



# Available Tools to Acquire Abandoned Sites

Hummel Center Amphitheater

1:45 P.M. – 2:45 P.M.

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Our attorneys are widely viewed as a leader in understanding and managing the complicated tax structure and management required by the New York State Brownfield program, as well as other federal, state, and local tax credit and redevelopment incentive programs.

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# **TEMPORARY INCIDENTS OF OWNERSHIP: A MUNICIPAL TOOL FOR INVESTIGATION PROPERTIES PRIOR TO TAX FORECLOSURE**

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# THE PROBLEM

- Upstate communities faced with abandoned properties including former gas stations, industrial sites, commercial and residential sites.
- Herkimer County's policy was not to foreclose on tax delinquent properties where there were any concerns of liability due to contamination and cleanup costs.
- Result was a build up of "Zombie" properties where the County did not take title, taxes and penalties continue to accrue.
- Temporary Incidents of Ownership offers municipalities a way to investigate site prior to taking title through the tax foreclosure process.

# ADVANTAGES OF TEMPORARY INCIDENTS OF OWNERSHIP

- Not a difficult process with no need to hire outside environmental counsel.
- TIO process through New York State Environmental Conservation Law Sec. 56-0508 provides a way for municipalities to obtain limited ownership rights to conduct environmental assessment without assuming liability for contamination.
- After TIO investigations, tax authorities will have a better idea of future uses of the tax parcel
- Property may be too heavily contaminated to take title immediately.
- Municipalities can prioritize properties to be taken (or not taken) in In Rem process.

# COUNTY PROCESS FOR EVALUATION OF PROPERTIES IN TAX FORECLOSURE PROCESS

- Herkimer County “Zombie” properties list grew through the years to over 80 plus properties with unpaid taxes, questionable environmental status and no action plan.
- Going forward, we revamped our In Rem process to include:
  - Taking photos of each property in tax arrears.
  - Contacting codes officers in municipality where property is located asking for codes review status on form to be provided back to county.
  - The County Property Agent checks online NYS DEC Conservation/DER Environmental Remediation Database for information concerning any environmental contamination.
  - County Clerk filings of hazardous waste sites are reviewed by County Property Agent.
  - Joint meeting with County Administrator, Treasurer, County Attorney, County Property Agent and county employee who is codes certified to review which properties will move forward to the In Rem tax sale and which would not be taken and added to “Zombie” list.
  - The Herkimer County IDA reviews “Zombie” properties and requests that the Herkimer County Legislature authorize a resolution to proceed with obtaining Temporary Incidents of Ownership. (TIO)
  - If Legislators agree, a Resolution is adopted by full legislature authorizing County Attorney to bring legal action for TIO.
  - County enters into an Agreement with Herkimer County IDA to retain environmental consultants to conduct environmental review during TIO process.

# STATUTORY FRAMEWORK FOR TEMPORARY INCIDENTS OF OWNERSHIP

Environmental Conservation Law Sec. 56-0508 governs the foreclosure of tax liens and sets framework for taxing district to obtain “temporary incidents of ownership.”

- On twenty days notice to any interested parties, “...the taxing district may move at a special term of court for an order granting the taxing district the temporary incidents of ownership for the sole purpose of entering the parcel and conducting an environmental restoration investigation project upon such parcel “ ECL 56-0508[1].
- Herkimer County has filed Order to Cause with Affidavits attached from County Treasurer and County Attorney detailing property and status. Copy of Order to Show Cause filed in County Clerk’s Office and then served upon all property owners and potentially “interested parties.”
- ECL 56-0508 provides that temporary incidents of ownership is of limited duration.
- Within 30 days of receipt of receiving the final environmental restoration investigation report, the taxing jurisdiction must file the report with the court on notice to all parties of record. (ECL Sec. 56-0508(1).
- Upon filing of the environmental investigation report with the Court, the “...stay of foreclosure shall be lifted...and all incidents of temporary ownership of the taxing jurisdiction that was awarded to such taxing district, except any right for the environmental restoration investigation project to be funded, shall cease to exist...” ECL 56-0508(1)

# PRACTICAL CONSIDERATIONS

- Identifying the interested parties: Herkimer County has ordered an abstract of title for each “Zombie” property that will be subject of action for TIO.
- We have found that some of our “Zombie” properties are owned by out of state property owners. This may involve some investigation to locate owners and “interested parties”.
- Since some of the “Zombie” properties have been in this status for several years. Thus, properties may be owned by individuals who are now deceased. We have used Surrogate Court records, obituaries, online sites to find “interested” individuals.
- Make sure that the Order to Show Cause includes all “interested” parties and specifies how service upon “interested” parties will be accomplished. (“Interested parties” may include banks, investors, creditors, both local and out-of-state).
- Service of Process: We have had great results by contacting County Sheriff in the out-of-state counties to track down and serve the owner or interested party

# THINKING OUTSIDE OF THE BOX: GAS STATION TO BICYCLE TRAIL PARKING

- Former CHIPS gas station, a derelict gas station owned in part by out of state owner and the estate of former partner.
- Temporary Incidents of Ownership and property plan was a joint effort between Herkimer County, Herkimer County IDA, Town of Frankfort, private billboard owner.
- After site investigation of former gas station site study, there was subsequent tank removal by working with New York State Comptroller.
- Herkimer County took title and will deed former site over to the Town of Frankfort.
- Town of Frankfort adopted resolution authorizing the Town to take title to the site upon proof of clean site from NYS DEC.
- Former CHIPS Gas Station site has received closure letter from NYSDEC.
- The site will be converted into a parking lot for adjoining Empire State Trail to provide parking for bicyclists.
- Owner of billboard company will continue use of corner of site and will provide enhanced lighting for bicycle parking at night.



# DOWNTOWN VILLAGE OF HERKIMER FLAGSHIP PROPERTY: FORMER MASONIC LODGE

- Flagship properties: Upon request of the Herkimer County IDA, the County obtained TIO on a former Masonic Lodge.
- Former Lodge constructed in 1918, this building is a key building in downtown Village of Herkimer. Totaling 17, 524 square feet, the building once contained a meeting hall, offices, bowling alley and ballroom.
- Herkimer County conducted an environmental review using the TIO mechanism to determine level of contamination.
- After review, the County proceeded to take title through the In Rem process, deeded property over to Herkimer Local Development Corporation for future use as an IDA headquarters, a certified kitchen, shared office and a community room.



# TEMPORARY INCIDENTS OF OWNERSHIP ON MAIN STREET

- Downtown Herkimer presents a difficult situation with many buildings not maintained absentee owners and a questionable future.
- Village Main Street: Main Street consists of apartment buildings, store fronts and commercial properties. Herkimer County has used the TIO process to review the environmental conditions of several Main Street Buildings.
- The Village of Herkimer does have a Brownfield Opportunity Area (BOA) project focused on the Main Street corridor
- The IDA is using the baseline environmental information gathered through TIO actions to consider alternatives for the properties.





# THANK YOU

## FOR YOUR ATTENTION

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Department of  
Environmental  
Conservation

# Land Bank Agreements

Mitigating Risks for Municipal Partners

April 21, 2026

## **DISCLAIMER**

**The views expressed by the speaker are her opinions alone and do not necessarily represent the position of NYSDEC or the State of New York.**

# Who is the target audience?

**Municipalities**

**Land Bank Managers**

**Developers**

# What kind of properties?

**Abandoned**

**Contaminated**

**Unknown or derelict owners**

# The Issue

Municipalities or governmental entities with the authority to foreclose on a property generally do not want to foreclose on a contaminated property.

Why?

- Owner in the chain of title

- Responsible for remediation

  - Potential DEC or Spill Fund enforcement

- Resale Issues

# Addresses Liability Concerns

DEC/Oil Spill Fund covenant-not-to-sue or seek payment as RP under CERCLA, State Superfund, Navigation Law, with caveats:

County/Land Bank in chain of title to a property pursuant to its *sovereign functions* (taxes, abandonment) – cannot be purchased under business purpose

CANNOT own/operate/manage during *disposal, release, discharge or spill*

CANNOT cause or contribute to a release or threat of a release

Must exercise “appropriate care” with respect to existing contamination (stop continuing release/passive migration, prevent exposure)

County/Landbank does not need to remediate previously released contamination during brief ownership

# Cost Sharing

Upon sale of property to a new buyer/developer:

- 1) Split proportionally from net proceeds of a sale based on costs incurred by each party
- 2) DEC - guaranteed \$1,000 (if expend funds)
- 3) OSC - guaranteed \$1,000 (if expend funds)
- 4) Land Bank/County keeps remainder (if seller)
  - DEC/OSC will not seek recovery of past costs against County/Land Bank
  - Successors in title (new buyer) remain liable for costs incurred by State

# Redevelopment Paths

- Municipality sells to a Buyer. The buyer enters a remedial program with DEC (likely brownfield cleanup program) and remediates the site.
- Municipality can complete a Phase 1 or Phase 2, which can clear the “cloud” or identify the remedial path.

Eventually the property is back on the tax rolls and is available for its best use



Department of  
Environmental  
Conservation

**Thank you!**

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# From Liability to Asset: Niagara County's Brownfield Toolkit

Presented by  
Amy E. Schifferli, AICP  
Niagara County Director of Planning & Brownfield Development

Date: April 21, 2026

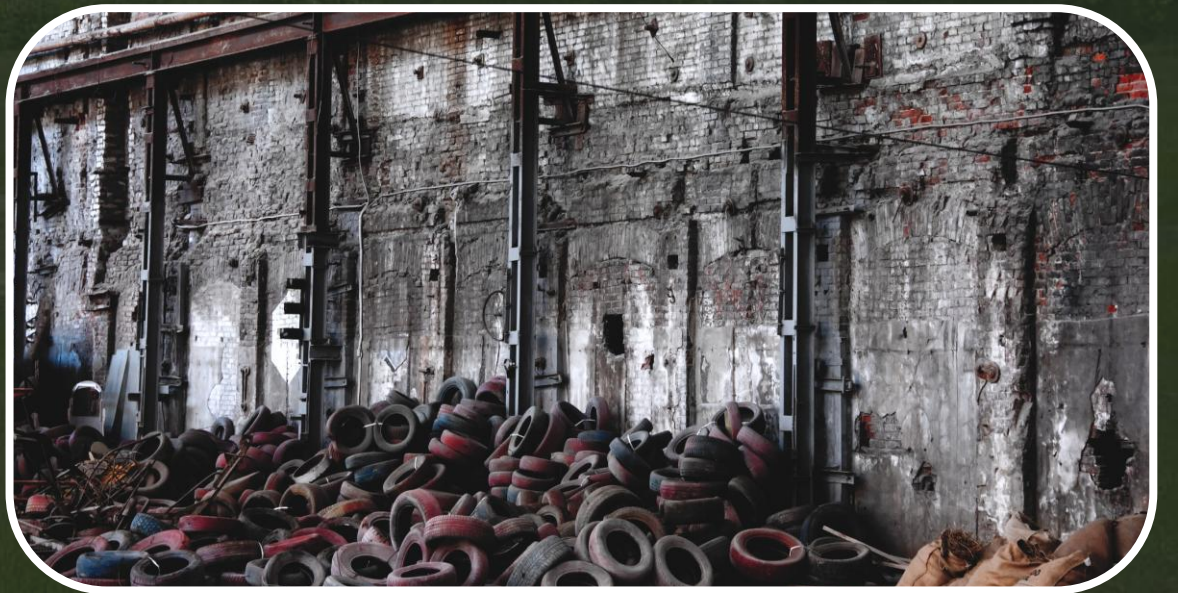




# Scope of Niagara County's Brownfields

> Over 600 sites from small gas stations to large, defunct manufacturing facilities

> Over 100 tax-delinquent parcels flagged as contaminated





# Temporary Incidence of Ownership

- ✔ Started using in 2013 tackling 22 sites at once
- ✔ Results showed all sites contaminated and no easy solution for disposition
- ✔ 48 sites investigated through TIOs – 5 “clean” and went through normal tax foreclosure and auction. 43 sites left in limbo





# Creation of Land Bank

Regional land bank created in November 2017 to tackle brownfields and vacant, abandoned properties especially the sites in the black holes



NIAGARA ORLEANS REGIONAL LAND IMPROVEMENT CORPORATION  
[www.niagaraorleanslandbank.com](http://www.niagaraorleanslandbank.com)



## A DOUBLE FOCUS: RESOLVING BROWNFIELDS AND INVESTING IN STRATEGIC NEIGHBORHOOD BLOCKS

- 19 PROPERTIES ACQUIRED
- 21 DEMOLITIONS COMPLETED
- 11 RENOVATIONS COMPLETED
- \$2.2M PUBLIC + PRIVATE INVESTMENT LEVERAGED
- \$1.6M ASSESSED VALUE RETURNED

Niagara Orleans Regional Land Improvement Corporation (NORLIC) was jointly created by five local and county jurisdictions in Western New York: the cities of Niagara Falls, North Tonawanda, and Lockport; and the counties of Niagara and Orleans.

A primary focus of NORLIC is to help unlock the potential of brownfields, which are former industrial or commercial sites with real or perceived contamination. Given its history as a critical industrial center in western New York, Niagara County has its fair share of brownfields. In the summer of 2022, Niagara County secured \$3.9 million grant from the U.S. Environmental Protection Agency to assess, clean, and redevelop brownfields, which represented the largest award in New York state that grant cycle.

NORLIC is well-positioned to help implement this work. In February 2021, The New York State Department of Environmental Conservation (DEC) announced it had executed a new cooperative agreement with the State Comptroller's Office, Niagara County, Orleans County, the cities of Lockport, Niagara Falls, and North Tonawanda, and NORLIC. Modeled after the agreement pioneered by Suffolk County Land Bank years previously, the agreement is designed to remove contaminated properties from tax foreclosure lists and put these sites back into productive use while addressing any potential contamination.



# NYSDEC Agreement



In 2021, signed multi-party agreement with state agencies to provide liability protections

Parties included NORLIC and 5 jurisdictions making up NORLIC

Changed the game for how contaminated properties were managed



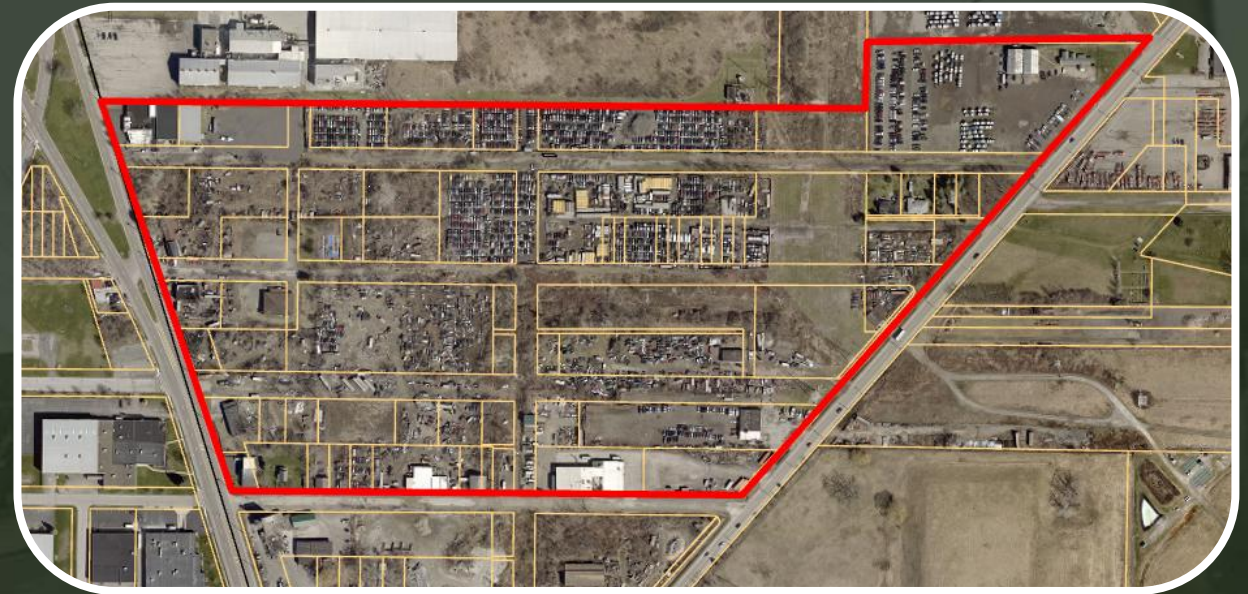


# Junkyard Dilemma

➤ Cluster of 16 junkyard. Most operating but hadn't paid taxes in over 20 years

➤ DEC agreement publicized and foreclosure letters sent to owners

➤ 8 properties redeemed paying \$124K in back taxes



# Tax Lien Transfers



- ✓ County transfers the tax liens to NORLIC
- ✓ NORLIC accepts proposals and sells the tax liens to a private party
- ✓ Purchaser conducts a private foreclosure proceeding to gain full title to the property

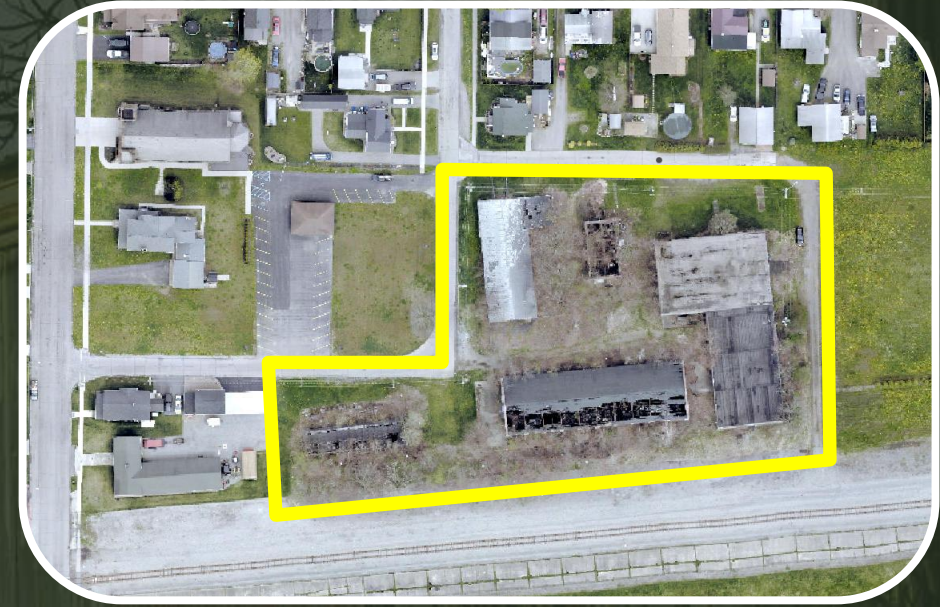


**County and  
NORLIC  
never enter  
chain of title**



# Norco Sites, Middleport

- › Site access for assessments was granted through Village Code Enforcement provisions
- › 5 parcels with ~\$200K in back taxes
- › PRP identified as being responsible to remediate site
- › PRP requested County transfer tax liens
- › DEC agreement provided comfort to move forward
- › PRP completed foreclosure on 4 parcels and remediated site



# Kanthal Global, Niagara

- Former NYS Superfund Site
- Back taxes accumulating since 2000
- Court granted TIO for environmental investigation
- DEC agreement provided comfort to move forward
- Transferred ~\$1M tax lien to private developer
- Foreclosure completed late 2025



# 5222 Lockport-Junction Road, Cambria

- › Back taxes accumulating since 1999
- › Court granted TIO for environmental investigation
- › EPA grant funding used for assessments
- › 17 acres site eligible for NYS Superfund Program
- › DEC agreement provided comfort to move forward
- › Transferred ~\$650K tax lien to private developer
- › Developer applied to BCP for cleanup
- › Foreclosure in process
- › Proposed use \$95M strawberry greenhouses





**THANK YOU!**


**Questions? Contact:**



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