

Local Government Subgroup**Meeting #3 Minutes**

May 7, 2014 9AM - 12PM

West Allis City Hall/Conference Call

ATTENDEES

John Stibal - City of West Allis (Co-chair)
 Dan Kolberg - DNR
 Jenna Soyer – DNR
 Adam Gallagher – Dane County

Lanette Altenbach – AECOM
 Bill Scott- Gonzalez, Saggio, Harlan
 Karen Dettmer – City of Milwaukee

Assignments:

Assignments	Timeframe	Person(s) Responsible
<u>Assign Judgment issue paper :</u> Add background information and finalize	By 5/14/14	Staff
<u>Modify Negotiated Sale issue paper:</u> Revise proposal language as a consideration for full group Draft concerns for comments section for full group to consider	By 5/14/14 By 5/14/14	Staff Karen
<u>Exempt LGU Investigation issue paper:</u> Revise proposal language to recommend outreach option, but also include alternative proposal that were considered	By 5/14/14	Dan
<u>Tax Issues issue paper & model MOU:</u> Revise MOU to address both county and city concerns	By 5/14/14	Bill
<u>LGU Access issue paper:</u> Draft language for including hazardous substances and wastes, prevention inspection purposes, illustrative examples of “emergency”	By 5/14/14	Bill
Discuss 3 rd Party Liability with Art Harrington	When possible	John

AGENDA ITEM #2: Discuss assigned issue papers.**Relevant Attachments:**

- **Issue:** Authorization of counties to cancel delinquent taxes outside of 75.105/75.106 and reluctance of counties to enter 75.17 agreements (Adam Gallagher/John Stibal)
 - Model MOU, 2 example MOUs from West Allis
- **Issue:** Assign Judgment of a Tax Deed Without Taking Title
- **Issue:** Negotiated Agreements
- **Issue:** Exempt LGU Investigation before Development Requirement
- **Issue:** Modify Local Government Access to Tax Delinquent Brownfields Properties (Karen Dettmer)
 - Considerations Regarding LGU Access to Tax Delinquent Brownfields (Bill)
 - Definition of environmental pollution and human health hazard (Bill)

Discussion:**1. Issue: Assign Judgment of a Tax Deed Without Taking Title**

Dan explained the historic issue and what the recommendation was last time. Karen asked if it was an oversight to leave out the foreclosure method or if it was left out on purpose. Dan and John indicated that they did not know. Dan also pointed out that some of the issues that this paper addresses some of the same issues as the negotiated agreement paper. So this may be a redundancy or may just be another tool.

Subgroup recommends the proposal and agrees to forward it to the full Study Group.

Dan clarified that this proposal did not go through last time simply because they did not want to attach non-budget items to the budget.

Action Item: Karen suggested adding something to the background that states this issue was previously recommended and continues to be relevant. John also suggested adding the reason it did not go through next time. The group agreed.

2. Issue: Modify Negotiated Sale in Lieu of Bidding for Tax Delinquent Properties

Dan explained the background of this issue, the proposal and how it is another tool in the same vein as the Assign Judgment issue.

John talked about how this is important to cities, especially on difficult sites. If the site has been sitting there for years and years, and someone finally comes in, the city should be able to have them go through the process.

Karen expressed that she has some problem with it because, even if the site has been sitting there for a while, more than one entity can be interested for new circumstances (i.e. a new development going in down the road). From the City of Milwaukee's perspective, they don't sell property on speculation, so it isn't always the lowest bidder; they have to submit a plan.

John mentioned that the proposal doesn't require that the city go along with anyone who comes in; it says the city "may" do a negotiated sale. John talked about how in a competitive market, like Milwaukee, competitively bidding makes sense. But in some instances, there is not as much interest, and the competitive bidding process doesn't make sense in all cases (i.e. when only one entity is interested). Competition in a competitive bid may drive the only interested entity away. The purpose is to

Karen asked what the benefit of this over a 75.106 is. Dan said that taxing authorities are not always involved in 75.106, it is often just between the developer and the DNR.

Dan clarified the process and language included in the proposal.

John said having a deadline may make sense. Karen and Adam said that they regularly do this. Where they put it out for bid for a certain amount of time and if they don't get something in that meets the criteria, they are allowed to take whatever comes in next.

Karen is worried that implementation of this may become too political, and is not really sure where the issue is.

John said that he thinks the benefit is to those localities that have very little interest in properties, especially if there may be contamination. This allows the locality to get the property redeveloped without taking the risk of taking the potentially contaminated property. John thinks the "may" hopefully takes care of some of the potential abuse by developers.

John offered that we could add it needs to be competitively bid first. Karen and Adam pointed out that this is already possible, so no issue paper is really needed.

Dan mentioned that there are some circumstances that this could be really beneficial. For example, on properties that have been sitting there for a very long time and someone is finally interested.

Karen said she didn't understand why you wouldn't then just guide them through the 75.106 process. John asked who pays for the Phase I and II in these agreements. Karen said that it's negotiable and often they will pay for half of the Phase II, since the developer is agreeing to clean up the property.

Dan mentioned that this issue paper is applicable to property the City or County owns, where 75.106 is property that they do not own.

Bill asked Adam what happens when the County sells a property that has delinquent taxes. Adam clarified that the County pays off every each year, and when they sell it, the County writes those expenses off, for the better of getting it back on the tax roll.

Bill clarified how he understood the issue, and suggested an additional step, where the municipality essentially noticed way in advance that they were going to enter into an agreement with this buyer and if anyone else is interested, speak up now. If nobody offers anything up in X months, then the municipality can go with the sole source buyer. This would hopefully guard against any sweetheart deals and satisfy the tax payer notice.

Adam asked how the administration would go if you got another bid. John explained that that option already exists with RFP/bid and public hearing process. Bill said that with that in mind, then he is with Karen in guarding against any political favoritism.

Action Item: Karen suggested that we keep the issue on the table, since it was previously "adopted", and Karen will write up her concerns in the Comments section. The full group can deliberate if it should move forward or if there are better proposals to address the issue. The group agreed.

3. Issue: Exempt LGU Investigation before Development Requirement

Dan explained the background of this issue and the draft proposal. The draft offers three options: 1) new guidance on NR 708.17, 2) statutory wording changes to s.292.11 (9)(e)4 to require investigation, and/or 3) clarify that some actions may invalidate portions of their exemption.

John said he likes the options and that if the legislature wants to pick up any one of them, they can. Dan also mentioned that maybe we could start with the guidance and then move to something stronger if the need is still there.

Bill asked Dan to clarify what the issue is: enforcement or preventative. Dan explained that it is a little of both. That it leaves the DNR information-poor on the site and if the new use is appropriate which then flows into what the DNR can/cannot do. The intent is not to have enforcement against exempt-LGUs, but to keep problems from occurring in the first place.

Adam asked how the LGU would know what sites to do this with. Karen said it would be based on historical data.

John asked what we do when the historical data doesn't necessarily suggest anything or the LGU has no reason for concern, until something is bubbling up from the ground. Do you lose the exemption?

Bill is concerned and doesn't want to see this as an excuse for the DNR to push enforcement on exempt-LGUs, which will significantly strain the good things happening between the Brownfields program and LGUs.

John doesn't think that's the purpose, but he is concerned about the unknown/surprise cases and what to do about that.

John thinks the best approach is the education option, and that the other options may degrade the exemption. Lanette agreed. Bill agreed.

Karen would like to see a stronger definition of development/construction work that does not include demolition. John pointed out that this may not be an issue if we keep it an education-level.

Action Item: Group agreed that the education option is the preferred proposal, but leave the other ones in as well to show that they were considered. Change "Type of Recommendation" to "Administrative Guidance/Outreach". Dan will revise and send out a final draft to the group.

4. Issue: Authorization of counties to cancel delinquent taxes outside of 75.105/75.106 and reluctance of counties to enter 75.17 agreements.

Bill discussed how the issue seems to be that nobody wants the "hot potato". Neither the City nor the County wants to take on any more liability than necessary. The City doesn't want to take it without knowing what they are getting. The County doesn't want to take it without having someone to pass it on to. Nobody wants to take responsibility for the other party's actions. This is the Good Samaritan issue he brought up previously: that neither should have enforcement brought against them for trying to do the right thing. If this is done the correct way, both should be exempt. Bill's questions were then:

- How do we cleanly divide the responsibility?
- Why can't the city have the same rights as the County to take property? That would take care of the issue of the County not wanting to get involved. And will not force this relationship.
- The counties seem to be concerned about liability issues that may not actually be present because of current protections, which complicates the issue.

Adam pointed out that the counties are reluctant because they are the ones that are out the tax revenue, in his case, because they pay the municipalities every year no matter if it is delinquent or not, and then have to write off that expense.

Dan said that the closest thing we have right now to providing municipalities the same authority as counties (taking the counties out of the chain altogether) is the 75.105 agreement. However, this is the sort of agreement that counties are most leery of.

Bill talked about how he thinks the draft model MOU right now is a bit weighted toward the counties interest. Bill said he is going to try to strip it down a little to address some city-raised issues. However, there is nothing that can really be included that alleviates the counties liability concerns.

Dan pointed out that all we can do at this point to alleviate those concerns, is provide guidance and education for counties to utilize the existing protections and take the property through appropriate methods. This agreement should fall under appropriate methods for both state and federal involuntary acquisition.

Action Item: The group agreed to have Bill address the city concerns and do some other revisions, and provide the new draft to the group by email.

Karen will also send out Milwaukee's typical 75.106 agreement with developers, so the group can see the liabilities covered in that language.

Dan also mentioned that we should be cognizant to make sure the proposal includes the fact that these protections already exist and the MOU is not necessary to exercise these protections. The proposal should offer a tool, while not moving the program backwards in terms of the ease of available protections for LGUs. The group said it would be a good idea to include this information with the model MOU, perhaps in the cover sheet.

5. Issue: Unwillingness of LGUs to condemn

Lanette gave a little background on the issue and said that she was unable to get the historic acquisition information she was looking for.

Action Item: The group agreed that this is more of an outreach issue and should be dropped.

6/7. Issue: Environmental contamination definition and LGU access

Karen talked about the discussion she and Bill had since the previous meeting, and that they agreed the previous proposal to allow more discretion on the part of the LGU may not be appropriate. Bill discussed how the constitutional provisions for a special inspection warrant are there to protect the most vulnerable and to protect against abusive discretion. Bill attempted to work through a new process and came pretty close to the existing special inspection warrant process, so there really isn't anything that needs to be updated. Bill suggested that the best option may be to clarify some definitions.

Karen said that they decided to drop the "like blight" or any other "blight"-type definition to avoid the additional requirements that go along with that designation.

Karen and Bill also discussed that the existing interpretation of environmental pollution considers only the outside of the building. They suggested adding "hazardous substances and wastes" to cover interior potential contamination and building contamination. Bill also would like to include special inspection warrants for the purpose of preventing environmental pollution, and that similar language for prevention could extend to fires/hazards as well. John agreed that we should include prevention, because that's really the purpose of inspections.

He also had a suggestion for adding illustrative examples for the definition of “emergency” (i.e. when a special inspection warrant is not required), like for the other definitions in the statute. Karen had a question as to what implications on emergency personnel. Bill will do a first draft.

Action Item: The group agreed that the proposal should include adding hazardous substances, wastes, illustrative examples of “emergency”, and language for prevention purposes. Bill will revise the proposal and send to the group for review this afternoon as well.

8. Any lingering issue?

Dan went over the issues that were dropped or handed over to another group: Vapor Intrusion (to Technical Group), PACE model (to Financial Group), Unwillingness of LGUs to Condemn (Dropped), Salvage Ordinance (close to complete), BMPs (to Technical Group), Methods of Acquisition (Dropped), Definition of LGUs (Dropped)

John is still in discussions with Art Harrington on the 3rd Party Protection issue and will check back in with him.

AGENDA ITEM #3: Discuss presentation of issues at the full Study Group meeting

Discussion:

State buddies will have a meeting next Tuesday, to talk about the agenda for the Full Study Group meeting, and Jenna will pass along any agenda afterwards.

AGENDA ITEM #4: Discuss any assignments prior to the May 23rd meeting

Discussion:

See top of minutes. Assignments due by Wednesday, May 14th.

AGENDA ITEM #5: Discuss the possibility of additional meeting after the full Study Group meeting to finalize issues

Action Item: The group decided to wait to see what suggestions/edits, etc. the full Study Group comes up with.