

# OUR HIDDEN TREASURE

Recovering Land Value  
to Repair and Rebuild

Fall 2020



PRATT  
CENTER  
FOR  
COMMUNITY  
DEVELOPMENT

# ACKNOWLEDGEMENTS

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# Executive Summary



The city owns vacant land that could be used to create more than 50K units of permanently affordable housing.<sup>6</sup> Photo: Pratt Center





New York City and the world are in crisis. As COVID-19 ravages communities across the country, the city's fault lines of inequality have been exposed. African-American and Latinx New Yorkers have been nearly five times more likely to be hospitalized, and twice as likely to succumb to the virus.<sup>1</sup> Unemployment has increased.<sup>2</sup> The threat of eviction looms for 70% of low-income households who were already only one disaster away from falling behind on rent,<sup>3</sup> and food insecurity among vulnerable New Yorkers is higher than ever.<sup>4</sup> Amid these challenges, the Mayor and City Council cut parts of the budget that supported community stability, initially including a 40% cut to the housing agency's capital budget,<sup>5</sup> and future leaders will face the pressures of declining revenues and increasing costs for years to come. It is more important than ever to ensure New York City (NYC) is maximizing all sources of value for public good.

**One important source of value in NYC is the value of development rights created by the city via up-zonings.** When up-zoning neighborhoods to increase development capacity, City officials have a hand in increasing the value of privately owned property. But this report provides evidence that under current practice, up-zonings primarily create private windfalls that fuel speculation and lead to higher development costs, which in turn drives up land prices, exacerbates the city's affordability crisis, and worsens inequality. Leaders should rethink whether this negative consequence of up-zonings is worth the increased development capacity the city gains from such actions; and when it is, leaders must ensure that the public recovers a portion of the value created.

**Another source of value is the value of land the City owns, or could come to own.** The City is in possession of its own portfolio of properties, and the COVID-driven economic slowdown may cause more privately owned property to fall into distress or face abandonment. While the fiscal consequences of this are worrying, the City could build on its past experience as a manager of *in rem* property and reinvigorate the tradition of conveying vacant land and distressed buildings to entities committed to housing vulnerable New Yorkers or supporting businesses that advance community wealth-building objectives.<sup>7</sup>

This report is based on three good governance propositions:

- 1. The City should discourage front-running.** It is problematic when the public sector creates value that becomes a private windfall.
- 2. The City should have a coherent value recovery strategy.** When the public sector creates value, it should recover a portion of that value.
- 3. The public sector should reinvest reclaimed value in redistributive and reparative ways.** Recovered value should undo the harms of the past.

## RECOMMENDATIONS

As such, the report recommends serious discussion among elected officials and leaders of executive agencies of three broad proposals:

- 1. Restructure taxation at the time of property transfer in order to capture value uplift that would otherwise go to "front-runners" and speculators.**
- 2. Create Transfer of Development Rights (TDR) districts or Purchasable Density Bonus regimes that require property developers to purchase the option to densify rather than granting it free of charge via upzonings.**
- 3. Establish social ownership/social stewardship mechanisms that enable land to be transferred to mission-driven organizations devoted to housing justice and economic security.**

We view these concepts not as finished proposals, but as a provocation for an expansive public conversation about how the City of New York stewards the value inherent in its power to increase development capacity through zoning and in its ownership of land.



Zoning changes that allow for residential development in place of existing auto-related uses generate a substantial uplift in value. Photo: Pratt Center

# I. Up-zonings and Recovering Collectively Created Value

**One important source of value in NYC is the value of development rights created by the City.** This section describes the current approach, problem, and missed opportunities associated with the current approach to rezonings, which are unpopular, unfair, fuel speculation, and worsen the affordability crisis.

Neighborhood up-zonings have been a hallmark of Bill de Blasio's two terms in office as the Mayor of New York City. In an effort that connects directly to *Housing New York*, a mayoral plan to create or preserve 300,000 affordable housing units by 2026, the City Planning Commission has enacted changes in use, height and bulk regulations in five neighborhoods and proposed changes remain in process in other neighborhoods (Table 1). At the heart of each neighborhood plan is the use of zoning tools to create new opportunities for development. City officials increase the capacity of the city's finite land supply to accommodate residential growth by allowing developers to construct residential buildings in areas formerly zoned for manufacturing and by allowing them to construct taller, bulkier buildings in areas where only smaller-scale development had been permitted prior.

Despite being touted as an opportunity to make communities "stronger and more affordable," many up-zoning actions have been met with resistance and anger from communities. There are five reasons for this:

1. The de Blasio Administration has **targeted primarily low-income neighborhoods of color for rezonings** while declining to propose them for predominantly white middle-class areas<sup>8</sup> that could also have accommodated greater density (in fact, many such neighborhoods were the beneficiaries of down-zonings during the Bloomberg Administration).<sup>9</sup>
2. City officials largely **ignored community-driven plans**<sup>10</sup> that called for deeper affordability and more attention to priorities like climate resiliency, public transportation improvements, and protections for small-scale commercial and industrial business owners.
3. It became evident that even with the Mandatory Inclusionary Housing (MIH) policy<sup>11</sup> in place, **private development generates new housing that is too expensive**<sup>12</sup> for most residents of the up-zoned neighborhoods. Thus far, units built under the MIH requirement have been unaffordable to over half of the city's population, in part because "Area Median Income" (from which affordable rents are calculated) is skewed by geographic imprecision and by the high incomes of the wealthy.

Pratt Center has found that just one area-wide zoning action could generate up to

**\$1.3B**

in additional land value. What if a portion of the value from all zoning actions was recovered for the public?

4. It was feared that new development would exert inflationary pressure on entire neighborhoods. Advocates argued that **environmental impact statements as conducted by City agencies did not accurately anticipate the likely displacement** of businesses<sup>13</sup> and households<sup>14</sup> in the areas being up-zoned.
5. The low-income neighborhoods of color that were targeted had widespread infrastructure and other needs borne from a **history of disinvestment that the City had no plan to address**, other than promising funds for limited purposes in exchange for accepting the density of the rezonings, regardless of documented community need.

With lawsuits, community protests, and councilmember opposition threatening to derail several planned rezonings, 2019 was a tempestuous year for the Administration.<sup>15, 16, 17</sup> Meanwhile, studies of earlier up-zonings' impacts suggested that concerns about displacement were well-founded.<sup>18</sup> Then, in the first months of 2020, all development in the city was upended by the Coronavirus pandemic.

It is time to reconsider when it makes sense to activate the public sector's role as a land regulator and land owner to create capacity for new private development and how that fits into a larger framework of planning for our city. This is especially true if the City's rezoning practices are contributing to runaway land prices, effectively nullifying many of the hypothesized affordability benefits of density increases. We need to consider what policy levers are available to promote truly affordable development that benefits historically marginalized communities and begins to dismantle traditional race- and class-based inequity.

Table 1: Status of neighborhood rezonings initiated by the City under Mayor Bill de Blasio

	2016	2017	2018	2019	2020
<b>Ratified by CPC and City Council</b>	East New York	East Harlem	Jerome Avenue	Bay Street	
		Downtown Far Rockaway	Inwood	Reinstated after suspension	
<b>In ULURP</b>				Pending Litigation occurring	Downtown Flushing
<b>Proposed, Not yet in ULURP</b>				Stalled Political Impasse	Southern Boulevard
				Stalled Political Impasse	Bushwick
				Withdrawn	Anable Basin
					Gowanus

# GOWANUS A Case Study

This section describes a case study of property dynamics in Brooklyn's Gowanus neighborhood starting in the early 2000s, which demonstrates how the uplift in land value associated with an anticipated neighborhood rezoning ends up being capitalized into land prices and realized almost entirely by landowners – including those who have “bought in” with the intention of reselling sites without making any improvements.

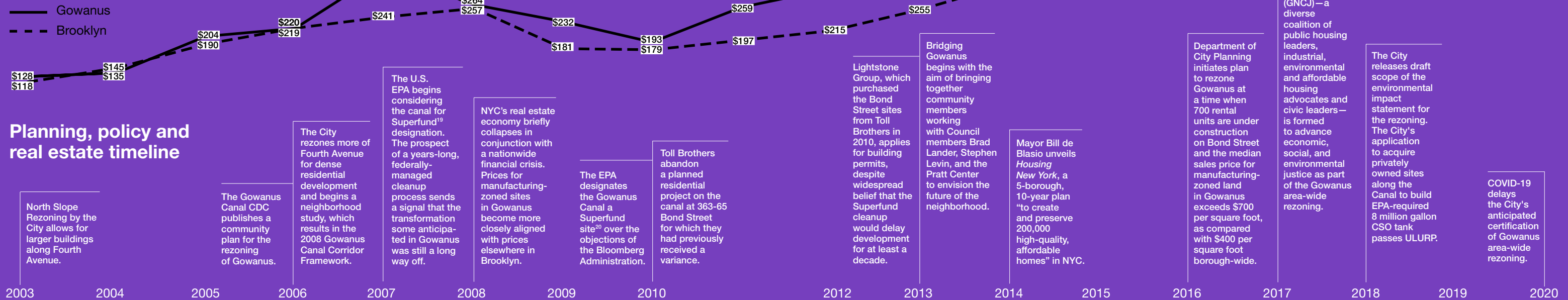
**Industry in 19th Century Gowanus:** Gowanus is a historically industrial neighborhood in southwest Brooklyn—one of the first in the borough to be settled by European colonists. Its landmark feature is the Gowanus Canal, a waterway that began its existence as a tidal inlet of navigable creeks along which the indigenous Canarsie people fished and farmed, and which Dutch settlers later developed with water-powered mills. As Brooklyn industrialized in the 19th century, the creek was increasingly in demand for commercial transportation. In 1849, the New York State legislature decreed that it be deepened and channelized, and by the 1860s the Gowanus Canal was a busy shipping channel surrounded by factories. Waste from these factories, particularly plants that created manufactured gas from coal, combined with residential wastewater to create a deeply contaminated waterway.

**Pollution in 20th Century Gowanus:** As the nature of manufacturing and goods distribution changed in the mid-20th century, many of the industrial businesses along the canal closed or moved. The systemic denial of various services by the government and the private sector over decades known as “redlining”, and then the suburbanization of industry and population, also led to disinvestment in the commercial and residential areas surrounding Gowanus. Housing in the neighborhood has historically been segregated

by race and income. Population stability in the area was attributable to the construction of about 4,300 units of (largely segregated) public housing between 1949 and 1970. Responding to local activism, officials built a new treatment plant that diverted some of the raw sewage from the canal; it opened in 1978. The canal nevertheless remained highly polluted, due to coal tar residue from manufactured gas plants, contaminants from other industrial uses, and to the persistence of combined sewer overflow discharge points.

**Speculation in Present-day Gowanus:** Gowanus was still industrial when Mayor Michael Bloomberg took office in 2002, but the industry mix was changing. Some longtime industrial businesses such as Quadrozzi Cement and Brooklyn Casket Co. remained in the neighborhood, but artists and artisans had joined them, renting studios and workshops in converted factory buildings. Moreover, as New York City's population grew in the early 2000s, many new high-income households showed a taste for “industrial chic” that Gowanus was well positioned to satisfy. Developers successfully sought zoning variances to convert some industrial lofts to market-rate housing, and as-of-right industrial-to-commercial conversions became more common. It was in this environment that Bloomberg's administration undertook a series of rezoning actions across the city designed to allow dense residential development in formerly low-income and manufacturing-zoned areas. One of the first such actions was the City's 2003 up-zoning of Fourth Avenue—the boundary line between Gowanus and the affluent Park Slope neighborhood to the east—as part of the North Slope rezoning. Fourth Avenue had previously been zoned for small-scale residential development, including hundreds of units of rent stabilized housing with first-floor business premises; suddenly it became possible to build residential structures of up to 12 stories, and a building boom ensued. The City's 2007 rezoning further south on 4th Avenue continued this trend. Soon afterward, Bloomberg's Department of City Planning began studying the Gowanus neighborhood.

## Median sales price (per square foot) of manufacturing-zoned land in Gowanus compared with Brooklyn (2003-2020)



## Planning, policy and real estate timeline

North Slope Rezoning by the City allows for larger buildings along Fourth Avenue.

The Gowanus Canal CDC publishes a community plan for the rezoning of Gowanus.

The City rezones more of Fourth Avenue for dense residential development and begins a neighborhood study, which results in the 2008 Gowanus Canal Corridor Framework.

The U.S. EPA begins considering the canal for Superfund<sup>19</sup> designation. The prospect of a years-long, federally-managed cleanup process sends a signal that the transformation some anticipated in Gowanus was still a long way off.

NYC's real estate economy briefly collapses in conjunction with a nationwide financial crisis. Prices for manufacturing-zoned sites in Gowanus become more closely aligned with prices elsewhere in Brooklyn.

The EPA designates the Gowanus Canal a Superfund site<sup>20</sup> over the objections of the Bloomberg Administration.

Toll Brothers abandon a planned residential project on the canal at 363-65 Bond Street for which they had previously received a variance.

Lightstone Group, which purchased the Bond Street sites from Toll Brothers in 2010, applies for building permits, despite widespread belief that the Superfund cleanup would delay development for at least a decade.

Bridging Gowanus begins with the aim of bringing together community members working with Council members Brad Lander, Stephen Levin, and the Pratt Center to envision the future of the neighborhood.

Mayor Bill de Blasio unveils *Housing New York*, a 5-borough, 10-year plan “to create and preserve 200,000 high-quality, affordable homes” in NYC.

Department of City Planning initiates plan to rezone Gowanus at a time when 700 rental units are under construction on Bond Street and the median sales price for manufacturing-zoned land in Gowanus exceeds \$700 per square foot, as compared with \$400 per square foot borough-wide.

The Gowanus Neighborhood Coalition for Justice (GNCJ)—a diverse coalition of public housing leaders, industrial, environmental and affordable housing advocates and civic leaders—is formed to advance economic, social, and environmental justice as part of the Gowanus area-wide rezoning.

The City releases draft scope of the environmental impact statement for the rezoning. The City's application to acquire privately owned sites along the Canal to build EPA-required 8 million gallon CSO tank passes ULURP.

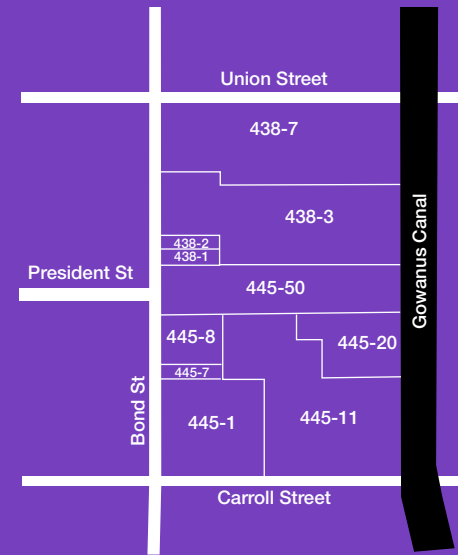
COVID-19 delays the City's anticipated certification of Gowanus area-wide rezoning.

## How the value of

7 parcels in Gowanus

jumped to

**\$95 Million**



- 1 In 1978, Daniel Tinneny of Staten Island bought parcels 445-8 and 445-11 for \$85,000 from S. Alexander and Company of Jersey City. He established Vidan Auto Salvage on the site and acquired the remainder of the President Street properties site (438-1, 438-2, 438-3, 445-20) over the next eleven years.
- 2 In 1994, Tinneny paid the city \$95,000 to close and demap President Street between Bond and the canal (parcel 445-50) making Tinneny the largest waterfront property owner in Gowanus.<sup>21</sup>
- 3 Between 2009 and 2012, Tinneny transferred ownership of the parcels to a holding company, owned by his estate and eventually controlled by his son.
- 4 In 2016, Tinneny Jr. applied to the NYS Department of Environmental Conservation's Brownfield Cleanup Program to clear the way for potential future development.<sup>22</sup>
- 5 In 2018, Tinneny sold the parcels to Yoel Goldman's All Year Management for \$61 million.<sup>23</sup>
- 6 In 2019, a majority stake in these same parcels was sold to the Rabsky group for \$95 million, with All-Year retaining a 12% stake. This price tag far exceeded the low-density industrial property's current income value of approximately \$31 million.<sup>24</sup>



# LESSONS LEARNED FROM THE GOWANUS CASE STUDY



A residential tower at 363 Bond Street is the first to be constructed along the Gowanus Canal and provides a striking contrast to the industrial landscape of the surrounding neighborhood. Image credit: Google Maps

The Gowanus case study illustrates the argument that when the City announces its intention to rezone without a strong plan in place to capture some of the value it will confer, the “value uplift” ends up being capitalized into land prices and realized almost entirely by landowners. In such cases, the opportunity to capture value uplift for investment in deep affordability is lost.

The key to understanding the outlandish price increases for manufacturing-zoned sites in Gowanus in the 2000s and 2010s is to think of the sites not as land but as locations.

In earlier years, the prices of these locations reflected the income that could be earned from renting to manufacturers or other industrial tenants. When rumors of a rezoning began to circulate, “front-runners” bid up the prices of these locations in anticipation of their becoming more economically valuable. The prices front-runners paid were based not on the income that could be earned there at the time but on an estimate of the maximum income that could be earned at these locations after the rezoning occurred. The destructive thing about this is that the value increase anticipated to be conferred by the public sector’s intervention was absorbed in speculative trades. **Owners of land reaped most of the gains long in advance of the rezoning.** Anyone building at these locations after the rezoning must now charge luxury prices if they hope to generate a reasonable return for their investors. It could be argued that land prices in this context, while responsive to

estimates of achievable rents for newly built space, actually put upward pressure on housing costs in that they leave developers no wiggle room.

In the absence of a policy to discourage front-running, it is very difficult for an up-zoning to deliver on the promise of increased affordability. Its major effect will be to increase land prices, as the anticipated development value uplift resulting from public sector action gets capitalized into the value of locations. While higher land values do result in higher real estate tax assessments for owners, standard practice in NYC results in the abatement of real taxes on new residential property (and much new commercial property as well) for at least a decade. Moreover, research suggests that tax costs too are passed along to tenants and buyers in a property tax system that city and state officials have both acknowledged to be broken.<sup>25</sup>

In the short run at least, the only real beneficiary of speculative real estate pressure is the seller. The escalating price of land hurts for-profit developers, non-profit developers, first-time home-buyers, and renters by driving up development costs. While the value of location is collectively generated by all of the people who live in a city, a few individual owners—those with the wherewithal to park capital on land in anticipation of a public sector action—realize a disproportionate share of the benefits of urban economic agglomeration.

## II.

# Public Land and Safeguarding Value

**Another source of value is the value of land the City owns, or could come to own.** In 2012, Picture the Homeless conducted a citywide survey that identified 41,176 publicly and privately-owned vacant buildings and lots across the city, and among recommendations, they identified the need to turn over properties to community land trusts and mutual housing associations to allow for community controlled long-term affordable housing.<sup>26</sup> In 2016, NYC Comptroller Scott Stringer published a report arguing more than 50,000 units of permanently affordable housing could be created on vacant city-owned property.<sup>27</sup> The Comptroller advocated the development of a city-controlled land bank that would steward some or all of the City's current portfolio of 1,459 vacant properties, and also pointed to a substantial inventory of persistently tax-delinquent privately owned property that a land bank could acquire.

Moreover, as a city we are facing the possibility in the current, COVID-driven economic slowdown, that privately owned property, including occupied residential and commercial buildings, will fall into distress or face abandonment. While the fiscal consequences of this are worrying, the situation also presents an opportunity for the city to rely on its past experience as a manager of *in rem* property and reinvigorate the tradition of conveying vacant land and distressed buildings to entities committed to housing vulnerable New Yorkers or supporting businesses that advance community wealth-building objectives.<sup>28</sup>

Distressed properties will be diverse in character. They may include everything from vacant development sites to empty industrial buildings to multi-family buildings occupied by low-income tenants and in need of investment. Similarly, there is a diverse spectrum of intermediaries invested in stewarding property and keeping it permanently affordable. Some are grassroots housing development organizations; some are more established non-profit landlords with large portfolios of affordable units. Some are quasi-public corporations like the Brooklyn Navy Yard Development Corporation; others are land trusts, limited equity cooperatives and mutual housing associations. Some groups are high-capacity and others would need technical assistance to thrive within a citywide social ownership infrastructure. The land bank structure would need to be flexible enough to include a variety of kinds of property and work with a variety of mission-driven organizations on a wide range of approaches to acquisition, redevelopment and management.

At this time, there may be more pressure than ever for the City to generate revenue in the short term, either by selling tax liens on delinquent properties or by auctioning them off. But a smarter long-term strategy is to use a land bank mechanism to safeguard the value these properties represent, which would enable the city and mission-driven organizations either to share in the benefits of land value increase, or to prevent out-of-control land value appreciation when this is necessary to keep homes and business premises affordable.<sup>29</sup>

### III.

# Recommendations and Conclusion



The Long Island City Justice for All Coalition is advocating that city-owned land on the Long Island City waterfront be developed in a way that meaningfully meets the needs of low- and moderate-income stakeholders. Photo credit: Roy and Rita Normandeau.

New York City has fiscally difficult years ahead. Future leaders will face declining revenue and resources. It is more important than ever to ensure the City is maximizing all sources of public value for public good. Bold, provocative ideas are critical and can provide the basis for discussion and debate among the future leaders of NYC.

This final section offers three basic propositions derived from the lessons learned from the Gowanus case, and presents public policy proposals to discourage land speculation, recover the value created by public action for investment in critical social goods, and promote social ownership of land that contributes to community wealth-building.

First, given that escalating land prices caused by front-runners are destructive to the City's fight against the affordability crisis, **it is in the public interest to discourage front-running.**<sup>30</sup>

Second, given that land value is collectively created, **the City should have a coherent value recovery strategy when its actions create value.**

Third, given the vast, historically-based inequities in health and wellness infrastructure, **the public sector should reinvest existing and reclaimed value in redistributive and reparative ways.**

## Recommendation

# 1

# RESTRUCTURE TAXATION AT THE TIME OF PROPERTY TRANSFER IN ORDER TO RECOVER VALUE UPLIFT THAT WOULD OTHERWISE GO TO “FRONT-RUNNERS” AND SPECULATORS.

Real estate taxes inherently recover for the public sector a portion of the value that up-zonings confer, and there are various ways to approach such a restructuring. A new transfer fee could be assessed that would be triggered when property is transferred from one owner to another in an area where a rezoning study is underway. The Department of Finance, or an independent entity such as the City’s Independent Budget Office, would estimate the income value of the property under current zoning (e.g. a two-story manufacturing building; or a site where only a three-story residential building can now be built) and also estimate the imputed income value of the property that is reflected in the sales price. Some proportion of the difference between the two values—perhaps 30%—would be levied on the buyer as a transfer fee. A transfer fee would be complicated to implement, both because it would be difficult to arrive at accurate estimates of income value and because such estimates would be subject to contestation.

Another approach would be to impose a City capital gains tax rate for owners of property in an imminently or recently rezoned area. The tax could be calibrated to recover a specific portion of the value conferred by the rezoning, and no more. It would be possible to construct a tax regime targeted at flippers—owners who acquire property for a short-term gain by extracting the value that the market anticipates being conferred by public sector action. Owners who have held a property for only a short period of time could be taxed at a higher rate than owners who have been operating buildings on a site in their currently permitted uses.

### MAIN PURPOSE

Disincentivize speculation; generate revenue to meet property affordability needs.

### HOW WOULD FUNDS BE USED

The revenue raised would be dedicated to highly redistributive expenditures, such as public housing repair or to construct units affordable to very low-income households. It could also be dedicated to the construction of commercial and industrial space affordable to small businesses.

### POLICY DESIGN CONSIDERATIONS

Private actors will attempt to circumvent or minimize the tax. Discussion will be needed to determine the dating of when the anticipation of a rezoning begins.

### WHO MUST ACT

The Department of Finance would need to develop a standard methodology for estimating the value of the properties implicated in the tax: both the current income value and the income value implied in the sales price. This will require assumptions about income capitalization, expected costs and revenues, and reasonable rates of return. This proposal can be considered in connection with the most recent property tax reform commission’s proposals.<sup>31</sup>

### BUDGET IMPACT

Neutral or Positive

### LEGAL CONSIDERATIONS

New York State must grant the City authority to levy a new transfer tax.



# 2

## **CREATE TRANSFER OF DEVELOPMENT RIGHTS DISTRICTS OR PURCHASABLE DENSITY BONUS REGIMES THAT REQUIRE PROPERTY DEVELOPERS TO PURCHASE THE OPTION TO DENSIFY RATHER THAN GRANTING IT FREE OF CHARGE VIA UP-ZONINGS.**

While real estate taxes recover for the public sector a portion of the value that up-zonings confer, officials should also rely directly on the value uplift that their land use and capital spending<sup>32</sup> actions generate, especially in times of great need and limited revenue in our city.

Instead of up-zoning an area, the City would structure land use actions as air rights sales within special districts, giving developers the option to directly purchase additional density. The examples of Hudson Yards and the East Midtown rezoning could be instructive here; in both cases, the City created new development rights and a market for selling them, then used the proceeds to fund public infrastructure. However, in the case of Hudson Yards, property tax breaks effectively eroded the possible value recovery.

If the City employed transfer of development rights (TDR) or density bonuses as a way of raising revenue, areas in which there is lack of a market for development rights could be neglected as sites for investment. The City could explore a revenue-sharing model that would, for example, enable NYCHA developments that are far from “hot market” areas of the city to share in the revenue generated by TDRs elsewhere.



Members of the Gowanus Neighborhood Coalition for Justice held a press conference in February 2020 to demand upfront funding commitments for local NYCHA developments as part of the proposed rezoning of Gowanus. Photo: Pratt Center.

## MAIN PURPOSE

Generate revenue

## HOW WOULD FUNDS BE USED

The City would use the proceeds from the air rights sales to restore the integrity of public housing or to construct housing units affordable to very low-income households. Development rights sales involving commercial land uses could be dedicated to the construction of commercial and industrial space affordable to small businesses.

## POLICY DESIGN CONSIDERATIONS

(1) Funds could be generated at an unpredictable rate. (2) Without “guardrails” of some kind to guide development to what is appropriate, this could trigger excessive densification if the City expanded development capacity solely for the purpose of raising revenue through air rights sales. (3) Appendix B (p. 20) summarizes Pratt Center for Community Development’s *Public Action, Public Value* study, which proposes an air rights transfer in conjunction with the Gowanus rezoning to recover some of the value uplift and invest it in nearby public housing.<sup>33</sup> The proposal is based on the assessment that the benefits of the rezoning would exceed its costs, because it would bring affordable housing to an affluent neighborhood and because it could generate revenue for local public housing, a critically important social good. Nevertheless, up-zoning is not always an appropriate choice, and these recommendations should not be interpreted as advocating a blank check for densification in areas that are environmentally vulnerable, or in areas (as already noted) where new development projects will likely lead to displacement and exacerbate existing inequalities.

## WHO MUST ACT

New York City Department of City Planning

## BUDGET IMPACT

Positive

## LEGAL CONSIDERATIONS

The City’s authority to regulate land use must be based on land use considerations, and there must typically be a nexus or close relationship between the land use action and the use of the funds. The nexus test could be satisfied if the use of the funds is in the service of realizing a well-considered land use plan for the area and achieves outcomes that would not be achieved in the absence of the mechanism. However, the City could establish the need to fund public housing and/or deeply affordable housing as part of a “well-considered land use plan” for an area. This conclusion would allow the City to argue that absent a public value recovery mechanism, these public goods would not be realized. Thus, even if challenged, a TDR district could withstand scrutiny in court.

# 3

## **ESTABLISH A SOCIAL OWNERSHIP OR STEWARDSHIP MECHANISM, SUCH AS A LAND BANK OR ACQUISITION FUND THAT ENABLES PROPERTY TO BE TRANSFERRED TO MISSION-DRIVEN ORGANIZATIONS DEVOTED TO HOUSING JUSTICE AND COMMUNITY WEALTH-BUILDING AS A FORM OF VALUE SAFEGUARDING.**

In an increasingly revenue-scarce environment, critical social infrastructure is suffering. Public housing developments desperately need investment in order to be habitable. Nearly 60,000 New Yorkers are unhoused, including more than 20,000 children. The COVID crisis has laid bare significant inequities in health and wellness infrastructure for economically fragile households of color. The spending of recovered value must address these needs; it must be redistributive. Moreover, we believe that historically marginalized communities should be involved in developing and executing the framework by which new funds are invested. Residents of public housing communities, for example, know their needs and priorities and can help to ensure that the City invests fairly and in ways that maximize on-the-ground benefits.

Publicly owned land is an underutilized resource in the struggle to meet the needs of households and businesses unable to afford market rents in an increasingly expensive city.

## MAIN PURPOSE

Empower community groups seeking to acquire land and use it to insulate people from gentrification and displacement pressure.

## HOW WOULD THIS WORK

Among advocates and policy-makers, discussions are ongoing about mechanisms for public and collective land stewardship. For example, there are efforts to end the City's tax lien sale; efforts to re-establish more effective mechanisms for transferring property from the city's portfolio to mission-driven organizations; and efforts to advocate for more quasi-public entities, like the Brooklyn Navy Yard Development Corporation, which leverage real estate with objectives such as quality job creation in mind. There is legislation currently in the City Council that would create a land bank. Others have suggested a not-for-profit corporation governed by a board that includes Mayoral, Council and community representatives. An additional way for mission-driven organizations to acquire privately held property on which to develop permanently affordable space would be an acquisition fund created by the City, similar to the Industrial Development Fund operated via the New York City Economic Development Corporation. All these ideas, and others, should be the subject of a robust public conversation.

## POLICY DESIGN CONSIDERATIONS

In determining the best entity to achieve this goal, the following should be considered: Who would manage the land bank/entity, and how would its structure allow for decisions about land disbursements to be made in a manner that centers historically marginalized communities? The types of properties that would be subject to *in rem* foreclosure should also be defined through a transparent process.

## WHO MUST ACT

The mayor and the City Council need to initiate.

## BUDGET IMPACT

Neutral if the City dedicates its own properties or acquires properties via *in rem* foreclosures. Negative if the City capitalizes a non-revolving fund.

## LEGAL CONSIDERATIONS

Local legislation would likely be needed establish an entity with the powers to receive, hold, and transfer land currently held by different public entities to mission-driven organizations. State permission may be required. The City would need to obtain State approval to create a land bank. Legislation initiating this process has been pending in the City Council since 2018.<sup>34</sup> NYC would need to amend laws and procedures governing *in rem* foreclosures. Depending on how structured, transfer of City property into the land bank could require ULURP. The City can unilaterally initiate a fund.



Launch meeting of the Western Queens Community Land Trust, held in January 2020 at the Jacob Riis Center at Queensbridge Houses. Photo credit: Western Queens Community Land Trust



# CONCLUSION

The purpose of this report is not to field test complete policy proposals. The ideas presented here are deliberately rough around the edges, ready to be unpacked, debated and refined. We offer them in a spirit of experimentation, as the basis for what we hope will be a more expansive public conversation about how the city stewards the value inherent in its land use regulatory powers and its ownership of land at an extraordinary moment in time.

# GLOSSARY

### **Mandatory Inclusionary Housing (MIH)**

As a condition of being able to build bigger and higher or to build residential properties on land that had hosted commercial or industrial uses, MIH requires developers in up-zoned areas to build permanently affordable housing alongside market-rate units. The MIH ordinance, along with significant city capital expenditure to create and preserve new units, has helped to increase the supply of permanently below-market housing for New Yorkers at a range of incomes.

### **Income Value**

The income value of a property is an estimate generated by the so-called income approach to land appraisal. An appraiser arrives at a value by estimating the annual income (Net Operating Income) that could be generated on a property under current market conditions, assuming that it has been developed according to its highest-yielding use under current zoning. The income value of a property zoned for a one-story manufacturing plant is less than the income value of that same property zoned for a four-story residential structure. In turn, the income value of the property zoned for a four-story apartment building is lower than the income value of the property zoned for a ten-story apartment building.

### **Imputed Value**

When a property changes hands, the price the buyer pays reflects their understanding of its value. When property is purchased at a price that far exceeds its income value under current regulatory conditions (see above), this is a signal that the buyer is speculating—i.e. betting that its income value will soon increase.

# THE GOWANUS VALUE UPLIFT STUDY AND AIR RIGHTS TRANSFER PROPOSAL

The Gowanus Neighborhood Rezoning is distinct from other de Blasio Administration rezonings in that it targets a neighborhood where existing rents and housing prices are above average for the city. The application of the city's Mandatory Inclusionary Housing policy would bring income diversity to Gowanus, in that people who cannot afford to move to the neighborhood at present would qualify for the below-market units integrated into new development. Nevertheless, the gentrification of Gowanus is relatively recent; median income in the neighborhood increased from about \$35,000 in 2000 to over \$90,000 in 2015. The influx of wealthier residents was enabled not just by densification along Fourth Avenue in the wake of the 2003 and 2007 rezonings, but also by the harassment and eviction of low- and moderate-income tenants and the demolition or conversion of rent-stabilized buildings.<sup>35</sup> Between 2010 and 2015 alone, median rent in Gowanus increased from \$1,925 to \$2,900; median home sales prices jumped dramatically as well.

By far the largest source of housing now available to low-income renters in Gowanus is public housing. However, like New York City Housing Authority (NYCHA) campuses across the city, Gowanus's three developments (Wyckoff Gardens, Gowanus Houses, and Warren Street Houses) need significant capital investment to become minimally livable. \$237 million in capital funds are required at the three complexes to repair elevators, replace outdated ventilation and plumbing systems, and relieve residents of chronic infestations of mold and vermin.<sup>36</sup> A community-based coalition, the Gowanus Neighborhood Coalition for Justice (GNCJ), advocated that the City advance physical rehabilitation and social inclusion efforts for public housing residents in conjunction with its plan to rezone the neighborhood. However, when the Department of City Planning released its draft framework in 2018, the three campuses were excluded from the rezoning area. GNCJ members were furious. They insisted that as the city government promulgated a new zoning regime that would set in motion a massive increase in development value, public officials should find money to fix their homes.

In 2018, Pratt Center and Fifth Avenue Committee (the convener of GNCJ) engaged David Paul Rosen and Associates (DRA) to estimate the increase in economic value that the Gowanus Neighborhood Rezoning would generate for those who own land in the rezoning area. Using residual land value analysis, DRA estimated that

the value uplift in Gowanus post-rezoning would range from \$108 million to \$1.3 billion, depending upon the capitalization rate used to calculate the income value of new development. This showed that the City could recover value from property owners in Gowanus and invest it in social housing without making development unprofitable. Pratt Center's *Public Action, Public Value* report conveyed the study's findings and proposed a transfer of development rights (TDR) regime as a way of capturing this value and reinvesting it in the capital-starved NYCHA buildings nearby.

Specifically, the report proposed that property owners in Gowanus who wished to take advantage of the City's up-zoning be required to purchase development rights. The City Council's Land Use Division estimated that 370,000 square feet of unused development rights on the NYCHA campuses could raise \$111 million in such a sale. That dollar value was based on using a floor-area-ratio (FAR) of 2.43; if the City had up-zoned the NYCHA campuses from 2.43 to 3.0 FAR, the unused development potential figure would have increased to 794,000 square feet, and an air rights sale could have raised up to \$217 million to rehabilitate the public housing.

DRA's analysis treated 2018 property values as a baseline. Namely, it did not count the uplift in value that had been realized by front-runners between the early 2000s, when Gowanus first became the subject of rezoning rumors, and 2018. Nevertheless, because of the massive value uplift associated with rezoning land from manufacturing to residential use and because of the high rents and sales prices that developers could expect to earn in a rezoned Gowanus, the study still found some "residual value." At the core of the *Public Action, Public Value* report (and the activism of GNCJ) is a strong conviction that wherever residual value exists, the government should recover it. Moreover, the public sector should redistribute that value in ways that alleviate current and historical inequalities in wealth and power, such as by putting recovered capital into deeply underinvested social housing. A crucial part of this is a transparent planning process with a strong element of community control. In the GNCJ case, Gowanus NYCHA residents are adamant that if a TDR district is created, they should participate in developing and governing the framework for investing and managing new capital funding yielded by development rights sales.

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- Superstorm Sandy did significant damage to Gowanus Houses in 2012; sewage backups are common at Wyckoff Gardens.



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