

NON-TRADITIONAL REMEDIES TO DEMOLITION-BY-NEGLECT: PRIVATE
SECTOR INCENTIVES, PUBLIC SECTOR MUNICIPAL ABATEMENT, AND
OTHER APPROACHES

by

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(Under the Direction of JOHN C. WATERS)

ABSTRACT

This thesis (1) explores two non-traditional remedies for demolition by neglect, focussing on newly-enacted legislation in Alabama that allows municipalities to make municipal improvementst of dilapidated structures and provides private sector incentives to prevent neglect, (2) examines the positive effects these laws will have on one historic neighborhood in Montgomery, Alabama and one property in Selma, Alabama and (3) explores other approaches to demolition-by-neglect including environmental courts, administrative reviews, and other approaches.

INDEX WORDS: Historic preservation, Demolition-by-neglect, Lien redemption, Nuisance abatement, Dilapidated buildings

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FOREWORD

Local historic preservation regulation in America traces its roots to the city of Charleston. It was the first city to enact a local historic preservation ordinance in 1931. New Orleans enacted local historic preservation ordinance shortly thereafter with the creation of the Vieux Carre Commission in 1936.¹ The process of local historic designation continues today throughout America. Unfortunately, the local regulatory process is a reactive process whereby local commissions must wait for property owners to come to them. When a property owner applies for building permits in a historic district, the application is then reviewed by a local commission for its impact on the historic character of the building and district. However, municipalities and local preservationists have struggled on how to adapt their laws and ordinances to become more proactive to stem the continued loss of historic buildings.

A pervasive dilemma facing historic preservationists is how to address the dilapidated state of many historic buildings to achieve a goal of long-term preservation. Many dilapidated buildings are victims of demolition-by-neglect: the abandonment, intentional neglect, or lack of maintenance on a building in an effort to avoid local historic preservation regulations. While some historic buildings are located in municipalities that have passed local historic preservation ordinances, many of those

¹ William J. Murtagh, Keeping Time: The History and Theory of Preservation in America, (New York: Sterling Publishing, 1990), 58-59.

ordinances do not include demolition-by-neglect clauses, or clauses that require an owner to preserve and protect the property from deterioration. This omission provides property owners who wish to disregard the ordinance with alternatives to compliance, a loophole that allows their inaction to lead to demolition, by default.

The National Trust for Historic Preservation advocates that “every state should make sure that communities with preservation programs should have the capacity to address this problem.”² To this end, Alabama enacted two laws that will help local communities address this problem. The concept and processes established in these laws are remedies that can be enacted in other states.

In Alabama, many of the approximate eighteen thousand buildings listed on the National Register of Historic of Historic Places are protected by local historic preservation ordinances. In fact, over eighty percent of Alabama’s National Register-listed properties are located in locally designated historic districts with limited protection from outright demolition. However, of the properties in local districts, very few are protected from another type of demolition, demolition-by-neglect. This is due to one fact: Alabama’s state enabling legislation mentions demolition-by-neglect but does not have a minimum maintenance clause or a process to proactively prevent demolition-by-neglect.³ Fortunately, many municipalities in Alabama are enacting stronger historic preservation ordinances or are attempting to amend their ordinances to strengthen the demolition-by-neglect clause. Further, some municipalities such as Mobile are creating a mechanism that requires owners to maintain their historic buildings to minimum

² Constance Beaumont. Smart States, Better Communities: How State Governments Can Help Citizens Preserve Their Communities, (Washington, National Trust for Historic Preservation, 1996) 33.

³ Code of Alabama 11-68-9.

standards. (In 2002 the City of Mobile adopted a revised local historic preservation ordinance that includes strong minimum maintenance standards.)

A review of many states' most endangered properties lists, often sponsored by the statewide preservation non-profit organization, indicates demolition-by-neglect is a significant threat to valuable historic resources. Of the endangered properties listed on Alabama's "Places in Peril" in 1999, fifty percent were cited as threatened by demolition-by-neglect⁴. The challenge of addressing demolition-by-neglect is national in scope. In fact, one historic neighborhood, Boylan Heights in Raleigh, North Carolina, has a committee designated to list neighborhood properties suffering from demolition-by-neglect.

While there are efforts by statewide preservation organizations to extend demolition-by-neglect provisions to existing historic districts, there is formidable resistance to such changes by property-rights advocates. Put simply, local historic preservation commissions across the nation have enough difficulty enforcing existing laws without increasing their burden. The same holds true for local commissions in Alabama. Therefore, a two-prong legislative model was drafted and implemented in Alabama at the state level to curb demolition-by-neglect in all areas – not just locally designated historic areas. This legislative approach encourages both private and public sector action that will benefit preservation. It provides financial incentives to encourage private sector preservation of some of the most "at risk" properties and it enhances existing public sector enforcement abilities. These two legislative initiatives facilitate the preservation of existing building stock by providing an additional tool in preventing

⁴ Suzanne Wolfe, ed. "Places in Peril" Alabama Heritage, no. 54 (1999): 18-32.

municipal demolition of dilapidated buildings and creating incentives for private sector investment in dilapidated historic property sold at tax sales. There is a two-fold benefit to this approach. First, it works regardless of the property's local historic designation. Second, it applies to all properties, regardless of age; therefore giving it a broader constituency and increasing its applicability and attractiveness to local officials and revitalization advocates.

A variety of research methods were utilized in the development of this thesis. Research into various legal methods to reduce demolition-by-neglect was conducted with a focus on legislative remedies to demolition-by-neglect. Additionally, the history and development of two new Alabama laws, Act 2002-426 and Act 2002-522, are documented and their application to reduce demolition-by-neglect explored. They are included as appendices.

This thesis will: (1) explore two non-traditional remedies for demolition by neglect, focussing on two newly-enacted laws in Alabama that allow municipalities to make municipal improvements of dilapidated structures and provides private sector incentives to prevent neglect, (2) examine the positive effects these laws will have on one historic neighborhood in Montgomery, Alabama and one property in Selma, Alabama and (3) explore other approaches to demolition-by-neglect including environmental courts, administrative reviews, and other approaches.

CHAPTER 1

TWO APPROACHES: PUBLIC AND PRIVATE

Traditional historic preservation regulatory actions are largely public in nature and depend upon statutes and ordinances that designate historic areas and afford them protection from demolition as well as regulate their treatment or material change in appearance. The legal basis for this public regulation of local historic districts is an extension of existing land use regulations and is authorized by the same police powers that serve as the basis of zoning and other commonly-accepted land use controls.

Additionally, there are private controls of land use associated with historic preservation. The most prevalent are covenants and easements. Covenants, such as those found in almost every suburban neighborhood, are a contractual obligation to obey or follow certain rules. An example of a covenant is seen in neighborhoods with homes fronting golf courses whereby all residents agree not to erect fences along the fairway. Other neighborhoods have covenants that even address such minutiae as placement of basketball goals in front yards. Covenants are a contractual tool local and state governments can utilize with private property owners to further historic preservation. One such covenant is found in Alabama with the grant recipients from the Alabama Cultural Resources Trust Fund. Part of the grant agreement requires that the recipients agree to follow certain preservation requirements for a limited period of time as a condition of receiving the grant, typically for a period of five years.

Another form of private agreement, or contract, whereby a subordinate ownership interest in land is sold, donated, or otherwise conveyed to another party is an easement. For historic buildings, these easements usually focus on the façade or the exterior, unless the interior is highly significant. The long-term benefit of preservation easements is that they usually run with the land in perpetuity, so they accomplish long-term preservation of a resource. A donor conveys these ownership interests in the form of a deed to a non-profit or governmental organization in exchange for monetary compensation or the value as a charitable contribution. These are popular because they may offer donors certain tax advantages. Though each case is different and depends on a local appraisal, façade easements are typically valued at approximately twenty percent of the overall value of the property. In Alabama, façade easements are detailed in the Alabama Uniform Conservation Easement Act, Code of Alabama 35-18-1 (et. seq.) There are other innovative private and public sector approaches that may be employed to curtail demolition-by-neglect outside of the traditional historic preservation ordinances, covenants, and easements that will be discussed in Chapter Four.

Public Sector

Historic preservation ordinances and special zoning overlay districts empower city officials and local citizens to locally designate and protect historic properties. Despite the passage of enabling legislation for local historic preservation ordinances, the trend to make government more responsive to the needs of historic buildings has not permeated all aspects of local governmental regulation. For example, two well-meaning arms of government, the local building official and local preservation commission, are

often at odds. Specifically, the local preservation ordinance mandates the preservation of a historic building while the local code official may concurrently condemn the same dilapidated historic building for risks to health and safety.

The two contradictory public policies prescribed by code officials and preservationists can be found throughout America and Alabama: modest, dilapidated mill houses in the City of Huntsville's historic Lowe Mill Village; the Peerless Saloon in Birmingham's historic downtown; and the historic YMCA building in Mobile. All of these examples represent instances where preservationists and code officials approached the situation with different goals and did not have the tools to mitigate the circumstances. All these historic buildings were condemned for dilapidation resulting from demolition-by-neglect and preservationists were unable to prevent their demolition. Fortunately, their demolitions have inspired their respective communities to act; Mobile has added minimum maintenance standards to its ordinance, after losing several historic mill houses to city code enforcement demolition the city of Huntsville submitted its Mill villages to the state's 2001 "Places in Peril" list (the state's most endangered historic places), and Birmingham preservationists pushed a state law in an attempt to enable the city to repair the dilapidated Peerless Saloon.

Many historic buildings throughout the nation continue to deteriorate due to demolition-by-neglect. Factors that contribute to demolition-by-neglect stem from absentee ownership, out migration from historic city centers, questionable or clouded title, abandonment, and loss of a certificate of occupancy. In fact, it is estimated that there are several thousand parcels of historic property in Alabama that are unsafe to the extent of becoming public nuisances. In Birmingham alone there are thousands of run

down and abandoned properties,⁵ so, the statewide count of dilapidated properties is more likely in the tens of thousands.

One cause often cited for demolition-by-neglect is the lack of enforceable minimum maintenance standards. Where such standards exist, municipalities often find them difficult to enforce due to a lack of political will by elected officials. The net result is an abundance of dilapidated historic buildings. Ironically, political pressure by neighborhood residents wanting to remedy the blighting influence – most recently the social problem of drugs – is often the stimulus for proactive enforcement of building codes and the inadvertent loss of historic buildings. This pressure to curb blight or social problems such as drugs and crime in and around dilapidated buildings results in the needless loss of many historic resources. Sometimes a benevolent spin is put on the demolition in instances when a local fire department targets a dilapidated historic structure for a practice fire for training purposes, or in one extreme example, use of a dilapidated historic area for U.S. Marine Corp’s “urban war zone training” such as that conducted in the historic Fort Conde Village in Mobile, Alabama.

Trying to address social problems by attacking the built environment has proven to be unsuccessful and has led to vacant, blighted, and abandoned wastelands in many cities. Unfortunately, this fact was a lesson that should have been realized in the years following the failed policies of urban renewal that razed entire historic urban neighborhoods in the name of progress. While rigorous enforcement of building codes would seem to benefit a municipality, its results are often at odds with the goals of local

⁵ Anita Debro, “House by House, Groups Reclaiming Neighborhoods.” Birmingham News, 3 March 2001.

preservation ordinances and the broader goals of historic preservation and neighborhood revitalization in general.

Recently, under existing law in states such as Mississippi and Alabama, the only outcome for buildings that have become public nuisances is for the local building official to condemn the dilapidated properties for demolition. Usually, this occurred only after a somewhat cumbersome and complicated nuisance abatement process.⁶ In Alabama, this condemnation by local building officials is an effort to abate the public nuisance caused by the dilapidated building. Unfortunately, this condemnation has become synonymous with demolition and has, heretofore, precluded more sensible alternatives such as stabilization or mothballing because they were not alternatives permissible under Alabama law. While the condemnation and subsequent demolition is motivated by the well-meaning intentions of limiting municipal liability, addressing public health and safety concerns, and responding to political pressures to eliminate blight, this action addresses the symptoms of blight but it does not solve the problem. In fact, after demolition, blight continues on the newly cleared lots due to the inevitable growth of weeds and the influx of pests.

Further complicating the demolition of dilapidated buildings are the exorbitant costs involved in the process. These costs include legal notifications and staff time, as well as the actual demolition. Under close examination, one realizes the costs to the municipality greatly exceed the benefit. All these costs come from the municipal treasury. The only recourse, to recover the municipality's capital outlays for demolition expense, is to attach a lien to the property. Unfortunately, many of the structures are

⁶ Code of Alabama 11-40-32

located in marginal areas that are not performing well in comparison to the real estate market as a whole. In areas where the property is desirable, market forces often insure that properties do not fall into disrepair in the first place. The net result is a “missing tooth” in the streetscape and a vacant lot that is less marketable because it has a lien on it. Another continual cost associated with demolition is the expense of maintaining vegetative growth on the lot to comply with weed ordinances. Common sense holds that if the owner did not maintain the house, they will not maintain the remaining vacant lot. In fact, it is not coincidental that many of the properties cited under weed ordinances will eventually also be cited as nuisance buildings. For many of the cases in Birmingham and across Alabama, the demolition of dilapidated structures to abate a nuisance actually compounds blight, has an adverse effect on the municipal treasury and, in many instances, adjacent property values.

In one analogy, using municipal funds to tear down dilapidated structures is “cutting off one’s nose to spite one’s face.” This is because municipal revenue is generated by the local ad-valorem property tax. The basis for the ad-valorem value of a property is increased by improvements on the land or buildings. After demolition of the dilapidated building, there is an immediate decrease in the ad-valorem value of the property and, subsequently, it is not an asset to the tax rolls. It is counter-productive to deplete the municipal treasury to demolish a building that is, in effect, the basis of municipal property tax revenue. Average demolition costs for a small house are approximately \$2,000 with larger structures costing an average of two to five dollars per square foot. The high cost of abating nuisances through demolition is not unique to Alabama or Birmingham. In other larger cities, such as San Diego, California, “the

disadvantage in using abatements is the initial . . . cost. The average abatement costs \$3,000 to \$4,000. The city must pay this to a crew and then place a lien on the property to recover the cost of the abatement.”⁷ Birmingham Mayor Bernard Kinkaid estimates the City of Birmingham demolishes “four hundred houses a year, at a cost of one million dollars . . . creating vacant lots on which the city will have to trim the weeds.”⁸

Alabama legislators enacted Act 2002-522 to enable municipalities to mitigate blight, preserve the public welfare by abating public nuisance, and preserve in-town housing stock. The law offers municipalities alternatives to demolition by allowing municipal improvements to repair and stabilize properties, thereby preserving buildings that are the basis for tax revenue. There are two distinct benefits to this approach: from a historic preservation viewpoint, it preserves the historic building and; from a municipal governance viewpoint, it is fiscally responsible. The municipal improvement occurs only after the property owner has been notified and given an adequate opportunity to correct the problem. To recapture the improvement costs, the city may place a lien on the property. It is interesting to note that almost every municipality in Alabama currently has some sort of weed ordinance. If a property owner fails to cut his grass and his weeds become a nuisance, city crews cut the yard and the city bills the owner. In practice, the new legislation works in the same manner, but with historic buildings instead of overgrown yards.

⁷ Robert A. Vacchi “New Options for Code Enforcement: San Diego’s Use of Administrative Remedies” in Contrasts and Transitions: Proceedings of the 1997 American Planning Association, San Diego 1997. by the American Planning Association (Washington: American Planning Association.)

Private Sector

In most states, there is a process whereby properties that owe back taxes are sold at public auction to the highest bidder. These tax sales are often held on the courthouse steps and typically occur annually in May. For example, Jefferson County, Alabama (which includes Birmingham), sells an average of 4,000 tax certificates annually, with a tax value exceeding two million dollars. Of these four thousand properties sold for taxes, approximately forty-nine percent are over fifty years old. In fact, the Jefferson County tax collector's office sold over 1,946 properties at its May 2002 tax sale.⁹ Built into these tax sales is a redemption period when the redemptioner, or previous owner of the property, can purchase the property back by remitting the amount of the delinquent tax bill plus an additional twelve percent interest. While nearly half of the properties offered for sale in Jefferson County are older than the fifty-year benchmark, statewide, the average is less. The volume of historic property sold for taxes, in the city's urban environment indicates that tax sales affect a great deal of historic resources. Unfortunately, the tax sale is often the first step towards a slow period of demolition-by-neglect for many properties.

Prior to passage of Act 2002-426, investors who purchased properties at these tax sales risked losing the value of any improvements they made to the properties during the redemption period if the previous owner redeemed the property. It is a well-known fact that historic houses need annual maintenance. By not providing that purchasers at tax sales could recoup any necessary maintenance costs, prior to enactment of Alabama

⁸ Benjamin Niolet, "New Law Set to Help City Save Decaying Buildings," Birmingham News, 3 May 2002.

⁹ Records, Office of Jefferson County Tax Collector, Jefferson County, Alabama 3,969 tax certificates (parcels) were sold, 1,946 with dates of construction prior to 1952.

Act 2002-426 Alabama law substantially encouraged the neglect and the subsequent dilapidation of thousands of historic properties. The need for maintenance is often more dire with many neglected properties that end up being sold for taxes because these properties have likely undergone deferred maintenance. This is due to the fact that owners, who feel their property's liability exceeds its worth, adopt a rationale that they are going to "cut their losses" and cease to pay the property taxes owed or pay for upkeep and maintenance. Potential purchasers had no vehicle to recover investments in the property during the redemption period and, therefore, have no incentive to perform even the most basic maintenance.

Many properties, when sold at tax sales, are neither habitable nor weather-tight. So, many historic properties purchased at tax sales continue to remain vacant or boarded up during the three-year redemption period, serving as a blighting influence to the surrounding neighborhood. During this period, there is no incentive for the purchaser to maintain adequate insurance on the building. Inattention to newly acquired property by tax sale purchasers and its attractiveness to squatters threaten the property with increased exposure to destructive forces such as fire, vandalism, looting, and falling limbs.

An added incentive in the new lien redemption law is found in changes made to Code of Alabama 40-10-132 § 4 that allow the state land commissioner to sell properties to city authorities or non-profit organizations for any amount, irrespective of taxes owed. While this may seem a small change, consider the fact that of the 3,969 certificates offered for sale in Jefferson County (Birmingham) for the 2001 tax year, only 1,031 parcels were sold to investors with the balance being sold to the State.

Typically, the properties not purchased at the time of the sale are in disrepair or in at-risk neighborhoods. These parcels then end up being owned by the state, an entity even farther removed from a local neighborhood and less cognizant of the property's condition. The change in the law will allow the state to sell these properties to a non-profit organization, governmental agency, or community housing organization after three years (rather than the currently required five years) at any price, even if it is less than the taxes owed. While this seems like a revenue loss to the state, in fact, it saves the state money by returning these properties to the tax rolls two years sooner and preserves what remains of property's ad-valorem basis if the property is purchased. Other savings to the state include stabilized and safer neighborhoods and the possibility a local community housing development organization can meet existing housing needs.

Act 2002-426 seeks to provide private sector incentive to reduce demolition-by-neglect. It does this by allowing purchasers at tax sales to receive twelve percent interest on preservation improvements made to the property during the redemption period as well as a twelve percent return on insurance premiums paid. The law provides an incentive, at no cost to the government, to repair and insure dilapidated properties and return them to the tax rolls. The State of Alabama has an estimated 25,000 properties it owns for back taxes. Amazingly, the exact figure is unknown to the state because it depends on local tax assessors to document and monitor the disposition of these properties. If only twenty-five percent of these parcels are over fifty years old, this measure will help prevent the demolition, abandonment, and vacancy of over 6,050 historic buildings statewide.

CHAPTER 2
NUISANCE, ABATEMENT, AND LIENS

Nuisance

At the heart of any demolition order by a city is a nuisance. Nuisances come in many forms. Alabama's statutory definition of "nuisance" is found in Section 6-5-120, Code of Alabama, 1975, and reads as follows: "A 'nuisance' is anything that works hurt, inconvenience, or damage to another. The fact that the act done may otherwise be lawful does not keep it from being a nuisance. The inconvenience complained of must not be fanciful, or such as would affect only one of fastidious taste, but it should be such as would affect an ordinary reasonable man." See also Higgins v. Block, 213 Ala. 209, 104 So. 429 (1925). The Alabama Supreme Court in Milton v. Maples, 235 Ala. 446, 79 So. 519 (1938), announced that the above definition is "declaratory of the common law."

The Alabama Code also defines public and private nuisances in Section 6-5-121:

Nuisances are either public or private. A public nuisance is one that damages all persons who come within the sphere of its operation, though it may vary in its effects on individuals. A private nuisance is one limited in its injurious effects to one or a few individuals. Generally, a public nuisance gives no right of action to any individual, but must be abated by a process instituted in the name of the state. A private nuisance gives a cause of action to the person injured.

An abundance of statutory and case law authorizes towns and cities to abate or enjoin public nuisances. Section 6-5-122, Code of Alabama, 1975, states: "All municipalities in the state of Alabama may commence an action in the name of the city

to abate or enjoin any public nuisance injurious to the health, morals, comfort or welfare of the community or any portion thereof." It is important to note the reference to welfare for the community, as this language is often the vehicle for a municipality to address blight and dilapidation prior to it becoming a threat to health and safety.

Many times, municipal officials face situations where a property owner will resist or ignore appeals to stabilize or rehabilitate an unoccupied or dilapidated building. The officials may feel that such a building is a public menace or has become an eyesore that has a detrimental effect on the entire community. Since these nuisances affect the overall welfare, they are considered public, and therefore actionable on the part of the municipality. The city building code enforcement officer typically undertakes this action. Demolition of the building is the standard abatement of a building declared public nuisance.

Alabama municipalities abate public nuisances in a similar manner to all municipalities in America. Broad language addressing the regulation of unsafe buildings is detailed in Code of Alabama Title 11 Chapter 53 and it applies to all municipalities. Because Alabama does not have home rule, each class of municipality must have customized enabling legislation to allow them to act. Class one municipalities (Birmingham) have a special act that authorizes the abatement of unsafe buildings. (Sections 11-40-30 to 11-40-36, Code of Alabama, 1975.) Class four municipalities (All cities with a population of not less than 50,000 and not more than 99,999 inhabitants) have similar authority in Sections 11-53A-20 to 11-53A-26. Class five, Class six, and Class eight municipalities (Population ranges 25,000 to 49,999,

12,000-24,999, and less than 5,999 respectively)¹⁰ also have authority to abate unsafe buildings in Sections 11-53A-1 and Section 11-53A-6.

Further, municipalities are given more latitude in their definition of nuisance. In the Code of Alabama 24-3-1, it declares that “slum, blighted and deteriorated areas” are a “menace, injurious to the public health, safety, morals and welfare of residents.” The legislature went even further in Act 1987- 824 (11-99-1a) stated the same of both blighted and economically distressed areas, adding “salvable slum and blighted areas can be conserved and rehabilitated through appropriate public action.” Clearly, it is within the municipal police powers to declare blighted buildings a nuisance, regardless of their physical and imminent threat to health and welfare. In sum, the broad definitions of nuisance established under Alabama law allow the municipality to act to stop demolition-by-neglect before the building’s dilapidation has progressed to a point it is neither salvageable nor feasible to repair. Many of the same provisions exist in states across the country.

Language of a complaint regarding a dilapidated building, after alleging the jurisdictional facts, might take the following form, depending on the facts of the case:

That located on the said described lot is a frame building and complaint alleges that said building is unoccupied and not tenantable; that said building is in a dilapidated condition, open to the public and to animals; that in its present condition and state of repair it constitutes a fire hazard and a menace to the City [Town] of _____ and is a nuisance under the laws of the State of Alabama, and that the existing conditions, herein described, constitute a flagrant and persistent continuing nuisance in the City [Town] of _____ which is dangerous, offensive, unwholesome and injurious to the health, safety and welfare of the City [Town] of _____.”¹¹

¹⁰ Code of Alabama 11-40-12.

¹¹ Sample from Alabama League of Municipalities legal department.

The City of Montgomery, a class three municipality, has adopted a policy of suing to abate alleged nuisances created by dilapidated structures even when the owner cannot be reached. The complaint alleges that all of the owners and their addresses cannot be ascertained after diligent search, although the known owners are listed in the complaint. The complaint also includes an allegation that no suit is pending to test the title to the land.

Included in the complaint is a request that the plaintiff, in this case the municipality, be ordered to abate the nuisance by removing the structure, but at the expense of the defendants, and that a lien against the property be established equal to the sum expended by the city to remove the structure to abate the nuisance. The complaint also requests that the award include a reasonable attorney's fee for the work of the city attorney. This same process can be used if the municipality repairs the dilapidated building as opposed to demolition. Repair costs would then be substituted for demolition costs. Of course, this pre-dates the new laws and will hopefully be amended to include the option of repairing the building.

It is clear that dilapidated and blighted buildings pose a nuisance to municipalities and are a great threat to neighborhood preservation. Existing law in Alabama gives municipalities the ability to declare dilapidated and blighted buildings a nuisance, and then allows them to take action to abate the nuisance.

Abatements

Once a public nuisance has been identified and declared a nuisance by the governing body, municipalities have several options. Ideally, the property owner

remedies the situation immediately and the process ceases. Unfortunately, this is not typically the case. Alabama law, as well as the Uniform Building Code, published by the International Conference of Building Officials and typically adopted as part of each state's building code, includes provisions that allow municipalities the ability to abate dangerous buildings as nuisance. Depending on the threat to health and welfare, the nuisance can be abated immediately, called summary abatement, in cases where there is an extreme case of risk such as a front porch that threatens to fall off a building or a chimney that has pulled away from a house and threatens to fall on a neighboring property. The impetus for abating this threat or nuisance is for the common good. An additional reason for the municipality to act is to absolve the municipality of liability should a resident or neighboring property be hurt or damaged by a nuisance a city could, or should, have abated.

Unfortunately, most dilapidated historic buildings take a while to fall into such disrepair and reach the level of a threat to health and welfare. This creates a "fuzzy" area in the minds of elected officials and code officials as to whether the dilapidated building is a nuisance that warrants abatement. Making this area of threats to welfare more blurred is the constant comparison to decaying and condemned buildings that pose a clear and imminent threat to health and welfare. It is at this point when municipalities are forced to try and abate the nuisance through administrative remedies or other channels that the threat can no longer go unchecked.

Complicating nuisance abatement of unsafe buildings is the general lack of willingness of the municipality to be proactive, especially in cases of demolition-by-neglect. Often this stems from the fact the buildings are more of a blight and eyesore

than an immediate risk to health and safety. Fortunately, many municipalities have retained the broad powers authorized under urban renewal laws passed in the 1960's and 1970's to address blight as a nuisance. However, many code officials may have entered the workforce since they went out of use and may not be familiar with them. Further, it typically takes considerable political will to abate mere eyesores, something which is hard to generate when it involves condemning private property or is perceived as infringing on private property rights. This issue becomes more politically charged when the property is in economically distressed areas.

Conversely, some municipalities take their enforcements to extreme, with an overall detrimental effect on historic resources and in some examples, entire neighborhoods. Many municipalities have enacted overly broad nuisance ordinances that are meant to address "crack houses," not realizing that demolishing entire neighborhoods in the name of drug eradication simply pushes the drug a block in either direction. The victims of these measures are existing historic housing stock and diminished neighborhood integrity.

The unintended consequences of razing buildings in neighborhoods prone to drug activity are to actually stimulate criminal activity. By targeting the built environment for social problems, impoverished areas become more impoverished. It is simply demolishing historic buildings for a social problem for which they were merely a setting. A good argument in favor of repairing dilapidated buildings in high crime areas is called the "broken window" theory. The theory states:

Neighborhoods characterized by signs of neglect and decay as accumulation, uncared-for building exteriors, and broken windows are evidence that residents of the area feel vulnerable and have begun to withdraw from community involvement and upkeep. These indicators serve as a signal to would-be criminals that residents

are nor likely to respond to criminal activity, making the area less risky for criminal activity . . . which then makes crime even more likely.¹²

To safeguard against demolishing blighted properties in the name of drug eradication some states have created a process of checks and balances. The state of Washington has limited their powers of abatement of blighted property. Under statute, cities and counties in Washington may acquire or condemn buildings that meet at least two of the following conditions: (1) if a dwelling has not been occupied for at least a year, (2) if a property constitutes a threat to the public health, safety, or welfare as determined by the executive authority of the city (or designee), and (3) if the dwelling has been associated with illegal drug activity in the last year. While this statute includes the dreaded “crack house” or drug activity clause, it rationally deals with variables other than drug use, such as abandonment; and it vests much of the determination of what is blight in the hands of the local municipal executive who is responsive to the governing body and electorate.

Liens

According to West’s Encyclopedia of Law, lien is a French word meaning “knot or binding.” So the common statement that someone’s property is “tied up” is appropriate when describing the effect of property liens. One of the most common applications of liens is found in the use of mechanic’s or contractor’s liens. For instance, if a customer has work done on a house or car on a credit basis and then fails to pay the services or products installed, the mechanic or craftsman can issue a lien against the property or the vehicle, claiming his or her financial interest in that item. The courts

¹² John H Schweitzer, June Woo Kim and Juliette R. Mackin. “The Impact of the Built Environment on Crime and Fear of Crime in Urban Neighborhoods” Journal of Urban Technology, Volume 6, No. 3

record these liens and the lien holder may recover his or her financial interest before title to the property or automobile is legally transferred.

With respect to the two non-traditional remedies to demolition-by-neglect discussed herein, there are several types of liens involved. The public sector remedy involves the municipality placing a lien on the property for the cost of repairs made to the property. There is a provision in the public sector remedy that allows the municipality to sell the property after thirty days if the owner has not satisfied the municipality's lien on the property. This lien is a guarantee that the municipality can recoup its expenses in eliminating the nuisance should a property owner not cooperate or fail to repay the municipality. The private sector remedy involves a lien in the amount of taxes owed. The tax lien and its purchase by the private sector is the means by which there is private sector involvement in repairing dilapidated private structures. By paying the tax liens placed on a property by the city, the purchaser receives a tax certificate of ownership and the purchaser may initiate work or repairs on the building. Should the owner who let the property taxes become delinquent try and redeem the property, they become the redemptioner and are subject to reimburse the person who satisfied the tax bill, with twelve percent interest added.

The procedures and processes that govern placing and recording these various liens is addressed in separate sections of the code of Alabama. These code sections are not altered by these new acts.

The Three in Concert in Public Sector Remedies

The above-mentioned nuisance, abatement, and lien are the trilogy of components that are set forth under Act 2002-522. First, there is finding of a public nuisance. In this case, the nuisance is a dilapidated structure that either causes a blighting effect on a neighborhood or is a threat to health and welfare. It is, therefore, in the common good for the governing body to eliminate this blighting influence or repair the building's dilapidated state. Under the new law, the municipality can repair or demolish the structure to ameliorate this nuisance. To preservationists, demolition is obviously not the preferred alternative for historic buildings. Unfortunately, with some of the buildings involved in this process it is unfeasible to rehabilitate due to irreparable deterioration or irreversible structural shortcomings.

The benefit of repairing the building rather than demolishing the building is that the city has only to remedy the nuisance, not make all the necessary repairs to rehabilitate the building. In essence, the city can stabilize the building or "mothball" it. In fact, in its latest historic preservation ordinance update, the City of Mobile recently prescribed the treatment of mothballing dilapidated buildings in lieu of demolition in an effort to give owners ample time to make repairs.¹³ This provides additional time for the owner, or a prospective investor, to redeem the lien and rehabilitate the property. This trilogy of declaring a nuisance, abating with repair, and placing a lien on the property fulfills the municipality's obligation to address the public nuisances while also meeting historic preservation and community development goals.

¹³ Amendment to Mobile City Code Chapter 44, Article IV § 13. Effective Dec 1, 2002.

Of course, to the detriment of historic resources, the three seldom work in concert. Any system with many variables can break down. “The process of code enforcement used to be easy . . . as long as everyone cooperated, the process worked pretty well. When someone didn’t, your other option was to take the case to the City Attorney for resolution . . . the result could be a nightmare of backlogged cases, frustrated complainants, and outraged politicians.”¹⁴ There is a tremendous backlog of houses facing municipal action for dilapidation or neglect by municipal code enforcement officers and city governing bodies. There are an even greater number of dilapidated nuisances awaiting action in the courts. Act 2002-522 is historic preservationists attempt to empower municipalities to end this nightmare and prevent demolition-by-neglect.

Liens in the Private Sector Remedy

The private sector remedy to demolition-by-neglect is dependent on the process of selling property for delinquent taxes and the purchase and redemption of tax liens. When a property owner does not pay property taxes, the municipality (or county as the case may be) will provide notice to the owner that they are delinquent in taxes and a lien is placed upon the property for the value of the taxes owed. After a certain delinquency period, the property may be sold for the value of the lien. There are many procedural steps involved in the sale and redemption of property at tax sales that vary greatly from

¹⁴ Robert A. Vacchi “New Options for Code Enforcement: San Diego’s Use of Administrative Remedies” in Contrasts and Transitions : Proceedings of the 1997 American Planning Association, San Diego 1997. by the American Planning Association (Washington: American Planning Association.)

state to state. However, there is typically some incentive supplied to encourage investors to purchase property at tax sales.

In Alabama, the incentive to encourage private investors to purchase property is a guaranteed twelve percent return on the purchase price of the property's tax lien. Since many property owners eventually redeem their property by paying the purchaser the value of the lien plus that twelve interest, this incentive successfully keeps revenues flowing into the municipal coffers even when the owner does not pay property taxes. Unfortunately, purchasers at tax sales are often only concerned with their twelve percent return on the price they pay at the tax sale and are not concerned with the overall condition of the property. Because of this lack of concern, they have no economic interest in maintaining, insuring or improving the property if it is dilapidated or in disrepair.

Act 2002-426 extends the twelve percent incentive interest applied to the purchase price for back taxes, and extends it to improvements made to the building by the purchaser. By expanding and guaranteeing the profit margin of investors at tax sales and limiting the risks to investors repairing these dilapidated buildings, the expectation is that the private sector and free market will act to reduce the number of dilapidated and blighted historic buildings sold at tax sales annually.

CHAPTER 3

AN ALABAMA LEGISLATIVE REMEDY

There are many shortcomings, either in existing law or its application, that result in the loss of historic buildings. Over time, historic buildings are lost incrementally to uncontrollable accidents such as fire, willful destruction, or unchecked demolition by neglect. The end results of these actions are historic districts with diminished integrity and reduced numbers of contributing resources. Sadly, this process occurs even in the face of well-meaning historic preservation regulatory laws. Property owners allow properties to fall into disrepair incrementally, a process that goes unchecked by the city code enforcement staff or local preservation commissions.

A single situation gave rise to two unique legislative remedies to demolition-by-neglect in Alabama. The imminent loss of the historic Peerless Saloon prompted the formation of a diverse coalition and spurred their action on two fronts. This coalition created two legislative remedies to demolition-by-neglect in Alabama, Act 2002-426 and Act 2002-522. The bills and acts that resulted from these remedies impact several Alabama code sections. The sections of the Code of Alabama amended by Act 2002-426 are Sections 40-10-122 and Sections 40-10-132. The revised Code of Alabama amended by Act 2002-522 can be found in a new Section 11-53B.

One of the oldest remaining commercial buildings in downtown Birmingham, constructed by Gilbreath Construction Company in 1889 and remodeled around 1920,

the Peerless Saloon featured decorative brickwork typical of the Victorian Period. Located at 1900 Second Avenue in Birmingham, it was a contributing element in the Downtown Birmingham Retail and Theatre District.¹⁵ Vacant for several years, a 40-foot portion of the rear of the building was demolished by the owner. While the owner



Figure 1. Peerless Saloon (2002) prior to demolition Birmingham, Alabama.

Attempted to raze the building, city officials halted work. Attempts by Operation New Birmingham¹⁶ and others to insure its stabilization were unsuccessful and the building was left standing, its rear walls open to the elements. The building became an eyesore and a blighting influence on the neighborhood. What remained of the Peerless Saloon was structurally sound despite the continuous exposure to the elements. In reviewing options at their disposal, it became more and more evident to local preservationists that

¹⁵ Listed on the National Register of Historic Places in 1989. (Files of the Alabama Historical Commission.)

¹⁶ Founded in 1960, ONB is a Section 501 (C)(3) non-profit organization supported equally by a contract with the City of Birmingham and contributions from business, individuals and Jefferson County.

state law only allowed the city to condemn and demolish the building, a move diametrically opposed to ongoing efforts to preserve the building. This confronted preservationists with a Catch-22, if they asked the city to abate this nuisance they risked that the city would utilize the only power at their discretion: demolition. The building's preservation was seen as a potential component of ongoing economic revitalization of the neighborhood, which had just seen the major capital improvement of the adjacent McWane science center and IMAX theatre. While material changes to the Peerless Saloon would have typically gone through the standard local design review process created by the local historic preservation ordinance, its slow demolition-by-neglect had gone unchecked and the local ordinance was helpless to prevent the slow, willful demolition by the owner.

In an effort to address the preservation community's concerns in 1999, the Birmingham City Council issued a resolution ordering the owner to remove a dangerous condition of the missing rear wall and stabilize the building. While the owner complied with a portion of the resolution's dictates by erecting a chain link fence around the building, he failed to stabilize the structure. Preservationists were optimistic that the City Council resolution would spur the owner to rehabilitate, or at least stabilize, the building but they were disappointed. Unfortunately, the city was not authorized by state law to remedy the nuisance by any means other than demolition. Too often, this is the same conclusion that preservationists come to as they exhaust their legal remedies and are forced to watch a building deteriorate and suffer willful demolition-by-neglect. This situation was aptly summarized in a March 2002 article in the *Birmingham Business Weekly*:

While the social and economic causes of urban decline have been exhaustively debated for decades, the reality, at least in Alabama, has as much to do with antiquated legislation as it does with shifting social issues. Simply put, there are no enforceable methods available to the city to salvage structures that can be saved, because demolition is the only legally available remedy to the City when a structure falls into disrepair.”¹⁷

In response to this legislative shortcoming, a broad coalition was established to share concerns and generate ways to address the problem. The Birmingham Historical Commission and Sam Frazier, its chairman, spearheaded the effort. The Birmingham law firm of Spain and Gillon, L.L.C., of which Mr. Frazier is a partner, worked with stakeholders to draft the proposed legislation with input from the Alabama Historical Commission (SHPO), the Alabama Preservation Alliance (statewide partner with the National Trust for Historic Preservation), Operation New Birmingham (a Birmingham non-profit devoted to redeveloping center city Birmingham) and numerous other entities such as the Mayor’s office, and the office of the Jefferson County tax collector.

The intent of the legislation was to enable municipalities to make a municipal improvement, not unlike constructing a sidewalk or installing streetscape improvements on private property. This would be allowed after the municipality demonstrates the need for the improvement to abate a nuisance and after it affords the property owner with significant procedural due process so as not to be confiscatory in nature. This law was intended not only to offer a remedy to the Peerless Saloon dilemma, but to also have the much larger benefit of helping reduce similar blighted and dilapidated buildings in Birmingham, historic or otherwise, as well as in every town across the State of Alabama.

¹⁷ Samuel H. Frazier and Myla Calhoun Choy, “Saving In-Town Housing: It’s the Right Thing to Do,” Birmingham Business Journal, March 25 2002.

Another problem soon became apparent to the coalition tackling this problem in Birmingham. The tremendous quantity of properties sold yearly at tax sales that undergo neglect exacerbate blight in the city during their three-year redemption period. Birmingham experienced major growth in the early Twentieth Century. Therefore, a large percentage of its properties and those involved in tax sales are historic. It was identified that there needed to be an incentive to put these properties back into service and back on the tax rolls. The coalition concluded that existing lien redemption laws could easily be amended to make them more favorable to private investors and, subsequently, more favorable to the preservation of historic neighborhoods.

After review of the many dilapidated properties that were fallow or upon which taxes were owed, one unique scenario became evident: many commercial properties that are in disrepair had an outstanding tax bill that exceeded the property's fair market value. This is due to the fact that, in Alabama, commercial properties are appraised for taxes at a higher commercial rate, which is twice that of the residential property appraisal rate. Over time these tax bills had accrued to a point that it made little sense for an investor to purchase them at a tax sale. Because these tax bills fail to be paid, the buildings often stay boarded up, with weeded lots, and the buildings have no hope of returning to the tax rolls.

The coalition came to the conclusion that there needed to be a mechanism to transfer these properties to non-profit housing organizations such as Habitat for Humanity, community housing development organizations, or other non-profit organizations, to preserve viable housing stock and return the properties to the tax rolls. The coalition realized this problem would have to be addressed in a separate bill due to

the fact that the lien redemption process is found in a different code section from that of municipal governance and bills typically have to amend one code section at a time.

Thus, the coalition set out to pass not just one new law, but two new laws.

The Legislative Process

In Alabama, the process of passing legislation is similar to that of other states. A detailed analysis of the process can be found in *Alabama's Legislative Process* by McDowell Lee (Senate Document No. 3, Revised 2000.) This is a brief overview to familiarize the reader with the process in Alabama. In Alabama, there are two legislative bodies. There is a House of Representatives and Senate. Both consider bills, which are proposed laws written out in the correct form. Bills receive three readings in each chamber. The first reading is an introduction where bills are read by title only and assigned to a standing committee. If the committee takes favorable action on the bill, it then receives its second reading and is placed on the calendar of the respective chamber for the next legislative day. If considered by the full body, it is called the bill's third reading. If the bill passes, it is transmitted to the other chamber for consideration where it goes through essentially the same process.

To increase the chance of passage, many bills are introduced simultaneously in each body, increasing the odds that the bill will have every opportunity to pass. When the bill has passed both houses, it is enrolled and transmitted to the governor where it can be amended by an executive amendment that must be reconsidered by both bodies, signed into law, or vetoed. What many people fail to realize is that one single instrument, either the respective House or Senate bill, must pass both chambers. Passing

identical instruments in the Senate and House does not have the same effect. This complicates the legislative process in Alabama.

A Three-Year Process Begins

There is an accepted truism around the Alabama legislature that it takes three years to pass a law. The initial year is for legislators and committee members to familiarize themselves with the law; the following year is for it to pass one of the two houses, and the third year for it to receive final passage. This adage held true for the bills addressing demolition-by-neglect. Many of the dates of action on respective bills comes first hand from the author, but can be documented in the Journals of each respective legislative body from each session. The history of each bill can be found retrieved online from <http://alisdb.stateal.us/ACASLogin.asp> or in the bound journals of each legislative body published at the close of the session.

A set of laws was drafted by the coalition and, unfortunately, introduced in the 1999 Regular Session too late for serious consideration. The bills were re-introduced in the 2000 Regular Session by Senator Smitherman and House Speaker *Pro Tempore* Demetrious Newton (Senate Bill 175 with identical companion House Bill 139.) Along the way, the bills were amended and adapted to make them more palatable to special interest groups as well as to insure that they were in consonance with other portions of state law. In many cases, bills can be so thoroughly amended they lose their impact. Fortunately, this did not happen to these bills. One amendment these bills received was before receiving a favorable report from the Senate Committee on Governmental Affairs in March 2001. This amendment dealt with the notification process, requiring that

notification be sent via certified mail and required that mortgage holding companies had a right to receive copies of such notices. All supporters agreed this was a clear shortcoming in the bill and the bill's sponsors agreed to this amendment offered by the banking community. The amended version passed the full Senate on April 12, 2001 and was referred to the House Committee on Local Government where it was favorably reported by the committee and read for a second time in the House on April 26. Due to the legislature adjourning *sine die*, the bill did not receive its third reading and was not considered for passage by the full House of Representatives.

Act 2002-426

The previous two attempts to pass the lien redemption bill had demonstrated that there was very little opposition to this bill. It was once again introduced with its companion, the municipal improvement bill. Having been through the legislative committees before, the bills became known to legislators as the "housing bills." This familiarity proved beneficial to the speedy passage. The bill was pre-filed before the legislative session began. House bill forty-one was referred to the House Committee on the Judiciary because it dealt with the legal and technical lien redemption process. Coincidentally, the senate companion instrument was Senate Bill forty-one.

On January 8, 2002, the bill was given a favorable report by its committee without amendment. On January 22, 2002 it was considered by the full house and an amendment was made on the floor. The amendment insured that the twelve percent interest would only apply to the actual tax bill and improvements made, and not any overbid made on the property when sold for taxes. This was in response to situations

where purchasers at tax sales greatly overbid on the purchase price, to guarantee twelve percent on their bid amount. This amendment did not adversely impact the intent of the bill nor did it neuter the bill's effectiveness at providing an incentive to purchase and repair dilapidated properties. It passed the House January 22, 2002 only two weeks into the legislative session.

It was referred to the Senate Committee on Judiciary January 24, 2002. On the advice of the Alabama Law Institute, a severability clause was added to insure the bill would remain in force if a portion of it were overturned in a legal challenge. The lack of such a clause was an oversight on the coalition that drafted the bill. House bill forty-one received its second reading in the Senate March 21, 2002 and received final passage as amended April 9, 2002. Due to the fact that the Senate had amended the bill the House passed, the House had an option to concur in the changes or go to a committee on conference. The bill's sponsor and Speaker Pro-Tempore of the House garnered the support of the House leadership to accept the Senate changes. The House of Representatives concurred April 11, 2002 and Governor Don Siegelman signed the bill into law April 18, 2002. The revised Code of Alabama sections are found in Section 40-10-122 and Section 40-10-132.

Act 2002-522

Prior to the 2002 Legislative session, the broad coalition supporting this bill renewed efforts to pass this legislation. New groups were solicited to assist these efforts, namely the Birmingham Chamber of Commerce and the preservation community in the City of Huntsville. The Birmingham Chamber of Commerce was increasingly interested in improving the quality of life in Birmingham and viewed preservation and

housing issues as key to that goal. Huntville's preservation community was alarmed by ongoing demolition of historic mill houses by the City's Community Development officials. Two critical changes were made to the municipal improvement bill (Act 2002-522) at this time: (1) references to moving dilapidated structures were completely removed throughout the bill and, (2) the installment payment plan option minimum found in section seven was increased from one thousand dollars to ten thousand dollars.

There were three sound reasons to amend the draft bill to preclude the option of moving dilapidated structures. The need to eliminate the moving option is based on the practical fact that once the property is moved off of its site, any liens issued to recover the cost are then separate from the building and it is less likely the city would recover its costs. A second reason to preclude moving buildings as an option to abate nuisances, the net result of the law would be the creation of vacant lots with liens on them - one of the very problems this legislation was intended to remedy. Finally, there is a third more philosophical reason.

Preservationists typically discourage moving buildings unless absolutely necessary. This is supported by the fact that moved buildings are, in practice, not eligible for listing on the National Register of Historic Places under federal law.¹⁸ Moving historic buildings is an acceptable alternative only as a last resort when buildings cannot be preserved *in situ*. Further, the National Park Service requires locating buildings on a similar site to retain National Register of Historic Places eligibility. One of the most obvious reasons for deleting the moving option was the fear that municipal leaders, while they are well meaning, would take the path of least

¹⁸ Code of Federal Regulations, 36 CFR 60.

resistance and move properties rather than try to repair them in place. Once again, this option is counter to the goal of preserving historic buildings and returning them to the tax roll. To move the buildings would be a temporary solution, at best, and one with no long-term value.

The increase in the minimum amount of assessment that could be repaid in installments from one thousand to ten thousand dollars was strictly one that would prevent a small assessment from being made in installments over the course of ten equal payments. An example of a small assessment would be a three thousand dollar roof stabilization that would result in ten equal payments of three hundred dollars. The installment payment option is one that is a logistical burden for municipality and, as such, the coalition felt it should only be available to assessments that are so costly that payment in a lump sum would be perceived as an impractical financial burden on the property owner.

The House and Senate versions were pre-filed prior to the 2002 Legislative Session by the same sponsors and assigned house bill forty-two/senate bill fifty. Both bills initially moved through the system rapidly and then stalled. House bill forty-two was amended in committee with a substitute bill by the Committee on Local Government January 10, 2002. This amendment was drafted and supported by the state banking interests. It was technical in nature and insured that liens issued for the assessment were subordinate to previously held mortgages and it clarified a portion of the notification process. The bill received its third reading, or final passage, in the House of Representatives on January 24, 2002, and was transmitted and received its first reading in the Senate on the same day. Simultaneously, the senate companion, senate

bill fifty, went to the Committee on Judiciary that the bill's sponsor, Senator Smitherman, chaired. At this time, the same amendment that was placed on house bill forty-two by the bankers was placed on senate bill fifty. Senate bill fifty was passed by the Senate February 19, 2002 with a floor amendment drafted by the Alabama Association of County Commissions that increased recording fees for the Judge of Probate from fifty cents to five dollars. After passing their respective house of origin, both bills stalled as the two houses refused to pass bills from the other house. This is a legislative tradition that has become very common throughout the 1998 to 2002 legislative quadrennium. It creates a tremendous backlog of bills vying for consideration at the end of the session.

On the last day of the session, seeing that senate bill fifty would likely not be considered and, that the House was in the midst of a filibuster, Senator Smitherman took strong action. He used his position on the Senate Committee on Rules to have Speaker *Pro-Tempore* Newton's house bill forty-two considered before the Senate. It passed by a vote of twenty-six to one, without the fee increase amendment supported by the Association of County Commissions and it was one of a few bills to receive final consideration on the last day of the session. It was signed into law April 26, 2002. The Act resulted in a new code chapter in the Code of Alabama, Chapter 53B (Code of Alabama 11-53B.)

One of the attorneys instrumental in drafting this legislation, Alton Parker of Birmingham, said that the bills are "going to be an extremely valuable tool to the mayor's and City Council's effort to rebuild the neighborhoods of this community."¹⁹

¹⁹ Kim Chandler, "Bill Lets Cities Repair Decaying Buildings," Birmingham News, 18 April 2002

One additional benefit of this bill is the cost savings to municipalities. The Birmingham Chamber of Commerce's Director of Governmental Affairs, Paul Vercher, stated, "The City of Birmingham will save an estimated one million dollars per year in weed abatement costs. Birmingham will also benefit because there will be less vacant lots blighting our neighborhoods. Current estimates are 6000 vacant lots in our city." The reference to weed abatement costs are the weed abatement costs the city incurs after demolishing a dilapidated or nuisance building.

The Work Continues

Of course, it is important to remember that while the legislation is a necessary step to solve the problem, it is only the first step. This is a fact that was identified by the coalition that supported the bills:

securing passage of the legislation is a critical first step, the value of this initiative depends on its implementation in the affected neighborhoods . . . (i)t is the intent of this legislation to give the City the flexibility to participate in this revitalization process in a way that respects the integrity, character, and flavor of each neighborhood through thoughtful, elastic, rehabilitation programs and architecturally appropriate infill housing. In so doing, fallow property can be returned to productive status and neighborhoods will be restored. And that, quite simply, is the right thing to do.²⁰

Only time will tell if these laws are used to their greatest potential. However, at a press conference in front of a house being demolished in the historic Norwood neighborhood following passage of the bill, Birmingham Mayor Bernard Kinkaid said "We can restore these properties before they get in this condition. We hope from this

²⁰ Samuel H. Frazier and Myla Calhoun Choy, "Saving In-Town Housing: It's the Right Thing to Do," Birmingham Business Journal, March 25 2002.

point forward when we see bulldozers in our neighborhoods, they are to build, not tear down.”²¹

After three legislative sessions, the State of Alabama finally has two additional legislative remedies to demolition-by-neglect. The effort is underway to educate local code officials. A brief story on the bills was included in the Alabama Historical Commission’s quarterly publication, the Preservation Report²² and the League of Municipalities’ quarterly Alabama Municipal Journal²³ in an effort to let code officials, city leaders, and preservationists know that there are options to demolition-by-neglect.

²¹ Benjamin Niolet, “New Law Set to Help City Save Decaying Buildings,” Birmingham News, 3 May 2002.

²² Brandon Brazil, “Preservation Friendly Legislation Passes,” Preservation Report 29 no. 3 (2002) 2.

²³ Gregory Cochran, “Environmental Outlook,” Alabama Municipal Journal 50 no. 12 (2002) 18.

CHAPTER 4
DEMOLITION-BY-NEGLECT CLAUSES, MINIMUM MAINTENANCE
STANDARDS, ENVIRONMENTAL COURTS ADMINISTRATIVE REMEDIES
AND OTHER REMEDIES

There are many approaches to remedy demolition-by-neglect. As shortcomings have been identified, existing laws and procedures have been updated and amended to offer innovative means to address nuisances. Two solutions that have become more common across the country are specific clauses in ordinances that address demolition-by-neglect. These two remedies are known as demolition-by-neglect clauses and minimum maintenance standards. There are also other new approaches to remedy demolition-by-neglect emerging across the country.

Demolition-by-Neglect Clause

One method to curb demolition-by-neglect is through an affirmative maintenance clause that stipulates that properties must be maintained to minimum standards. There is a provision in the Alabama historic preservation enabling legislation that specifically cites demolition-by-neglect as one of the many actions that requires a certificate of appropriateness: “Demolition by neglect and the failure to maintain an historic property or a structure shall constitute a change for which a certificate of appropriateness is

necessary.”²⁴ Unfortunately, there is very little opportunity for local municipalities to cite a violator for demolition-by-neglect under the historic preservation ordinance because most historic preservation commissions lack inspectors or the ability to actively cite offenders. Typically, the preservation commission is a reactive body – responding to applications for certificates of appropriateness as opposed to a proactive body policing the district for violations. Some localities and states are acting to change this role.

A recent example of a demolition-by-neglect clause being implemented at the state level is found in Mississippi. A 2001 law enacted in Mississippi has the authority of more generally accepted nuisance abatement powers behind it. Mississippi placed a demolition-by-neglect clause within its historic preservation enabling legislation, Code of Mississippi § 39-13-15, but references the nuisance remediation process for private property found in another code section by stating:

In addition to the powers specified in Section 21-19-11(1) [traditional nuisance abatement law], a governing authority, if the Historic Preservation Division of the Department of Archives and History concurs, may make repairs necessary to correct the demolition by neglect, and the cost of such repairs shall become a lien against the property in accordance with Section 21-19-11(3).

In this new Mississippi law, the Mississippi State Historic Preservation Office must concur with the determination by the local municipality that the repairs are necessary. In essence this turns local land use into an issue for the state. This approach may prove ineffective because it makes a time sensitive situation take longer to resolve. With state governmental agencies facing increased workloads and decreasing revenues

²⁴ Code of Alabama 11-68-9.

from both federal and state sources, depending on a state agency to involve itself in local land use activity may prove to be the law's weakness.

While the majority of states have provided municipalities the ability to abate nuisances such as structural dilapidation through "moving or demolishing," most have not allowed municipalities other alternatives such as remediation of the nuisance through a municipal improvement. Regardless whether demolition-by-neglect is outlawed through code enforcement and public nuisance ordinances or through the historic preservation ordinance, there are two measures that can reduce demolition-by-neglect. These are the creation of an environmental court and the formulation of increased administrative remedies. To make either of these alternatives work, the municipality must have adequate inspection officials, commissions and boards that are aggressive in enforcing local ordinance violations, and the political will to take definitive action that often draws criticism. Additionally, minimum maintenance standards may be adopted by the municipality in lieu of demolition-by-neglect clauses in local ordinances. The formation of minimum maintenance standards provide existing courts or an environmental court with clear guidelines to prosecute offenders.

Minimum Maintenance Standards

Minimum maintenance standards are effective means for municipalities to curb demolition-by-neglect. These standards are extensions of minimum occupancy standards established for buildings. These standards were initially established to address hazards in substandard rental property that proved unsafe for the residents. Many advocates for preservation have utilized minimum maintenance standards in their

building code or historic preservation ordinance to halt demolition-by-neglect. The first preservation ordinance in Alabama to include such standards is the City of Mobile's ordinance that went into effect December 1, 2002.

The revised Mobile City Code has a section concerning maintenance of properties in historic districts making it a violation of their historic preservation ordinance "to fail to maintain any structure to prevent the deterioration of any appurtenance or architectural feature."²⁵ It continues to list specific minimum maintenance requirements for foundations, walls, windows, doors and other crucial parts of the building.

Mobile began enforcing their minimum maintenance standards in 2003, sending seventeen downtown property owners letters in May stating, "it is necessary that you begin repairs on the building immediately."²⁶ According to Devereaux Bemis, Director of the Mobile Historic Development Commission, "The aim of the ordinance is to be able to require repairs before the building falls into neglect." According to the city attorney, if owners do not comply or submit plans to the city within thirty days, the municipality can issue a municipal ticket or file an injunction in circuit court.

Mobile's minimum maintenance standards are the first such standards included in a historic preservation ordinance in Alabama. If they are effective at utilizing the standards to curb demolition-by-neglect, they will become more common and there may be an effort to revise the state model historic preservation ordinance to include similar provisions. As a caveat to all legislative solutions, they alone are only a tool and not a

²⁵ Mobile City Code, 44-4-13.

²⁶ Jeb Schrenk, "City Directs Owners to Fix Downtown Properties," Mobile Register, 24 May 2003.

remedy. It takes the commitment of city leadership and staff to insure they are enforced. This seems to be the case in Mobile.

Environmental Courts

Another approach to demolition-by-neglect is found in restructuring the court system. Unfortunately, constrained municipal budgets have reduced city code enforcement staff and city legal counsel. The net result is a need to handle more cases with fewer staff. One approach that is gaining popularity is the creation of an environmental court, a municipal court whose sole purpose is to adjudicate environmental and code matters for the municipality. Today many communities have environmental courts. The first environmental court was founded in 1978 in Indianapolis, after realization that city officials were issuing forty-five code related citations a day. Environmental Court dockets are reserved exclusively for violations of local health, safety, housing, building, fire, solid waste, and litter ordinances. As more environmental cases are prosecuted, greater compliance with local laws is realized, resulting in a safer and cleaner community.²⁷ Tennessee organized its first environmental court in 1983 in Memphis, and currently Nashville, Chattanooga and Knoxville all have similar courts.

In 1999 the City of Mobile established Alabama's first Environmental Court – a court specializing in land use issues. According to City of Mobile prosecutor Carole Little, the City of Mobile's environmental court has heard numerous cases since its inception. The primary advantage of the environmental court is the increased likelihood that harsh penalties and enforcement measures will be taken against violators of

municipal building codes. This has not always been the case when violators are tried in conventional Municipal Courts alongside more traditional criminals – people accused of domestic violence, drunk driving, etc. An additional advantage from the formation of an environmental court is that prosecutors and judges gain familiarity with the nuances involved in environmental, nuisance, and code enforcement cases. For advocates of more effective code enforcement, it is a declaration that these cases are important to the municipality. Moreover, it is a demonstration that the municipality is willing to allocate the resources to operate the specialized court and dedicate staff time and resources to enforce its laws. Birmingham established a similar environmental court in 2003. It meets weekly and is being phased in over time.

Administrative Remedies

Another approach to deal with nuisances in a timely and specialized manner is administrative remedies. Administrative remedies are those remedies that, typically established by rules or regulation, enable staff or other adjudicative bodies to deal with abating a nuisance short of legal action in the courts. One efficient administrative remedy already mentioned is the summary abatement. This is an administrative decision made at the staff level that a nuisance must be abated immediately. In practice, the decision to make a summary abatement is rarely made and used only when the nuisance poses an immediate risk to health and welfare. Unfortunately, most cases of demolition-by-neglect go unabated long before there can be a summary abatement, and usually then the only option left is demolition.

²⁷ Keep America Beautiful. (2002). “A Brief History of Environmental Courts”; accessed 1 March 2003

To allow code enforcement officials more flexibility and to relieve an overloaded court system, many municipalities are implementing additional administrative remedies to abate nuisances. These administrative remedies complement the traditional approaches and include administrative citations and mediation. San Diego, California has successfully expanded administrative remedies. “These administrative remedies were designed to allow code enforcement officers more flexibility in gaining compliance and give code enforcement agencies a chance to pursue certain cases without having to submit them to the city attorney for prosecution.”²⁸

Administrative citations are a way for a municipality to encourage a property owner to abate a nuisance. If they do not abate the nuisance, they are issued a citation and a fine. Similar to a parking ticket, these fines do not go to court but carry a monetary penalty. “Most people comply after receiving the first citation. In addition, citations bring in revenue.”²⁹ Citations may go ignored in instances of demolition-by-neglect, however, as part of a proactive program to end blight and dilapidation, early action and citations may prevent the loss of historic buildings.

Another form of administrative remedy to nuisances gaining popularity is mediation. Mediation is a popular tool to solve disputes and decrease the burden of the court system. Many judges will order mediation prior to setting trial dates in an effort to seek non-judicial resolution to problems. While “it has been used to resolve disputes between the City and property or business owners . . . it has enjoyed its greatest success

from <<http://www.kab.org/envirocourt1.cfm>>.

²⁸ Robert A. Vacchi “New Options for Code Enforcement: San Diego’s Use of Administrative Remedies” in Contrasts and Transitions : Proceedings of the 1997 American Planning Association, San Diego 1997. by the American Planning Association (Washington: American Planning Association.)

²⁹ Ibid.

in bringing together neighbors to resolve . . . disputes.”³⁰ Mediation is a perfect opportunity for a neighborhood or citywide non-profit preservation advocacy organization to get involved in resolving demolition-by-neglect issues. If the organization realizes a demolition-by-neglect case may be headed toward long, drawn-out legal action, it can always offer to sponsor mediation to find a reasonable solution that prevents the building’s decay. Mediation can uncover innovative solutions to curb demolition-by-neglect or provide a resolution that may have been unlikely in a formal legal setting.

Other Approaches

An innovative approach that takes the environmental court idea one step further is underway in Oakland, California. Oakland has established a “neighborhood law corps” to house municipal lawyers in the neighborhoods where large concentrations of blight exist to provide instant legal attention. The neighborhood law corps does this by assigning a city attorney to each area to formulate a way to deal with a resident’s complaints. In effect, these attorneys serve as a liaison between residents and other city departments making sure complaints are heard. Local law firms underwrite these lawyers.³¹ The city attorney calls this “working in the trenches” to fight blight and says, “We are taking it to the neighborhood.” By insuring the city’s attorneys are on the ground where demolition-by-neglect and other nuisances exist, they are in a unique position to insure that complaints are pursued through appropriate administrative channels or at the municipal court level. Another advantage is that the attorneys are able

³⁰ Ibid.

to establish relationships with sectors of the city that may not historically have a good working relationship with governmental and law-enforcement representatives.

Environmental courts and creation of innovative programs such as Oakland's neighborhood law corps are ways municipalities can make sure that code violations receive swift and prompt attention. Often, it is a simple ordinance violation that goes unnoticed that facilitates demolition-by-neglect in neighborhoods. While every city, especially small, rural municipalities may not have the resources or the need to create an entire environmental court, they can look at other approaches to make dealing with code enforcement issues easier for residents and city personnel. One simple way is to staff to each individual neighborhood or district. The approach used successfully in Oakland demonstrates that if there is a single staff person with the city that works with a neighborhood, they can at least serve as a point of contact to residents when citizens have complaints or problems.

Another innovative approach that utilizes the municipal improvement concept as a tool to rehabilitate buildings sold at tax sales is found in Minneapolis. Four years ago, Hennepin County set up a program "to curb a vicious cycle that was undermining the vitality of property values in its neighborhoods. Land speculators would snatch up properties at the auction, make minimal repairs and, then, abandon their investments when they proved unprofitable."³² The county stepped in because it realized it could rehabilitate the same dilapidated buildings it was selling and actually make a profit. This is an excellent example of a municipality leveraging all its resources to insure

³¹Jahna Berry, "City Attorney's Team Tackles Oakland Blight," The Recorder, 12 October 2001.

³²Elizabeth Esfahani. "A Fight Against Blight in Minnesota" Governing: The Magazine of States and Localities, July 2002: 64.

community development and it is both revenue-positive for the city and a toll to curb blight. This program is an innovative approach whereby, “the county targets a handful of tax-forfeited houses each year to invest in -- homes whose sales would be likely to repay the county's investment and clear up other accumulated debts in the property's name. The program so far has generated more than one million dollars in profit on approximately twenty rehabilitations.”³³

There are many instances where a municipality might be well served to purchase a property at its own tax sale and rehabilitate it themselves. With the passage of the new lien redemption law, the guaranteed return of twelve percent on capital investment in improvements by the city promises to generate funds to bolster diminishing budgets. Additionally, any proceeds can be earmarked to establish a revolving fund for the purpose of buying and rehabilitating other dilapidated tax sale property. In fact, the city of Selma, Alabama was considering the same approach to the dilapidated General Hardee house before the property was purchased by an interested investor whose purchase was motivated by the new lien redemption law.

In addition to revenue generation, there are many instances when a municipality may have a more altruistic interest in purchasing and investing in a dilapidated property at a tax sale. These interests may include the fact the city has ongoing revitalization programs nearby, the city has made or is planning major infrastructure improvements in the neighborhood, or the city has targeted community development grant funds to the neighborhood. Moreover, purchasing the property at a tax sale and repairing the

³³ Ibid.

building may be the only way the municipality can reduce the building's blighting effect on the city.

In addition to the statewide remedies for demolition-by-neglect enacted in Alabama, there are many other approaches. Each one has its merits and can offer municipalities tools to end blight and demolition-by-neglect. These approaches include the incorporation of demolition-by-neglect clauses and minimum maintenance standards in existing ordinances, the creation of environmental courts, drafting regulations that create additional administrative remedies and other approaches. It may take one or all of these solutions to end demolition-by-neglect in historic districts.

CHAPTER 5

CASE STUDY: MONTGOMERY, ALABAMA'S "GARDEN DISTRICT"

There are many neighborhoods in Alabama that can demonstrate how the two non-traditional remedies to demolition-by-neglect can help preserve historic resources. One neighborhood, the Garden District, located in Alabama's capitol city, Montgomery, is a good representative historic district. It is near the city's center and is even home to the c. 1907 Alabama Governor's Mansion. This district's local and National Register district boundaries are not the same. The local district encompasses only a portion of the entire National Register District. The reason for this is a requirement of the local preservation ordinance that requires seventy-five percent property owner approval prior to local listing, an arbitrary and restrictive number that stymies local designation efforts in the city. To compare the two district sizes, there are 756 buildings in the National Register district. There are only 451 buildings in the local district, with 305, or forty percent, of the National Register-listed properties not locally designated.

The neighborhood's residents represent varied socio-economic backgrounds. Portions of the neighborhood are HUD target areas based on the income level of the residents. The neighborhood includes an eclectic mix of historic house styles and sizes with construction dates from the 1870's to the present. It is an exemplary historic neighborhood to examine because of its diversity. Likewise, it has experienced many of



Figure 2. Governor's Mansion located in Garden District National Register District.



Figure 3. Example of multi-family home in Garden District.

the same negative external environmental factors that have impacted historic districts statewide: commercial encroachment, church expansion, and socio-economic changes.

History and Composition

The Garden District is Montgomery's first neighborhood listed in the National Register of Historic Places. One reason for this is the fact that many preservation professionals who work at the Alabama Historical Commission have lived in the district. These preservation professionals worked with local residents and the Garden District Preservation Association to designate the neighborhood, both locally and nationally. Listed in the National Register in 1984, the neighborhood received local designation by act of the City Council in the same year. However, this local listing only included the southern half of the neighborhood, excluding property closest to the interstate and seven blocks that are primarily rental property³⁴. The National Register nomination cites the period of significance for the neighborhood from 1890 to 1930, and its historic character is similar to most early Twentieth-century streetcar neighborhoods. Examination of the Garden District National Register District (see Figure 6) shows a layout of grid pattern streets on cardinal axis. Downtown Montgomery is located to the north across Interstate 85 and many of the neighborhood's north-south streets run under the interstate right into the central business district. Lot sizes in the district vary greatly, with larger lots and houses to the south and smaller houses and lots to the north.

³⁴ Montgomery's historic preservation ordinance requires 75% owner consent for local designation, though the state enabling legislation has no such provision. There are efforts to reduce the owners consent provision to 60% and make local designation less difficult.



Figure 4. Example of large historic house in Garden District, Perry Street.



Figure 5. Typical bungalow in Garden District National Register District – 454 Clanton Avenue.

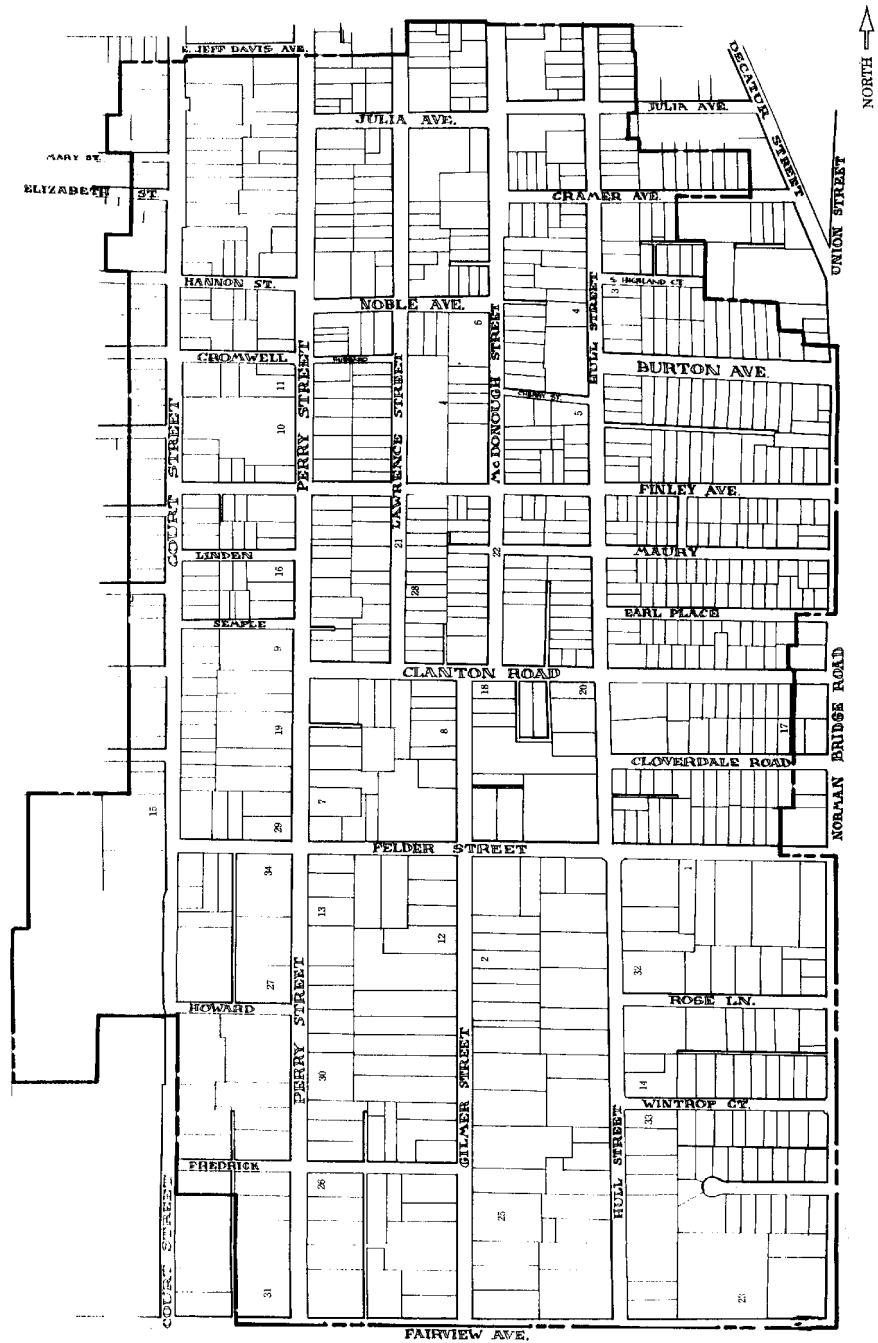


Figure 6. Garden District, Montgomery Alabama³⁵

³⁵ Adapted from Maps on file, Alabama Historical Commission.

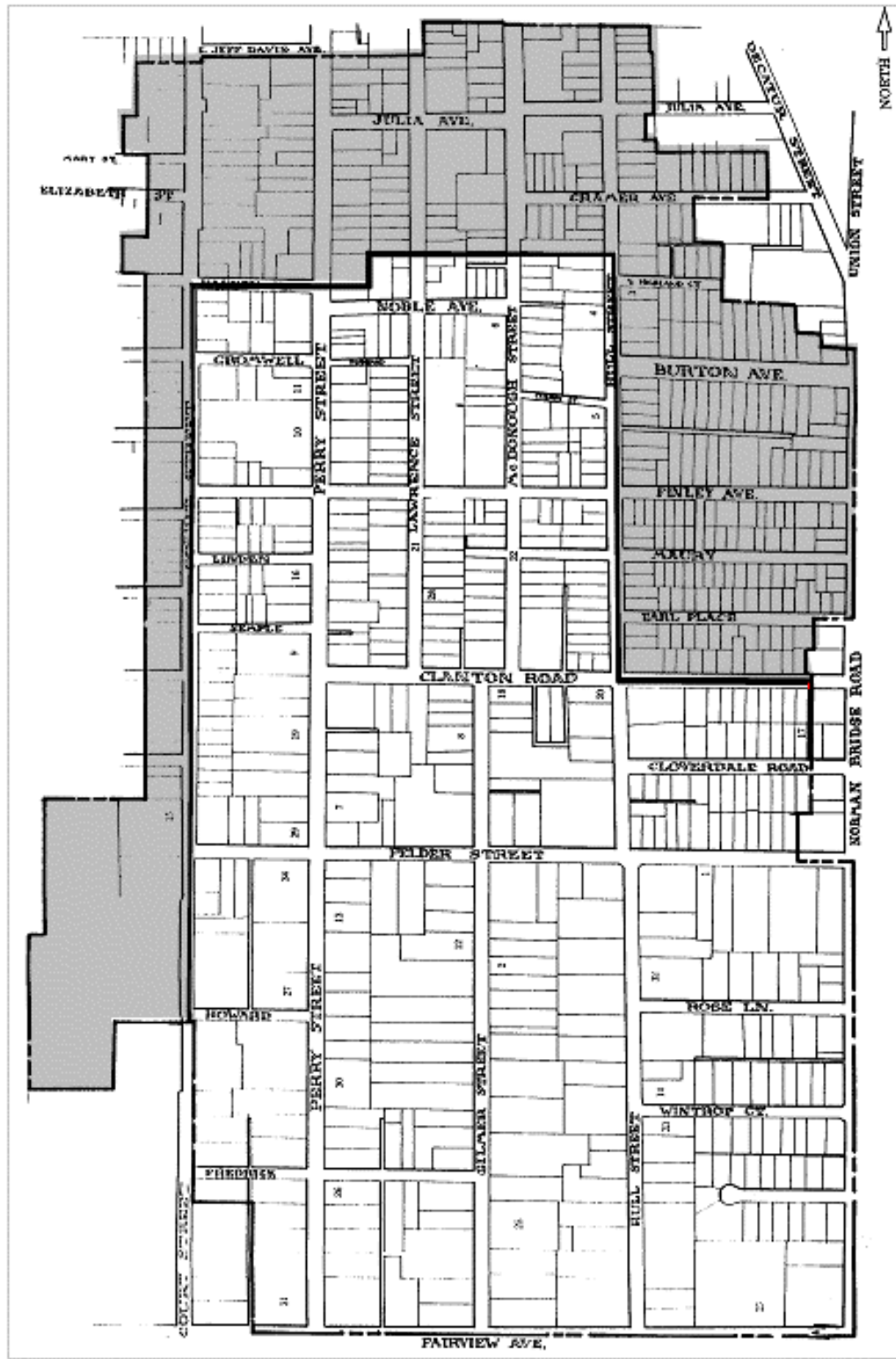


Figure 7. Garden District National Register District. Shaded area is not locally designated.



Figure 8. Garden District – Sixty-six properties destroyed since designation in 1984 shaded.

Changes to National Register and Local Districts

Montgomery's National Register-listed Garden District was composed of 756 buildings when it was listed on the National Register in September 13, 1984. Since that time sixty-six buildings or approximately 9% of the National Register District's properties have been destroyed (see Figure 8.) Based on these figures, the National Register district is losing an alarming 3.3% of its buildings annually.

Of those sixty-six buildings, nine were associated with various church expansions or parking lots (all within the local district boundaries,) six were associated with development around the Governor's Mansion which is located at 1142 South Perry Street, and the remaining fifty-one structures were lost due to other causes. Of these fifty-one, at least fifteen were demolished by the city or owners acting on city orders to abate a nuisance.

Based on a 2002 and subsequent 2003 windshield survey of the district, there were eighteen buildings that were abandoned (not including properties currently listed for sale) or suffering from serious demolition-by-neglect.³⁶ This is over 2.5% of the National Register district that is experiencing demolition-by-neglect. Three properties in disrepair from demolition-by-neglect offered as examples are, 313 Cramer Street (see Figures 9,10, and 11), 495 Finley Avenue (see Figures 12,13 ,14 and 15) and 430 South Highland Court (see Figures 16, 17, and 18.) Without immediate action by the city,

³⁶ Windshield survey conducted August 26, 2002 and June 25, 2003 by Brandon Brazil. Properties abandoned or suffering demolition-by-neglect: 487 Earl Place; 1165 McDonough St.; 454,455, 464, and 495 Finley; 430 and 432 S. Highland Court,;307 and 313 Cramer; 415 Maury St.; 401, 420, and 444 Burton; 1248 and 1826 S. Hull; 383 Felder, and 1311 S. Court.

many of these buildings will be in such a state of dilapidation as to make repair or rehabilitation unfeasible.

Of the sixty-six buildings demolished within the National Register district, the majority of buildings demolished, fifty-five percent were inside the National Register district boundary proper, but outside the local historic district boundary. Comparing the demolition rates within the local district boundaries and the National Register makes one question the value of enacting a historic preservation ordinance if it is unable to stop demolition. The inability of existing measures to preserve historic buildings is one-reason preservationists supported Act 2002-522. The law is a powerful tool to prevent demolition-by-neglect in areas that have an ineffective local historic preservation ordinance or no local ordinance at all.

Examples of Demolition-By-Neglect in the District

The transformation of 313 Cramer Street is typical of demolition-by-neglect.

Note the transformation in the building in the ten-month period 2001-2002. Limited roof



Figure 9. 313 Cramer Street (October 19, 2001)

damage, left unrepaired, transforms into major roof system failure that threatens the long-term preservation of the building. In its 2002 state, (see arrow in Figure 10) it is dilapidated enough to warrant action by the city under Act 2002-522 due to the fact its roof has a four foot wide hole in it and it is not weather tight. Fortunately, some action



Figure 10. 313 Cramer Street (August 25, 2002)



Figure 11. 313 Cramer Street (July 1, 2003.)

was taken on the part of the owner to meet the neighborhoods demands. However, a subsequent inspection nearly a year later in July 2003 indicated that the property is still dilapidated and exposed, its felt and tarp roofing once again failing. (See Figure 11.) The buildings long-term preservation is definitely at risk. Further, the building continues its blighting influence on the neighborhood.

Another building suffering from demolition by neglect is located at 495 Finley Avenue. (See Figures 6, 7 and 8.) In 2002 it was vacant and boarded-up and it was not in



Figure 12. 495 Finley Avenue (August 2002.) Note building is boarded up, structural elements are failing and the building is in disrepair.

such disrepair to warrant action by the City under minimum housing standards because it was weather tight. However, it was a vacant and blighting influence on the historic district whose structural elements were in disrepair and ripe for action under Act 2002-522. Unfortunately, no action was taken. A subsequent inspection in July 2003 indicates that the building's condition has deteriorated exponentially to the point is it actionable by the city and possibly worthy of a summary abatement which will likely end in

demolition. It is missing entire portions of its roof; siding and rafters are failing and exposed to the elements. The deterioration, in less than one year, is a powerful



Figure 13. 495 Finley Avenue (August 2002.)

testimonial to how demolition-by-neglect destroys buildings unless it is stopped by a neighborhood or city. One such example is seen in 430 South Highland Court. It is experiencing demolition-by-neglect and simultaneously the city has posted a notice to



Figure 14. 495 Finley Avenue left unrepaired (July 2003.)



Figure 15. 495 Finley. Open wall one year later due to demolition-by-neglect.



Figure 16. 430 S. Highland Court Note weed abatement sign posted by city.



Figure 17. 430 South Highland Court. Arrow points to decay.



Figure 18. 430 South Highland Court. Porch roof and fascia damage.



Figure 19. 383 Felder Avenue. Rental Property undergoing demolition-by-neglect

destroy weeds in front of the building. This example of demolition-by-neglect is illustrated in figure sixteen, seventeen and eighteen. Because of Act 2002-522, the same approach could be used to abate both the nuisance weeds and the ongoing dilapidation of nuisance buildings. The previous examples of demolition-by-neglect have been smaller properties. However, larger buildings in the neighborhood are not immune. Figure fifteen and sixteen illustrate a rental duplex on Felder Avenue. The owner has requested permission to demolish the structure and met resistance from preservationists. It is currently deteriorating and, meanwhile, having a blighting effect on the neighborhood. Under Act 2002-522, the city is empowered to act to stop this demolition-by-neglect due to the fact its wood and architectural details are not protected

and deteriorating. A large neoclassical revival house at 1826 South Hull Street is in the beginning stage of



Figure 20. 383 Felder - Peeling paint and eave damage.

demolition-by-neglect. It is adjacent to a religious institution that wants the lot for a parking lot. They have requested permission to raze the house, but the architectural review board has denied their requests. This building is vacant and has vegetation growing out of its gutters. It is in the beginning stages of demolition-by-neglect.



Figure 21. 1826 South Hull - vacant house owned by church at onset of demolition-by-neglect.

Analysis of Changes

Unfortunately, the changes the Garden District National Register District has undergone are typical of many historic districts. Over time, demolitions for church expansion and demolition due to fire and accidents cost the historic integrity of the neighborhood. Add to this the effect of demolition-by-neglect, and it becomes clear why local preservationists supported Act 2002-522. Whether or not there is a clear correlation between the current three percent rate of demolition in the Garden District National Register District and the 2.6 percent of properties undergoing demolition-by-neglect is unknown. What is clear is that a three percent attrition rate, if continued, will diminish the neighborhood's integrity in the next fifteen years to the point that National Register boundaries will need to be re-drawn or the neighborhood may need to be de-listed. Implementation of Act 2002-522 would at least stem the demolition of the eighteen properties undergoing demolition by neglect.

CHAPTER 6

PUBLIC SECTOR IMPROVEMENTS UNDER ACT 2002-522

For a municipality to reap the benefit of Act 2002-522, the municipal improvement bill, the municipality needs to implement it not as one singular tool but as part of a comprehensive code enforcement program. Unfortunately, no amount of state empowerment will force localities to utilize this law to reduce blight and curtail demolition-by-neglect unless local municipalities and preservationists take the initiative to make ending these problems a priority in their community.

There are some very simple steps municipalities must follow prior to making repairs to abate blight and neglect. Any procedural mis-step, or lapse, in due process will jeopardize the municipality's ability to recover the costs they incur in the abatement of the nuisance. Moreover, if municipalities do not insure due process for property owners, it may expose the municipality to civil action. The abatement of weed nuisances is the easiest parallel to the process enabled under Act 2002-522 that city code officials will recognize.

While it is an oversimplification, the typical weed abatement process municipalities initiate, in response to complaints when neighboring yards are not maintained or cut, is similar to the steps authorized under Act 2002-522. First, the city has a finding of the nuisance. Then the city provides notice to the owner to remedy the problem, usually in the form of a letter sent by U.S. mail and signs posted in proximity

to the property's entrance. If the nuisance is not remedied within a certain time frame, the city then authorizes city personnel or contractors to perform the abatement and assess the owner, typically in the form of a lien against the property. In concept, Act 2002-522 works the same. The only difference is the nature of the nuisance. The city crews or contractors take action in the form of repair on private property as opposed to cutting grass or removing debris from property.

Finding

A key component of the municipal improvement law is that there has to be a finding by the municipality that the building, structure, party wall, or foundation, is unsafe to the extent of being a public nuisance from any cause. While this may seem to be self-explanatory, this is the part in the process where code officials or other experts must make determinations as to the exact nature and threat of the nuisance. Additionally, these determinations can require a great deal of staff time. The two options available under the law are repair or demolition. Preservationists need to continue to advocate the repair of these dilapidated buildings. Unfortunately, there are instances where demolition is the only alternative.

Another factor that often slows the process at this phase is the subjective nature of findings. The finding of "blight" or "risks to health and welfare" are judgment calls by the respective building official. Typically, these findings were based on structural issues, so it is a gray area for code officials to determine what constitutes a blight. This subjectivity provides an opportunity for preservationists to work with their code officials to establish informal guidelines for officials that take into account features of historic

buildings and the specialized nature of the historic resources. Preservationists need to work to educate inspectors and code officials in the needs of historic buildings.

Notice

Notice must be sent via certified or registered mail to the owner's last known address, as associated with tax records. A copy of all notices is also sent to owners and mortgage companies with an interest in the property. The notice must detail the basis of the finding and shall direct the property owner to a) repair the property in forty-five days of the date of the notice or provide the appropriate city official a work plan to accomplish the repairs or b) demolish the structure in forty-five days.

To insure that timely action is taken, the notice also states that if the owner does not comply within 45 days, the municipality shall initiate the repairs or demolition and the costs will be assessed against the property. A copy of the notice is posted within three feet of an entrance to the building. The owner then has thirty days to respond to the notice and may request a hearing before the governing body of the city and this request holds in abeyance any further action by the municipality until a hearing is held.

If no hearing is requested, after the thirty-day period or satisfying the hearing requirements, the municipality may either repair or demolish the building.

Abatement

The abatement of the nuisance can be conducted by city personnel, as in the case of a weed abatement by city personnel. However, in the case of repair or demolition it is more likely the city will accomplish those tasks by an outsourced contractor. The

abatement of the nuisance in a typical case of demolition-by-neglect will involve roofing. Failing roof systems are almost always a component in demolition-by-neglect. The opportunity for craftsmen to gain experience working on a historic building is an outcome of the abatement of nuisance buildings. The municipality can partner with local trade schools or other programs to supply themselves with an inexpensive labor force.

Assessment

Following the repair or demolition of the nuisance building, the appropriate city official submits a report to the governing body of the associated cost of repair or demolition, deducting any salvage revenues received in the case of demolition. The owner shall have an opportunity to be heard if there is objection to the assessed costs. Once the governing body of the municipality accepts the amount, it is fixed against the lot or parcel of land upon which the building is or was located, in the case of demolition. The amount assessed is then recorded as a lien against the property in the office of the Judge of Probate. The assessment may allow the owner to satisfy the lien in cash within thirty days or, if the assessment exceeds ten thousand dollars, establish an installment payment plan of ten equal installments with interest of no more than twelve percent applied.

If the owner does not satisfy their financial obligations under the assessment levied by the city, after thirty days the city may then sell the property to recover its costs. From start to finish, the municipality can complete this process in approximately seventy-five days. The process is not simple, however, it establishes a streamlined

process that allows a municipality to initiate action, afford owners procedural due process, and preserve existing building stock in a timely manner.

HOW ACT 2002-522 (Code of Alabama §11-53B) WORKS:

City makes a finding – either nuisance or blight.

City provides notice to owner (via mail and posting signs.)

City makes abatement (either repair or demolition.)

City makes assessment and lien.

City recovers improvement costs plus twelve percent., thereby ending blight or dilapidation and stabilizing neighborhood.

CHAPTER 7

PRIVATE SECTOR IMPROVEMENTS UNDER ACT 2002-426

Overview

The primary preservation benefit from Act 2002-426, the lien redemption law, is that it provides incentives for purchasers of property at tax sales to perform minimum maintenance on the property they purchase. Act 2002-426, the lien redemption law, takes existing lien redemption law and broadens its scope, providing investors in property purchased at tax sales the ability to recover their costs incurred in making “preservation improvements” to keep the property in repair for its “reasonable and proper use” with regard for the “kind and character of the property.”³⁷ This allows the purchaser at a tax sale to receive reimbursement plus twelve percent compensation for preservation improvements made to the property prior to the three-year redemption period.³⁸

An additional preservation benefit of the law is an allowance that the property may be sold for less than taxes owed by the state revenue commissioner to a municipal entity or non-profit organization after three years, rather than five. It is unknown if this will benefit historic resources, but it may provide a vehicle to transfer dilapidated historic properties to local preservation organizations.

³⁷ Acts of Alabama 2002-426, See Appendix A 40-10-122 §d.

³⁸ Code of Alabama 40-10-120.

Effective July 1, 2002, purchasers of property at tax sales are provided protections if the property is redeemed by the original owner prior to the end of the redemption period. Moreover, these protections provided to the purchaser also include the costs of all insurance premiums and reasonable attorney's fees, as well as twelve percent interest on those expenses and on all improvements. The inclusion of insurance premiums provides purchasers at tax sales an incentive to insure the property against fire and weather damage. Lacking this incentive, properties purchased at tax sale typically remain uninsured during the redemption period when they are often unoccupied and most vulnerable to fire damage and vandalism.

Minimal improvements made to the building to keep the building in use and protect the character may ameliorate the blighting influences the building but they may not address the long-term preservation needs of the building. While cosmetic improvements may satisfy the surrounding neighborhood or historic district, these minimal improvements will not prevent demolition-by-neglect because they may only be cosmetic in nature. One such example is the historic YMCA building in Mobile razed in 2003. Owners had complied with orders from the city by making cosmetic and inexpensive improvements to repair the building while continuing to let the roof leak. By the time this shortcoming was realized, the building was so deteriorated as to render it structurally irreparable. Fortunately, the broad language of the lien redemption law is intended to encompass the repair of building systems such as electrical, roof, and exterior paint and finishes. These systems are essential to keeping the building in its reasonable use, therefore, all of these stabilization measures are covered by the law as

expenditures that are recoverable with twelve percent interest should the previous owner redeem the property.

Under the lien redemption law, the value of insurance premiums is not disputable. To redeem the property, the redemptioner must pay the value of those premiums plus twelve percent interest. Receipts for premiums from the insurance underwriter can easily quantify the cost of these premiums. The redemptioner bears the burden of making a written demand for the value of improvements made to the property since the tax sale. Once that request has been made, the burden shifts to the purchaser to respond to that request within ten days. The redemptioner then has ten days to accept the amount claimed by the purchaser or appoint a referee. If the redemptioner fails to request the value of the improvements, they must pay the value put upon the improvements by the purchaser. Likewise, if the purchaser fails to provide the value of improvement within ten days or fails to appoint a referee to settle the dispute, the purchaser forfeits his or her claim to the improvements.

A process to dispute the value placed upon the improvements is included to insure that purchasers act in good faith and do not take advantage of the situation or inflate the value of improvements without review. This insures that people who lose their property for non-payment of taxes have a possibility to redeem their property and will not be unfairly gouged. The procedure to dispute the value of the improvements is included in the law to insure due process. However, it is anticipated that in most cases the value of improvements can be easily quantified with receipts for work performed and materials purchased. Alternately, the improvements can easily be quantified by appraisals or inspections conducted prior to and following the improvements. If the

referees cannot agree upon the value of the improvements, an umpire is appointed to settle the matter. If the umpire is unable to settle the matter, the final arbiter of disputed values is the appropriate court.

Unfortunately, the passage of the lien redemption bill came late in the legislative 2002 session and it became law three months after signing by the Governor. Therefore, its effective date was July 1, 2002. Because Alabama tax sales typically occur in May, the bill was not in effect for properties sold at the 2002 tax sales, a fact lamented by many supporters of the bill. However, as the 2003 tax sales neared, many municipalities were able to use this new law to entice investors and purchasers to the stock of dilapidated properties. One such example is found in Selma, Alabama.

Example of Law Curbing Demolition-by-neglect: Selma, Alabama

By all accounts Selma, Alabama has been a model city as far as historic preservation is concerned. There is a local historic preservation ordinance that pre-dates the state enabling legislation; they have three residential historic districts and one commercial historic district (all locally designated); they are an Alabama Main Street Community and they participate in the Certified Local Government program. Although they are essentially using every tool at their disposal, historic properties continue to deteriorate and, in many cases, are eventually destroyed. One dilapidated building is 307 Lapsley Street, a contributing property in the Old Town historic district in Selma. Listed in the National Register of Historic Places May 3, 1978, it is a district of approximately fifty-nine residential blocks containing 450 structures. The property is individually significant because of an historic association with confederate General



Figure 22. 1860's Hardee House - Selma 2003

William Joseph Hardee who built the Italianate residence in 1870 and subsequently updated it to the Victorian style at the turn-of-the-century.



Figure 23. Sign posted on Hardee House

Noting compromised safety, local code officials put the owner on notice to remedy a sagging and deteriorated porch in 1994. According to the code officials, the building posed a risk to the health and welfare of citizens and was cited as a nuisance. Preservationists feared that the code enforcement officials would choose to abate the nuisance by demolishing the structure. Beginning in 1995, repeated notices and orders-to-comply went unanswered and the property's condition worsened. City code official considered demolition while preservationists searched for other alternatives.



Figure 24. Interior of Hardee House

Luckily, a willing purchaser was enticed to rehabilitate the property solely because of the guaranteed twelve percent return on funds they invest. As you can see by

the interior detail of the bay window (see figure 24) there are many great architectural details that make this building a worthy investment. Should the redemptioner repay the taxes owed, improvement cost, and the insurance premiums, plus twelve percent interest before the three-year redemption period expires, all parties will win. The investor will recoup the investment made in the building plus twelve percent while the preservation community and neighborhood have one less blighting eyesore. Fortunately in Selma, as in many small communities, the community development department that houses historic preservation functions for the city and the code enforcement offices work closely together. Both sides were able to work in concert because of good communication and a willingness to look for a non-traditional remedy to this case of demolition-by-neglect. The same is not always true for larger municipalities. Work is underway on the Hardee Home. Solely because of the lien redemption bill, another historic home is spared the fate of demolition-by-neglect. Further, the blight and demolition-by-neglect is being abated at no cost to the municipality.

HOW ACT 2002-426 (Code of Alabama§ 40-10-122 and 4-10-132) WORKS

Purchaser buys dilapidated property at tax sale

Makes needed repairs and improvements.

Redemptioner requests amount if redeeming property within redemption period.

To redeem, redemptioner must pay improvement amount and insurance premiums, plus 12% interest.

Dilapidated property gets repaired.

CHAPTER 8

CONCLUSION

The concept of historic preservation is one that is still relatively young in America and a relatively young phenomenon in American legal history; it is a movement that derives its powers from long-held land use law. The legal basis for local historic preservation regulations is drawn from zoning and land use law and it is in those areas that preservationists typically focus their attention. In each municipality the historic preservation ordinance and special zoning overlays are seen as the only legal mechanisms to prevent demolition of historic buildings and, to a lesser extent, demolition-by-neglect. However, many facets of the law impact historic resources and land uses that are broader in scope and application than the traditional historic preservation ordinance. By insuring that laws enabling municipalities to abate dilapidated and blighted buildings are favorable to the goal of historic preservation and that the lien redemption process provides incentives for purchasers to undertake repair or maintenance of historic buildings, preservationists can help save resources by preventing demolition-by-neglect.

A thorough approach to address vacant and deteriorating buildings must have many components. This approach must empower the municipality to be proactive in preventing demolition-by-neglect and it must also insure that private sector investors receive competitive returns on investments they make in dilapidated properties

purchased at tax sales. Preservationists need to continue to strengthen local ordinances and designate local historic districts; however, they need to be mindful that many areas of law have the ability to impact historic resources. Something as innocuous as the lien redemption incentives for private investors or the abatement options available to municipalities may provide non-traditional means for preservationists to further their cause.

There are two Alabama laws, Act 2002-426 and Act 2002-522 (see Appendices A and B), which may become model pieces of legislation to curb demolition-by-neglect. These laws, coupled with the other innovative approaches such as environmental courts, as seen in Birmingham and Mobile, as well as other remedies will bolster efforts to curb demolition-by-neglect nationwide. If strenuously applied, these laws will prevent the demolition-by-neglect of hundreds of buildings a year and could serve as incentive to preserve and rehabilitate worthy and usable buildings in Alabama and across the nation.

For those jurisdictions that want to address demolition-by-neglect, the following can serve as a checklist:

Do:

- 1) Review existing statewide laws and local ordinances for the ability to address blight and demolition-by-neglect before they advance to critical stages. If they are adequate, utilize them as part of a comprehensive program to remedy demolition-by-neglect. If existing laws and ordinances are inadequate, the municipality should seek revision to the legislation to remedy demolition-by-neglect.

- 2) Work with neighborhood organizations to identify high concentrations of dilapidated housing and look for funding and incentives, either public or private, to encourage the repair of those buildings. Community development block grants are a source of funding to reduce blight.
- 3) Establish a revolving fund used solely for the purchase and repair of dilapidated property, particularly those properties at risk of demolition-by-neglect sold at tax sales. To insure the fund receives an adequate return on its investment, pass legislation to insure the cost of improvements is recoverable by redemptioners at tax sales.

Don't:

- 1) Proceed with demolition of any building unless repair and rehabilitation efforts have been exhausted. To explore options other than demolition, establish a task force of preservation professionals, housing officials, and code officials to insure that there are clear channels of communication between various parties interested in curbing demolition-by-neglect.
- 2) Accept the fact that existing laws allow only demolition as the only remedy to dilapidated buildings. Follow other cities' and states' lead and enact legislation that is more advantageous to the goals of historic preservation. This can be accomplished by implementing a demolition-by-neglect clause, establishing an environmental court, or adopting minimum maintenance standards.

GLOSSARY

Abatement. The termination of a nuisance.

Abeyance. A temporary suspension.

Act. An enactment by a legislative body (a law.)

Ad valorem. In proportion to the value – a tax based on value of an item or piece of property.

Assessment. To levy a charge on a property owner.

Bill. A proposed act before a legislative body.

Blight. Unattractiveness, a prevailing condition of decay.

Certificate of appropriateness. Permission granted by a local preservation commission to proceed with work in a locally designated historic district.

Covenant. A formal contract to do, or not do something.

Demolition-by-neglect. A lack of positive, preventative maintenance allowing ordinary wear and tear to lead to a building's decay.

Easement. A right or privilege one may have in another's land such as a right of way.

Environmental court. A municipal court whose sole docket consists of building code, solid waste, and other environmental issues.

In situ. Latin for "in place."

Lien. A claim on a property as securement for payment of a debt.

Locally designated historic district. An area designated by local government that falls under protections of a local historic preservation ordinance.

Municipality. A legally incorporated local government.

National register of historic places. A designation by the National Park Service that a site or district is historically significant. Primarily honorific, affording little protection from demolition.

Nuisance. Something that causes harm.

Preservation ordinance. A local ordinance establishing procedures for protecting historic districts and sites.

Purchaser. Someone who purchases a property at a tax sale.

Repair. To put in proper working order or condition.

Redemptioner. Previous owner that loses property at a tax sale and has option to redeem it.

Rehabilitation.

SHPO. State Historic Preservation Office.

Sine die. Latin for “without day” applies to the last day of a legislative session, they adjourn having exhausted the days which the body may convene.

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APPENDIX A

ACT 2002-426

Enrolled, An Act, To amend Sections 40-10-83, 40-10-122, and 40-10-132, Code of Alabama 1975, relating to the redemption of property; to provide further for the process of redemption of land sold for taxes; to provide for the ascertainment of the value of insurance and improvements plus interest to be included in the lien on the land; to provide for the payment of the value of insurance and permanent improvements to a purchaser of land upon redemption and to provide a method of demand for the payment and a process for resolving any disagreement; and to provide further for the sale of lands that have not been redeemed in a certain time.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA: Section 1. Sections 40-10-83, 40-10-122, and 40-10-132, Code of Alabama 1975, are amended to read as follows:

§40-10-83. 18

When the action is against the person for whom the taxes were assessed or the owner of the land at the time of the sale, his or her heir, devisee, vendee or mortgagee, the court shall, on motion of the defendant made at any time before the trial of the action,

ascertain (i) the amount paid by the purchaser at the sale and of the taxes subsequently paid by the purchaser, together with 12 percent per annum thereon; (ii) with respect to property located within an urban renewal or urban redevelopment project area designated pursuant to Chapters 2 or 3 of Title 24, all insurance premiums paid or owed by the purchaser for casualty loss coverage on insurable structures and the value of all permanent improvements made by the purchaser determined in accordance with the provisions of Section 40-10-122, together with 12 percent per annum thereon; (iii) with respect to any property which contains a residential structure at the time of the sale regardless of its location, all insurance premiums paid or owed by the purchaser for casualty loss coverage on the residential structure and the value of all preservation improvements made by the purchaser determined in accordance with the provisions of Section 40-10-122, together with 12 percent per annum thereon; and (iv) a reasonable attorney's fee for the plaintiff's attorney for bringing the action. Upon such determination the court shall enter judgment for the amount so ascertained in favor of the plaintiff against the defendant, and the judgment shall be a lien on the land sued for. Upon the payment into court of the amount of the judgment and costs, the court shall enter judgment for the defendant for the land, and all title and interest in the land shall by such judgment be divested out of the owner of the tax deed.

§40-10-122.

(a) In order to obtain the redemption of land from tax sales where the same has been sold to one other than the state, the party desiring to make such redemption shall deposit

with the judge of probate of the county in which the land is situated the amount of money for which the lands were sold, with interest payable at the rate of 12 percent per annum from date of sale, and, on the portion of any excess bid that is less than or equal to 15 percent of the market value as established by the county board of equalization, together with the amount of all taxes which have been paid by the purchaser, which fact shall be ascertained by consulting the records in the office of the tax collector, or other tax collecting official, with interest on said payment at 12 percent per annum. If any taxes on said land have been assessed to the purchaser and have not been paid, and if said taxes are due which may be ascertained by consulting the tax collector or other tax collecting official of the county, the probate judge shall also require the party desiring to redeem said land to pay the tax collector or other tax collecting official the taxes due on said lands which have not been paid by the purchaser before he or she is entitled to redeem the same. In all redemptions of land from tax sales, the party securing the redemption shall pay all costs and fees as herein provided for due to officers and a fee of \$.50 to the judge of probate for his or her services in the matter of redemption. This application and payment may be executed by an on-line transaction via the Internet or other on-line provision.

(b) With respect to property located within an urban renewal or urban redevelopment project area designated pursuant to Chapters 2 or 3 of Title 24, the proposed redemptioner must pay to the purchaser or his or her transferee, in addition to any other requirements set forth in this section, the amounts set forth below:

(1) All insurance premiums paid or owed by the purchaser for casualty loss coverage on insurable structures with interest on said payments at 12 percent per annum.

(2) The value of all permanent improvements made on the property determined in accordance with this section with interest on said value at 12 percent per annum.

(c) With respect to property which contains a residential structure at the time of the sale regardless of its location, the proposed redemptioner must pay to the purchaser or his or her transferee, in addition to any other requirements set forth in this section, the amounts set forth below:

(1) All insurance premiums paid or owed by the purchaser for casualty loss coverage on the residential structure with interest on the payments at 12 percent per annum.

(2) The value of all preservation improvements made on the property determined in accordance with this section with interest on the value at 12 percent per annum.

(d) As used herein, "permanent improvements" shall include, but not be limited to, all repairs, improvements, and equipment attached to the property as fixtures. As used herein, "preservation improvements" shall mean improvements made to preserve the property by properly keeping it in repair for its proper and reasonable use, having due regard for the kind and character of the property at the time of sale. The proposed redemptioner shall make written demand upon the purchaser of a statement of the value

of all permanent or preservation improvements as applicable made on the property since the tax sale. In response to written demand made pursuant to this subsection, within 10 days from the receipt of such demand, the purchaser shall furnish the proposed redemptioner with the amount claimed as the value of such permanent or preservation improvements as applicable; and within 10 days after receipt of such response, the proposed redemptioner either shall accept the value so stated by the purchaser or, disagreeing therewith, shall appoint a referee to ascertain the value of such permanent or preservation improvements as applicable. The proposed redemptioner shall in writing (i) notify the purchaser of his or her disagreement as to the value; and (ii) inform the purchaser of the name of the referee appointed by him or her. Within 10 days after the receipt of such notice, the purchaser shall appoint a referee to ascertain the value of the permanent or preservation improvements as applicable and advise the proposed redemptioner of the name of the appointee. Within 10 days after the purchaser has appointed his or her referee, the two referees shall meet and confer upon the award to be made by them. If they cannot agree, the referees shall at once appoint an umpire, and the award by a majority of such body shall be made within 10 days after the appointment of the umpire and shall be final between the parties.

(e) If the proposed redemptioner fails or refuses to nominate a referee as provided in subsection (d) of this section, he or she must pay the value put upon the improvements by the purchaser. If the purchaser refuses or fails to appoint a referee, as provided in subsection (d) of this section, the purchaser shall forfeit his or her claim to compensation for such improvements. The failure of the referees or either of them to act or to appoint

an umpire shall not operate to impair or forfeit the right of either the proposed redemptioner or the purchaser in the premises and in the event of failure without fault of the parties to affect an award, the appropriate court shall proceed to ascertain the true value of such permanent or preservation improvements as applicable and enforce the redemption accordingly.

§40-10-132.

(a) It shall be the duty of the Land Commissioner to cause to be prepared a suitable book, in which shall be entered a description, as accurate as can be obtained, of all the lands which have been bid in by the state, with the amount of state and county taxes due thereon and the date when such lands were bid in; and, when three years shall have elapsed from the date of sale, such portions of lands as have not been redeemed shall be subject to sale by the state; and the Land Commissioner, with the approval of the Governor, may sell do any of the following:

(1) Sell the same at private sale to any purchaser, who may pay therefore in cash to the treasurer such sum of money as the Land Commissioner may ascertain to be sufficient to cover and satisfy all claims of the state and county, which sum shall not be less than the amount of money for which the lands were bid in by the state, with interest thereon at the rate of 12 percent per annum from the date of sale, together with the amount of all taxes due on said lands since date of sale, with interest thereon at the rate of 12 percent per annum from the maturity of such taxes.

(2) If the lands are within a municipal boundary, sell the same to the municipality or such other non-profit or governmental entity as the municipality may designate, at the best price offered, irrespective of the amount of taxes and interest due.

(3) If the lands are not within a municipal boundary, sell the same to the county in which the lands are situated or such other entity as the county may designate, at the best price offered, irrespective of the amount of taxes and interest due.

(4) Sell the same to such other entity created jointly by the municipality and the county in which the lands are situated as much as may be authorized by state law, at the best price offered, irrespective of the amount of taxes and interest due.

(b) Notwithstanding the foregoing, if the lands have not been redeemed or sold by the state within five years from the date of sale, such lands may be sold by the Land Commissioner as provided in Section 40-10-134.

Section 2. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

Section 3. Notwithstanding any provisions of law to the contrary, the provisions of this act shall not apply to any transaction that began prior to the effective date of this act.

Section 4. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law, and shall apply prospectively only to tax sales after the effective date of this act and shall in no way affect tax sales made prior to the effective date of the act.

APPENDIX B

ACT 2002-522

Enrolled, An Act, To provide for an incorporated municipality to demolish or repair an unsafe structure which has become a public nuisance and to collect an assessment lien on the property for the cost of work involved in demolishing or repairing the structure; to prescribe procedures for attaching and collecting the liens; to prescribe procedures for sales of property upon failure of the owner to pay an assessment and interest on property; to provide for redemption of certain property; and to authorize a municipality to demolish or repair a structure in certain emergency situations.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The Legislature finds all of the following:

(1) It is estimated that within the municipalities of the state, there exist several thousand parcels of real property that due to poor design, obsolescence, or neglect, have become unsafe to the extent of becoming public nuisances. Much of this property is vacant or in a state of disrepair and is causing or may cause a blight or blighting influence on the city and the neighborhoods in which the property is located. Such property constitutes a threat to the health, safety, and welfare to the citizens of the state and is an impediment

to economic development within the municipality. This threat can be minimized if an incorporated municipality is authorized to repair the affected structures and is able to recover the cost of the repairs. In addition, where the municipality has undertaken the demolition of the structures and has taken a lien on the real property for the cost of the demolition, there has not been an effective method for recovering this assessment. These obligations owed to municipalities have largely been under-performing assets that could be converted to cash, providing the municipalities with much needed revenues.

(2) It is the intent of this act to authorize a municipality of the state to proceed with the demolition or repair of a structure based on its own findings, and to set out a method for collecting the assessment liens so imposed.

Section 2. Upon a finding of necessity by the governing body of any incorporated municipality in the state, after giving notice as provided herein the municipality may demolish or repair a building or structure or parts of buildings and structures, party walls, and foundations which are found by the governing body of the municipality to be unsafe to the extent of being a public nuisance from any cause. The cost of any action taken by the municipality shall be assessed against the property as provided in this act.

Section 3. (a) Whenever the appropriate city official, as defined herein, shall find that any building, structure, part of building or structure, party wall, or foundation situated in the city is unsafe to the extent that it is a public nuisance, the official shall give the person or persons, firm, association, or corporation who is the record owner, notice to

remedy the unsafe condition of the building or structure by certified or registered mail to the owner's last known address and to the owner at the address of the property . A copy of all notices, orders, and other communications required by this act to be given to the owner of the property, or to the owner of an interest in the property, or to the person last assessing the property for state taxes, also shall be given to all mortgagees of record by certified or registered mail to the address set forth in the mortgage, or if no address for the mortgages is set forth in the mortgage, to the address determined to be the correct address by the person responsible for the notice or other communication. The term "appropriate city official," as used in this act, shall mean any building official or deputy and any other municipal official or city employee designated by the mayor or other chief executive officer of the municipality as the person to exercise the authority and perform the duties delegated by this act to "appropriate city official."

(b) The notice shall set forth in detail the basis for the appropriate city official's finding and shall direct the owner to take either of the following actions:

(1) In the case where repair is required, accomplish the specified repairs or improvements within 45 days of the date of the notice or if the same cannot be repaired within that time to provide the appropriate city official with a work plan to accomplish the repairs, which plan shall be submitted within 45 days of the making of the notice and shall be subject to the city's approval.

(2) In the case where demolition is required, demolish the structure within 45 days of the

notice. The notice shall also state that in the event the owner does not comply within the time specified therein, the repairs or demolition shall be accomplished by the municipality and the cost thereof assessed against the property.

(c) The mailing of the notice, properly addressed and postage prepaid, shall constitute notice as required herein. Notice of the order, or a copy thereof, shall, within three days of the date of mailing, also be posted at or within three feet of an entrance to the building or structure, provided that if there is no entrance the notice may be posted at any location upon the building or structure.

(d) If the owner of any property cited hereunder fails to comply with the notice prescribed, the municipality may take either of the following actions:

(1) In the case where repair is required, repair the building at the expense of the municipality and assess the expenses of the repair on the land on which the building stands or to which it is attached.

(2) In the case where demolition is required, demolish the building at the expense of the municipality and assess the expenses of the demolition on the land on which the building stands or to which it is attached. The term "assessment" as used in this act shall refer to the cost of repair or demolition as provided herein.

Section 4. Within 30 days from the date the notice is given, any person, firm or

corporation having an interest in the building or structure may file a written request for a hearing before the governing body of the city, together with that person's objections to the finding by the city official that the building or structure is unsafe to the extent of becoming a public nuisance. The filing of the request shall hold in abeyance any action on the finding of the city official until determination thereon is made by the governing body. Upon holding the hearing, which shall be held not less than five nor more than 30 days after the request, or in the event no hearing is timely requested, after the expiration of 30 days from the date the notice is given, the governing body of the municipality shall determine whether or not the building or structure is unsafe to the extent that it is a public nuisance. In the event that it is determined by the governing body that the building or structure is unsafe to the extent that it is a public nuisance, the governing body shall order the building or structure to be repaired or demolished, as the case may be. The repairs or demolition may be accomplished by the municipality by contract for the repairs or demolition. The municipality shall have authority to sell or otherwise dispose of salvaged materials resulting from any demolition hereunder. Any person aggrieved by the decision of the governing body at the hearing may, within 10 days thereafter, appeal to the circuit court upon filing with the clerk of the court notice of the appeal and bond for security of costs in the form and amount to be approved by the circuit clerk. Upon filing of the notice of appeal and approval of the bond, the clerk of the court shall serve a copy of the notice of appeal on the clerk of the city and the appeal shall be docketed in the court, and shall be a preferred case therein. The clerk of the city shall, upon receiving the notice, file with the clerk of the court a copy of the findings and determination of the governing body in proceedings and trials shall be held without

jury upon the determination of the governing body that the building or structure is unsafe to the extent that it is a public nuisance.

Section 5. Upon demolition or repair of the building or structure, the appropriate municipal official shall make a report to the governing body of the cost thereof, and the governing body shall adopt a resolution fixing the costs which it finds were reasonably incurred in the demolition or repair and assessing the same against the property; provided, however, the proceeds of any moneys received from the sale of salvaged materials from the building or structure shall be used or applied against the cost of the demolition; and provided further, that any person, firm, or corporation having an interest in the property may be heard at the meeting as to any objection he or she may have to the fixing of such costs or the amounts thereof. The clerk of the municipality shall give notice of the meeting at which the fixing of the costs is to be considered by first-class mail to all entities having an interest in the property whose address and interest is determined from the tax assessor's records on the property or as otherwise known to the clerk. The fixing of the costs by the governing body shall constitute an assessment against the lot or lots, parcel or parcels of land upon which the building or structure was located, and as made and confirmed shall constitute a lien on the property for the amount of the assessment ("the final assessment"). The lien shall be superior to all other liens on the property except liens for taxes, and except for mortgages recorded prior to the creation of the lien for the assessment, and shall continue in force until paid. A certified copy of the resolution fixing the final assessment shall also be recorded in the office of the judge of probate of the county in which the municipality is situated.

Section 6. The municipality shall have the power to assess the costs authorized herein against any lot or lots, parcel or parcels of land purchased by the State of Alabama at any sale for the nonpayment of taxes, and where such an assessment is made against the lot or lots, parcel or parcels of land, a subsequent redemption thereof by any person authorized to redeem, or sale thereof by the state, shall not operate or discharge, or in any manner affect the lien of the city for the assessment, but any redemptioner or purchaser at any sale by the state of any lot or lots, parcel or parcels of land upon which an assessment has been levied, whether prior to or subsequent to a sale of the state for the nonpayment of taxes, shall take the same subject to the assessment.

Section 7. The municipality, in ordering any repair or demolition the cost of which or any part thereof is to be assessed against any property in accordance with the provisions of this act, may provide that the same shall be paid in cash within 30 days after the final assessment; provided, however, that if the assessed amount is greater than ten thousand dollars (\$10,000), the property owner may, at his or her election, to be expressed by notifying the municipal official charged with the duty of collecting the assessments in writing within 30 days after the final assessment is determined, pay the final assessment in 10 equal annual installments, which shall bear interest at a rate not exceeding 12 percent per annum. Interest shall begin to accrue upon the expiration of 30 days from the date on which the final assessment is set by the governing body and the interest shall be due and payable at the time and place the assessment is due and payable. Any person who elects to make installment payments may pay the outstanding balance of the final

assessment together with all accrued interest thereon at any time during the installment payment schedule. The first installment shall be payable within 30 days after the final assessment is determined, and all installments thereof shall be payable at the office of the clerk, finance office, or treasurer of the city or town as may be prescribed. Upon full payment of the final assessments and accrued interest thereon, the municipality shall record a satisfaction of the lien in the office of the judge of probate of the county in which the municipality is located.

Section 8. If the property owner fails to pay the assessment lien within 30 days, or having elected to make installment payments, fails to make any installment payment when due, the whole assessment lien shall immediately become due and payable, and the officer designated by the municipality to collect the assessment lien shall proceed to sell the property against which the assessment lien is made to the highest bidder for cash, but in no event less than the amount of the lien plus interest through the date of default. Prior to the sale, notice shall be given by publication once a week for three consecutive weeks in a newspaper published in the municipality or of general circulation therein, setting forth the date and time of the sale and the purpose for which the same is made, together with a description of the property to be sold. If the officer shall fail to advertise and sell any property on which the payments are past due, any taxpayer of the issuing municipality shall have the right to apply for a writ of mandamus requiring the official to take such action to any court of competent jurisdiction, and the court shall, on proof, issue and enforce the writ.

Section 9. (a) Any property owner, notwithstanding his or her default, may pay the assessment lien with interest and all costs if tendered before a sale of the property.

(b) The cost of any notice and sale resulting from a default on paying an assessment shall constitute a charge against the property to be sold and shall be retained out of the proceeds of the sale.

(c) The officer making the sale shall execute a deed to the purchaser, which shall convey all the rights, title, and interest which the party against whose property the assessment was made had or held in the property at the date of making the assessment or on the date of making the sale. Any surplus arising from the sale shall be paid to the city or municipal treasurer to be kept as a separate fund by the treasurer for the owner upon the responsibility of his or her official bond. The municipality may, by its agents, purchase real estate sold as provided under this article and, in the event of the purchase, the deed for the same shall be made to the municipality.

(d) No mistake in the notice of sale in the description of the property or in the name of the owner shall vitiate the assessment or the lien and if for any reason, the sale made by the municipality is ineffectual to pass title, it shall operate as an assignment of the lien, and, upon the request of the purchaser, supplementary proceedings of the same general character as required in this act may be had to correct the errors in the proceedings for his or her benefit or the lien so assigned to him or her may be enforced by civil action.

Section 10. (a) Any real property heretofore or hereafter sold for the satisfaction of an assessment lien imposed thereon by the governing body of a municipality may be redeemed by the former owner, or his or her assigns, or other persons authorized to redeem property sold for taxes by the state, within two years from the date of the sale by depositing with the officer designated by the municipality to collect the assessments the amount of money for which the lands were sold, with interest thereon at the rate of 12 percent per annum from the date of the sale through the date of the payment.

(b) In addition to any other requirements set forth in this section, the proposed redemptioner must pay or tender the purchaser or his transferee all insurance premiums paid or owed by the purchaser with accrued interest on the payments computed from the date the premiums were paid at 12 percent per annum through the date of payment.

(c) In addition to any other requirements set forth in this section, the proposed redemptioner must pay or tender to the purchaser or his transferee the value of all permanent improvements made on the property determined in accordance with this section. As used herein "permanent improvements" shall include, but not be limited to, all repairs, improvements and equipment attached to the property as fixtures. The proposed redemptioner shall make written demand upon the purchaser of a statement of the value of all permanent improvements made on the property since the assessment sale. In response to written demand made pursuant to this section, the purchaser shall within 10 days from the receipt of the demand, furnish the proposed redemptioner with the amount claimed as the value of the permanent improvements, and within 10 days

after receipt of the response, the proposed redemptioner either shall accept the value so stated by the purchaser, or disagreeing therewith, shall appoint a referee to ascertain the value of the permanent improvements. The proposed redemptioner shall in writing (i) notify the purchaser of his or her disagreement as to the value; and (ii) inform the purchaser of the name of the referee appointed by him or her. Within 10 days after the receipt of the notice, the purchaser shall appoint a referee to ascertain the value of the permanent improvements and advise the proposed redemptioner of the name of the appointee. The two referees shall, within 10 days after the purchaser has appointed his or her referee, meet and confer upon the award to be made by them. If they cannot agree, the referees shall at once appoint an umpire, and the award by a majority of the body shall be made within 10 days after the appointment of the umpire and shall be final between the parties.

(d) If the proposed redemptioner fails or refuses to nominate a referee as provided in subsection (c) of this section, he or she shall pay the value put upon the improvements by the purchaser. If the purchaser refuses or fails to appoint a referee, as provided in subsection (c) of this section, the purchaser shall forfeit his or her claim to compensation for the improvements. The failure of the referees or either of them to act or to appoint an umpire shall not operate to impair or forfeit the right of either the proposed redemptioner or the purchaser in the premises. In the event of failure without fault of the parties to affect an award, the appropriate court shall proceed to ascertain the true value of the permanent improvements and enforce the redemption accordingly.

(e) In addition to all other payments provided hereunder, the proposed redemptioner shall also pay interest to the purchaser on the value of all permanent improvements computed from the date the improvements were made at the rate of 12 percent per annum through the date of the payment.

Section 11. The fixed two-year period of redemption allowed by Section 10 of this act for the redemption of any property heretofore or hereafter sold for the satisfaction of any assessment lien may be extended to a date 60 days after the date of the certificate of warning to redeem provided for in Section 12 of this act, but in no event for a longer period than six years from the date of such sale.

Section 12. At any time after an assessment sale deed has been recorded in the office of the judge of probate of the county in which the property therein described lies and after expiration of the fixed two-year period of redemption allowed by Section 10 of this act, any person may apply to the judge of probate for the certificate of warning to redeem, which references the recorded volume and page number of the deed to be recorded in the real estate records, in substantially the following form: "I hereby certify that on or prior to the date of this certificate, I mailed a certified copy of the deed here recorded, together with notice that the same is here recorded, and a warning to redeem to each of the one or more persons other than the grantee in said deed, to whom the property therein described was last finally assessed for ad valorem taxation at the address of each such person as shown by said ad valorem tax assessment records. This ___ day of ___, 2___, Judge of Probate, ___ County, Alabama."

Section 13. At the time of application for entry of the certificate of warning to redeem, the applicant shall deliver to the judge of probate three certified copies of the recorded deed and shall pay to the judge of probate a fee of one dollar (\$1). Copies of the deed need not include any certificate of acknowledgment. The applicant shall also deliver to the judge of probate a certified copy of the ad valorem tax assessment records of the county containing the name of the person or persons other than the grantee in the deed to whom the property described in the deed was last finally assessed for ad valorem taxation, together with the address of each person as shown by the tax assessment records, or an affidavit that there is no one else. The judge of probate shall promptly mail to each person at such address one of the aforesaid certified copies of the deed, together with an attached warning to redeem in substantially the following form: "Take notice that there is recorded in my office in Deed Book ___ at page ___ a deed of which the attached is a correct copy. You are warned that unless you, or those claiming under you, take prompt steps to redeem from those claiming under the deed, all rights of redemption may be lost. This ___ day of ___, 2___, Judge of Probate, ___ County, Alabama."

Promptly upon or after mailing the notice or notices and certified copy or copies of the deed, it shall be the duty of the judge of probate to record in the real estate records the signed and dated certificate of warning substantially as prescribed by Section 12 of this act. At the expiration of 60 days after the date of the certificate all rights to redeem from the sale shown by the deed shall cease and desist.

Section 14. Redemption may be effected after expiration of the fixed two-year period of redemption allowed or provided by Section 10 of this act and before the extended period of redemption has expired in the same manner and at the same redemption price as is provided in Section 10 of this act; provided, that if the judge of probate has made the certificate of warning to redeem as provided in Section 12 of this act, said redemption price shall be increased by one dollar (\$1).

Section 15. Notwithstanding any other provisions of this act, a municipality shall have authority to enact, and may by ordinance authorize, the appropriate city official to initiate immediate repair or demolition of a building structure when, in the opinion of the official so designated, such emergency action is required due to imminent danger of structural collapse endangering adjoining property, the public right of way or human life or health. The cost of the emergency action shall be fixed by the municipal governing body and shall be assessed as provided in the ordinance, or, if such ordinance does not provide a method of assessment, as provided by this act.

Section 16. The provisions of this act shall also apply to all assessment liens for demolition or renovation of record as of the effective date of this act.

Section 17. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.