

April 15, 2020

EMERGENCY DEMOLITION POLICY RECOMMENDATIONS

As an ongoing concern since at least August of 2017, stakeholders and community members across the city are expressing extreme concern and frustration over the ongoing activity and extent of demolitions happening, primarily in the lower income and historic neighborhoods, and the lack of transparent and fiscally responsible procedures used for “emergency situations.”

Just since 2015 there have been:

- more than 350 emergency demolitions tracked, yet very few of the resulting vacant parcels have seen new construction.
- more than \$12million of taxpayer dollars have been spent in hope of being reimbursed. Clearly not all has been recovered.
- Less than \$1million (less than 8% of annual demo budgets) is spent on emergency stabilizations to allow for future productive use.
- More than 100 demolitions of these emergency demolitions have been National Register listed or determined eligible properties, eliminating the ability to use rehabilitation tax credits to fund repairs, and chipping away at our city’s architectural integrity.
- More than 75 of these demolitions were of publicly owned properties – meaning owned by the County, Land bank, Capitalize Albany, ACCA, ACDA, or the City. This is abuse of taxpayer dollars on multiple levels.

Despite the assurance that with a AG-funded and City-employed Neighborhood Stabilization Coordinator (NSC), increased staffing at the Building Department and the new Preservation Plan, our members and members of the concerned general public continue to feel something is awry. Regardless of these minor changes or actions, too many buildings continue to be falsely deemed emergencies and are fully demolished, without the cause or source of the problems identified and documented and without the advantage of a cost/benefit analysis. There is simply no time provided to approach these “emergency declarations” with a clear, rational and qualified approach.

Without the benefit of review of a written emergency declaration protocol or procedure followed by the City of Albany leading to either demolition or stabilization, the following are notes on the publicly perceived procedure and the various related issues. There are more questions than there are clear, publicly known systems in place, which ultimately leads to suspicions of impropriety, illegal practices or abuse of powers.

KNOWN PROCESS:

Procedure: sole determination of need for demolition by City’s Chief Inspector and contracted engineer.

Rationale: Demolition required for public safety and elimination of liability: Emergency declaration issued if there is a determination that a building *could* collapse and pose a safety hazard.

In the event of a building condition noted and perceived to be of *potential* public safety concern (i.e. roof collapse, fallen masonry, foundation settlement, loss of building element), the Dept. of Buildings and Regulatory Compliance (BRC) does cursory inspection, makes declaration giving city authority over all decisions, actions and expenses; City-contracted engineer is called in to confirm,

utilities are shut off, demolition contractors solicited to provide bids with very little if any written design specifications, and the lowest bid wins the demo job. In the case of an emergency action, this generally all occurs within 24 hours. Project costs are finalized with bill sent to property owner and if not paid levied directly against property taxes by County. County reimburses City for time being until taxes are collected. Very little involvement of other agencies, commissions, neighborhood stakeholders, or even the property owner. Very little time is spared as small properties are usually reduced to a pile of rubble within 24 hours. Engineering reports when produced are often submitted to city a week or so after the property is demoed. There is no opportunity for anyone to question the approach, the findings, or the extent of demo required. The only extent of asbestos abatement conducted is air monitoring, wetting down of debris and dust and public noticing. This is a legal loophole that this process provides.

Public Questions on Known Process:

- Sometimes the owner is reached; sometimes Historic Albany is notified; sometimes the abutters are notified. But there have certainly been cases where none of the above were notified. What is the legal notification procedure and timeframe requirements? How long does BRC try to reach owner or wait for a call back before process is begun?
- When property is in a local or National Register historic district, it is rare that the HRC Chair or members are notified. What does HRC Planner (E. Glennon) in Planning Dept. do upon notification of impending emergency demo? What property information is checked (pending historic district, pending grant awards, project for review before PB or BZA?, recent change in ownership?) What, if any, provisions are made if property is historic? Might this be reason to consider stabilization if feasible? Arrangement for salvage?
- Why isn't it standard protocol to consider stabilization plans? Has the **source, rather than the symptoms** of the hazard been identified? Often, identification of the source, can lead to a plan to remedy the cause and stabilize the structure, thus eliminating the hazard. A very small percentage of annual emergency action funding is used for stabilization. Why such a small amount? (5-8%) Doesn't a stabilized property generate more property tax than a vacant lot, such that in the long term, City/County are being fiscally irresponsible?
- Why are only demolition contractors given the opportunity to provide bids? Naturally they are accustomed only to demolish, not stabilize or make repairs. The biased is set against saving the structure from day 1 since restoration contractors are not given any opportunity to bid. What is the process by which this list of contractors is created? Perhaps this process needs revision?
- It seems the large number of emergency demolitions each year (avg. 75 annually) are overseen by the same contracted engineer, despite the City having contracts with other *structural* engineering firms with more experience in stabilization and working with older structures? Why does the City favor this one engineer exclusively? This has resulted in much speculation of corruption involving this engineer and various city agencies/departments. Might this engineer be the link to the large number of demos and the small number of actual stabilizations? Maybe he simply is not comfortable, experienced or knowledgeable with assessing the source of a problem and designing stabilization and repair? How many wrongful demolition law suits has he been involved in?

The following is a listing and explanation of the most common issues involved with the current process.

ISSUE #1: Rash/Rushed Process. It is perceived by many city residents that the Emergency Declarations made by the BRC that lead to demolitions are based on impulsive and unqualified assessments of building failure, unwillingness to consider or "design" stabilization efforts and the

search for the “easy way out.” The approach is driven primarily by the City’s subjective and perceived concern of public safety hazard and the need for a rushed action to eliminate all possible liability to the City. There is a significant difference in opinion on what constitutes a need for emergency action. This needs clearer definition in order to garner support on a broader spectrum.

ISSUE #2: Little to no Notification. Because the Emergency declaration process appears to move at lightning speed, there is no opportunity for proper notification, for accurate assessment, thorough photographic documentation, and consideration of options and approaches. There is no time, to question the cause of the problem and the methods for correcting it. Within hours the building is leveled – often taking down more than was necessary (more than the damaged area), often undermining or causing damage to adjacent properties, and impacting the health of abutters. With more than a third of all emergency demolitions each year occurring in historic districts, it is inexcusable that the HRC is not given any notice or opportunity to weigh in on process.

The 2017 OAC Audit of the Emergency Demolition Procedures recommended that prior to actions, the City should engage stakeholders including neighborhood associations and Historic Albany in doing an assessment of the vacant properties in order to prioritize them for stabilization, rehab. or demolition. This assessment should be used to direct the City’s non-emergency stabilization and demolition powers to resolve large portions of the vacant building inventory. Despite the ongoing collection of data by the NSC, this assessment has never included stakeholders outside of the City administration and little to no notification or public process has occurred.

ISSUE #3: Property Owner made powerless. While in most cases, the property owner is absent, unreachable, or unwilling, unable or uncooperative in addressing the hazardous condition. However, in other instances, they are present, willing and cooperative, but by the nature of the “emergency declaration” their authority is taken away from them and assumed by the City. This prevents an owner to proceed and make the structural repairs that can use their own engineer/architect, their own contractors and can do it in a way that does not adversely or irreparably damage their property or development plans. They are also able to make a repair claim to their insurance for the emergency work. When the City takes over and assumes authority this often means the project scope is inflated, it is more reactionary and rushed, and thus more costly – without any opportunity for owner to make an insurance claim, use development funding sources, etc. Whenever possible the onus should be put on the property as the more fiscally responsible approach. Cleared, vacant lots are generally walked away from by the property owner as they have no remaining asset and as a result the entire process costs taxpayers.

ISSUE #4: Regular use of Reactionary Civil Engineer. The City continues to use primary one engineer, civil not structural, to prescribe the emergency action. His approach is often reactionary, excessive and speculative. There are differing professional opinions on the extent and magnitude of safety concerns and the needed approach to remedying the hazard. However, there is no opportunity given for a discussion or second opinion and there is a blatant lack of respect that others may actually have a better understanding of the problems and design solutions that prevent full demolition. This would be a perfect opportunity for public process involving the HRC members, who all have extensive experience in building preservation. The arrogance of the City-contracted engineer is transferred to a perceived arrogance of the City’s agencies and administration. The rush to eliminate this Engineer’s & thus the City’s liability speak volumes of the their ignorance and unwavering refusal to actually solve problems.

ISSUE #5: Only Demolition Contractors invited to “the party.” Similar to the use of one particular engineer for the majority of the emergency situations, regardless of the prescribed

treatment, the only contractors that are given the opportunity to bid on the emergency project are *demolition contractors*. In fact all the emergency work conducted I the City, whether demolition or stabilization are bid on by just four contracting firms. No contractors skilled and experienced in stabilization and repairs are ever given the opportunity to look at or bid on the project. The perception is that the City's has no real interest in keeping the building standing.

ISSUE #6: Older building Stock being lost at alarming rate. The mission/objective of the Historic Resources Commission is the oversight of and the protection of the city's historic architectural resources, however, the HRC rarely if ever is notified or privy to the Engineering report before a historic structure is demolished. Since the City has done almost nothing to survey and list new historic districts within the city limits, no building older than 50 years should be demoed without notice and time for evaluation, by the HRC, the City Historian or by Historic Albany Foundation. There is no one within the BRC that can make an informed determination on the architectural or historic significance of a building older than 50 years. In the ideal world, given the City's lack of real understanding of most buildings' architectural and historic significance, a demolition delay ordinance should be adopted which allows for sufficient time to research the architectural and historic context of the building in question. Any building confirmed to be 50 years or older should only be assessed by a Structural Engineer with qualification and experience working with historic buildings such that an approach for stabilization or selective removals can be prescribed. The current engineer does not have these credentials.

ISSUE #7: Need for Neighborhood Revitalization Plan. It is long overdue for the City to institute a good governance approach to its vacant buildings, to prioritized revitalization and public safety plans for neighborhoods in need and to provide a solid and publicly stated strategic plan. The current approach is ad hoc, impetuous, lacks equity, is not improving conditions, is not reducing the number of vacant properties and only marginally protects the public, despite the "party line" justification for the demolitions. The excuse of public safety has actually become a hackneyed crutch on which all claims are made. Demolitions are NOT making our communities safer, more desirable for new construction or development and only are reducing our taxable property values, spreading the burden out among those remaining properties.

Benefits of stabilization approach:

- Long term cost of demolition often exceeds the cost of stabilizing the building, as asset or equity is lost.
- Demolition eliminates the possibility of creating a historic district/maintaining historic designation that enables a rehab/repair project to access historic tax credits necessary to stabilize and renovate. Almost no state or federal funding is available for new construction.
- New construction may not be feasible at site due to lack of market economic value (cost of construction cannot be financed privately). Additionally, the site has the added project expense of demolition liens. If property foreclosed upon, further delays in redevelopment of site.
- Demolitions are destabilizing adjacent buildings as a result more than one building is coming down each time. Structural reviews need to be extended to adjacent properties, increasing the overall emergency cost.
- Currently there is a perception of corruption regarding demolition decisions.
- Stabilizations reduce city's liability for a "Taking" of property, loss of an asset and financing opportunity.

Reasons why stabilization program not currently in place:

- No one at the City wants to take on responsibility/liability to order or design stabilization. The City Codes department has been advised not to recommend a stabilization plan.

SOLUTION(S):

Evaluation of Current Process & Problems: The solution to all the above issues starts with looking closely at the current procedure, the factors that play into the decision-making process and levels of authority, its timeframe, who is involved, how it is managed financially and its limitations.

Slow down the Process, while taking necessary safeguards: Most importantly the process needs to be slowed down significantly in order to ensure transparency, to justify the decision-making authority and concluding action, while producing sufficient documentation. If public safety is a concern during this time, barricades should be set up. The City should draft and adopt an Emergency Demolition Delay Ordinance that delays emergency demolitions until after an independent, written review of stabilization options has been conducted by a qualified structural engineer. The delay ordinance would also require notification to residents and stakeholders.

Prioritizing Stabilization is Crucial if Administration is to be Committed to Preservation: Ideally the City needs to prioritize stabilization (thus the ability for a property to be rehabbed and put back into productive use and ultimately generate tax revenue) over demolition, and to better familiarize itself with the levels of intervention that allow a building to be saved. Currently the only real criteria used in determining whether to demolish or stabilize are the expenses involved. The lower cost option is always the one chosen, despite the fact that long term financial impacts don't align. The lack of commitment from the City to try and do what it can to retain, stabilize and encourage rehab of its existing buildings, and instead pinning its unrealistic hopes on some eventual new construction development scheme, is akin to a modern wave of thoughtless urban renewal as a solution for blight. This has proven to be an unsuccessful approach in the 1960s and 1970s, and it is outrageous to think that our Planning and Building department and City administration think this same approach now is any different.

Define what constitutes an Emergency & Public Safety: There is a need to redefine the limits of emergency action and what constitutes protection of public safety. The emergency action procedure needs to be fully evaluated and improved. Using the overused cry of "public safety hazard" as the excuse to eliminate a challenging problem, should from this point be considered suspect, and should require more specific information on the actual hazard. If there is a true immediate danger of physical harm to people in the right of way, then barricades with proper warning signage as an inexpensive and temporary action should be the first step. While barricades can be seen as an inconvenience they are a clear message to the public that the City cares about their safety. A hole in the ground or pile of asbestos-containing debris doesn't send the same message.

Hold all property owners responsible, including municipalities. The onus needs to be put back on the property owners with stricter enforcement backed by the judicial system. If the fault is the property owner's, as the City insists, they should be held responsible for the resulting actions, not take this responsibility out of their hands. More effort should be made by the City to enable or empower property owners to take back control and be responsible citizens. Otherwise more people simply walk away leading to abandonment and costly foreclosure. This also means requiring that County and City owned buildings (which are currently exempt from regulatory reviews) be subject to second opinion regarding stabilization. Make better use of Albany County Land Bank to take title to vacant buildings and stabilize if County and City refuse to maintain.

Paying for repairs: In case of stabilization work, owner can pay for work in several ways:

- Use own funds. If the property is in an historic district, stabilization work may qualify for historic tax credits. However this stabilization approach may need cursory review by SHPO.
- Utilize municipal home repair resources, such as a revolving loan fund described below.
- Have the municipality complete the repairs, then secure the funds via a lien against property taxes, giving time for owner to reimburse expense.

Create Vacant Building Stabilization Fund: Create revolving loan fund for stabilization work. If an owner is not willing to stabilize, have municipality complete repair with loan repayment assessed to building owner. This has dual impact of stabilizing building and potentially motivating owner to move forward with repairs or create disposition plan. Regularly update list of qualified stabilization engineers that have been vetted for experience with historic building stabilization.

Existing programs that may serve as models:

<https://www.governor.pa.gov/wp-content/uploads/2019/06/20190506-Restore-Pennsylvania-Blight-Initiative.pdf>

<https://www.mhpn.org/loans/>

Consider a Revised Emergency Declaration Process: A revised process that stresses thorough professional evaluation, transparency and advancement towards a strategic City revitalization plan should follow this sequence of steps:

1. Building concern brought forth to City, is noted by BRC. Code violation confirmed & cited.
2. BRC identifies correct address and tax parcel number. Attempts contact with property owner/mgr based on information on file (every reason assessors data should be up to date).
3. At same time notifications are sent out – blanket email to: Planning Dept., Mayor’s Office, corresponding Ward Councilmember, HRC Chairperson, City Historian, County legislator, Historic Albany Fdn, Neighborhood Association representative and anyone else that might be familiar with this property.
4. Request for any information from above parties on recent changes in ownership; APD activity; Planning Bd, HRC, ZBA, Grant applications; redevelopment/repair plans or activities, etc. Basic compilation of property data.
5. Notifications and request for information should allow for a min. 3 day/72 hour business period for response – before any **physical action** is made. Deadline for response should be indicated in written or verbal notification.
6. Barricades order to be put up with appropriate signage of **presumed** public safety hazard.
7. BRC to conduct a more in depth inspection of condition during notification response period, preferably in presence of owner or property mgr. This inspection *should* at the very least include clear photographic documentation and identify the *cause/source* of the problem ***Without a clear understanding of the cause/source of the issue, there is no way for BRC to make a precise declaration for emergency action.*** The documentation whether a drawing, or overall (wide angle) and detail (close up) photographs should be required for any emergency declaration for purpose of later proof in the event of a lawsuit (best to assume all projects will result in a wrongful demolition suit).
8. After notification response period and access to property for full inspection, either owner’s engineer or City-hired engineer called in to *design and specify* appropriate actions. An engineering report should at minimum include a summary of assessment and findings and specific recommendation of actions as is the standard of care required for a licensed engineering professional. Ideally a template should be produced and provided by BRC to any engineer that is engaged. This standard criteria for a complete engineering report

would apply for either stabilization/repair, temporary shoring/barricades or for partial or full demolition. Anything less than this should be considered insufficient to proceed.

9. This report should be filed with the City and made available to public **PRIOR** to any emergency action. Owner, Planning Dept., neighbors, HRC, HAF should all have an opportunity to review and provide feedback on findings and recommended approach prior to action. Only barricades and temporary protections for public should be allowed to go up prior to filing and availability of engineering report.
10. Up to this point, property owner is only responsible for the expense incurred in code violation, city barricades, & engineer's inspection/report. At this point the property owner should be given the opportunity to address building concern themselves with their own engineer/architect & contractor within a specified time period (7-30 days depending on condition), or allow City to proceed with emergency declaration for recommended action. This process keeps the authority of the City BRC limited to inspections of repairs, adherence to Bldg codes, and alleviating the public safety concerns, rather than their taking control of the project.
11. If owner or property manager cannot be reached throughout notification period, or if the owner is not willing or able to address issues on their own within the cited timeframe, then the City can declare the emergency action and solicit bids from contractors. Notification of the anticipated costs should be made public and shared with property owner.
12. Bids from contractors must follow the prescribed process laid out by the engineer and must include protection of adjacent properties and against unnecessary damage of property. If any additional hazards are encountered, work must stop and the process repeated with notification, assessment and designed approach.

These revisions to the Emergency Declaration process would be a good place to start in making a less contentious and suspect procedure. However, it is no replacement for a process that is arrived at through a public process of all stakeholders. It would help to eliminate suspicions of corruption (of which there are many), it would focus on a more fiscally responsible and cooperative approach and would enable an opportunity to tap into the vast professional building expertise within the community. Albany is the home of some of the nation's most reputable historic preservation design firms, with professionals who have applied countless solutions to vacant historic structures across the state and county for decades. Instead of the City posturing and acting as though they are all-knowing when it comes to our deteriorating building stock, it is time to work together, share both the burden and problem solving effort with our combined knowledge & expertise.