

LAURENTUM + GROUP



Combating Vacant Property

**THE LEGAL APPROACH TO NUISANCE
PROPERTY – UTILIZING O.R.C. § 3767.41
MATTHEW P. YOURKVITCH, ESQ.**

Why Me?



- Research and Litigation Assistant to Clinical Professor Emeritus Kermit J. Lind Esq. at Cleveland Marshall College of Law.
- Served on Litigation team for:
 - Cleveland Hous. Renewal Project v. Deutsche Bank Trust Co., Case No. 1:08-CV-3003, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, 606 F. Supp. 2d 698; 2009 U.S. Dist. LEXIS 29413, March 26, 2009.
 - Cleveland Hous. Renewal Project v. Wells Fargo Bank, Case No. 1:08-CV-3011, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO; Cleveland Municipal Court Division of Housing, Case No. 08-cvh-31391.
- 2009-2010 - Cleveland Municipal Housing Court Law Fellowship under Honorable Raymond L. Pianka
- Frequently represent various Cleveland area Community Development Corporations- Neighborhood Progress, Detroit Shoreway, Northeast Shores, Fairfax, South Euclid, Cuyahoga County Land Reutilization Corporation.

O.R.C. §3767.41



- (A)(2)- “Public Nuisance” means a building that is a menace to the public health, welfare, or safety;
- that is structurally unsafe, unsanitary, or not provided with adequate safe egress;
- that constitutes a fire hazard, is otherwise dangerous to human life, or is otherwise no longer fit and habitable;
- or that in relation to its existing use, constitutes a hazard to the public health, welfare, or safety by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment.

O.R.C. §3767.41



- (A)(3)- “Abate” or “abatement” in connection with any building means
- the removal or correction of any conditions that constitute a public nuisance **and**
- the making of any other improvements that are needed to effect a rehabilitation of the building that is consistent with maintaining safe and habitable conditions *over its remaining useful life.*
- “Abatement” does not include the closing or boarding up of any building that is found to be a public nuisance.

O.R.C. §3767.41



- Provides the ability to bring a civil action to enforce any local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance, or regulation applicable to buildings.
- Civil action may be commenced by
 - A Municipal Corporation (City of Cleveland) where the building is located.
 - A “Neighbor” – property owner within 500 feet
 - A “Tenant” of the building
 - A **“Nonprofit corporation”** – who **“has as one of its goals the improvement of housing conditions in the county or municipal corporation in which the building involved is located.”**

O.R.C. §3767.41



- Provides for relief via Judicial Order by
 - Injunction requiring the owner to abate the public nuisance within 30 days.
 - Abatement of the public nuisance by a “interested party” (approved of by court)
 - Receivership- the appointment of a “receiver” to take possession and control of the building and abate the public nuisance.

O.R.C. §3767.41



- Key provisions

(G) “A receiver ... is not personally liable except for misfeasance, malfeasance, or nonfeasance in the performance of his office.”

(H)(2)(a) – All approved costs incurred by the receiver and the receiver’s fees, is a *first lien* upon the building and property.

The receivers lien is superior to all prior and subsequent liens or encumbrances, including those for taxes and assessments.

O.R.C. §3767.41



- If the building or property is sold at Sheriff sale, the distribution of the funds are as follows;
 - 1. Receiver's lien (costs and fees)
 - 2. Delinquent taxes, assessments, charges, penalties, and interest owed to the State or political subdivision of the state.
 - 3. Pre-Receivership mortgages, liens or encumbrances, in their order of priority.
-
- Typically the “receiver's lien” is greater than the value of the property and the receiver obtains title to the property at Sheriff sale.

Why Civil Nuisance Abatement?



- There are typically two types of action to enforce Building and Housing Codes
 - Criminal Code Enforcement
 - Administrative (demolition, boarding, repair)
- Limitations: Jurisdiction, Remedies, Resources
 - Jurisdiction over Person (Defendant) not Property
 - Fines and/or Jail time
 - High Volume of Distressed Properties
 - Shrinking municipal budgets
- Civil Nuisance Abatement under R.C. 3767.41 allows jurisdiction over the Person as well as the Property and may be filed by Neighbor or Nonprofit Development Corporation.

Advantages of Civil Nuisance Abatement Actions



- Municipal Government, Nonprofit Corporations, Neighbor or Tenant may bring a Civil Action to eliminate public nuisance buildings within their community
- Jurisdiction over Property in addition to Jurisdiction over Person
- Rehabilitation Option
- Targeted Demolitions
- “All expenditures...necessary to abate a public nuisance...[are] a first priority lien, superior to all prior and subsequent liens...including taxes and assessments...” O.R.C. §3767.41(H)(2)(a).
- Mortgagees has displayed a greater willingness to release/disclaim interest once they are apprised of legal action.





Strategic use of O.R.C. § 3767.41



- Targeted Nuisance Abatement to support and protect neighborhood Assets
 - Schools
 - Churches
 - Residential Development Projects
 - Historic Buildings
 - Infrastructure Improvements
 - Business Stakeholders
 - Business Improvement Districts



NO LEFT TURN
ON RED LIGHT

Historic Revitalization



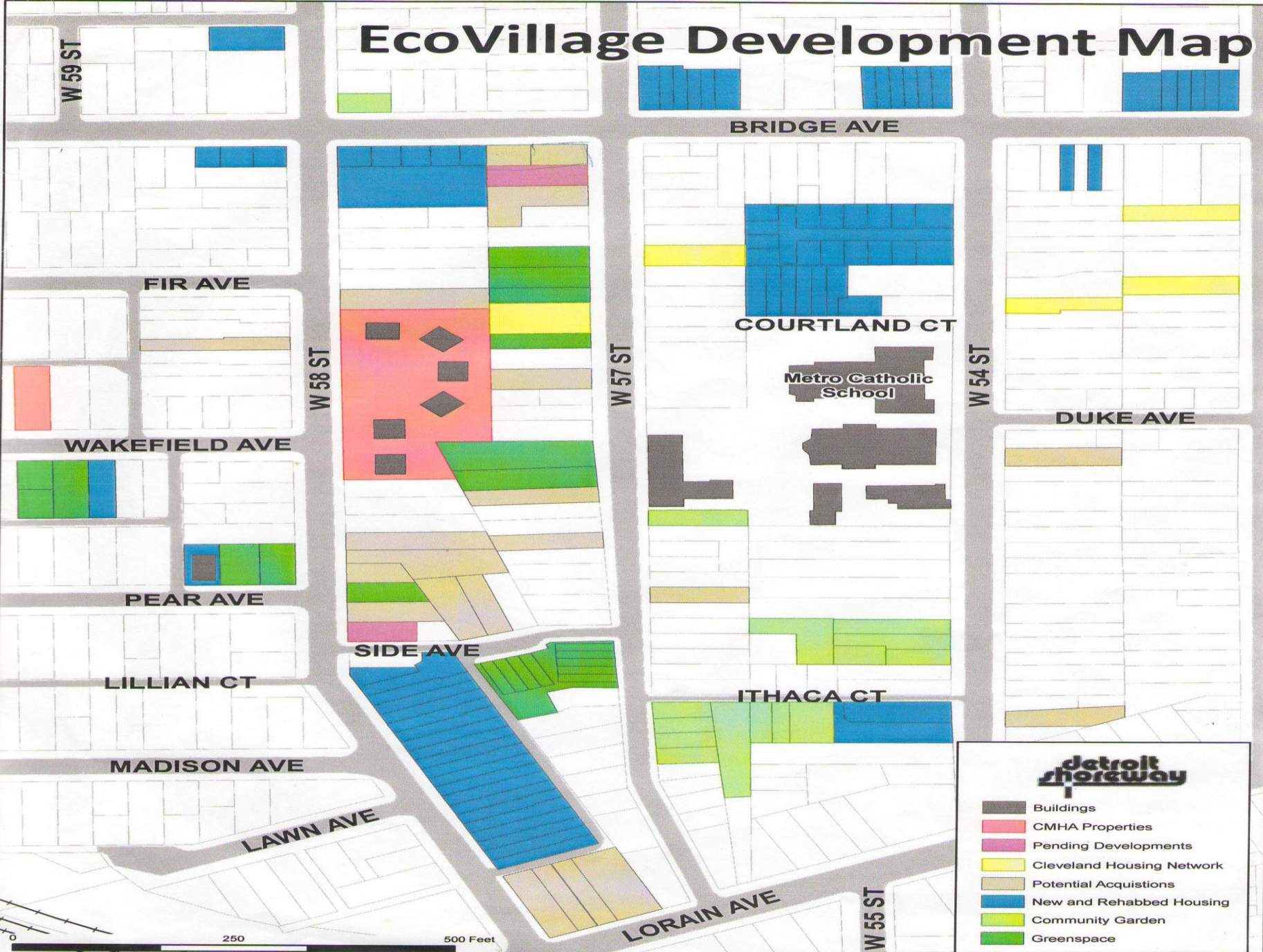
- The Sylvania was a 22-unit apartment building, originally constructed in the 1920's.
- A nuisance abatement action was filed in December of 2008, because the 4 remaining tenants were without utilities and the owner was deceased.
- It was viewed as being essential to continuing reinvestment in the community and expansion of housing opportunities for low income families.
- Now - The Sylvania will provide 18 units of high-quality affordable housing for tenants of all generations while retaining its historic integrity and National Register status.

Mixed-use Commercial Buildings



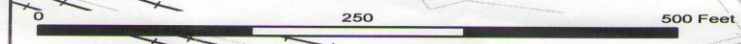
- “Building” means...any building or structure that is used or intended to be used for residential purposes.
- “Building” includes but is not limited to, a building or structure in which any floor is used for [anything].... and in which other floors are used, or designed and intended to be used, for residential purposes.
- “Building” does not include any building or structure that is occupied by its owner and that contains three or fewer residential units. [Mrs. Murphy Exception]

EcoVillage Development Map



detroit shoreway

- Buildings
- CMHA Properties
- Pending Developments
- Cleveland Housing Network
- Potential Acquisitions
- New and Rehabbed Housing
- Community Garden
- Greenspace

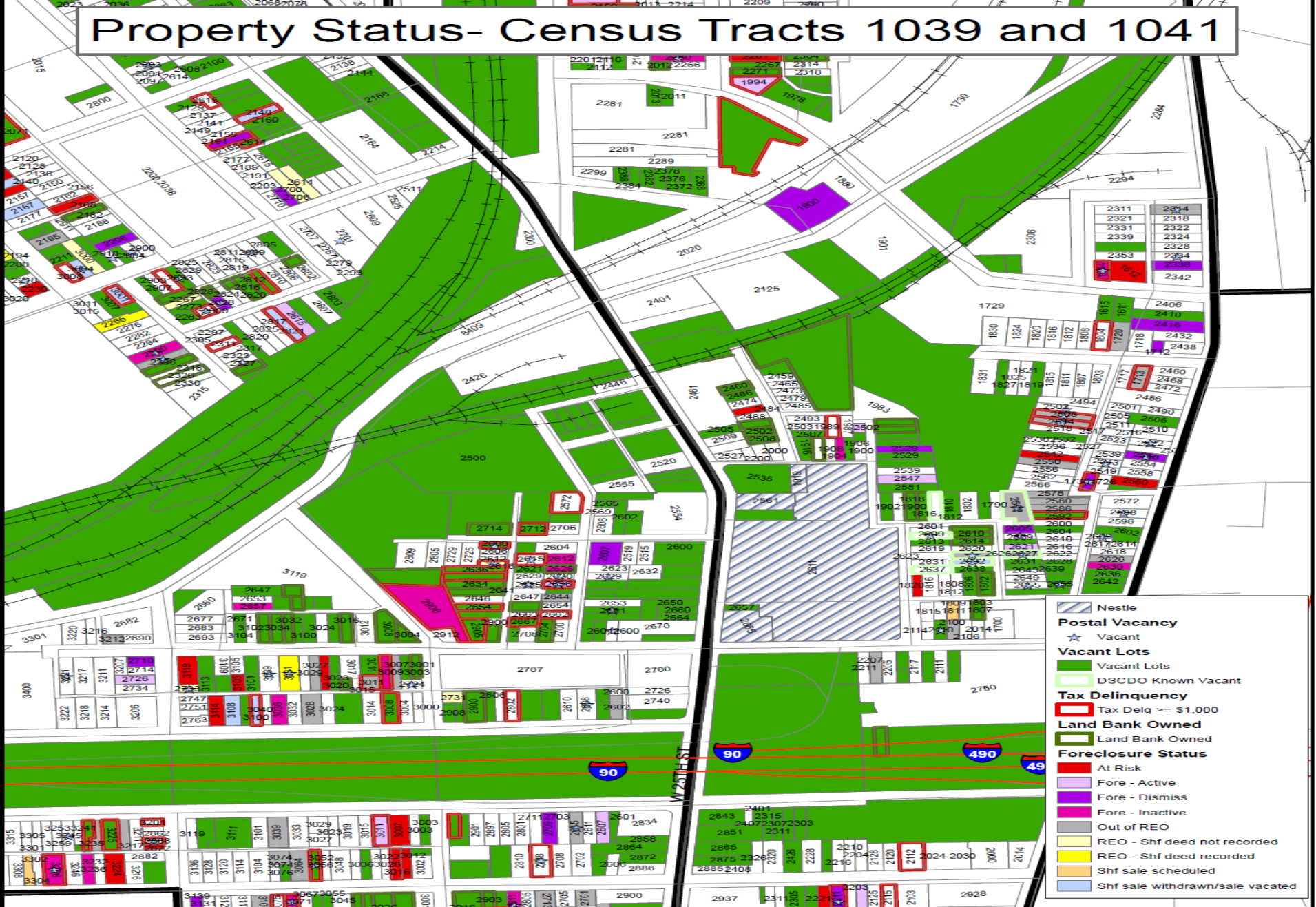


Support Commercial and Residential Development projects



- Determine opportunities for site expansion
- Determine opportunities to address surrounding housing conditions
- Identify areas which could support private development
- Identify opportunities for in-fill housing or mixed-use development
- Reach out to Responsible Property Owners; Developers; Business Owners

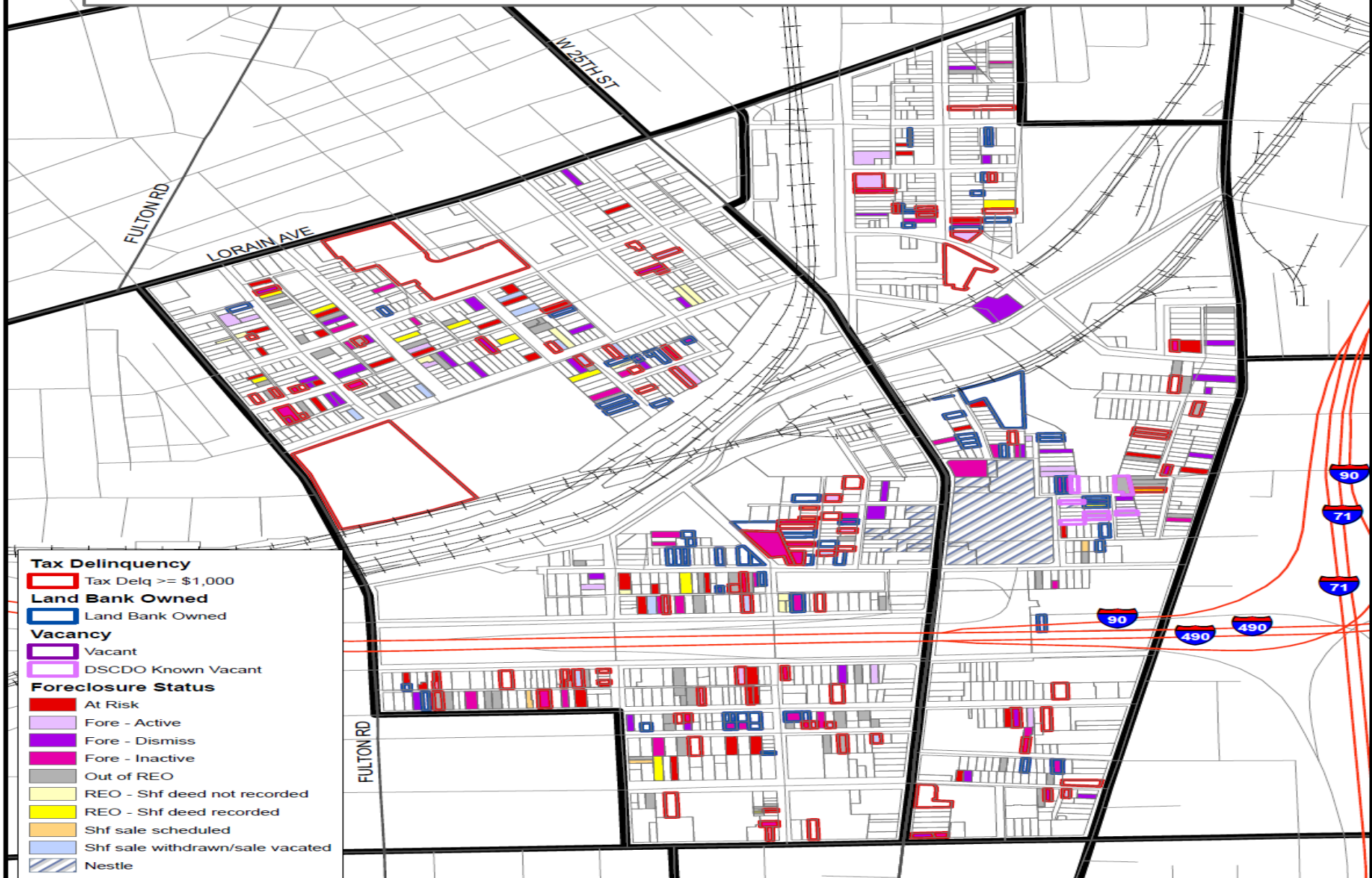
Property Status- Census Tracts 1039 and 1041



0 500 1,000 Feet

Prepared by: Center on Urban Poverty and Community Development
 Mandel School of Applied Social Sciences
 Case Western Reserve University
 October 5, 2010

Property Status- Census Tracts 1039 and 1041

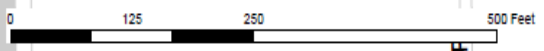


0 0.25 0.5 Miles

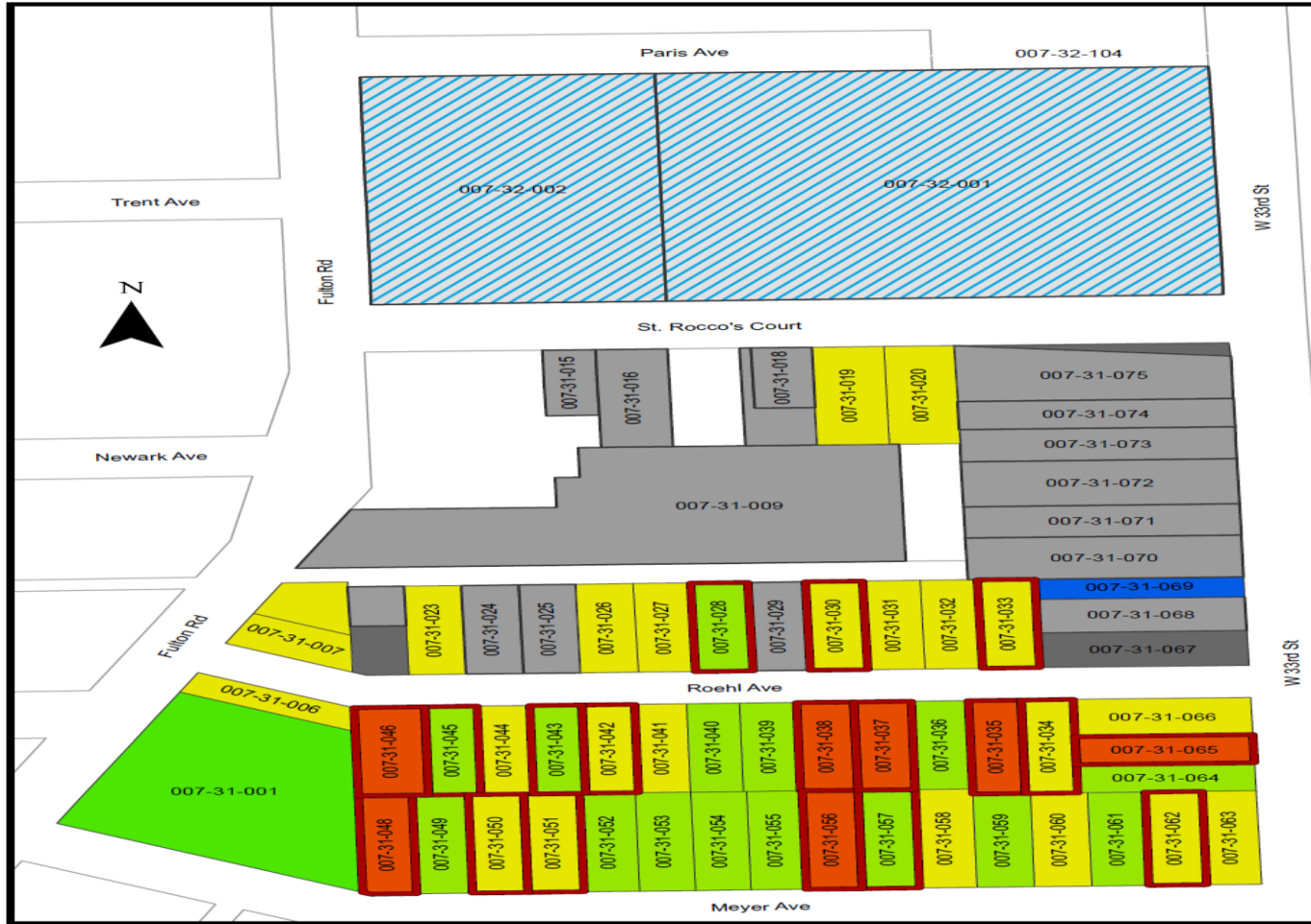
Nestle Area Parcels



	Owner Occupied
	Non-Owner Occupied
	Vacant Land
	"Clean" (Not Destabilizing)
	Destabilizing Factors
	City of Cleveland Land Bank
	Nestle Owned Parcels
	Board of Education Parcels
	Parcels



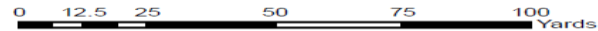
Property Conditions Around St. Rocco's



Legend

- Destabilized
- A
- B
- C
- Commercial
- D
- Church Owned
- Land bank
- Vacant Lot/Parking Lot

Stockyard, Clark-Fulton
& Brooklyn Centre
Community Development Office



Problems and Limitations of Civil Nuisance Abatement Actions



- Lack of Awareness – Statute is Underutilized
- Upfront Costs – Legal Fees and Costs
- Capacity to act as receiver
- Extensive Procedural Requirements
 - Receivership
 - Foreclosure
- Litigation Timeline – 12-18 months
- Perfecting Service of Process
 - Identifying all Parties in Interest
 - Unknown Heirs and Spouses

Additional Information:



- [https://sites.google.com/site/cmudlc1/Home/public-nuisance-abatement-and-receivership-a-guide-to-ohio-revised-code-3767-41](https://sites.google.com/site/cmudlc1/Home/public-<u>nuisance-abatement-and-receivership-a-guide-to-ohio-revised-code-3767-41</u>)
- Matthew P. Yourkvitch, Esq.
- matt@laurentumgroup.com
- myourkvitch@law.csuohio.edu
- 440-941-0582
- www.laurentumgroup.com