

## Local Government Subgroup Meeting #2 Minutes

April 17, 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  
Michael Prager – DNR  
Bill Scott- Gonzalez, Saggio, Harlan  
Karen Dettmer – City of Milwaukee

**Assignments:** Drafts/information for discussion should be circulated by 5/2/14 for the group to look at.

Assignments	Timeframe	Person(s) Responsible
Revise Tax Issues paper to layout the process for the MOU as an option; add/edit any language necessary	By next meeting	Adam Gallagher, Bill Scott
Update “Assign Judgment of a Tax Deed Without Taking Title” historic issue paper for current report	By next meeting	???
Update “Modify Negotiated Sale in Lieu of Bidding for Tax Delinquent Brownfields Properties” historic issue paper for current report	By next meeting	???
Draft Unwillingness by LGUs to Condemn issue paper	By next meeting	???
Draft “environmental contamination” definition issue paper	By next meeting	Bill Scott, Karen Dettmer
Edit Access issue paper to include “Like Blight” term and two-tiered option	By next meeting	Bill Scott
Get counsel’s interpretation of if a non-response is refusal to consent to access	By next meeting	John Stibal
Look into Illinois’ access laws and report back to group	By next meeting	Michael Prager
Get status of VIPI’s siting issue paper	By next meeting	Jenna Soyer
Look into 3 <sup>rd</sup> Party Protections at the State Level	By next meeting	John Stibal will talk to Art Harrington

**AGENDA ITEM #2:** Summarize events since last meeting.

**Discussion:**

Dan Kolberg discussed the events since the last meeting.

- The Buddies/Chairs met to talk about priorities and overlap.
  - The LGU Issue of the PACE model will be handled by the Financial Group.
  - Vapor Intrusion issues should go to Technical Group. Other groups will provide input for sub-topics as needed.
  - Soil/Sediment Management issues should go to Technical Group. Other groups will provide input for sub-topics as needed.
- Other subgroups have met and are working on their issues. The Financial Group is focusing more on how funding would be used and less on where the funding will come from, at this time.

**AGENDA ITEM #3: Discuss assigned issues and draft 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)
- Issue: Vapor Intrusion (Bill Scott)
- Issue: Underfunded LLCs (Bill Scott)
- Issue: Modify Local Government Access to Tax Delinquent Brownfields Properties (Karen Dettmer)
- Historic Issue Papers

**Discussion:**

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

Two options to discuss:

1. Transfer the property for no consideration under 75.17; or
2. Negotiate with the municipality as in the draft MOU

Adam Gallagher discussed the background and thinking behind the proposal and the model MOU. The counties would like to make sure that the City will actually take the property if the County cancels the taxes and gets involved with the property. The concept would be that the County and City would enter into an agreement to cancel taxes and would arrive on a purchase price. Dane County ordinance specifically says that the County can charge the delinquent taxes, plus one percent of assessed value, plus penalties and fees. The County may elect to waive fees and penalties for certain circumstances.

Discussion amongst members on if the municipality has an out, when the municipalities would want to enter the MOU, and if sampling can happen first. Options include:

- Access agreement between City and County
  - Does the counties' access under ch. 75.377 provide sufficient ability to provide access to the municipality as their agent? This is connected to the access issue paper.
  - Authority for access is given once the tax certificate is in place (two years back taxes)
- Clause to allow City to pull out prior to a court date if sampling shows something not favorable (i.e. option to purchase)

Karen asked the question and Dan clarified, that the City would still get the LGU exemption if using the model MOU, because it was taken by foreclosure and transferred to the LGU. This has been tested at the EPA level as well.

Bill Scott on how the process would work ideally:

1. MOU as an option
2. Tax certificate gives access to municipality for testing
3. If testing does not deter municipalities, the municipality would exercise the option
4. The County would initiate taking and transfer of title

The Group agreed that the draft issue paper should include the MOU as an option to buy and any language necessary to detail Bill's description of how the process should work.

Dan talked about the background of the 75.17 issue and the reluctance of Counties. The language states the County shall foreclose but they have the option of transferring or holding onto the property. Adam talked about the issues the Counties have with the statute. Bill stated that we need to address taking the County out of the chain of title, to move through the County's reluctance.

Dan brought up the "historic" issue papers as relevant to this discussion: "Assignment of Tax Deed Without Taking Title" and "Modified Negotiated Sale in Lieu of Bidding". These issue papers were put together considering counties that handle foreclosure through either the in rem or tax deed process.

Karen asked for clarification on the differences between the two tax processes. Adam and Bill weighed in.

- In rem goes through court system
- Tax deed is administrative
- Both have the same notice requirements, the difference is in how the transfer works. Bill pointed out that the Tax Deed process can be tricky because it is appealable, whereas the In rem process is not. Up front court process versus possible future court action.

John Stibal motioned that the Group should re-recommend the historic Assignment of Judgment proposal. Bill and Karen seconded. Adam asked for clarification of how the assignment of judgment process would work. Dan provided a brief description.

Dan then discussed the historic Modify Negotiated Sale issue. The proposal would allow a county or city to work with interested properties. This process would capitalize on possible interest in the property. John commented that he liked the proposal because it allows a county to take into consideration that marketability of the property- if it is marketable they can go for bid, if not, they can negotiate with someone who is interested.

John asked if there was consensus of the group to advance the two historic proposals. The Group gave consensus.

2. Talked about "Clarifying the Slum and Blight Elimination Statute" historic issue. Lanette talked about how some municipalities don't necessarily want to drag people to court for friendly condemnation. The city designates it slum and blight, but then negotiates a sale. The EPA then does not consider that involuntary.

Karen talked about Milwaukee's process involving the transfer of property to RACM.

The Group discussed putting together an issue paper on the Unwillingness by LGUs to Condemn with the recommendation to do outreach/put in literature that if you chose not to condemn, these are pitfalls and other options. Also include discussion of the process for "in lieu of" or "under threat of" eminent domain or condemnation.

The Group then looked over the historic issue paper. Karen talked about the issue that there is no definition/inconsistent definition for environmental pollution. Bill mentioned that **ch 254 Environmental Health**, can designate an area, giving them access. John recommended that we should add this definition to the blight statute or have one consistent definition separate and referenced throughout the statutes. The Group agreed that consistency was important.

## **2. Issue: Modify Local Government Access to Tax Delinquent Brownfields Properties**

Karen discussed Milwaukee's process for access is a series of notifications:

1. Title report
2. Send notice to the owner, per the statutes to enter the property
3. If they refuse or don't respond, then the attorneys send another letter demanding access
4. If they refuse again or don't respond, then they go to the duty judge and petition for a special inspection warrant

Karen talked about her discussions with Milwaukee's attorney on this. The city looks at the list of tax delinquent properties and which ones are appropriate to foreclose on. These properties could be reviewed and acted on more quickly if the city had more efficient access methods. The proposal looks at access for the city to tax delinquent sites without a warrant, specifically for properties that are clearly abandoned.

Bill clarified that we may be talking about a two-tiered process: One step where the LGU can come onto the property and look around, the other where the LGU can do sampling. Bill gave his interpretation of police powers: Police powers are there to protect public safety whether the reasons are specifically described. These properties have several issues that are or could be happening (e.g. sprinklers not working, parts of the building falling down, vagrants, drugs, etc.). These would fit under police power. The statute allows an LGU to just go on, but the better option would be to use this statute as the clear reason for the warrant.

Karen talked about the requirement for "emergency situation". The group discussed that the goal would be to stop emergencies from happening, not reacting to them.

Michael talked about access to mothballed brownfield sites or to sites where the property owner is not being cooperative, even if it is not tax delinquent. Illinois may have some language the Group can look at.

Dan pointed out that the historic paper only applies to counties and first class cities and that the Group may want to include all municipalities.

Bill discussed a proposal to define a new term for "like blight" that would allow municipalities to enter for certain activities. Bill will write something up.

Karen also discussed the phrase "that showing consent to entry has been refused". Do you have to have an actual "no" answer or can a non-response be a refusal? More often than not, it is a non-response. Do we need to clarify this? John will confer with Art Harrington on whether or not this is an issue and the Group will revisit the topic next meeting.

John asked if there was a consensus on moving this issue forward. Group voted for John to look into non-response, Bill editing some language or drafting new issue paper for "like blight", Michael looking into Illinois law.

### 3. Issue: Vapor Intrusion

Bill talked about how he wrote the proposal and that most of it should be things that municipalities should be aware of. What should happen is that the DNR should have a rule that if a day-care, etc. is slated for development, then they have to do testing.

Lanette and Michael talked about that the bigger problem is the unknown sites or the new day-care sites etc. that pop up on redeveloped sites that have not been tested.

Bill asked about the permitting requirements for day-cares. Karen talked about that there is a state law for health, but it's mostly up to the City Health Departments to look at it. Day-care is a special use in Milwaukee so they all have to go to Zoning Appeals, and they almost never look at the history of the property. John said that his division would never think to look at the use either.

Karen pointed out that one of the problems is that day-care centers are leased a majority of the time, which makes them hard to keep track of.

Bill made the point that, even if people do not agree on health effects, it should be fairly common sense that young children exposed to this for extended periods of time is a bad problem. There should be some sort of process within the permitting that testing be done periodically or something similar.

The Group discussed whether or not this is a brownfields topic and/or if the Group should make a recommendation for the Health Department to look into the issue. The Group decided to table it and bring it up next meeting as to how to handle it. Karen will make sure that Technical Group is taking these issues into consideration. Jenna will check with VIPI on where they are on their siting issue paper.

### 4. Issue: Underfunded LLCs

Bill gave an update on what the Liability group is working on. Staff are also working on finalizing the model ordinance. Liability group is looking at liability laws to close some loop holes.

Two things that may interest this group:

- Model ordinance should be publicized and utilized
- When the municipality comes in to stabilize a problem, you could be violating the law and be found liable by the DOJ- there should be some sort of Good Samaritan clause where a municipality goes in and uses their money to fix a problem/stabilize the site, and is exempt from the term "operator" clause. **Bill will write up a draft.**

### 5. Issues that have not yet been addressed

Topic	Discussion	Action
Third Party Protections at the State Level		John will discuss with Art Harrington and bring it to the Group at the next meeting
Revised Definition of LGU	John felt like this might be an issue in terms of resources; Bill pointed out that attracting schools to redevelop brownfields may cause more public health concerns	Group decided to drop the issue
Clarification of Methods of Acquisition		This topic is being dealt with under other issue papers

PACE model		Issue moved to Financial Group
Vapor Intrusion		Covered by Technical group; will look into VIPI aspects
Area-wide Brownfields Planning/Assessment/Clean up		Should go to Financial Group
Interpretation of liability (federal v. state)		Group decided to drop the issue
Developer incentives from LGUs		Financial Group is looking at this

---

**AGENDA ITEM #4:** Identify and discuss new issues
**Discussion:**

Dan introduced new issues that came up after the last meeting including:

- Should exempt LGUs be required to investigate sites before development work?
  - Up to this point, it has been taken care of by saying “Talk to the DNR”, but some don’t
  - The LGU exemption currently says the LGU should work with the DNR to make sure there aren’t any threats before developing, but the DNR doesn’t really haven’t any authority
  - Dan pointed out that this comes out in the NR 712 continuing obligation requirements as well
  - **John directed staff to write up something you would like to see and the Group will discuss at next meeting**
- What LGU issues need funding?- Finance is taking care of this
- Model salvage/demolition ordinances- Almost completed, we can recommend using it, talk about it next time

---

**NEXT MEETING**

May 7, 2014 (face-to-face)

9AM - 12PM