

Land Bank Process Subcommittee



Prepared by the Kent County Administrator's Office

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The mission of Kent County government is to be an effective and efficient steward in delivering quality services for our diverse community. Our priority is to provide mandated services, which may be enhanced and supplemented by additional services to improve the quality of life for all our citizens within the constraints of sound fiscal policy.

I. HISTORY/BACKGROUND

The Kent County Land Bank Authority (KCLBA) was created through an intergovernmental agreement between the Michigan Land Bank Fast Track Authority and the County Treasurer, which was approved by the Board of Commissioners by Resolution 11-19-09-136 in November 2009.

The KCLBA requested, on four occasions, that Kent County take property from the annual tax foreclosed property listing and sell it to the KCLBA prior to the County Treasurer's public auction. The Board of Commissioners approved KCLBA requests on August 11, 2011 (12 properties), October 13, 2011 (3 properties before the second auction); June 28, 2012 (two properties) and July 12, 2012 (45 properties).

After the June and July 2012 Board of Commissioner actions, a number of concerns and questions were raised regarding the process used by the KCLBA to determine which properties should be acquired. Voiced non-commissioner opposition to the 2012 actions suggested that the KCLBA was "cherry picking" the select properties in the tax foreclosed listing, and that removing the property from the auction process in some way violated principles of fairness and the free market. In response to all concerns, Kent County Board Chair Sandi Frost Parrish established a Land Bank Process Subcommittee consisting of Commissioners Michael Wawee, Jr. (Chair), Tom Antor, Candace Chivis, and Dick VanderMolen in August 2012 (the "Subcommittee"). The charge of the Subcommittee was:

To review and assess the County's process and procedures and potential policy regarding selling tax-lien properties to the Kent County Land Bank Authority prior to the Treasurer's public auction process.

County Administrator/Controller Daryl Delabbio, Corporate Counsel Dan Ophoff, County Treasurer Ken Parrish, KCLBA Executive Director David Allen, and Executive Assistant to the Board Jamie Groom assisted the Subcommittee in its deliberations.

II. SUBCOMMITTEE WORK

The Subcommittee has worked diligently to respond to the Board Chair's stated charge. It met in September and October of 2012. In November of 2012 the Subcommittee was advised that the County, the County Treasurer and the KCLBA had been sued by some of those that had voiced opposition to the County decision to take property from the tax foreclosed property list and transfer it to the KCLBA. The lawsuit involved some of the same issues that the Subcommittee believed it was charged to discuss. Therefore, the Subcommittee elected to suspend its meetings until there was a judicial determination of the issues raised in the lawsuit.

The claims raised in the lawsuit mirrored the objections raised before the Board of Commissioners. In fact, the lawsuit had as Plaintiffs some of those that publicly opposed the 2012 Board of Commission action prior to commission meetings. The lawsuit claimed that the County lacked legal authority to take property from the list of tax foreclosed property and transfer it to the KCLBA and that the process used by the County violated its policies. In support of its claims the multiple Plaintiffs in the lawsuit charged, as they had before the Board

of Commissioners, that the KCLBA took only the best property from the list of tax foreclosed property and that taking property from the list of tax foreclosed property violated the principles of fairness and the free market. On December 20, 2012, the Kent County Circuit Court dismissed all of the Plaintiff's claims as unsupported by any facts which could be or would be shown if the claims went to trial. The Plaintiffs have appealed that ruling.

Based on the very favorable ruling in the Kent County Circuit Court and the likelihood that the Plaintiffs would not be able to prevail on appeal, the Subcommittee began its work again in January of 2013. The Subcommittee, over the course of its nine meetings, met with local residential and commercial realtors to understand their concerns. The KCLBA was extremely helpful and provided information about its property selection process and how it met its statutory purpose by taking undesirable property and using profit from desirable property to fund remediation of undesirable property. The Subcommittee also received information from the County Treasurer and County Corporate Counsel on the tax foreclosure law and the State statute which authorized Land Banks in the State of Michigan. Finally the County Treasurer presented information which demonstrated that the current auction process did not emulate free market principles.

A majority of the Subcommittee is now convinced that the KCLBA was established to primarily address local residential and commercial real estate blight and instability. The exception of course is the recognized Land Bank success with the Sparta Foundry property which will have regional economic impact. Therefore, the recommendations of the Subcommittee must allow for flexibility to address demonstrated challenging circumstances.

III. SUBCOMMITTEE CONCLUSION AND KEY FINDINGS

The Subcommittee has concluded that the issues prompting the KCLBA requests to the County are, for the most part, locally generated. Cities, villages and townships are able to address local issues of blight and instability in their jurisdictions by following permitted statutory procedures for removal of property from the tax foreclosure list and transferring those properties to the KCLBA for appropriate treatment.

In support of its conclusion the Subcommittee makes the following findings:

- The process used by Kent County in 2011 and 2012 by which tax foreclosed property was statutorily claimed by the County and transferred to the KCLBA has been legally affirmed by the Kent County Circuit Courts. An appeal has been filed but we are confident the Circuit Court's opinion will be upheld on appeal.
- The KCLBA is authorized by State law to address the effects of the mortgage forfeiture crisis and an excessive number of tax foreclosures, and is therefore the appropriate countywide entity to deal with the concerns.
- The referenced concerns to be addressed remain local government (cities, villages, townships) issues which first impact local neighborhood blight and instability.

- Local governmental units which have planning, zoning and housing standards with demolition powers, and are likely to be the most knowledgeable about neighborhood blight and instability in their jurisdictions, are best suited to identify and work with the KCLBA to address these local issues.
- Michigan's tax foreclosure law allows local governmental units (cities, villages and townships) to remove property from the tax foreclosure list to deal with public purpose concerns such as neighborhood blight and instability.
- The dismissal of the lawsuit filed against Kent County, the County Treasurer and the KCLBA which challenged the legality of transferring property to the KCLBA has confirmed that the County, and by the same argument cities, villages and townships, have the authority under State law to claim and transfer tax foreclosed property to the KCLBA.

IV. RECOMMENDATIONS

As a result of its deliberations, the Subcommittee recommends, on a vote of three (Commissioners Wawee, Antor, and VanderMolen) to one (Commissioner Chivis), to the Board of Commissioners that the County resolve not to acquire properties and sell them to the Land Bank Authority prior to the public auction, unless the County has a direct interest and under special circumstances related to said properties, and that the Kent County Land Bank Authority work with the local units of government within the County to acquire properties prior to the public auction.