

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

Background

Currently, a county or city of the first class must hold a competitive bidding process for the transfer of property that was acquired through the tax foreclosure process. The competitive bidding process and property transfer becomes complicated when a property is contaminated.

Often, an LGU works with a prospective purchaser to plan for the remediation and redevelopment of a contaminated property, and when the competitive bidding process is used, it is possible that the purchaser who has been cooperating with the LGU will not receive the property. The process also can result in a party acquiring the property and not completing the environmental remediation.

Proposal

The Study Group proposes the following:

- create a statutory amendment to s. 75.69(2), Wis. Stats., that would allow for a county or city of the first class to transfer tax delinquent property it owns, without using the competitive bidding process, if environmental pollution is present and the property meets the definition of a brownfield under s. 560.13, Wis. Stats.; and
- create language similar to provisions in s. 75.106(2)[1999 Act 121] to:
 - provide a 15-day notice of the sale to the city, town or village where the parcel is located;
 - require an environmental site assessment of the property be completed and results sent to the DNR; and
 - require the purchaser to enter into an agreement with the DNR to clean up the parcel to the extent practicable; to minimize the harmful effects from the hazardous substance; and to maintain and monitor the parcel, all pursuant to rules promulgated by DNR.

Type of change

Statutory

Resources

Comments

Issue: Assign Judgment of a Tax Deed Without Taking Title

Background

Recently Wisconsin adopted changes which allow counties or the City of Milwaukee, which use foreclosure provisions under s.75.521, Wis. Stats., to assign their rights of ownership of a brownfield property to a third party if the property is subject to a foreclosure.

Under Wisconsin law, counties can take title to property using s.75.521, or .75.14, Wis. Stats., using a tax deed, or s.75.19, Wis. Stats. to foreclose on a tax certificate. The recent changes apply only to s.75.521, Wis. Stats.

Under 1999 Wisconsin Act 121, a county or the City of Milwaukee can assign to an individual its right to judgment with respect to a brownfield parcel, as defined under s.560.13(1)(a), Wis. Stats. The right to judgment is subject to a foreclosure action under s.75.521, Wis. Stats., if the assignee agrees to remediate the property.

However, Act 121 did not provide a similar mechanism for counties that take a tax deed under s.75.14, Wis. Stats. As a result, counties that do not utilize the *in rem* process under s.75.521, Wis. Stats., are unable to convey delinquent brownfield property without entering into the chain of title.

To the extent that tax delinquent properties are returned to tax-paying status as a result of the proposal, county costs will be reduced to settling for the delinquent property taxes of contaminated properties. To the extent that the subsequent clean up and development of the parcel increase the parcel's assessed value, the tax base of the taxing jurisdictions where the parcel is located is expanded, relative to what it was had the parcel remained contaminated and delinquent.

Proposal

The Study Group proposes the following:

- allow a county to execute a tax deed under s.75.14(1), Wis. Stats., to an individual under the same conditions as prescribed under s.75.106, Wis. Stats.; this would allow an individual the right to accept a deed which vests an absolute estate in fee simple for a brownfield property where a Phase I and II environmental assessment has been conducted if the individual agrees to further investigate and remediate the property per the requirements under s.75.106(2)(f), Wis. Stats.; and
- allow the individual who has elected to accept a tax deed under the above conditions to commence an action to bar former owners under s. 75.39, Wis. Stats.

Type of change

- statutory

Resources

Comments

Issue: Clarify Blight Elimination and Slum Clearance Authority

Background

In 1997, the State Legislature provided local units of government with an exemption from the hazardous substance Spill Law, s.292.11, Wis. Stats., if they acquired a property for the purpose of slum clearance or blight elimination. The state followed the lead of the EPA and the U.S. Department of Housing and Urban Development (HUD) in providing local governments more authority and protection for dealing with blighted brownfields properties.

While the Spill Law was clarified regarding slum and blight, certain members of the Brownfields Study Group believe it is necessary to make a clarification to the state's slum clearance and blight elimination statutes with respect to environmental pollution. Many properties that are blighted are also brownfields, and the clarification that environmental pollution is a blight factor would facilitate the redevelopment of these brownfields.

Additionally, the group proposes to clarify the inspection authority of municipalities and redevelopment authorities in regards to the inspection of a property within a blighted area or a single property that has previously been declared blighted. Presently, there is inspection authority for local governments that designate an area as blighted, but not for a single property that has been designated as blighted.

Due to the length of the proposed statutory changes, the complete language is in Appendix ???.

Proposal

The Study Group proposes creating a statutory amendment to add the term environmental pollution to the list of blight factors, with the definition of environmental pollution as the following:

- “Environmental pollution” has the meaning given in s.299.01(4), Wis. Stats.; provided, however, in the case of industrial or commercial property, the known or suspected environmental pollution must also adversely impact the expansion or redevelopment of the property. For purposes of this section, environmental pollution shall not include:
 1. Any discharge for which a consent order under this chapter or ch. 289 or 291 or an agreement under 292.11(7)(d) or 292.31(8)(d) has been entered into and there is compliance with the consent order or agreement;
 2. The discharge is in compliance with a permit, license, approval, special order, waiver or variance under ch. 283 or 285 or under corresponding federal statutes or regulations;
 3. A discharge for which the department of natural resources, the department of commerce or the department of agriculture, trade and consumer protection has indicated that no further remedial activities are necessary; or
 4. A discharge that is exempt under 292.15(2) or 292.11(9)(e).
- Additionally, the group proposes to clarify the inspection authority for municipalities and redevelopment authorities to allow an environmental inspection of properties in blighted areas or of a single property determined to be blighted.

Please see Appendix ??? for complete statutory language.

Type of change:
Statutory

Resources

Comments