

Taking Control: **WORKSHOP 2B** *Effective Property Acquisition Strategies*



NJ Cities Initiative – 2012 Community Leadership Institute

Moderator:

**Barbara George Johnson,
John S. Watson Institute for Public Policy**

September 27, 2012

Presenters:

**Wayne T. Meyer, New Jersey Community Capital
David A. Clark, GluckWalrath LLP**



Increasing Challenges for Cities

- Weak housing market and economy
- Foreclosures
 - \$99 million tax revenue loss
- State budget problems and cuts in state aid
- Market won't come back easily or on its own



New Tools to Help Maintain, Reclaim & Preserve Problem Properties

- APRA – Abandoned Properties Rehabilitation Act
- Creating an Abandoned Property List
- Accelerated tax foreclosure for abandoned properties
- Special tax sales
- Receivership
- Spot blight eminent domain

Combined with Older Tools

- Code enforcement
- Nuisance abatement
- Redevelopment powers

...are a powerful resource to return problem properties to productive use and grow tax base.

APRA –What it is & How to Use it

- A) State law empowering municipalities to tackle vacant and abandoned properties through the use of special tools
 - P.L.2003, c.210
- B) An ordinance establishing an Abandoned Property List, designating a Public Officer, and authorizing the Public Officer to designate Qualified Rehabilitation Entities
- C) Abandoned Property List (APL)
 - Municipalities may create APLs
 - Only properties on the APL are eligible for Special Tax Sale or Spot Blight Eminent Domain
 - APL does not have to contain all abandoned props in municipality to take effect

Creating an Abandoned Property List under APRA

- A) Defining the problem
- B) Identifying and researching each problem property in the city
 - Block by block survey
 - Photographs
 - Research ownership / tax lien implementation
 - Create map that shows concentration of problem properties
 - Types of properties
 - Areas / Neighborhoods
 - Trends/ changes in recent years

Accelerated Tax Foreclosure Special Tax Sales

- Accelerated foreclosure of abandoned properties
 - Third-party tax lien holders or Assignees of municipal tax liens of abandoned properties can initiate foreclosure proceedings immediately
 - Lien Purchaser has right of entry in order to:
 - Make repairs
 - Abate nuisances
 - Preserve property value
- Special tax sales
 - Municipalities can remove and set aside properties from an abandoned property list for a special tax sale
 - Municipalities can set terms of special tax sale:
 - Limit eligible bidders to qualified entities
 - Set performance requirements for bidders
 - Combine properties into single bid packages
 - If successful bidder fails to meet obligations under sale, the liens or properties revert to municipality



Special Tax Sale – Why and How

- **A) Advantages**
 - Recoup lost property tax revenue
 - Think strategically about neighborhood impact
 - Abandoned buildings are kept from speculators/disinterested investors
 - Sustainable reuse of properties
- **B) Process**
 - Building must be on Abandoned Property list
 - City establishes qualifications and performance criteria
 - City establishes bid requirements
 - Properties can be combined into packages
 - Successful bidders can immediately foreclose and exercise their right of entry

Spot Blight Eminent Domain

- Eminent Domain can be used to take any property on the abandoned property list
- APRA sets standard for appraisals in such proceedings:
 - Where the value of the property after rehab or new construction is less than the Total Development Costs, value of land is presumed to be \$0



Spot Blight Eminent Domain – Why and How

- A) Advantages
 - Abandoned buildings do not have to be in redevelopment area
 - Favorable appraisal procedures
- B) Process
 - Building must be on Abandoned Property list
 - Owner must have exhausted right to appeal being placed on list
 - Follow procedures set forth in Eminent Domain Act (EDA)
- C) City of Newark
- D) Appraisal Analysis



Spot Blight Eminent Domain Pre-Litigation Considerations

- Retain appraiser and schedule appraisal
- Retain Title company and obtain Title report
- Retain environmental consultant (if necessary) and perform environmental review of property
- Retain legal counsel to assist in condemnation process

Spot Blight Eminent Domain Pre-Litigation Requirements under EDA

- Send letter to property owner by certified mail at least 10 days before appraisal inspection date
- Upon receipt and approval of appraisal by public entity, send letter to property owner by certified mail offering to acquire property for appraised value
- Engage in bona fide negotiations with property owner
- Once 14 day period from date of offer letter has expired and bona fide negotiations have concluded, file condemnation action

Spot Blight Eminent Domain Initiating Condemnation Action

- A condemnation action is initiated through the filing of a Verified Complaint and Order to Show Cause
- Once condemnation action has been initiated, Notice of Lis Pendens must be recorded against the property
- In order to extinguish all claims against the property, all parties with an interest in the property must be included as defendants in the Complaint and must be served with the pleadings
- On return date of Order to Show Cause, the Court will determine whether the public entity duly exercised its power of eminent domain and, if so, shall appoint condemnation commissioners to establish the fair market value of the property

Spot Blight Eminent Domain Taking Title to Property

- Title may be obtained by filing/recording Declaration of Taking, depositing appraised value of property into Court as authorized by Court Order, and serving notice thereof upon all defendants
- Once funds are deposited into Court, they may be withdrawn by any defendant upon a showing of cause by filing a Motion for Withdrawal and notifying all other defendants
- Withdrawal of funds does not impact right of defendants to contest value
- Declaration of Taking may be filed at the inception of the case or at any time thereafter

Spot Blight Eminent Domain Commissioners Hearing

- Two attorneys and one realtor from the county in which the property is located shall be appointed as Condemnation Commissioners
- The Commissioners shall schedule a hearing, upon notice to all parties, to determine the value of the property
- The public entity must present evidence at the hearing; the defendants need not do so
- Either party may appeal from the Commissioners award within 20 days of its issuance. If they do so, the case will proceed to trial, and the award cannot be used as evidence of value
- If no appeal is filed, the Commissioners award becomes a final judgment
- The public entity is responsible to pay the reasonable fees and expenses incurred by the Condemnation Commissioners

Spot Blight Eminent Domain Trial and Judgment

- A trial on the value of the property may be heard by a judge or, when requested, by a jury
- The sole issue at trial is the just compensation to be paid by the public entity for the taking of the property
- If judgment is entered requiring the public entity to pay more than the amount on deposit with the Court, the public entity shall be responsible to pay interest on the increased amount from the date of the Complaint through the date of judgment

Spot Blight Eminent Domain Appraisal Analysis & Example

STEP I: DETERMINE COST OF REHABILITATION

Baseline information:

| | |
|--------------------------------------|--------------------------------------|
| Square footage of building | 1800 SF |
| Rehabilitation Cost (hard cost only) | \$80/SF |
| Soft costs | 25% of hard costs |
| Profit/developer fee | 10% of combined hard & soft costs |



Calculation:

| | |
|---------------------------------|------------------|
| Rehabilitation cost (1800 x 80) | \$144,000 |
| Soft costs (\$144,000 x .25) | \$ 36,000 |
| Profit (\$180,000 x .10) | <u>\$ 18,000</u> |
| COST OF REHABILITATION | \$198,000 |

Spot Blight Eminent Domain Appraisal Analysis & Example

STEP 2: DETERMINE MARKET VALUE AFTER REHABILITATION

Appraiser determines value by taking into account the market conditions particular to the neighborhood in which the property is located

ALTERNATIVE A:

IF Market Value After Rehabilitation (\$120,000)

is Less Than Cost of Rehabilitation (\$198,000)

THEN Presumptive Value for Eminent Domain Proceedings = \$0

ALTERNATIVE B:

IF Market Value After Rehabilitation (\$250,000)

is Greater Than Cost of Rehabilitation (\$198,000)

THEN Value for Eminent Domain Proceedings

= As Determined taking ALL FACTORS INTO ACCOUNT,

But Not More Than \$52,000

Spot Blight Eminent Domain Appraisal Analysis & Example

STEP 3: DETERMINE FAIR MARKET VALUE FOR PURPOSES OF EMINENT DOMAIN

$$\$120,000 - \$198,000 = - \$78,000$$

CONCLUSION:

Since the relationship of “Market Value after Rehabilitation” to “Cost” is a Negative Number, the “Presumptive Value” for purposes of Eminent Domain is Zero (\$0).

Spot Blight Eminent Domain Appraisal Analysis & Example

STEP 4: Municipality undertakes condemnation proceedings to obtain the property and determine the assessed value. Upon approval of the condemnation by the court, the municipality becomes the official owner.

STEP 5: The municipality sells the property to a nonprofit for rehabilitation.

STEP 6: The CDC rehabilitates the property and sells it to a first-time homebuyer.



We're Working with Municipalities & Community Organizations to . . .

- 1. Apply tools to tackle different situations & market conditions in their community**
- 2. Identify further changes in state laws to make things work better**
- 3. Build skills and technical capacity in local government and CDCs**
- 4. Create peer exchange**
- 5. Partner with groups to leverage funds and have a greater impact**

Creating a Strategic Approach for Reducing Problem Property Inventory

- **Determine extent of problem and opportunities**
 - Tax foreclosed, REO, in foreclosure, tax delinquent, code violations
 - Market and reuse opportunities
- **Look at existing city systems and strategies**
 - Property maintenance, property acquisition & disposition, etc.
- **Inventory CBOs, developers able to partner in monitoring, maintenance, redevelopment work**
- **Set goals for effort**



Collaborations During Property Identification

1. The City of Newark approached local nonprofits and community groups to identify problem properties in their neighborhoods.
2. Municipal Community Development Officials and CAPC toured every property with local community groups.
3. Each property was assigned a value based upon physical condition, ability to rehabilitate, visibility, and neighborhood impact.
4. Upon completion of the tours and property assessments, the City of Newark published an Abandoned Properties List based on the community input and survey results.

Putting the Pieces Together

- Can combine above tools with strategic code enforcement activity
- Need carrots as well as sticks
- Can build problem property partnerships with local CBOs to extend reach
 - Create “neighborhood deputy” program to monitor properties (Atlanta)
 - Pay “finders” to ID properties for vacant property registry (MN)
 - Contract with CDCs to hire code enforcement specialists (Cleveland)

Thank You!

WAYNE T. MEYER

732-640-2061

wmeyer@njclf.com

DAVID A. CLARK

609-278-3906

dclark@glucklaw.com

BARBARA GEORGE JOHNSON

609-777-4351

bjohnson@tesc.edu

