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Land Reuse Agency Use of the Right of First Refusal at Tax Sales

A Report to the Joint Committee on Government and Finance by:

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City of Morgantown and the Morgantown Land Reuse and Preservation Agency
City of Nitro and the Nitro Land Reuse Authority of Kanawha and Putnam Counties
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HISTORY OF LAND REUSE LEGISLATION

Authorization of Land Reuse Entities

For over a decade West Virginia has experienced a significant increase in vacant, abandoned, dilapidated, and tax delinquent properties due to the loss of population across the state. These properties impose significant costs to municipalities and counties by increasing fire and police protection costs, increasing labor costs for removal of overgrown weeds and brush, and imposing costs for demolition of unsafe or dilapidated structures, while, at the same time, lowering property values which result in decreasing tax revenues. These properties also undermine community cohesion and can be an impediment to attracting development investment.

In an effort to provide an additional tool to combat the growing problem of dilapidated properties, the West Virginia Legislature in 2014 enacted W. Va. Code § 31-18E-1 *et seq.* authorizing the creation of Land Reuse Agencies (LRAs) by individual public bodies - either municipal or county - and Land Reuse Jurisdictions (LRJs) by combinations of municipalities and/or counties. The Land Reuse Agency is similar to an urban renewal authority with arguably fewer powers than an urban renewal authority (LRAs do not have the authority of eminent domain) but the flexibility to hold properties in a broader geographical area, and in smaller communities that might lack a comprehensive plan. The purpose of these Land Reuse entities was to provide a flexible tool for the purchase, rehabilitation, improvement, or sale of vacant, abandoned, and tax delinquent real property resulting in the elimination of blight and the return of properties to productive use.

Tax-Delinquent Properties

As municipalities worked to address the problems associated with dilapidated and abandoned properties, the problem of properties that were tax-delinquent or were tied up in the tax sale public auction process emerged. In some cases, tax liens on severely dilapidated properties were being purchased by out of state private entities that were not interested in the rehabilitation of the properties, but in the financial gains that can be made when a tax lien is redeemed. If these properties were not redeemed during the eighteen-month redemption period, no tax deed was executed, and the properties continued to languish.

If tax-delinquent properties were identified as ones that were in need of remediation or were necessary or desired for economic development initiatives, municipalities were faced

with bidding against private investors during the county tax sales in an effort to affect the desired improvements for the community. This frustrated the rehabilitation and development plans of the municipalities, allowing vacant and dilapidated properties to continue to drain public funds and demoralize neighborhoods, sometimes for years.

The enabling statute did not allow LRAs to purchase of tax-delinquent properties at a tax sale by unless there were no other bidders on the property. The LRA could identify properties that fit within the mission of the LRA but could not reliably acquire those properties through the tax sale process.

Amendment to the Legislation

In 2017, the Legislature passed HB 2109, introduced by Cabell County delegates, which amended the statute allowing LRAs to have the right of first refusal to purchase the tax liens on tax-delinquent properties within the geographic limits of the LRA. The properties are limited to those that have an assessed value of \$25,000 or less or that have been condemned. The statute requires that a county sheriff's tax office compile a list of qualifying properties from which the LRA could purchase prior to the public auction. The LRA is required to pay the full amount of taxes and fees owed on the property. The amended statute also requires that LRAs provide notice to owners of properties adjoining any property purchased in this manner and that adjoining owners be allowed to acquire the property from the LRA for an amount equal to the amount the LRA paid for the property.

Due to the concerns of some members of the Legislature, a sunset provision was added to the right of first refusal. This sunset provision is effective July 1, 2020. The amended code also permitted any LRA to submit a report on its activities related to the purchase of tax-delinquent properties to the Joint Committee on Government and Finance prior to January 1, 2020.

ACTIVITY OF LAND REUSE AGENCIES RELATED TO W. VA. CODE §31-18E-9

Active Land Reuse Agencies

Currently, there are five Land Reuse Agencies in West Virginia, three of which have been formed in the last year:

- Huntington Land Reuse Agency, City of Huntington (Class II municipality), established in August of 2009;
- Morgantown Land Reuse and Preservation Agency, City of Morgantown (Class II municipality), established in 2018;
- Nitro Land Reuse Authority of Kanawha and Putnam Counties, City of Nitro (Class III municipality), established in October of 2019;
- Charleston Land Reuse Agency, City of Charleston (Class I municipality), established in November of 2019; and
- South Charleston Land Reuse Agency, City of South Charleston (Class II municipality), established in November of 2019.

Huntington Land Reuse Agency

In 2009, the City of Huntington was the first West Virginia municipality to establish a Land Reuse Agency as part of its participation in the West Virginia Home Rule Pilot Program. Its stated purpose was to stabilize neighborhoods, preserve and increase property values, and reduce the expense burden on municipal and county government from abandoned and derelict properties. The budget of the Huntington LRA has historically been focused on its stated priorities: the reduction of blight through demolition of dilapidated structures; boarding-up and securing of abandoned properties; and maintaining abandoned properties through weed and garbage removal.

The corporate limits of the City of Huntington cover property in both Cabell and Wayne counties. Although the Huntington LRA has not exercised the right of first refusal on any Cabell or Wayne County tax-delinquent properties as of the date of this report, the Huntington LRA is in the process of determining the amount of funding that could be dedicated for the acquisition of tax-delinquent properties through the right of first refusal without diminishing the revitalization programs that have over the last decade been so successful in reducing blight and stabilizing neighborhoods in Huntington.



Morgantown Land Reuse and Preservation Agency

The Morgantown Land Reuse and Preservation Agency has been operational since January of 2019. The LRA has been setting its goals, objectives, and priorities during 2019, and in the 2019-2020 budget cycle, the City Council of Morgantown did not budget funds to the LRA to be used for the purchase of tax-delinquent properties through the right of first refusal process. Even though it was unable to exercise this right, the LRA did conduct a “mock run” during Monongalia County’s November 2019 tax sale. With the collaborative cooperation of the Monongalia Sheriff’s Department, the Agency has established the process through which tax-delinquent properties that would be eligible for purchase under the right of first refusal are provided to the LRA in a form that enables the LRA to use GIS to analyze and evaluate the properties. Using this analysis of properties that were available in the 2019 tax sale, the LRA anticipates submitting a funding request to the Morgantown City Council for the 2020-2021 budget cycle.

Nitro Land Reuse Authority of Kanawha and Putnam Counties

The Nitro Land Reuse Authority of Kanawha and Putnam Counties has been operational since early October 2019. The corporate limits of the City of Nitro cover property in both Kanawha and Putnam counties so this LRA quickly established a process with the sheriffs of both counties for the provision of a list of tax-delinquent properties that would qualify under the statute. The LRA determined that it would purchase the tax liens on 16 properties that were in the part of Nitro located in Kanawha County, and 3 properties that were in the part of Nitro located in Putnam County. Some of the properties were selected because they were targets for remediation. Others were selected due to their proximity to other properties already in possession on the City of Nitro for which rehabilitation plans were already being executed. The LRA spent \$8,567 in Kanawha County and \$3,024 Putnam County to secure the tax liens to these properties. The liens are still subject to the 18-month redemption period before the LRA can execute its lien and receive a tax deed to the properties. Under the statute, adjoining property owners have until March of 2020 to exercise their right to purchase the tax liens acquired by the LRA through the right of first refusal.



Examples of Nitro Properties

Purchased from the November 2019 tax sale list



1103 Old Country Road

Slated for demolition. This property adjoins two other parcels that were already in the possession of the City of Nitro. The parcels may be combined to provide an opportunity for new construction and residential infill.



208 Smith Road

Slated for demolition.

Charleston Land Reuse Agency

The Charleston Land Reuse Agency began operating in November of 2019. The LRA also quickly established a process with the Kanawha County Sheriff by which it could obtain a list of eligible tax-delinquent properties. The LRA decided to use the right of first refusal on several properties with different purposes in mind for the properties: residential infill, economic development support, recreational development opportunities, and economic development initiatives. The LRA first exercised its ability to purchase properties under W. Va. Code §31-18E-9 in November of 2019, purchasing 36 liens totaling \$8,323. Of the liens purchased, 21 have been redeemed as of the time of this report, and the remainder are still subject to the 18-month redemption period before the LRA can execute its lien and receive a tax deed to the properties. Under the statute, adjoining property owners have until March of 2020 to exercise their right to purchase the tax liens acquired by the LRA through the right of first refusal.

An Example of Charleston Property Liens purchased from the November 2019 tax sale list



924 W. Second Street

Property purchased for improving navigation by emergency vehicles of narrow “dog-leg” in the street.

SUMMARY

When a property is abandoned and becomes dilapidated, there is a significant impact on the surrounding property owners and the community at large. The community turns to local government for solutions. Many times, people living in close proximity to a dilapidated structure don't understand or appreciate the due process that must be followed by local governments before a dilapidated property can be remediated and they become frustrated as they witness the daily decline of the condition of their neighborhood. Municipalities are using all tools available to them to combat this problem.

When W. Va. Code §31-18E-9 was amended in 2017, there was only one Land Reuse Agency in West Virginia, the Huntington Land Reuse Agency. In the two years since, municipalities have recognized that a Land Reuse Agency is a valuable tool in combatting the continuing problem of abandoned and dilapidated properties within their cities. Four have established and are operating LRAs. At least five more are at different phases of evaluation and planning, including Class IV towns (populations of under 2,000) that are considering combining their resources into a Land Reuse Jurisdiction. The West Virginia Abandoned Properties Coalition has facilitated a robust working group to provide support for LRAs and a forum for the exchange of information and experience between the agencies.

All of the LRAs operating in West Virginia have put in place, or are actively working toward establishing, a procedure for purchasing tax liens on problem properties through the right of first refusal. The LRAs have worked cooperatively with their respective county sheriffs to obtain lists of properties that would qualify for purchase according to the requirements of the statute. The November 2019 tax sale was the first in which LRAs exercised their rights under amended §31-18E-9 and purchased tax liens prior to their sale at public auction. These purchased liens constituted a negligible amount of the liens sold. In Kanawha County, an estimated \$3 million in tax liens are auctioned annually. The amount of the liens purchased in Kanawha County by LRAs was under \$20,000. These properties are now subject to an eighteen-month waiting period in which the liens may be redeemed. The LRAs have notified adjacent property owners of the LRA's purchase of the properties, and those owners have until March to purchase the liens from the LRAs.

Land Reuse Agencies typically make decisions oriented toward the long-term interests of the community as articulated by its residents. The acquisition of properties necessary to accomplish the community's stated goals - whether for the remediation of blight, expansion of

affordable housing stock, establishment of recreational opportunities, or economic development - is vital to the success of the LRA. With an increasing number of properties subject to sale at a tax lien auction, the ability to have an active role in determining their disposition is also vital. Once a property is involved in the tax lien sale process, it can be as long as three years before a responsible owner is established, leaving the municipality with limited recourse in dealing with the declining condition of the property. Under the original statute, LRAs could only buy tax liens when there were no other bidders. With the growing popularity of tax lien investment - there are dozens of books and YouTube videos on the subject - fewer and fewer properties go without bidders, and the chances that a bidderless property would be one that an LRA has determined is necessary or desirable for rehabilitation are even lower. Even if they could participate in bidding, LRAs do not have the financing to compete with private investors.

The ability to purchase liens prior to public auction has only been in place for two years and given the multi-year duration of the tax sale process, the full benefit has not yet been realized. However, the opportunity to purchase tax liens prior to their offering at a public sale affords Land Reuse Agencies an active role in intervening in the cycle of decline that is perpetuated in part by the tax sale process, and aids in advancing the revitalization and development of West Virginia communities.

CONTACT INFORMATION

The following contributors to this report are available if you have questions or would like additional information.

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