

**Promotion of Home Ownership in the City of Binghamton: A  
Report of the Mayor's Commission on Housing and Home  
Ownership**

The Mayor's Commission on Housing & Home Ownership was appointed in the Spring of 2008 with an inaugural meeting on April 3, 2008. It issued an Interim Report on December 10, 2008 (Appendix A). A Public Forum was held in City Council Chambers on November 6, 2008, to receive public input (Appendix B).

Four main objectives were specified as the Commission's charge:

1. Review best practices for increasing homeownership, compare with current local resources and strategies, and make recommendations per the following issues:
  - a. Legislation
  - b. Programmatic Initiatives
  - c. Development and Resources
2. Discuss and identify strategies to promote and retain responsible, local landowners and to incentivize student housing in appropriately zoned neighborhoods.
3. Discuss strategies in improving quality of life and building healthy neighborhoods with a focus on the following housing issues:
  - a. Zoning
  - b. Code enforcement and Certificate of Compliance (universal requirement?)
  - c. Absentee landlord and property management
4. Create Strategic Plan that incorporates the above elements with integration of relevant findings from other Commissions.

This Final Report is divided into two main parts and a series of Appendices.

Part I sets forth the factual and legal context and background for the Commission's conclusions and recommendations, which are contained in Part II. The Report includes a number of Appendices, as follows, which form an integral part of the Report:

- Appendix A: Interim Report
- Appendix B: Highlights of Housing Commission Public Forum of 11/6/08

- *Appendix C: Categories of Impacts and Potential Strategies*
- *Appendix D: Proposed Elements of the "Package" of Measures to be Proposed by the Binghamton Commission on Housing and Home Ownership*
- *Appendix E: Rationale for Presumptive Limit of 3 in R-1 District*
- *Appendix F: Proposed Student Housing Overlay District*

*Additional background information relied upon by the Commission was posted on an internet tool known as "Basecamp" for information-sharing among Commission members.*

*The Commission in developing its recommendations had to reconcile a multiplicity of legitimate interests and concerns of a variety of stakeholders—including residential and commercial property owners, landlords, tenants, and the City of Binghamton. Although compromises and tradeoffs were necessary, the Commission was not dealing with a zero-sum game. For one set of stakeholders to benefit, it is not necessary for other stakeholders to lose. With sensitivity and creativity, the Commission's recommendations can be a win-win proposition for everyone involved. This requires, however, that no stakeholder realize ALL of its objectives, but that ALL stakeholders realize at least some of their most important objectives. It was therefore necessary for the Commission to agree collectively on a package of recommended measures, rather than on isolated measures individually. Only in this way, could win-win results be generated for all stakeholders. We encourage readers of this report to evaluate it in this spirit.*

## **I. INFORMATION SOURCES AND FACTUAL AND LEGAL BACKGROUND**

### Homeownership Rates

1. The City of Binghamton has among the lowest rates of homeownership (43%) of any City or town in New York State, and New York State has the lowest homeownership rate (53%) of any State in the U.S. The average rate of homeownership in Broome County is in excess of 65%. So, the City is far below the norm—for the country, the

county, and the State.

2. This low rate of homeownership, reflecting a predominance of renters relative to homeowners, is unhealthy and destabilizing. Renters tend not to maintain their homes as well as owner-occupants, and rental properties are more likely than owner-occupied residences to be abandoned and become vacant. They also do not gain value as rapidly as owner-occupied homes. See Paragraph 9.
3. According to the City's Comprehensive Plan<sup>1</sup> (p. 12), Binghamton's home ownership rate between 1990 and 2000 "depicts a dangerous future for Binghamton's neighborhoods and their stability.... In 1990, owner-occupied housing units comprised just over 44 percent of Binghamton's overall occupied housing stock. In 1990 signs of decline were evident with 56 percent of households being renter-occupied. Census data confirms that home-ownership is becoming less likely in Binghamton as ownership rates decreased over 3 percent and rental occupancy increased 2.5 percent."
4. Again, according to the Comprehensive Plan (p. 12), vacant housing trends also show "cause for concern over the future stability of Binghamton's neighborhoods. Between 1990 and 2000, the number of vacant housing units increased by 46.6 percent. 2000 Census data suggests that Binghamton now has 2,882 vacant housing units. Adding to these concerns of decreasing home-ownership and increasing vacant housing units is the illegal conversion of many large single-family homes into multiple unit dwellings, adding further disruption to some of Binghamton's neighborhoods...." See also Paragraph 10.

Other Binghamton Comprehensive Plan Findings and recommendations included the following:

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<sup>1</sup> "New York requires that zoning be adopted in accordance with a well-considered or comprehensive plan. This requirement reflects both underlying constitutional considerations and a public policy which views zoning as a tool to plan for the future of communities. Over the years, the New York courts have defined the comprehensive plan to be the legislative body's process of careful consideration and forethought which results in zoning calculated to serve the general welfare of the community." *Zoning and the Comprehensive Plan* (James A. Coon Local Government Technical Series), NYS Department of State (Dec. 1999, reprinted Jan. 2008), p. 10. See also General City Law §28-a.

5. Needed action steps to address low homeownership rates, as identified in the Comprehensive Plan, include the following:
  - a. The City should begin by identifying and building a database of illegally converted homes. The greatest measure the City can take is to prevent any further intrusions. This can best be accomplished by improving enforcement of existing zoning regulations. (p. 82).
  - b. "Density reduction is an element of stabilizing threatened neighborhoods." The "family" definition should be addressed. Where illegal conversions are needed to be recognized. And "a grant conversion program should make [legal] conversions more attractive to building owners." (p. 83).
  - c. The City should institute the proposed Rental Permit and Inspection program, which will enable the City to track the location of rental properties and, in the case of student rentals, coordinate municipal initiatives with student housing initiatives [by BU and other institutions of higher learning].... (p. 83).
  - d. "The City should work closely with the University to develop an awareness program that outlines the responsibilities of living in the community as well as the students' expectations of landlords." (p. 83).
6. Findings of a BU graduate thesis (*circa* 2002) indicate that BU students are concentrated in Westside neighborhoods, particularly along five streets (Murray Street, Chapin Street, Oak Street, Walnut Street, and Leroy Street). Of these, only the Leroy Street houses were "mostly R-1." The rest were "mostly R-5, some R-2." (R-4 and R-5 areas were subsequently consolidated into the other three residential districts.) In total, 615 students were clustered in 139 homes (avg. of 4.4 students per household) within a 0.21-square mile area. (p.82)
7. Citywide Policies & Projects to Promote Economic Vitality include the following Action Steps [again, from the Comprehensive Plan]:
  - a. The City should begin keeping a register of every suspected or reported code violation in the City's GIS database. This will allow for violations to be mapped, thereby creating a visual means to quickly and accurately identify trends. (p. 96).

- b. The City should develop a Rental Permit program that requires all rental units to be registered and annually inspected. The inspector and the owner should develop a compliance plan that identifies immediate remediation actions, which are then subject to reinspection before a Rental Permit can be issued. A comprehensive strategy to bring troubled units into compliance with neighborhood principles should include imposition of "standards that allow the City to revoke a Rental Permit if, for instance, a certain number of nuisance calls are made within a determined period of time. This can also be an effective technique to address [rental] housing concerns citywide." (p. 96).
- c. The City should develop a rehabilitation loan program aimed at improving the quality and condition of homes in targeted areas. (p. 96).
- d. The City should reach out to the building community to remind it to report work that requires permits and to encourage compliance with the building code. (p. 96).
- e. The City should also encourage emergency response personnel (e.g., police, fire, and EMS) to report violations to the Building Department for appropriate follow-up. (p. 96).
- f. The City should develop a strategy to comprehensively address illegally converted housing units. (p. 96).
- g. "In an effort to help improve enforcement of zoning regulations as well as stabilize neighborhoods, Binghamton should revise its Zoning Ordinance to more contemporary standards." (p. 100).
- h. The City should continue to make rehabilitation of its housing stock and neighborhoods a priority, through such programs as: (1) the **Healthy Neighborhoods initiative**, which strives to improve the quality of life by integrating community-based advocacy, programming, and development projects; (2) the **Binghamton PACT** program, which "builds from strength, calls for proactive comprehensive action rather than isolated reaction to problems, directs public investments with a focused rather than scattered approach, and aims to improve the livability as well as the market conditions in Binghamton's neighborhoods; (3) aggressive utilization of funding from the State's **RestoreNY program** to demolish notorious eyesores, promote homeownership (e.g., to sell more than 20 properties for \$1 apiece and to assist buyers in renovation efforts with grants of up to \$100,000), and beautify communities; and (4) to fight blight and rehabilitate vacant properties (through an active Vacant

Properties program and with the aid of a Blight Prevention Coordinator). See also Paragraph 42.

Issues with Vacant Properties and Non-Owner-Occupied Properties

8. Research on the relationship between homeownership and neighborhood stability indicates that higher rates of homeownership lead to higher property values and, therefore, increased property tax revenues to the City. For example, one extensive study (Rohe & Stewart, 1996) found that, "[a]fter controlling for housing stock characteristics, household characteristics, and MSA-level economic factors, a 5-percentage-point change in the homeownership rate of a tract would be associated with about a \$4,000 increase in mean single-family property value over a 10-year period of time." This research also indicates that "homeownership programs should focus on current renters who are both capable of and interested in buying a home. In this way, the neighborhood is stabilized but not at the expense of former low-income residents."
9. While responsible landlords, particularly those who live in or near the City, keep their properties in good repair and good condition; in general, owner-occupants tend to paint, repair, and otherwise maintain their homes better than owners or tenants of solely renter-occupied homes. Rental properties--especially those owned by irresponsible landlords--are more likely than owner-occupied properties to be abandoned and become vacant (after they have netted their owners a sufficient return on their investment). Studies on the sociology of neighborhoods have shown that one unrepaired broken window soon leads to the rest of the windows being broken, because it is a signal that no one cares. Untended property becomes fair game for people out for fun or plunder.<sup>2</sup>
10. Vacant properties (both residential and commercial) are a safety hazard, drain resources, are unsightly, depress market values, and discourage economic development. They depress the value of nearby properties. They not only don't contribute to the tax base, but they are expensive to maintain, and they are a

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<sup>2</sup> James Q. Wilson and George L. Kelling, "Broken Windows," The Atlantic Online, March 1982, [www.theatlantic.com/doc/print/198203/broken-windows](http://www.theatlantic.com/doc/print/198203/broken-windows) .

magnet for criminal activity. There are close to 300 abandoned properties in Binghamton—accounting for thousands of vacant housing units (see Paragraph 4).

11. Houses that are allowed to deteriorate decline in value, tend to depress the value of surrounding and nearby homes, and, generally, make a neighborhood less desirable. They are also often abandoned and allowed to become vacant (see above).
12. Rental properties utilize more community services (i.e., cost the community more) than owner-occupied single- and two-family properties. For example, a study in Ogden, Utah indicated that "single-family and duplex rentals utilize[] between 3 and 7 times more police and fire services than owner occupied single-family and duplex properties." And, while single-family residential properties (as well as industrial and retail properties) return more in tax revenues to a municipality than the associated cost of services, the opposite is often true for multi-family residential properties. (See, e.g., CaliforniaCityFinance.com - Fiscal Comparison 050518). Because of this, a number of local governments have included in their revitalization programs, the grant of forgivable loans to encourage buyers to reconvert multi-family homes to single-family residences. (See, e.g., the Pottstown, PA "Homeownership Initiative Program" and the Montgomery County, PA "Revitalization Grant Program.")<sup>3</sup>

#### BU Students in the City of Binghamton

13. Young adults, many of whom happen to also be students, rent many of the rental units in the City. About 8,000 Binghamton University students live off campus<sup>4</sup>, including about 4,000 in the City of Binghamton. Many of these live, in groups of various sizes, in multi-unit dwellings on the City's West Side.

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<sup>3</sup> The point at which the cost of city services will begin to exceed property tax revenues will, obviously, vary by jurisdiction and depend heavily on such things as the local property tax rate. Where property tax rates are high, which is the case throughout New York State, but especially in Upstate New York including the City of Binghamton, the disparity between revenues and costs may be smaller than in lower-taxing jurisdictions.

<sup>4</sup> In the Fall of 2005, 7,734 Binghamton University students lived off-campus in the surrounding communities. That number has steadily increased since that time, with BU's growing enrollment.

14. Binghamton University is the area's major employer and its leading economic development engine.
15. Binghamton University's contribution to the local and state economy includes all of the following
  - a. The economic bottom line: \$673 million to the region. \$859 million to the state. Every dollar the state invests in Binghamton University is returned six-fold to New York's Southern Tier - eight-fold to the state.
  - b. 2,471 jobs retained or created last year. Faculty and students at the University's Thomas J. Watson School of Engineering and Applied Science helped 150 small and mid-sized firms across 18 New York counties add or retain almost 2,500 jobs since 1995. Those jobs translate into \$75 million in wages, plus a much greater ripple effect - stronger towns, proud families, thriving industries.
  - c. Binghamton University opened its Downtown Center in fall 2007, drawing hundreds of students, faculty, staff and visitors downtown every day, helping to revitalize the area. The center houses the newly created College of Community and Public Affairs (CCPA), whose mission to assist the people and governments in our region is a model for the next generation of civic engagement. Faculty, staff and students affiliated with its programs in human development, public administration and social work are close to the agencies and organizations with which they collaborate. It is estimated that the building created 840 jobs during its construction, for an economic impact of \$57 million.
  - d. Since its first event in January 2004, the University's Events Center has been attracting people and events, making a \$20 million annual impact on the regional economy.
  - e. Since 1978, Binghamton University's New York State Trade Adjustment Assistance Center (NYS TAAC) has helped over 1,200 New York firms recover from the effects of foreign competition and has provided more than \$53 million in assistance.
  - f. BU's Center of Excellence in Small Scale Systems Integration and Packaging is making the region a vital nerve center in the technology race, generating an estimated annual impact of \$100 million with partners including Endicott Interconnect, IBM, Lockheed Martin, General Electric, Corning, BAE Systems and Cornell University.
  - g. Since its inception in 1984, Binghamton University's Small Business Development Center has assisted over 9,260 clients and helped to raise more than \$98 million in private and public funding for their businesses, helping to create or save over 6,800 jobs across the Southern Tier of New York.
  - h. Plans are under way to develop a law school at Binghamton University. BU's goal is to become one of the best public law schools in the nation, building on its academic strengths and fulfilling the need for high-quality, affordable legal education in New York state. Within five years, the estimated annual economic

impact will be \$26.4 million on the Southern Tier and \$33.7 million on New York State.

16. BU students living off-campus spend some \$62 million dollars a year in the surrounding communities, with an overall economic impact on Broome County of nearly \$105 million per year, while supporting an estimated 1,481 local jobs. (Based on Fall 2005 survey results.)
17. Some 6,500 BU students spend 136,500 hours each year, valued at nearly \$2.5 million, volunteering in the community. An additional 123,840 student hours are devoted to internships in the community, valued at another \$2.23 million. Clinical nursing programs contribute another \$2.5 million. All told, student volunteerism and internship programs contributed an estimated \$7.2 million to the community in 2005.
18. The City of Binghamton and its environs embody an aging demographic. As BU graduates and other young adults leave the area, Binghamton's population gets older, and contains a higher proportion of retired and disabled people. Moreover, because of generous public assistance programs in New York State<sup>5</sup>, Binghamton continues to attract an increasing number of low-income and infirm residents from other states and countries. Binghamton must be more welcoming to young people, especially well-educated young people, because its economy and well-being will increasingly depend on

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<sup>5</sup> New York's *per capita* Medicaid spending is more than any other state (35% more than California) and double the national average. According to Kaiser State Health Facts, it's 128 percent above the average. About one-third of the Medicaid dollars spent on personal care in the United States in 2004 were spent in New York. Crain's *New York Business*, June 5, 2006. New York's Medicaid program costs Upstate taxpayers about \$1 million more a year in state and local taxes than it would if it matched the national average per recipient. The combination of AFDC (now TANF), Medicaid, Housing Assistance, Food Assistance, and Energy Assistance in New York State results in Welfare benefits so high that, according to CHANGE-NY, "a welfare recipient would have to work at a job paying nearly \$45,000 [a year] to break even." A recent New York *Times* article (Dec. 9, 2008), describes New York's welfare policies as "one of the most generous" in the country, "allowing certain recipients to opt out of work requirements and providing benefits indefinitely." "Several studies have found that when the poor move, they are more likely than the nonpoor to move to states with higher benefit levels (Southwick, 1981; Gramlich and Laren, 1984; Blank 1988). A recent study of migration between border counties of several sets of adjacent states similarly finds evidence of welfare migrations (Walker 1996)." Cited in Smith, Mar W. (Health Economics Resource Center, U.S. Dept. of Veterans Affairs), "Should we expect a race to the bottom in welfare benefits? Evidence from a multistate panel, 1979-1995), MPRA Paper No. 10125, posted 21 August 2008 / 20:27. <http://mpr.ub.uni-muenchen.de/10125/>. Binghamton's location close to the border of Pennsylvania may make it more prone than non-border communities to experience an in-migration of welfare recipients.

stemming the brain-drain and attracting more young-adults.

19. Richard Dietz, a senior economist with the Federal Reserve Bank in Buffalo, New York, compared the rates of in- and out-migration of people of working age (25-60) in Upstate New York between 1995 and 2000. He found that, while the rate of out-migration was about in the middle compared to other states, the rate of in-migration was 50<sup>th</sup> out of 51 states (treating Upstate as a State). The disparity is worse, however, in looking at the educated population (those with 4 or more years of college). For out-migration of this demographic, Upstate New York ranks 29<sup>th</sup>. But in terms of the in-migration rate, Upstate New York ranks dead last.

20. An analysis by Robert Scardamalia of Cornell University (Aug. 2007) showed that, in 2000:

\* In-migrants to Upstate New York who were under 28 years of age who had 4 or more years of college numbered 11,700, while those who migrated out of Upstate numbered nearly 47,000.

\* Young scientists and engineers in this group who were attracted to Upstate New York numbered 8,500, but those who left numbered nearly 18,800.

\* Upstate attracted 9,500 self-employed entrepreneurs under 40, but lost 11,700.

This migration deficit was very costly to Upstate. A mere 1% increase in the stream of young adults moving to Upstate New York, coupled with a 1% decline in those moving out of Upstate, could mean roughly \$130 million more in consumer spending across Upstate New York—according to Professor Scardamalia.

#### The City of Binghamton Zoning Code: Relevant Provisions and Legal Analysis

21. Areas of the City have been divided into different Zoning Districts, reflecting among other factors, the varying suitability of different areas to accommodate residents, and the differing "densities" of residents that can be accommodated in different areas, based, for example, on the capacity of the streets to support traffic and parking.

22. As noted by the NYS Department of State Office of Counsel (1999)--"Courts have regularly found a legitimate purpose in zoning regulations which are aimed at achieving a homogeneous, traditional, single-family neighborhood. 'A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs,' according to the U.S. Supreme Court in *Village of Belle Terre v. Boraas* [1974] ....
23. Also as noted by the NYS Department of State Counsel's Office (Legal Memorandum LU05)--"To preserve this quiet neighborhood character, many municipalities have enacted definitions of 'family' to exclude groups of individuals who, it is perceived, degrade the single family district. For example, in college towns or resort areas, municipalities are often concerned about fraternities and other groups of unrelated college students living together in crowded conditions in single family areas. Such living conditions can cause parking, noise, litter and congestion problems. Many local governments, therefore, have enacted restrictive definitions of family within their zoning and building codes, and enforce those provisions against groups who do not meet the 'family' definition, in an effort to keep out those who would otherwise cause or contribute to unwanted neighborhood impacts..."
24. The City's current Zoning Code includes three Residential Zoning Districts: R-1 (single unit dwelling district with low-density, one-unit dwellings), R-2 (residential one and two unit dwelling district where a mixture of one-unit dwellings, two-unit dwellings and townhouses creates a low to moderate population density), and R-3 (residential multi-unit dwelling district where multiple unit housing and a broad range of housing options predominate with a moderate to high population density). Until recently, there were five residential districts, but the former R-4 (broad range of dwelling unit types with moderate population density) and R-5 (predominant multiple-unit housing with moderate to high population density) districts were subsumed within the other three types. Previously lawful uses in a former R-4 or R-5 district, were grandfathered as lawful "non-conforming uses" when they were subsumed within a more restrictive zoning district.

25. The City's Zoning Code defines "Family" as "[a]ny number of individuals related by blood, marriage or adoption; or any number of individuals not related by blood, marriage or adoption living together and who meet the indicias [sic] for a functional and factual family equivalent."
26. The City's Zoning Code goes on to define "functional and factual family equivalent" as "[a] group of unrelated individuals living together and functioning together as a traditional family. In determining whether or not a group of unrelated individuals comprise a functional and factual family equivalent, a petition shall be presented before the zoning board of appeals, who will consider, among other things, the following factors:
- a. Whether the occupants share the entire dwelling unit or act as separate roomers.
  - b. Whether the household has stability akin to a permanent family structure. The criteria used to determine this test may include the following:
    - i. Length of stay together among the occupants in the current dwelling unit or other dwelling units.
    - ii. The presence of minor, dependent children regularly residing in a household.
    - iii. The presence of one (1) individual acting as head of household.
    - iv. Proof of sharing expenses for food, rent or ownership costs, utilities and other household expenses.
    - v. Common ownership of furniture and appliances among the members of the household.
    - vi. Whether the household is a temporary living arrangement or a framework for transient living.
    - vii. Whether the composition of the household changes from year to year or within the year.
  - viii. Any other factor reasonably related to whether or not the group of persons is the functional equivalent of a family."

Complaint-Driven Regulation vs. "Rebuttable Presumption"

27. The Binghamton approach can be referred to as "a complaint-driven process." To determine whether unrelated tenants are the "functional and factual equivalent" of a "family" and are legally occupying a

residential dwelling, requires a complainant (usually an unhappy neighbor) to go through a petition process and a subsequent determination by the Zoning Board of Appeals. While not unique to Binghamton, this approach is relatively uncommon in New York State.

28. Most other cities and localities have a more self-implementing process which does not require a complaint or a petition. Rather, there is a "rebuttable presumption" that more than a certain number of unrelated tenants (usually 3 or 4) is *not* the functional equivalent of a family. That does not automatically render the arrangement illegal. The landlord still has the opportunity, applying "functional family equivalence" criteria, to demonstrate that his/her unrelated tenants meet the characteristics of a non-transient, stable household.
29. Of the 15 other New York State localities confirmed by Commission members to use the "rebuttable presumption" approach, nine (60%) jurisdictions have set three (3) as the maximum number of unrelated renters allowed in a dwelling unit. Five jurisdictions (33%) set four (4) as the presumptive maximum. And, the remaining jurisdiction (Plattsburgh) was in the process of changing the presumptive maximum from four (4) to three (3). The "rebuttable presumption" approach has been upheld by courts in the City of Albany, Village of Brockport, and the City of Poughkeepsie. The Poughkeepsie decision was by an appellate court (Appellate Division, Second Department). Thus, if the City of Binghamton were to modify its Zoning Ordinance to establish a rebuttable presumption, and to set the presumptively allowable limit on unrelated renters at three (3) in the R-1 district, it would be following a well-established practice and precedent in New York State.
30. The "rebuttable presumption" approach is typically accompanied by a "rental registration" and/or "rental inspection" program, which establishes the number of tenants living in rental housing units—and also helps ensure that the number of tenants can be safely accommodated in the structure.
31. The complaint-driven process practiced in Binghamton for determining the legitimacy of rental apartments in

residential districts has a number of disadvantages:

- a. It puts the burden and expense on neighbors to investigate and file a complaint with the City on nearby landlords whom they feel are violating zoning regulations.
- b. It is an unfair and unclear process. Because there is no set (or presumptive) number that defines what is and is not allowed, landlords are encouraged to push the envelope and hope, either that no one will complain, or that neighbors won't be willing to go to the expense of hiring a lawyer to pursue matters through the Zoning Board of Appeals (ZBA) and potential judicial review.
- c. It is also unfair to responsible landlords who do not wish to disrupt the neighborhood and merely seek fair rents and a fair return. They are placed at a competitive disadvantage relative to unscrupulous landlords—who often live out of town and whose only interest is maximizing their return on investment and then abandoning their properties.
- d. Since every determination is case-by-case, the complaint-driven process does not work well for transient tenants. In such cases, the tenants have often already left by the time the ZBA and/or judicial process has run its course. The landlord is then typically free to start all over again with a new crop of tenants.
- e. The complaint-driven process is also very resource-intensive and, therefore, costly to the City.

*Despite these disadvantages of the complaint-driven process, we are recommending retention of the existing approach (with some refinements) in the R-2 and R-3 districts. There are two primary reasons for this. First, many fewer complaints are generated in the R-2 and R-3 districts than in the R-1 district. So, the negative impacts of the complaint-driven process come into play less frequently in the former than in the latter. And, second, as a practical matter, agreeing upon acceptable presumptive limits in R-2 and R-3 districts has proven much more difficult than in the R-1 district because of the desire to provide an outlet in these higher-density residential districts for groups of unrelated tenants too large to be accepted in R-1 neighborhoods.*

32. The differing views of homeowners, landlords, students, and elected officials on these issues were presented to the Housing Commission at a Public Forum held on November 6, 2008, and in follow-up written and emailed comments. A summary of these comments is presented in APPENDIX B and strategies for addressing various issues and impacts are outlined in APPENDIX C.

#### Summary of Applicable Case Law

*Note: This section is presented to describe what the law currently is and the parameters under which the City is required to operate. The members of the Commission do not necessarily subscribe to the sentiments expressed in individual court decisions.*

33. The U.S. Supreme Court upheld a narrow definition of "family" in the *Belle Terre v. Boraas* case in 1974, saying that "it is a proper purpose of zoning to lay out districts devoted to 'family values' and 'youth values.'" *Boraas* held that a zoning ordinance limiting occupancy of single-family homes to any number of related persons or not more than two unrelated persons does not offend the Equal Protection clause of the Constitution.

New York's highest court has rejected occupancy limits: that are based on "the biological or legal relationship between its inhabitants" rather than on factors like the size of the dwelling and the lot and the number of occupants which relate to the goals of "reducing parking and traffic problems, controlling population density and preventing noise and disturbance" (*McMinn v. Town of Oyster Bay*, 1985); that restrict the size of a functionally equivalent family but not the size of a traditional family (*Baer v. Town of Brookhaven*, 1989); and that restrict the use of a single-family home as a "group home" for a married couple and their 10 foster children (*City of White Plains v. Ferraioli*, 1974).

However, even the New York Court of Appeals has differentiated a stable group home arrangement from more transient living arrangements, where more stringent zoning restrictions would be legally permissible: "The group home is not, for purposes of a zoning ordinance, a temporary living arrangement as would be a group of college students sharing a house and commuting to a

nearby school... Every year or so, different college students would come to take the place of those before them. There would be none of the permanency that characterizes a residential neighborhood of private homes... [T]hose uses which conflict with a stable, uncongested single family environment may be restricted. High density uses, for example, may be restricted; so too those uses which are associated with occupancy by numbers of transient persons may be limited. By requiring single family use of a house, the ordinance [properly] emphasizes and ensures the character of the neighborhood to promote the family environment ..." *Ferraioli, supra*.

At the Commission's Public Forum, held on November 6, 2008, a business attorney, who is also a Binghamton landlord, disputed the significance of the *dicta* in *Ferraioli* because it contrasted the situation in *Village of Belle Terre v. Boraas* [1974], and Belle Terre "is not Binghamton." The Village of Belle Terre had 220 homes inhabited by 700 residents and more than 96% of the residences were owner-occupied. As noted by the *Boraas* decision, every property there was subject to a provision that restricted land-use to one-family dwellings—excluding lodging houses, boarding houses, fraternity houses, and multiple-dwelling houses. *Boraas* also recognized that, in creating zoning ordinances, a municipality may not unlawfully discriminate.

In fact, *Ferraioli* indicated that an ordinance restricting group homes might have been upheld if not for an overly narrow definition of a biological family. *Ferraioli's* interpretation of the *Boraas* decision clearly indicates that occupancy limits can legitimately be different for transient tenants than for a more permanent group—as long as a plausible basis is given for the different limits.

34. The Sixth Judicial District of the New York State Supreme Court, encompassing Binghamton, has applied this reasoning of the *Ferraioli* Court in upholding actions of the Binghamton ZBA invalidating the lease of single family residences on Leroy Street [in an R-1 district] to anywhere from 6 to 10 college students: "... While there may be some carryover from year to year, every year or so a different group of students moves into the residences. Their intent is patently transient and temporary, intending to remain for only so long as is necessary to

complete their educations.

"Further, the 'functional and factual family equivalent' standard arose to accommodate the needs of non-traditional families in the twentieth century. It would fly in the face of common sense (even in an era of evolving family standards) to find that a group of students who meet during college or barely know each other, living together for, at most, two years are the 'functional and factual family equivalent' just because they share a kitchen, a bathroom, and the occasional meal together..." *Barvinchak v. City of Binghamton*, Oct. 2000 (Index #2000-1605, Monserrate, J.).

See also *King v. City of Binghamton*, May 21, 2002 (Index #2002-1641, Relihan, J.), which vacated as arbitrary and capricious a ZBA decision upholding the landlord: "The mere fact that all of the students [5 students in a single family residence on Lathrop Avenue in an R-1 Zone] may have been enrolled at Binghamton University during 2000-2001, and resided on the same campus of some 12,000 students during the same academic year, is not persuasive evidence that any of them were linked, in any way, during that period. The students, the owners report, are well behaved. 'They go to school, come home, eat and go to bed'. This, surely, is a depiction of a rooming house despite the owner's self-serving additional opinion that 'they come to us a group or family'."

35. More recently, in protracted (10-month) proceedings initiated by a complaining neighbor, a Lincoln Avenue landlord renting to 6 unrelated undergraduate students in an R-1 single family district, was held by the ZBA to be in violation of the Zoning Code, applied for a use variance, and later withdrew the variance application. Ultimately, the landlord pled guilty (on July 10, 2008) to a violation of the ordinance in Binghamton City Court, agreeing to a \$1,500 fine and a one-year conditional discharge. The conditional discharge, in conjunction with the landlord's plea agreement and corporate resolution, makes clear that the landlord may continue renting the premises only under the conditions that the house be rented to no more than three individuals and that no additional violations of the law occur there.

36. The same business attorney (see Paragraph 30) argued that case law precludes treating unrelated tenants who

function as a family differently from related family members (citing *McMinn v. Town of Oyster Bay* [New York Court of Appeals, 1985] and *Baer v. Town of Brookhaven* [New York Court of Appeals, 1989]). That is why the City of Binghamton's Zoning Ordinance imposes the same rules on unrelated tenants who meet functional family equivalence criteria as on biologically related family members.

(*Baer*, involving a rental to five unrelated women, invalidated the Town's definition of a "family" because it contained a restriction on the size of a functionally equivalent family [i.e., not to exceed four] but no restriction on the size of a traditional family. *McMinn*, involving a rental to four unrelated males, invalidated a local occupancy limit because it imposed a restriction on the number of unrelated persons residing together as a functionally equivalent family, but imposed no such restriction on related persons. The restriction imposed was that two unrelated residents could only occupy single-family housing if they were both 62 years of age or older.)

37. The attorney also argued that the New York Human Rights Law §296(5) (a) makes it unlawful to discriminate against any person because of "familial status." If Binghamton adopts a restrictive "functional family" definition, it will force landlords and real estate agents to make the "Hobson's Choice" of either complying with the zoning code and violating the HRL, or vice-versa.

In response, it is true that "unlawful discrimination" is by definition unlawful. But, there is a much higher standard for discriminating against a "suspect class," such as a racial minority, than for treating a class which is not "suspect" (such as students) differently. A presumptive limit on unrelated tenants will not violate the HRL as long as traditional family equivalents and traditional families are treated similarly.

#### Other Forms of Rental Housing

38. Certain types of residential uses are permitted in miscellaneous other City of Binghamton Zoning Districts. For example, "Off-Campus Dormitories" (group sleeping arrangements "for persons not members of the same family group") and "Fraternity or Sorority Houses" (structures

occupied by nationally or locally chartered organizations "for persons enrolled in college, university, or other educational institution..." are allowed in a C-2 (Downtown Business) District, along with all uses listed for an R-3 District except townhouses.

39. A "Rooming House" or "Lodging House," allowed in an R-3 or C-2 Zoning District, may not be a single-family residence, and must have been "originally constructed for the provision of lodging rooms with or without meals but with no cooking facilities in the individual rooms..." It is currently defined to encompass "at least three (3) but not more than ten (10) persons."
40. A "Boardinghouse," also allowed in an R-3 or C-2 Zoning District, is defined as an "owner-occupied dwelling with up to three (3) roomers or lodgers in the same household, who are lodged with or without meals... as a temporary residence for part of the occupants."

#### Existing Controls on New Construction of Multi-Unit Dwellings and on Rental Conversions

41. New construction or conversion of existing buildings into multi-unit dwellings is permitted only in an R-3 or C-2 District. Planning Department approval is required-- with a Series B Site Plan (less detailed review for "limited effect" on neighborhood character) for three or four units, and with a Series A Site Plan (more in-depth review for likely "broad and significant impact" on neighborhood character) for five or more units.

#### The Binghamton "Healthy Neighborhoods Initiative"

42. A major premise of the "Binghamton Healthy Neighborhoods" (BHN) initiative, based on the results of similar programs elsewhere in the country, is that "one of the 'Key Elements' of 'Livable Communities' and 'Smart Growth'" is maintaining "appropriate levels of urban density."

#### Real Property Tax Issues

43. Except for the narrow definition of "Roominghouse" under current law (and "Group Homes" or "Community Residential Facilities" that provide assisted living

under State law), the City Zoning Code currently makes no provision in Residential Zoning Districts for four or more unrelated individuals, who do not function as the equivalent of a family, to reside together—even where they choose to do so for their common benefit.

44. There are potential real property tax issues intertwined with the Zoning Code treatment of residential property owners who rent to unrelated individuals: (1) One issue is when does the rental of dwelling units become a commercial business that can or should be taxed (i.e., have its assessed valuation) based on the rental income received—and whether rentals to individuals who meet the “functional family equivalent” should be taxed at the residential rather than the commercial rate. According to the City Assessor (personal communication, Jan. 12, 2009), rental properties with four units and above are assessed based on a combination of market value (comparable valuations) and rental income earned. The last reassessment done in the City of Binghamton was completed in 1993. That is also the last time the number of bedrooms in a house was systematically recorded by the Assessment Office. (City Assessor, personal communication, Jan. 12, 2009).

(2) Another issue is whether the Homestead credit, intended for owner-occupied residential housing, should apply under any circumstances to non-owner-occupied rental housing. According to the City Assessor (personal communication, Jan. 12, 2009), The Homestead credit is currently applied to one-, two-, and three-family properties.

#### Vacant Property and Absentee Landlord Initiative

45. A Vacant Property Registration Ordinance enacted by City Council in mid-2007, and effective January 1, 2008, provided for all of the following: (1) filing of a registration form by all owners of “vacant buildings” (included is information on property square footage, the name and address of a local “registered property manager”, information on the number and nature of rental housing units and certificates of compliance, and a “vacant building plan”); (2) submittal of plans for demolition, securing, or rehabilitating of all vacant buildings; (3) a requirement for keeping the building

secured and safe and properly maintaining the building and grounds; (4) a "registration fee" of \$50 and an "annual vacant building fee" of \$500; (5) a responsibility to perform such acts as may be required "to ensure that the building and its adjoining yard remain safe and secure and do not present a hazard to the adjoining property or the public"--including a long list of maintenance duties for the building's exterior and interior, including snow removal and grass mowing; (6) the ability of the City to step in and perform necessary maintenance, if the owner fails to comply with a notice to do so, and to submit a bill for expenses to the owner; (7) the owner's consent to inspection of the premises to ensure enforcement and compliance (with provision for an administrative search warrant, if necessary); and (8) penalties for violation or for providing false information of up to \$1,000 per day. Enforcement authority under this ordinance is given to "any duly authorized City of Binghamton employee of the Office of Buildings and Construction, Code Enforcement/Fire Marshal's Office, or designated representative of the Planning, Housing and Community Development (PHCD) Department. For the most part, no parallel authority exists for occupied rental buildings, where non-resident landlords do not always keep up with maintenance and adhere to code provisions.

#### The Literature on Student Rental Housing in Low-Density Residential Neighborhoods

*NOTE: Other than in areas of City--University coordination and cooperative enforcement, the Commission has rejected the notion that students should be treated differently from other tenants. However, an extensive literature exists on student rental housing and its management. Some of that literature and analysis is referenced here. Pertinent solutions recommended by other governmental commissions and studies are summarized in the next section.*

46. Raborn, C., "Coping with Colleges: How Communities Address the Problems of Students Living Off-Campus," Zoning News (American Planning Association), May 2002, pp. 1-5. See also, Anonymous, "What Other College Communities Have Done: Examples of Regulatory Actions to

Preserve the Single-Family Character of a Campus Neighborhood," <http://www.prairienet.org/wuna/whitepaper/WhitePaperRegulatoryActions.pdf> ; Wang, et al., "Impact of Rental Properties on the Value of Single Family Residences," J. Urban Economics 30: 152-166 (1991); Urban Land Institute, Student Housing: Selected References (InfoPacket No. 3009, 2006); Russell, T.D., "Between Town and Gown: The Rise and Fall of Restorative Justice on Boulder's University Hill" (see especially "Appendix A: Victim Impact Statements"), Utah Law Review, Vol. 2003, No. 1: pp. 91-136 (2003).

47. Examples are provided below from widely diverse parts of the country of governmental commissions and task forces—which included Town and Gown representatives, tenants and landlords, and students and neighbors:
  - a. Raleigh, NC Neighborhood Preservation and Housing Task Force ([www.tricc.org/docs/NPHTFFinalReport.pdf](http://www.tricc.org/docs/NPHTFFinalReport.pdf)).
  - b. Plattsburgh, NY City - College Commission Report, [www.plattsburgh.edu/president/pccc/](http://www.plattsburgh.edu/president/pccc/) (July 16, 2007).
  - c. West Urbana, IL - "Issues Facing Campus Neighborhoods and Possible Solutions" ([www.prairienet.org/wuna/whitepaper/WhitePapterIssuesPossibleSolutions\\_v2.pdf](http://www.prairienet.org/wuna/whitepaper/WhitePapterIssuesPossibleSolutions_v2.pdf) (Jan. 2005)).
  - d. Fargo, ND - "Joint Study on the Impact of Rental Housing on Residential Neighborhoods: A Look at Neighborhood Best Practices" (2006); See consultant's report by Dahlgren Shardlow and Uban, Inc., of Minneapolis, MN, re "Neighborhood Best Practices" (Dec. 21, 2005), p. 2: This was a joint study by four college towns in North Dakota and Minnesota—City of Fargo, City of Mankato, City of Moorhead, and City of Saint Cloud.

#### Solutions Recommended by Other Governmental Commissions

48. A number of "key strategies" are referenced repeatedly by committees constituted to address Zoning-related issues. These include:
  - a. West Urbana, IL -
    - Adopt a restrictive family definition, non-discriminatory and broad enough to

include two unrelated partners and same-sex partners

- Reduce the number of unrelateds permitted in a single-family house
- Strictly enforce existing codes and standards
- Institute residential parking permits
- Create rental inspection and landlord licensing programs
- Consider limitations on rooming house program and disorderly house designation
- Encourage owner-occupancy and responsible management
- Reverse grandfathered non-conforming uses<sup>6</sup>
- Establish a conservation district or overlay zones to discourage demolition of historic properties
- Promote adaptive reuse

b. **Plattsburgh, NY:**

- Amend the definition of "family" to create a rebuttable presumption that four or more unrelated tenants are not a functional family equivalent
- Enact a nuisance and property maintenance ordinance to "raise the [city's] ability... to address properties where frequent infractions of the laws occur"
- Enact a registration, inspection and permitting ordinance covering rental units
- Encourage the College to lower the threshold for judicially pursuing off-campus conduct issues
- Increase the number of appearance tickets versus warnings issued by the Building Inspector's Office "to create a culture of enforcement"
- Need for Building Inspector's Office to become more proactive in policing

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<sup>6</sup> "Grandfathering of non-conforming uses" refers to the practice of allowing practices that were legal at the time they occurred to continue even after changes to the zoning code would make similar practices illegal going forward. Reversal of such grandfathering might occur if, for example, a given house was converted from owner-occupied to rentals and a certain number of nuisance complaints or Code violations were accumulated at that property.

violations of zoning and building codes (and not just responding to complaints) in the areas impacted by high densities of bars and rental housing—including “a methodical and regular patrol of neighborhoods impacted by problematic behaviors”

- Increased use by the Building Inspector’s Office of database software to develop a monthly report of violations by address, which should be made available through the City’s website and should be delivered to the Mayor and City Council members in hard copy form once a month (“this... would allow nuisance properties to be more readily identified and the problems remedied”)
- Use of a zero tolerance policy by City and College police departments with respect to violations of quality of life ordinances
- Provision by these police departments of additional information in their Accusatory Instruments about the circumstances of a violation—to allow the City Court to apply more appropriate sentences to those “guilty of egregious conduct”
- Cross-training of police, fire and public works employees in the area of code violations and amendment of the Code as necessary to allow these employees to legally issue appearance tickets for all relevant sections of the Code [note: this is similar to what Binghamton did in its Vacant Property / Absentee Landlord ordinance]
- Authorization of the Fire Department to assist the Building Inspector’s Office in conducting inspections of all rental properties after the first inspection of a new structure

c. **Raleigh, NC:**

- Goal of City to establish strategies, policies, and ordinances that recognize the need for a variety of housing options, while simultaneously stabilizing, protecting and

enhancing existing neighborhoods (the City should encourage home ownership by exploring a variety of options and programs)

- Support and encouragement for the core value of home ownership and recognition of the long-term benefit of owner-occupied dwellings as vital to the overall well being of any community
- Provision of necessary tools, political support and resources to conduct enforcement of existing laws, codes and ordinances
- Establishment of a rental licensing program--covering single family, non-owner occupied duplex, and single family homes converted to multi-family usage--as a low cost, efficient and effective tool to address rental-housing problems; it will also fund the necessary tools required by the city inspection departments to provide effective enforcement (all fees associated with licenses, nuisance, code and housing violations, and inspections to remain with the Zoning Inspections and Housing/Environmental Inspections departments for budgetary purposes)
- Recognition that the conversion of single-family homes to rentals "is clearly a business" not unlike running larger residential complexes
- Recognition that the accumulation of single-family rental properties in a residential neighborhood has the same negative impacts as the intrusion of apartments or other types of undesired properties
- Recognition that **Neighborhood Preservation Overlay Districts** that limit the density of rental conversions (with a target maximum of 20% combined single-family homes for rent and single family homes converted to multi-family usage for rent in any defined neighborhood) are an innovative solution to preserve residential neighborhoods; they give residents "an instrument to blunt the detrimental effects of encroaching decay due to increasing rentals" and they are "a selling point for available, affordable housing stuck, thus making neighborhoods attractive to buyers looking to live in the city--and elusive and primary goal for urban vitality"

- Maintenance of the Neighborhood Preservation and Housing Task Force as a permanent advisory group to the city for review of issues facing neighborhoods throughout the City

**d. Fargo, ND [and 3 other ND and MN cities]:**

- "In order to ensure that rental properties meet housing, zoning and other codes, cities can institute a **rental licensing system** in which owners of rental property must submit an application to be licensed before renting the property." Such a program can have many benefits, including protecting the health and safety of renters, protecting the neighboring from the negative effects of rental properties, and providing accurate data on how many rental units exist in the city, allowing city staff to judge the speed and extent of rental conversions.
- Student housing can be concentrated in certain areas either through a change in zoning, or by the adoption of an **overlay zoning district**. These approaches can be used to restrict occupancy, or to permit higher occupancy to preserve other neighborhoods. Through planning and zoning, areas of a city could be identified that are appropriate for student housing, and then an overlay district could be applied in these areas. The zone would allow for increased density to accommodate student populations that may be spilling over into surrounding areas. (Citing example of Austin, TX infill program.)
- Other zoning tools to address student housing include ordinances (such as in Boulder, CO) that allow **accessory dwelling units** in certain zoning districts, in which rentals (but not duplex or multi-family rentals) are allowed. This serves to prevent the full conversion of single-family homes to rental properties and provides for the owners to reside on the property where they maintain control over the accessory dwelling units.
- Other tools also include design and location guidelines, which seek to prevent over-

concentration of student housing in certain neighborhoods by establishing a minimum distance between student rental units (see, e.g., State College, PA). A difficulty with such an approach is identifying which rental properties contain student renters.

- Tools can also be used to address various externalities caused by student housing, such as:
  - overcrowded parking
  - nuisance and safety issues

## II. RECOMMENDATIONS

1. Significant attention should be directed by the City and County to increasing the rate of homeownership in Binghamton by 10 to 20%. High priority should be given to current renters who are capable of, and interested in, buying a home. Emphasis should also be given to "Neighborhood Action Areas." Among the strategies that should be strengthened or initiated to accomplish this are the following:<sup>7</sup>
  - a. Low cost loan programs directed at first-time buyers. Funding from the federal and state governments and foundations should be aggressively pursued. The City should also continue to work with banks, credit unions, and other lenders to ensure an adequate pool of capital to encompass buyers who might not otherwise qualify.
  - b. Rehab loan programs for owner-occupants—e.g., Community Development Block Grants.
  - c. Promotion of State legislation similar to Pennsylvania's Abandoned and Blighted Property Conservatorship Act to give localities greater power to bring abandoned properties in line with community codes and standards.
  - d. Creation of Neighborhood Preservation Overlay Districts in which strategies are implemented to maintain single-family rental housing at no more than a specified percentage.
  - e. City and State workers who work in Binghamton should be encouraged and incentivized by the City and State to acquire homes within the City limits.
  - f. One such potential program is to offer Police Officers and Firefighters homes owned by the City to live rent-free for two years in redevelopment areas. In return, the Officer or Firefighter would be required to spend 24 off-duty hours a month in their community focusing on crime prevention, neighborhood pride, etc. After 2 years, the officer or firefighter would be eligible to purchase the home from the City.

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<sup>7</sup> Note that items (a) through (f) are largely based on recommendations in the Raleigh, NC "Neighborhood Preservation and Housing Task Force" report.

- g. Programs should reward long-term residency and physical property improvements and should leverage the use of any public funds.
- In designated areas, improvements by homeowners and landlords should receive temporary city tax abatements for any increases in tax value as a result of those improvements. There should be a cap on the maximum property value that qualifies for an abatement and on the maximum tax abatement—to ensure that this incentive is utilized in a cost-effective manner.
  - The City should develop a secondary mortgage fund for homeowner improvements, with repayment terms that incentivize long-term residency.
  - The City and major employers in the City should design incentive plans to encourage employees to stay in Binghamton and reside near their place of employment.
  - Local banks should be solicited to provide loan pools for homeowners in certain districts of the City. The City should explore ways to help underwrite such loans to make them more attractive to banks. Swap-outs of bad loans or second mortgages that could give the City cure rights on defaulted loans are examples that may make banks more willing to consider such programs.
  - A private equity pool should be attracted to fund qualified buyers that receive below-market financing for a percentage of the appreciation of the property. Investors would receive a share of the loan value at sale or at the end of a set period of time. (See Toronto, Canada's program.)
  - The City should aggressively condemn and take over deteriorated properties and turn them over to private hands as quickly as possible for rehabilitation. State legislation akin to The Abandoned and Blighted Property Conservatorship Act, recently enacted in Pennsylvania, should be strongly considered and promoted.
  - City or private loan pools should be explored to assist neighborhood associations or ownership entities comprised of property owners in a neighborhood that wish to acquire run-down properties, make improvements, and transform them

into more desirable homes for resale.

*[Note: Items (a) through (f), above, are based on recommendations in the Raleigh, NC "Neighborhood Preservation and Housing Task Force" report]*

- h. The City should focus on creating a "positive energy"—including dissemination of information to create an awareness--regarding the quality of life in the City's neighborhoods.
- i. The City should implement PHCD home improvement programs.
- j. The City should work with Community Development Corporations in Neighborhood Action Areas, and support programs such as Binghamton Healthy Neighborhood (BHN) collaboration with neighborhood groups for exterior improvements in Action Areas.
- k. The City should also pursue: the BHN Curb Appeal Improvements initiative; the Neighborhood Development Project Fund; and additional beautification efforts, such as litter campaigns, and the Youth Beautification Initiative.
- l. The City should continue to pursue and promote RestoreNY renovations and new construction.
- m. The City should explore opportunities to collaborate with private sector entities and activities, including the Greater Binghamton Board of Realtors and the Home Builders and Remodelers Association.
- n. Other tools that should be considered and aggressively pursued by the City include: RFPs for redevelopment of entire blocks of blighted properties or substandard housing; City takeovers of vacant or rundown homes, followed by renovation, redevelopment, and resale; cleanup and redevelopment of brownfield sites—using State and U.S. Environmental Protection Agency grants; use of the State Brownfield Opportunity Area (BOA) program to revitalize broad areas of brownfield contamination.
- o. The City should aggressively market the value and affordability of housing in this area, including the following:
  - Binghamton ranked second (Cedar Rapids, Iowa was first) among the 11 cities with the highest home price appreciation in 2008—despite the overall housing market collapse. Source: First American CoreLogic Inc. (2/18/09).

- Binghamton leads the Forbes list of most affordable housing markets in the U.S, with 89.4% of homes sold in the last quarter being available to a median-earning family in the City. "Where In The U.S. Homes Are Most Affordable," Forbes.com, 2/19/09; [www.forbes.com/2009/02/19/cities-affordable-ten-lifestyle-real-estate-cities.html](http://www.forbes.com/2009/02/19/cities-affordable-ten-lifestyle-real-estate-cities.html) .
- The Binghamton Metro Area is the nation's second highest rising-in-value housing market (next to Salt Lake City, Utah). Between 2006 and 2007, Binghamton's median home price growth was 19.8 percent. Forbes.com, Nov. 2008; Realtor Magazine, Jan. 2009. See also, [www.cityofbinghamton.com/viewarticle.asp?a=2735](http://www.cityofbinghamton.com/viewarticle.asp?a=2735) .
- Binghamton is the nation's top market for "making money and having a great quality of life to boot." It "leads the nation in how quickly home prices are rising." Real estate expert Barbara Corcoran, 10/30/08, on NBC's Today Show. See also, Forbes.com, Dec. 2007; [www.cityofbinghamton.com/viewarticle.asp?a=2982](http://www.cityofbinghamton.com/viewarticle.asp?a=2982) .

2. The City should pursue strategies to promote and retain responsible local landowners and to incentivize student and professional housing in appropriately zoned neighborhoods, through strategies such as the following:
  - a. Partner with area hospitals (Lourdes, United Health Services [UHS]), developers, and property owners to assist health care professionals to locate in neighborhoods convenient to the hospital area.
  - b. Partner with local colleges and other educational institutions to assist graduate and undergraduate students, professors, and other college employees to locate in neighborhoods convenient to these institutions.
  - c. Promote other beneficial partnerships of this kind—such as "City Living Sundays" and "Affordable Homes" fairs.
  - d. Using zoning tools, such as Planned Development Districts and Overlay Districts, to allow higher densities of students and professionals in areas able to accommodate such densities—consistent with principles of Smart Growth and Livable Communities. For example: close to where they work and/or close to mass-transit routes. These tools should be used

to create housing to meet needs, and should focus on inclusion rather than exclusion. See, e.g., Appendix F.

- e. The City should partner with banks and other financial institutions to utilize Community Reinvestment Act (CRA) funds to promote zoning and land use objectives.

3. Recommendation #3: The Binghamton Zoning Code should be updated and improved, in conformity with best practices elsewhere in New York State and the U.S., to better control the numbers of transient renters, and of rental conversions, in low-density residential neighborhoods. Among the modifications that should be strongly considered are the following:

- a. The current complaint-driven process for determining whether unrelated tenants are the functional equivalent of a family, should be replaced with clearer and fairer rules that provide a more objective, self-implementing process for setting occupancy limits in residential dwellings and determining when such limits are exceeded.
- b. There should be a "rebuttable presumption" that landlords can lease rental units in the R-1 (low-density, single-family residential) residential district to no more than three unrelated renters. More than three unrelated renters would be allowed in a rental unit, if (i) the landlord demonstrates that the renters sufficiently display functional family characteristics, or (ii) the larger number of renters was previously allowed under prior zoning (and is, therefore, "grandfathered" as a legal "non-conforming" use), or (iii) the landlord obtains an appropriate "use variance" from the Zoning Board of Appeals, or (iv) for a superseding overlay district of the sort proposed in Appendix F, the property is in the overlay district.
- c. The number of unrelated renters presumptively allowed in an R-1 district should not be set at more than three—subject to the exceptions set forth in the previous sub-paragraph. A limit of three is the most prevalent standard in use by other localities in New York State and the U.S.—outnumbering by two-to-one localities setting the presumptive occupancy limit at four or more. To ease the impact of immediately enforcing the new presumptive limit, the Council

- should consider the following mitigative measures: (1) specify a phase-in date for the new presumptive limit of not less than 3 months nor more than 12 months from the date of enactment of new legislation; (2) allow existing leases that were finalized prior to enactment of the new legislation to remain in effect until they run their course; and (3) where the number of tenants does not exceed the number of lawfully constructed rental units or bedrooms prior to the date of enactment, allow a higher presumptive limit to remain in effect for a period of no more than 5 years (i.e., be "grandfathered") unless and until further structural changes or use modifications occur.
- d. The Commission also recognizes and intends that rental units currently located in R-2 and R-3 districts, which were previously lawfully located in less-restrictive R-4<sup>8</sup> and R-5<sup>9</sup> districts (which were abolished several years ago during a revamping of the Zoning Code), are and ought to be "grandfathered" as lawful pre-existing uses—including uses that might not currently satisfy "functional family" equivalency criteria. Nothing in the Commission's current recommendations is intended to alter that status.
- e. To make the process self-implementing, a rental registration, licensing, and inspection program should be established--similar to those employed in other cities and towns throughout New York and the U.S. (and similar to that recently advocated by City Council Planning Committee Chair Bob Weslar). The "**City of Binghamton - Rental Unit Registration Form**," developed in connection with the Vacant Building Registry law and for the Absentee Landlord program should be expanded to cover all rental apartments. A nominal registration fee should be charged for each rental unit (a fee of \$50 is currently charged for registration of vacant properties). The proceeds of

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<sup>8</sup> "The intent of the R4 Residential District is to designate areas where a broad range of dwelling unit types is presently available and is desired as the future developmental character. Moderate population density, combined with a reduction of traffic congestion and the preservation and gradual improvement of the economic viability of real estate and the visual quality of the neighborhood is in the best interest of the community and will be the objective of development restrictions and controls."

<sup>9</sup> "The intent of the R5 Residential District is to designate those areas where multiple unit housing predominates and where a broad range of available housing options and a moderate to high population density is the existing and desired future developmental character. Development restrictions will be aimed at achieving the highest concentration of population and the broadest range of housing opportunities in the city while improving land use efficiency, safety, and environmental quality."

this fee should be used to augment building inspection and code enforcement staff, to conduct periodic inspections of rental apartments, to ensure that building and safety codes are adhered to and to spot-check the accuracy of registration forms. Such a program is also essential to collect data and monitor trends on homeownership versus rental rates, rental conversions, code compliance, and the impact on these of remedial programs developed by the City.

- f. The Certificate of Compliance program employed by the City in cooperation with Binghamton University, which is currently voluntary, should be made mandatory and tied to an expanded Citywide Rental Registration program. This will increase its value to students by providing more current information and including many more rental properties in the database maintained by the BU Off-Campus Housing Office. An expanded program of this sort will also have value for non-student rentals and the City, helping to ensure that unsafe rental apartments are brought up to standards or taken off the market. The utility of the Certificate of Compliance program would also be increased if it were expanded to encompass, not only building and housing code compliance, but also occupancy limits under the Zoning Code. (In this regard, the Certificate should note the Zoning District in which the dwelling is located.) Although maximum occupancy levels could not be definitively established in districts lacking presumptive numerical occupancy limits, maximum occupancy levels could be specified based on State Building Code and Binghamton Housing Code requirements. In addition to providing copies of Certificates of Compliance to the Off-Campus College office of Binghamton University for posting on the latter's housing website, landlords should be required to conspicuously post their Certificate of Compliance on the premises of each rental unit covered by the Certificate.
- g. Zoning (including applicable tenant occupancy limits, especially in the R-1 district) and building code compliance must be more strongly, uniformly and predictably enforced.
- h. Similar to the vacant building and absentee landlord program(s), enforcement authority to ensure compliance with tenant occupancy limits in residential districts should be given to "any duly authorized City of Binghamton employee of the Office of Buildings and

Construction, Code Enforcement/Fire Marshal's Office, or designated representative of Planning, Housing and Community Development."

- i. Students are a welcome part of the Binghamton community and should not be singled out for more restrictive treatment than other renters in residential neighborhoods.
- j. Students (and other unrelated tenants) who wish to live in groups larger than 3 who are unable to do so under tighter R-1 occupancy limits, should feel welcome in R-2 and R-3 neighborhoods where occupancy limits are more flexible. The Planning Commission should be given the authority to issue special use permits to rental units that exceed otherwise applicable occupancy limits, without regard to general Zoning Code definitions of "family" or "functional family equivalent," where all of the following factors are determined to be present:

a. In R-2 and R-3 districts:

1. The building owner has completed a Rental Registration statement and has received a Certificate of Compliance; and
2. Applicable side setbacks<sup>10</sup> are met under Zoning Ordinance § 410-28, Schedule IA; and
3. Required front yard may not be used for parking; and
4. Lighting and landscaping are designed to maintain the property's residential character; and
5. Appropriate measures are taken to maximize the building's "curb appeal" (including architectural features, materials and colors to preserve and enhance the visual and aesthetic quality of the neighborhood); and
6. An appropriate buffer strip is provided around parking areas containing more than four parking spaces; and
7. Each dwelling unit conforms to the minimum habitable area requirements of the State Building Code and Local Housing Code; and adequate safeguards are provided to protect the health, safety and general welfare of the public and to mitigate

<sup>10</sup> IA apply only to new construction.

possible detrimental effects on adjacent property; and

9. Adequate off-street parking is provided— which, for multi-unit dwellings with 4 or more bedrooms in any unit, shall be no less than 1.5 spaces per unit, or 0.5 space per bedroom, whichever is greater; and

10. The dwelling does not share a driveway with a neighboring residential property

b. Where the Planning Commission is unable to determine that the conditions for a special-use permit are satisfied, otherwise applicable "family" and "functional family" definitions shall continue to apply.

c. A special permit shall be revoked for dwellings that incur repeated complaints or violations under the terms of a "three-strikes" or expanded "lockdown" law.

k. Consideration should be given to expanding the current definition of "Rooming House" or "Lodging House" to make it easier to construct or convert buildings for such uses in R-3 or C-2 districts. Specifically, the requirement that the building must have been "originally constructed" for such use is probably overly restrictive and should be deleted. Also, the existing occupancy limit in such facilities of "at least three (3) but not more than ten (10) persons" should be re-evaluated. For example, more than 10 persons could be allowed as of right in a C-2 district and by special exception in an R-3 district, where safety requirements are satisfied and the increased density is not incompatible with surrounding community character. A rooming house permit, following registration and inspection, should be required in all instances.

l. The existing prohibition against new construction or conversion of existing buildings into multi-unit dwellings except in R-3 or C-2 Districts, should be more widely publicized and strictly enforced. (We note with approval efforts by City Council to strengthen the process for authorizing rental conversions.)

- m. If deemed appropriate, consideration could be given to waiving strict enforcement of rental conversion restrictions—in instances where landlords in R-2 and R-3 districts converted their dwellings prior to current limits on conversions or mistakenly failed to obtain required City approvals, or where such conversions were made by prior owners without the knowledge of current owners.
- n. Consideration should be given to providing tax rebates and incentives for moneys expended by landlords and homeowners in rehabilitation, renovation, and/or exterior beautification of their buildings.
- o. The City should actively track rental conversions by zoning district and by neighborhood. Consideration should be given to the approach used by Task Force members in Raleigh, NC. Properties with eight or more tax bill address mismatches in the last ten years were assumed to mean a conversion of an owner-occupied home to a rental. A map and charts were prepared showing the percentage of conversions for neighborhoods in the study area. Areas of high conversion rates could then be focused on for priority remediation and enforcement.
- p. The Building Department and other authorized City enforcement officials (see earlier recommendation) should become more proactive in policing violations of zoning and building codes (and not just responding to complaints) in areas impacted by high densities of bars and rental housing---including a methodical and regular patrol of neighborhoods impacted by problematic behaviors.
- q. A monthly report of violations and complaints by address should be made available on the City's website and should be provided to the Mayor and City Council to allow nuisance properties to be more readily identified and addressed. (A concern was raised about publicly identifying on the website the names or addresses of the subjects of code violations or complaints—especially of complaints that do not lead to confirmed violations. One possible solution that was discussed would be to post a GIS [Geographic Information System] map with complaints and violations shown as colored dots—so that clusters within neighborhoods would be apparent, without identifying particular properties.) Identities of individual tenants associated with disturbance incidents should

