

**BOROUGH OF WASHINGTON
WARREN COUNTY, NEW JERSEY**

ORDINANCE # 7 -2009

**AN ORDINANCE ADDING NEW CHAPTER 30 ENTITLED
“BUILDINGS, ABANDONED” TO THE CODE OF THE BOROUGH
OF WASHINGTON TO ESTABLISH AN ABANDONED PROPERTY
LIST WITH AUTHORIZATION FOR THE BOROUGH MANAGER
TO DESIGNATE QUALIFIED REHABILITATION ENTITIES AND
AMENDING CHAPTER 31 OF THE CODE OF THE BOROUGH OF
WASHINGTON**

WHEREAS, the Borough of Washington contains a number of vacant buildings that have been abandoned by their owners and that are in a state of disrepair and neglect; and

WHEREAS, these buildings, by virtue of their condition and their proximity to other buildings, are diminishing the value of neighboring properties and have a negative affect on the quality of life of adjacent residents and property owners, increasing the risk of property damage through arson and vandalism and discouraging neighborhood stability and revitalization; and

WHEREAS, many of these buildings, or the land on which they are situated, can be used for productive purposes, which will further the revitalization of the Borough and improve its economic and social condition; and

WHEREAS, the Borough desires to use the powers granted local governments under the laws of the State of New Jersey to address the conditions created by these buildings, and further their reuse for productive purposes; and

WHEREAS, by creating an abandoned property list the Borough will be better able to address the conditions created by these buildings, and further their reuse for productive purposes;

WHEREAS, *N.J.S.A. 55:19-55* authorizes a municipality that has designated a public officer to deal with unsafe buildings pursuant to *N.J.S.A. 40:48-2.5* to adopt an ordinance directing that public officer to undertake an inventory of abandoned properties within the municipality; and

WHEREAS, Section 31-4 of the Code of the Borough of Washington designates the Zoning Officer as the public officer to exercise the powers set forth in Chapter 31 of the Code related to unfit buildings as authorized by *N.J.S.A. 40:48-2.5*; and

WHEREAS, the Mayor and Council have determined that it would be more efficient for the Borough if the Borough Manager or his designee ~~serve~~ **serves** as the public officer pursuant to both *N.J.S.A. 40:48-2.5* and *N.J.S.A. 55:19-55*;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Washington, County of Warren, as follows:

Section 1. A new chapter 30 entitled “Buildings, Abandoned” is hereby added to the code of the Borough of Washington to read as follows:

§30-1. Legislative Declaration.

It is hereby found and declared that vacant buildings in the Borough of Washington abandoned by their owners, by virtue of their disrepair and neglect and their proximity to other buildings, diminish the value of neighboring properties, have a negative affect on the quality of life of adjacent residents and property owners, increase the risk of property damage through arson and vandalism, and discourage neighborhood stability and revitalization. It is further found and declared that the use by the Borough of the powers granted to local governments by State law to address the conditions created by abandoned buildings will further the revitalization of the Borough and improve its economic and social condition.

§30-2. General Definitions.

“Lienholder” or “mortgage holder” means any person or entity holding a note, mortgage or other interest secured by the building or any part thereof.

“Owner” means the holder or holders of title to an abandoned property.

“Property” means any building or structure and the land appurtenant thereto.

“Qualified rehabilitation entity” means an entity organized or authorized to do business under the New Jersey statutes which shall have as one of its purposes the construction or rehabilitation of residential or non-residential buildings, the provision of affordable, housing, the restoration of abandoned property, the revitalization and improvement of urban neighborhoods, or similar purpose, and which shall be well qualified by virtue of its staff, professional consultants, financial resources, and prior activities set for in *N.J.S.A. 55:19-78 et seq.* to carry out the rehabilitation of vacant buildings in urban areas.

“Utility” means any electric or natural gas public utility that is regulated under the jurisdiction of the Board of Public Utilities.

§30-3. Abandoned Property Criteria

A. Except as provided in §30-4 below, any property that has not been legally occupied for a period of six months and which meets any one of the following additional criteria may be deemed to be abandoned property upon a determination by the Public Officer that:

(1) The property is in need of rehabilitation in the reasonable judgment of the Public Officer, and no rehabilitation has taken place during that six-month period;

(2) Construction was initiated on the property and was discontinued prior to completion, leaving the building unsuitable for occupancy, and no construction has taken

place for at least six months as of the date of a determination by the Public Officer pursuant to this section;

(3) At least one installment of property tax remains unpaid and delinquent on that property in accordance with chapter 4 of Title 54 of the Revised Statutes as of the date of a determination by the Public Officer pursuant to this section; or

(4) The property has been determined to be a nuisance by the Public Officer in accordance with *N.J.S.A. 55:19-82*.

B. A property which contains both residential and non-residential space may be considered abandoned so long as two-thirds or more of the total net square footage of the building was previously legally occupied as residential space and none of the residential space has been legally occupied for at least six months at the time of the determination of abandonment by the Public Officer and the property meets the criteria of either subsection A.1. or A.4. above.

§30-4. Abandoned Property Exceptions

A. If an entity other than the municipality has purchased or taken assignment from the municipality of a tax sale certificate on a property that has not been legally occupied for a period of six months, that property shall not be placed on the abandoned property list if (1) the owner of the certificate has continued to pay all municipal taxes and liens on the property in the tax year when due; and (2) the owner of the certificate takes action to initiate foreclosure proceedings within six months after the property is eligible for foreclosure pursuant to either subsection a. or subsection b. of *N.J.S.A. 54:5-86*, as appropriate, and diligently pursues foreclosure proceedings in a timely fashion thereafter.

B. A property which is used on a seasonal basis shall be deemed to be abandoned only if the property meets any two of the additional criteria set forth in §30-3.A. above.

C. A determination that a property is abandoned property shall not constitute a finding that the use of the property has been abandoned for purposes of municipal zoning or land use regulation.

D. Upon the request of a purchaser or assignee of a tax sale certificate seeking to bar the right of redemption on an abandoned property pursuant to subsection b. of *N.J.S.A. 54:5-86*, the public officer or the tax collector shall, in a timely fashion, provide the requester with a certification that the property fulfills the definition of abandoned.

E. An abandoned property shall not be included on the abandoned property list if rehabilitation is being performed in a timely manner, as evidenced by building permits issued and diligent pursuit of rehabilitation work authorized by those permits.

§30-4. §30-5. Designation of Public Officer

The Borough Manager or his designee is hereby designated as the Public Officer for the purpose of carrying out the responsibilities set forth in this Chapter and shall have all the responsibilities and powers provided by law.

~~§30-5.~~ **§30-6. Identification of Abandoned Properties**

The Public Officer is hereby directed to identify abandoned properties throughout the Borough for the purpose of establishing an abandoned property list. Each property so identified shall include the tax block and lot number, the name of the owner of record, if known, and the street address of the lot. Following the identification of abandoned properties, the Public Officer shall establish and maintain an “abandoned property list.” The Borough may add properties to the abandoned property list at any time or delete properties from the abandoned property list when the Public Officer finds that the property no longer meets the definition of abandoned property.

~~§30-6.~~ **§30-7. Request for Property to be Placed on Abandoned Property List.**

Any interested party may submit a written request to the Public Officer that a property be included on the abandoned property list, specifying the street address and block and lot number of the property to be included, and the grounds for its inclusion. Within 30 days of receipt of any such request, the Public Officer shall provide a written response to the party, either indicating that the property will be added to the list of abandoned properties or, if not, the reasons for not adding the property to the list. For purposes of the section, “interested party” shall mean any resident of the Borough, any owner or operator of a business within the Borough or any organization representing the interests of residents or engaged in furthering the revitalization and improvement of the neighborhood in which the potential abandoned property is located.

~~§30-7.~~ **§30-8. Establishment of Abandoned Property List; Notification of Property Owners.**

The Public Officer shall establish the abandoned property list or any additions thereto by publication in the official newspaper of the Borough, which publication shall constitute public notice and, within 10 days after publication, shall send a notice by certified mail, return receipt requested, and by regular mail, to the owner of record of every property included on the list. The published and mailed notices shall identify property determined to be abandoned setting forth the owner of record, if known, the tax lot and block number and street address. The Public Officer, in consultation with the tax collector, shall also send out a notice by regular mail to any mortgagee, servicing organization, or property tax processing organization that receives a duplicate copy of the tax bill pursuant to *N.J.S.A. 54:4-64(d)*. When the owner of record is not known for a particular property and cannot be ascertained by the exercise of reasonable diligence by the tax collector, notice shall not be mailed out but shall be posted on the property in the manner provided in *N.J.S.A. 40:48-2.7*. The mailed notice shall indicate the factual basis for the Public Officer’s finding that the property is abandoned property, specifying the information relied upon in making such finding. A copy of the mailed or posted notice shall also be filed by the Public Officer in the office of the county clerk or register of deeds and mortgages, as the case may be, of the county wherein the property is situate. This filing shall have the same force and effect as a notice of lis pendens under *N.J.S.A. 2A:15-6*.

~~§30-8.~~ **§30-9. Notice to Electric and Gas Utilities.**

Within ten days of the establishment of the abandoned property list, or any additions thereto, the Public Officer shall send by regular mail, facsimile or electronic mail, a copy of the abandoned property list to the electric and gas utilities serving the Borough.

~~§30-9.~~ **§30-10. Challenge by Owner to Inclusion of Property on Abandoned Property List.**

An owner or lienholder may challenge the inclusion of his property on the abandoned property list by appealing that determination to the Public Officer within 30 days of the owner's receipt of the certified notice or 40 days from the date upon which the notice was sent. An owner whose identify was not known to the Public Officer shall have 40 days from the date upon which notice was published or posted, whichever is later, to challenge the inclusion of a property on the abandoned property list. For good cause shown, the Public Officer shall accept a late filing of an appeal. Within 30 days of receipt of a request for an appeal of the findings contained in the notice pursuant to §30-7 above, the Public Officer shall schedule a hearing for redetermination of the matter. Any property included on the list shall be presumed to be abandoned property unless the owner, through the submission of an affidavit or certification by the property owner averring that the property is not abandoned and stating the reasons for such averment, can demonstrate that the property was erroneously included on the list. The affidavit or certifications shall be accompanied by supporting documentation, such as but not limited to photographs, repair invoices, bills and construction contracts. The sole ground for appeal shall be that the property in question is not abandoned property. The Public Officer shall decide any timely filed appeal within 10 days of the hearing on the appeal and shall promptly, by certified mail, return receipt requested, and by regular mail, notify the property owner of the decision and the reasons therefor.

~~§30-10.~~ **§30-11. Owner's Appeal of Adverse Determination by Public Officer**

The property owner may challenge an adverse determination of an appeal with the Public Officer pursuant to §30-9 above by instituting, in accordance with the New Jersey Court Rules, a summary proceeding in the Superior Court, Law Division, sitting in the county in which the property is located, which action shall be tried de novo. Such action shall be instituted within 20 days of the date of the notice of decision mailed by the public officer pursuant to §30-9 above. The sole ground for appeal shall be that the property in question is not abandoned property. The failure to institute an action of appeal on a timely basis shall constitute a jurisdictional bar to challenging the adverse determination, except that, for good cause shown, the court may extend the deadline for instituting the action. The Public Office shall promptly remove any property from the abandoned property list that has been determined not to be abandoned property on appeal.

~~§30-11.~~ **§30-12. Effective Date of Abandoned Property List; Borough Rights and Remedies.**

The abandoned property list shall become effective, and the Borough shall have the right to pursue any legal remedy with respect to properties on the abandoned property list, at such time as any one property has been placed on the list in accordance with the

provisions of this Chapter, upon the expiration of the period for appeal with respect to that property or upon the denial of an appeal brought by the property owner.

~~§30-12.~~ **§30-13. Designation of Qualified Rehabilitation Entities.**

Pursuant to *N.J.S.A. 55:19-90*, the Borough Manager or his designee is hereby delegated the authority to designate qualified rehabilitation entities to act as the Borough's designee for the purpose of exercising the Borough's rights under the Abandoned Properties Rehabilitation Act, *N.J.S.A. 55:19-78 et seq.*

~~§30-13.~~ **§30-14. Reports**

The Borough Manager **or his designee** shall provide a report to the mayor and governing body every six months with respect to the number and location of properties on the abandoned property list, the status of those properties, and any actions taken by the Borough or by any qualified rehabilitation entity designated pursuant to the authority granted the Borough Manager with respect to any property on the abandoned property list or any other abandoned property within the Borough.

Section 2. Section 31-4 entitled "Designation of public officer" of Chapter 31 entitled "Buildings, Unfit" of the Code of the Borough of Washington is amended to read as follows (deleted text shown as strikethrough, new text shown as underlined):

The ~~Zoning Officer~~ Borough Manager or his designee is hereby designated and appointed as the public officer to exercise the powers set forth in this chapter. ~~The Mayor and Borough Council may, by resolution, designate any other person or persons to act in the place of the Zoning Officer.~~

Section 3. All ordinances or parts of ordinances or resolutions that are in conflict with the provisions of this Ordinance are repealed to the extent necessary.

Section 4. If any article, section, subsection, term or condition of this Ordinance is declared invalid or illegal for any reason, the balance of the Ordinance shall be deemed severable and shall remain in full force and effect.

Section 5. In accordance with Chapter 3, Article II, Section 15, Subsection E of the Code of the Borough of Washington, this Ordinance shall become effective 20 days after final passage unless the Council, by an affirmative vote of five (5) Council Members, shall adopt a resolution declaring the Ordinance to be an emergency upon which said Ordinance will take effect upon final passage.

Introduced June 16, 2009

Public Hearing/Adoption July 7, 2009

K. Blanchard, RMC