned owners . . . DAA involvement in buildings with poor conditions is ineffective at best . . . and damaging at worst . . .") (on file with the author).

continues to pressure HPD to re-evaluate and revise its policies. In 2004 at a meeting with HPD, Northwest Bronx introduced a plan to address the inadequate enforcement of TPIs. The proposal stressed that HPD should grant code enforcement inspections at the request of tenant associations and community groups, that all code enforcement TPIs include dismissal of cured violations in addition to documentation of new ones, and that community groups be allowed to provide DAA lists of good or fair buildings with backlogs of old violations.²⁹²

HPD responded with a community-driven TPI plan of its own. HPD proposed an inspection system where CBOs would identify buildings and conduct initial assessments, collecting survey forms as part of the assessment.²⁹³ DAA then would visit identified buildings and re-survey the properties.²⁹⁴ DAA would make outreach attempts to landlords offering voluntary repair agreements.²⁹⁵ If after some time, subject to DAA discretion, DAA determined that the owner was not cooperating, the building would be referred to the Department of Code Enforcement.²⁹⁶ A team of inspectors from the Department of Code Enforcement would visit the building and cite violations.²⁹⁷ The inspectors would prioritize "C" violations and would write notice of "B" and "A" violations at the tenants' insistence.²⁹⁸ Inspectors would use TPIs as opportunities to conduct dismissal requests to remove old violations.²⁹⁹

While Northwest Bronx approved of certain measures outlined in HPD's TPI proposal, it also identified various problems.³⁰⁰ According to Northwest Bronx, HPD's proposal would treat all owners the same, regardless of the owner's track record.³⁰¹ Northwest Bronx insisted that buildings assessed as fair or poor be automatically referred to the Department of Code Enforcement if the owner was a known delinquent.³⁰² Northwest Bronx maintained that while DAA and CBOs could assist owners in fixing problems during this period, TPIs should not be

292. Background on Northwest Bronx Proposal Re: TPIs, *supra* note 291.

293. *Id.*

294. *Id.*

295. *Id.*

296. *Id.*

297. *Id.*

298. *Id.*

299. *Id.* The inspection reports would be available online.

300. *Id.*

301. *Id.*

302. *Id.*

deferred.³⁰³ Northwest Bronx argued that DAA was often too lenient with owners, in particular in disregarding HPD's own code enforcement criteria in building ratings.³⁰⁴ Organizers observed that DAA's involvement often resulted in repair and code enforcement delays, frustrating organizing efforts in the bargain.³⁰⁵

To substantiate its critique, Northwest Bronx tracked the compliance history of particular buildings to demonstrate how the DAA's and Code Enforcement's involvement in monitoring buildings with extensive code violations was "ineffective at best" and "damaging at worst."³⁰⁶ One example was 4301 Park Avenue in the Bronx.³⁰⁷ Northwest Bronx began organizing tenants in this building in February of 2002. Organizers found leaks, falling ceilings, and an unlocked front door, and categorized the building conditions as poor.³⁰⁸ Northwest Bronx requested a TPI.³⁰⁹ The building's tenant association further requested assistance from Washington Mutual, the mortgage holder, and the Department of Code Enforcement.³¹⁰ The DAA's own evaluation determined that the building was in fair condition and that there was no need for Code Enforcement intervention.³¹¹ It concluded that the building did not need a TPI.³¹² Washington Mutual conducted three inspections of its own in the spring of 2003.³¹³ The Washington Mutual inspections resulted in certain roof repair work. Although Northwest Bronx requested a TPI, the Department of Code Enforcement did not intervene except for certain court-ordered code inspections.³¹⁴ As of 2005, the building had seen some repairs, but tenants and organizers continue to insist that the work is incomplete and inconsistent.³¹⁵

To Northwest Bronx organizers, it is clear that HPD, lenders, and tenants all have benefited from thorough documentation of building conditions whenever it has been available. Left to itself,

303. *Id.*

304. *Id.*

305. *Id.*

306. *Id.*

307. *Id.*

308. *Id.*

309. *Id.*

310. *Id.*

311. *Id.*

312. *Id.*

313. *Id.*

314. *Id.*

315. *Id.*

however, HPD's own system produced a database of code violations which was not a precise tool for evaluating overall building conditions. Rather, it was at best a patchwork of DAA building assessments that sometimes accurately pictured building conditions but did not carry the legal force of a code violation.³¹⁶ Northwest Bronx thus has insisted that HPD create a more precise and comprehensive accounting system of building conditions, a system in which stakeholders like Northwest Bronx would play an important role.³¹⁷

Recently, Northwest Bronx and other community-based groups negotiated a comprehensive inspection program which integrates elements of both the CBO and government plans. In February 2005, after various negotiations, a coalition of housing advocates led by ANHD and community groups including Northwest Bronx reached a memorandum of understanding (MOU) with HPD.³¹⁸

The MOU, authorized by the HPD Commissioner and the New York City Council Speaker, provides that within each City Council District buildings would be selected for building-wide inspections.³¹⁹ A building would be designated for inspection based on class "B" and "C" violations per unit, outstanding fines and/or whether it has been assessed in "poor condition" by HPD.³²⁰ HPD would provide the list of selected buildings to the Council Member or the designated CBO.³²¹ The MOU gives the City Council Member and designated CBOs two weeks to narrow the list to "fifteen buildings containing a maximum of 200 units that warrant a building-wide inspection."³²² After the CBO and City Council Member designate the buildings, HPD authorities and the City Council Member discuss the identified buildings.³²³ HPD then schedules a meeting with the City Council staff and CBO to

316. May 20 Meeting, *supra* note 125.

317. *Id.*

318. The MOU was not officially authorized until July 18, 2005. Memorandum of Understanding Between Council Members and Designated Not-For-Profit Community groups and HPD (Jan. 25, 2005) (draft) (hereinafter Jan. 25 MOU) (on file with the author).

319. *Id.*

320. "Poor condition" refers to buildings that "a) show evidence of abandonment or long-term neglect, usually accompanied by major replacement and/or repair needs; or b) have two or more serious conditions . . . or c) have three or more less serious conditions" *Id.*

321. *Id.*

322. *Id.*

323. *Id.*

finalize the list.³²⁴ Under the policy, DAA gathers data on the landlords using city-wide databases to determine ownership history.³²⁵ HPD, the City Council Member and the CBO then jointly coordinate the inspection.³²⁶

After the inspection, informed by the City Council member's and CBO's recommendations, HPD's Building Treatment Team evaluates the results and consider appropriate next steps.³²⁷ Owners have three months to remedy eighty percent of all violations.³²⁸ If that threshold is not met, unless there is a compelling reason against it, the DAA will refer the case to the Building Treatment Team for litigation review.³²⁹ The MOU stipulates that HPD must present to the New York City Mayor and the City Council an annual report assessing the status of the building-wide inspection program.³³⁰

Although the MOU successfully integrates many of Northwest Bronx's code compliance demands, it leaves open many questions as to how the different parties will coordinate their efforts and who ultimately will be accountable for the program's successful execution.³³¹ At a minimum, this program will result in even greater interaction between HPD and CBOs like Northwest Bronx. The policy has the potential of further integrating the many divisions that form HPD and of generating multiple indicators of building conditions. Having access to more pooled indicators will allow both HPD bureaucrats and CBOs a more comprehensive review of housing problems, which could result in an entirely new system of compliance. In order to effectively gather useful and material information, HPD and Northwest Bronx are likely to undergo further internal reforms. HPD's Division of Code Enforcement, DAA, and the Litigation Division will have to coordinate their efforts more systematically across divisions and levels in order to accommodate their new roles. Northwest Bronx's leaders and senior staff members, who often

324. *Id.*

325. *Id.*

326. *Id.*

327. *Id.* HPD's Building Treatment Team is comprised of HPD's Division of Code Enforcement, DAA, and the Litigation Division.

328. *Id.*

329. *Id.*

330. *Id.*

331. According to Mary Dailey, HPD, in conjunction with ANHD, would train the community groups and HPD inspectors on their new roles. Interview with Mary Dailey, former Executive Director of Northwest Bronx, in New York, NY (Jan. 28, 2005).

have been at the forefront of the negotiations, will have to more fully involve the common member into this comprehensive street-level monitoring process. Given the many open questions, the negotiations between HPD and Northwest Bronx are likely to be ongoing, inducing deliberative and continuous revisions of the new norms.

IV. Toward a New Model of Public Administration and Local Problem-Solving

HPD's and Northwest Bronx's ongoing transformation demonstrates a break with many of the elements that had defined these institutions. During the 1970s and 1980s under the old model of command-and-control public administration, HPD became New York City's biggest landlord and Northwest Bronx, by organizing dissatisfied tenants, emerged as one of HPD's biggest critics.³³² Both institutions had to change, both internally and externally, in order to effectively deal with the housing problem. Neither institution was equipped to deal with the problem on its own.

In the 1990s HPD divested itself of its housing stock and turned to prevention as the means of solving the property abandonment problem. HPD's transformation was instigated by the crisis in its command-and-control system of public administration manifest in the wave of property abandonment and arson in the Bronx of the 1970s and 1980s. HPD's hierarchical control of the buildings it owned gave way to a new system of early detection and prevention of deterioration in privately owned housing. This new system relies on local, street-level information pooled by seasoned community-based organizations like Northwest Bronx with a trajectory of building neighborhood-based, countervailing power. Without the CBOs' constant feedback, HPD cannot meet its anti-abandonment, prevention, and code enforcement goals. There are various formal arrangements that facilitate feedback from the grassroots to the government agency. These formal arrangements are accompanied by community-organized actions that monitor and pressure government. As a result, HPD has reluctantly come to rely on grassroots organizations, which historically have organized and mobilized communities to demand better government services, to coordinate its efforts, and to assist HPD in developing effective policies.

Northwest Bronx, for its part, was able to leverage its

332. *Id.*

neighborhood-based knowledge and became an authority on housing reform. No longer was power seen, in the Alinsky tradition, as zero-sum. As Northwest Bronx acquired more authority, and developed a more elaborate relationship with HPD and a more sophisticated membership base, its tactics evolved from short-term, confrontational actions and "hits" to more complex and sustainable organizing. Northwest Bronx's evolved organizing model and approach to targets and partners attempt to balance both conflict and cooperation in novel ways.³³³ This dynamic has not created a one way flow of information. On the contrary, Northwest Bronx's conflictual participation in public problem-solving has allowed it to strengthen "the community's informational hand."³³⁴ Indeed, government's hesitant openness to Northwest Bronx's participation has allowed Northwest Bronx to build a stronger membership as the leaders witness more measurable and realistic results from their efforts.³³⁵

Throughout the last decades Northwest Bronx and HPD have been in constant contact. HPD was always one of Northwest Bronx's targets. To HPD, however, at least in the beginning, Northwest Bronx was simply a loud critic. Today both are fully aware of one another as they are linked in various ways and on multiple levels, and the distinction between the roles of the government agency and the CBO are increasingly difficult to draw. HPD and Northwest Bronx are engaged in symbiotic dealings which involve continuous, public "learning and reconstruction" of norms which are likely to generate even more elaborate entanglements and complex interdependence.³³⁶

Governance systems, such as the one being developed by HPD and Northwest Bronx, that pool local information to develop context-specific solutions to particular problems and to improve the system for detecting and correcting problems, have been called experimentalist. Typically, they emerge in settings such as the administration of housing in the Northwest Bronx, where

333. According to Mary Dailey, this is a certain stage of organizational development for these types of grassroots organizations:

As an organization wins and has a host of relationships in play, it has a lot to lose. Every time that the organization complains or critiques its former targets (now allies or partners) it puts a relationship at risk. The heart of success is getting this balance right, ensuring that risks are taken on clear matters of principle and that the organization never puts too many relationships at risk simultaneously.

Interview with Mary Dailey, *supra* note 200.

334. See Karkkainen, *supra* note 81, at 317.

335. Interview with Mary Dailey, *supra* note 200.

336. *Id.*; see Sabel & Simon, *supra* note 13, at 1019.

command-and-control methods have incontrovertibly failed. In many cases, changes in the direction of experimentalist solutions, such as the ones experienced by the housing sector in New York City, have been prompted by impact public law litigation.³³⁷ In the present case, however, Northwest Bronx and other grassroots organizations, not public law litigation, have been instrumental in instigating, directing, and molding HPD's policies. Perhaps public law litigation was unnecessary because the crisis literally overwhelmed the local government, giving it no choice but to undertake a profound re-organization. Once that process began, HPD discovered that Northwest Bronx's members are stakeholders with a direct interest in the success of affordable rental housing and the advantage of neighborhood-level insight and experience. Indeed, these actions involve the continuous distribution of information and, consequently, of capacity to ordinary citizens, which are then better equipped to assist government in detecting patterns of misinformation and inaccuracies. Wary collaboration once begun was reinforced by demonstrable, material success. Whatever the exact cause, the outcome is that Northwest Bronx is directly involved in co-managing possible solutions, whereas community based groups have seldom, if ever, played this kind of active role in reform when it was initiated by public law litigation.

The co-evolution of HPD and Northwest Bronx demonstrates that community-based organizations, as sites for local stakeholder participation, are no longer just identifying problems and demanding immediate government intervention.³³⁸ Specifically,

337. See Sabel & Simon, *supra* note 13, at 1021-53 (describing the role of public law litigation in generating experimentalist practices in the areas of education, mental health, prisons, police, and housing). Sabel and Simon also describe "public law litigation" as "civil rights advocacy seeking to restructure public agencies." *Id.* at 1016.

338. See MEDIRATTA, *supra* note 6, at 40-43. The NYU Institute for Education and Social Policy, for example, surveyed CBOs that focused on education organizing and examined the effect of organizing on public goals. *Id.* at 3. The NYU study looked at the following community based organizations: Austin Interfaith (AI); Chicago ACORN; Community Coalition for Substance Abuse Prevention and Treatment (CC), Los Angeles; Eastern Pennsylvania Organizing Project (EPOP); Milwaukee Inner-city Congregations Allied for Hope (MICA); the Northwest Bronx Community and Clergy Coalition (Northwest Bronx); Oakland Community Organizations; and People Acting For Community Together (PACT), Miami. *Id.* The study found that in the short-term, school reform organizing improved the CBO's membership base, visibility, knowledge, and social capital. *Id.* at 41, Figure 2. At the school and district level, in the short term, education organizing "increased system responsiveness to community pressure, [allowed for] more flexible and transparent administrative procedures, and increased scrutiny of the system by local politics and the media." *Id.* at 40. In the intermediate term,

Alinsky-style grassroots organizations, which historically have been instrumental in demanding reform and public accountability through adversarial means, can collaborate, in such evolving relationships, with government institutions in new ways, while maintaining their own independent and critical practices—developing new forms of accountability. Such collaboration and attempts at coordination involve both formal arrangements with local government but also informal negotiations and pressure tactics. CBOs have community insight into public problems to which government does not have access. As street-level monitors then, community organizations assist in preserving the adequacy of public goods and services by tracking early warning indicators and by tackling problems at the source rather than leaving them to be corrected at the “the end of the pipe,” when often government has lacked the capacity to solve and contain the problem. Indeed, as strategic allies, organizations like Northwest Bronx are increasingly co-participants with government in identifying and solving public problems. Northwest Bronx has gone beyond developing countervailing power. The organization arguably has taken on certain roles of those in “official” power. Thus, it is not clear that this Northwest Bronx can still be categorized as a pure Alinsky organization.

Throughout this ongoing process, CBOs like Northwest Bronx have faced the challenge of preserving their original critical methods. The new relationship with government is not solely contractual. It encompasses an array of both conflict-driven and collaborative arrangements.³³⁹ As Northwest Bronx well understands, purely contractual relationships run the risk of completely demobilizing a grassroots organization’s political activism.³⁴⁰ Given this complex relationship, grassroots

organizing increased the influence, leadership capacity, and sophistication of the CBO. *Id.* at 41, Figure 2. Simultaneously at the school and district level, there was greater distribution of school and district-level performance data, staff and student attendance, and school-based responsiveness to the CBO and the community. *Id.* at 51, Appendix 3. In the long-term, education organizing developed the parents’, the community’s, and CBO’s ability to support and develop systemic school reform, complemented at the school and district level with improved education inputs and greater school capacity. *Id.* at 41, Figure 2. The study found that through this process, CBOs developed their capacity to advocate for change while contributing to public reform. *Id.* at 43.

339. For a review of “publicization” and how the state delegates to private actors, through contractual relationships, what at one point were public services, see Jody Freeman, *Extending Public Law Norms Through Privatization*, 116 HARV. L. REV. 1285 (2003). For an example of this contractual relationship, see the discussion of the neighborhood preservation consultant program, *supra* Section I.B.

340. See MATTHEW A. CRENSON & BENJAMIN GINSBERG, *DOWNSIZING*

organizations like Northwest Bronx, with a trajectory of principled organizing and a focus on leadership development, are well positioned to influence and inform public output and regulation, as now they have a seat at the table with public administrators and preserve a structural independence from the government bureaucracy.³⁴¹ This new engagement signals a possible move toward a new form of local public administration with grassroots organizations playing an integral and novel role in governance.³⁴²

This new approach to governance and local problem-solving is promising, though many questions remain. As demonstrated by Northwest Bronx's and HPD's ongoing code enforcement negotiations, the transformation to an entirely new system of governance is incomplete. Moreover, internally, both Northwest Bronx and HPD are experiencing their own organizational inconsistencies as they attempt to fully integrate their evolving practices and keep up with their changing roles and identities. Northwest Bronx must develop new forms of collaboration with a government agency which is itself experiencing dramatic and uncertain organizational changes, which are often subject to the whims of local politics. And the challenge of this fragile collaboration is heightened by Northwest Bronx's need, as a grassroots, largely volunteer organization, to fully integrate its diverse membership base into its evolving relationships with targets and partners.

On an expansive reading, then, the story told here suggests that community-based organizations like Northwest Bronx are enlarging the agenda of community organizing: moving grassroots organizations beyond demanding public sector reform and intervention and towards a novel form of conflictual participation in the design, revision, and implementation of the policies and regulations of local government, while moving local government to more directly involve stakeholder citizens in problem-solving. On the evidence presented here, the paradox of the promise of collaboration is that the outcome of many conflicts will decide

DEMOCRACY: HOW AMERICA SIDELINED ITS CITIZENS AND PRIVATIZED ITS PUBLIC, 224-26 (2002).

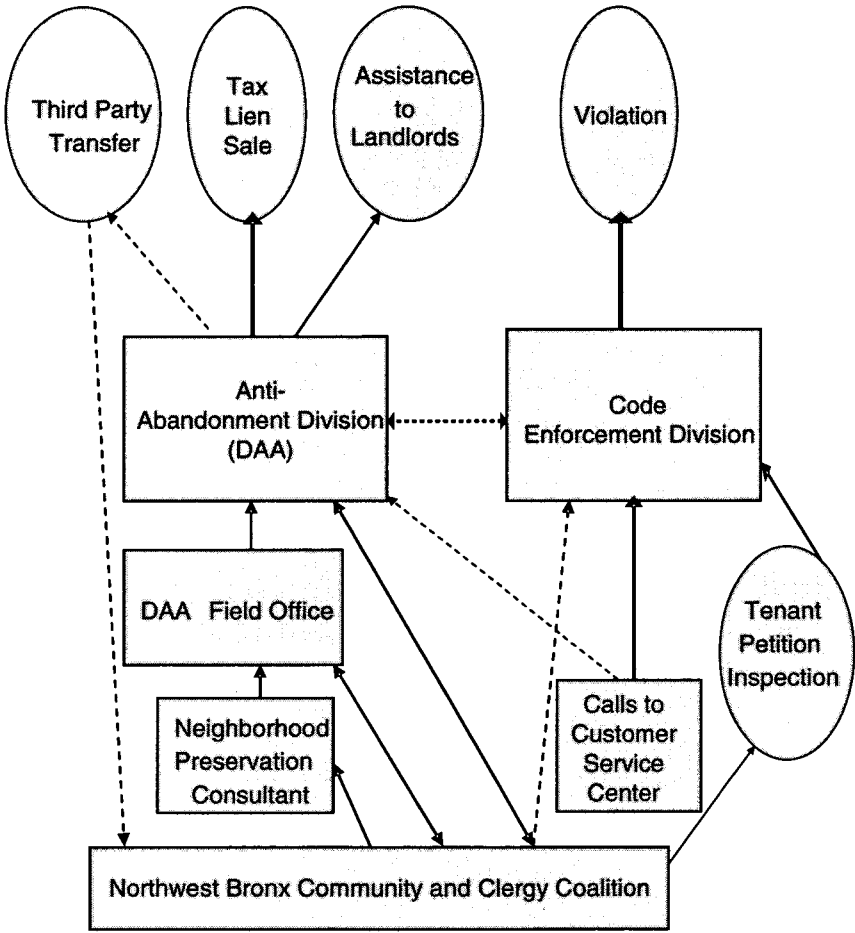
341. For an illustration of how the Texas Industrial Areas Foundation, a traditional Alinsky organization, has shifted its organizing methodology from adversarial to a more collaborative model, see MARK WARREN, DRY BONES RATTLING: COMMUNITY BUILDING TO REVITALIZE AMERICAN DEMOCRACY (2001).

342. See generally, James S. Liebman & Charles F. Sabel, *A Public Laboratory Dewey Barely Imagined: The Emerging Model of School Governance and Legal Reform*, 28 N.Y.U. REV. L. & SOC. CHANGE 183 (2003) (discussing education reform).

whether it is fulfilled.

Appendix 1:

The diagram illustrates some of the ways HPD and Northwest Bronx are linked.



Appendix 2: Deliverables.

Building surveys: DAA borough offices will give Neighborhood Preservation Consultants [NPCs] a standard building survey form to complete for buildings provided by DAA. This form will be counted as a deliverable when it is completed. In addition, NPCs may survey buildings that DAA did not give them, but they must first get approval from the DAA borough office director or the director's designee if they want to claim reimbursement for those buildings. The original building assessment form should be sent directly to the borough office, and a copy should be attached to the quarterly program report and voucher which are submitted to the central NPC Unit at 100 Gold Street.

Loan applications: Reimbursement will be given for each owner referred by an NPC to the DAA borough office in those cases where a complete loan application along with all required documentation is submitted to the private lender and/or HPD. Alternatively, loans processed directly by an NPC can be approved for funding after discussion with the DAA borough office director or the director's designee. To receive reimbursement, a copy of the cover form of the signed application should be attached to the quarterly program report and voucher which are submitted to the central NPC Unit at 100 Gold Street. Where the referral does not result in a loan application, the NPC can claim reimbursement under "Short-Term Intervention" or as "Long-Term Interventions," as appropriate.

Voluntary Repair Agreements (VRA): The process by which owners are recommended to DAA by an NPC for a VRA will result in reimbursement to the NPC if DAA executes a signed agreement. NPCs who want to sign a VRA directly should contact their DAA borough office director or the director's designee for approval. HPD will monitor all VRAs but NPCs may also participate in monitoring based on discussions with the director or the director's designee. To receive reimbursement for VRAs, a copy of the signed VRA should be attached to the quarterly program report and voucher submitted to the central NPC Unit at 100 Gold Street.

Workshops: Owner or tenant workshops related to housing issues will be reimbursed. To receive payment, the NPC must list attendees, and whether the attendees are owners or tenants, or their program reports. Reimbursement will vary based on whether there are 25 or more attendees, 15-24, or less than 15.

Mailings: At least 2000 pieces of mail discussing HPD and

NPC services must be mailed each year.

Short-Term Interventions: Short-term interventions include any contact with an owner or tenant where advice or counseling is offered.

Long-Term Interventions: Long-term interventions consist of work with an owner or tenant which extends over several telephone or in-person contacts to resolve issues related to Housing Court, to complete a loan application not using HPD funds or to complete work to resolve other issues related to HRA [Human Resources Administration] rent subsidies, DOF [Department of Finance] finance issues, DEP [Department of Environmental Protection] water charge issues, etc. To receive payment, a short description of the issue has to be submitted as part of the programmatic report, and this description must give information concerning how the issue was resolved.

Special Projects: NPCs may ask to undertake a special project, which they would like to do beyond the seven deliverables, listed above. Before they commence such a project, they should discuss with the borough director whether reimbursement will be made for the project.

