A Guide for Policy Makers and Practitioners September 2006

Abandoned Property in Indiana:

Legal, Practical, and Policy Effects of 2006 Statutory Amendments

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Purpose & Intended Audiences

This technical manual articulates how to put the 2006 statutory reforms into action.

On March 24, 2006, the Indiana General Assembly passed and Governor Mitch Daniels signed into law HEA 1102 that, among other changes, amends the Unsafe Building Law, property tax collection and enforcement, and redevelopment law. These statutory changes apply to all Indiana counties, and they substantially improve the ability of county executives and redevelopment commissions to effectively deal with abandoned properties in their jurisdictions.

Purpose

The purpose of this technical manual is to explain what Public Law No. 169-2006 (HEA 1102) means, in practice, for county executives and redevelopment commissions in terms of:

a - managing abandoned residential properties by applying the improved Unsafe Building Law and tax collection and enforcement procedures;

b - applying these amended statutes to create incentives for property owners to improve their properties to minimum standards established by law, and;

c - applying these amended statutes to take more control over the disposition of abandoned properties.

This technical manual articulates how to put the 2006 statutory reforms into action. It is intended to serve as a guide and resource that explains how to apply the new tools afforded by the recent changes to state law, in order that county executives, redevelopment commissions, and other community development practitioners can more effectively deal with abandoned and vacant properties in their jurisdictions.

This manual is intended to provide all of the information a policy maker might need to approve an effort to implement the changes now afforded by state law. And, the manual provides several case studies that demonstrate what specific problems these statutory changes are designed to address and how.

Primary Audiences

The primary audiences intended to benefit from the material provided in this technical manual are:

- **a** - county executives as well as their agents and advisors;
- **b** - redevelopment commissions; and
- **c** - community development corporations.

The manual assumes that its reader is familiar with the Unsafe Building Law (IC 36-7-9), property tax collection and enforcement (IC 6-1.1, Chapters 22–25), and redevelopment law (IC 36-7-14 and IC 36-7-15.1).

This manual attempts to address two levels of analysis: policy and application. For the policy level person, this manual is intended to stimulate interest and facilitate understanding. From a policy perspective, this manual will explain (a) what the statutory changes are in concept, (b) the value of these changes, and (c) what problems these changes are intended to address. For the person who will be applying or directing the use of the statutes, this manual is intended to provide practical information about how to apply them. From a practical and legal perspective, this manual will also provide (a) an in depth understanding of the statutory changes and (b) a practical awareness of how to implement the changes.

This manual attempts to address two levels of analysis: policy and application.

Policy & Legislative Context

Abandoned structures and lots represent decline, neglect, and devaluation of people and property.

The abandonment of property is common to all municipalities and counties in Indiana. Indeed, property abandonment is a local challenge, a state issue, and a national phenomenon. Abandoned structures and lots—no matter where they are located—represent decline, neglect, and devaluation of people and property. They are the visible reminders of the loss of value in the neighborhoods where they sit.

Policy Context

While the scope of this problem of vacancy and abandonment varies from one jurisdiction to another for many reasons, similar strategies can be applied in all jurisdictions to address abandonment of structures and lots. National level research, analysis, discussion, and technical assistance has demonstrated that there are key strategies to address vacancy and abandonment that are commonly successful across various jurisdictions.

In December 2003, Indianapolis Mayor Bart Peterson appointed community members representing diverse constituencies to study the problem of residential property abandonment in Indianapolis and Marion County and to recommend tangible but visionary actions for change. These community members—the Abandoned Houses Work Group—met regularly in 2004 and produced two reports.

In their first report—“Reclaiming Abandoned Property in Indianapolis”—the Abandoned Houses Work Group outlined a set of recommendations for both code enforcement and the tax sale process that highlighted: (a) existing legal tools allowed under Indiana code that could be valuable in the effort to deal with abandonment if these tools were applied and applied to their fullest extent, as established in the code (i.e., existing tools to apply); (b) tools that were deemed necessary to address abandonment but were not allowed under Indiana state law (i.e., recommended tools); and (c) existing legal tools that had been successfully applied in the effort to address abandonment (i.e., existing and effective tools). The Work Group’s second report—“Revitalizing Indianapolis Neighborhoods: A Framework for Linking Abandoned Houses and Redevelopment Initiatives”—outlined a framework that links abandoned property initiatives with broader, neighborhood redevelopment initiatives.[1]

Recommendations for legal and administrative reforms stemmed from this work. Two primary strategies were applied in the construction of recommendations for statutory reform in Indiana:

Strategy 1— Increase the carrying costs of vacant, abandoned, and boarded properties in a way that both respects investment and responsible speculation but also encourages actions to improve the conditions of properties. Specifically, (a) increase costs to property owners of keeping a property boarded or in a state of code violation and (b) increase costs to speculators so that they are less likely to invest in properties unless they are willing to make improvements to those properties.

Strategy 2— Expand the collection of properties over which some public interest can be exercised. This strategy is simply intended to increase the number of properties that generate positive externalities for neighborhoods and communities.

Legislative Context

The local effort that began in Indianapolis has become part of a national movement to develop strategies that effectively and meaningfully address the challenge of property abandonment. Based on the first report by the Abandoned Houses Work Group, the City of Indianapolis was one of seven cities awarded technical assistance through the National Vacant Properties Campaign's Vacant Properties Technical Assistance Demonstration Program.[2] As part of this assistance, a technical assistance team conducted research on Indiana statutes, ordinances, and policies related to land acquisition, management, and disposition. Following a site visit and detailed conversations with approximately twenty representatives of government, nonprofit, and private entities, the technical assistance team offered a report that listed a set of options for evaluation and consideration addressing three aspects of Indiana code: (1) the Unsafe Building Law (i.e., code enforcement); (2) delinquent property tax foreclosure procedures; and (3) land inventory strategies.[3]

The statutory recommendations developed through this process became the basis for substantial and significant legislative changes proposed in a bill to the 2006 Indiana General Assembly.

Subsequently, two Indianapolis attorneys who have substantial knowledge of and experience with code enforcement, property tax procedures, and redevelopment law evaluated each of the options for statutory reform outlined by the National Vacant Properties Campaign's team and examined the relationships between these options. These two attorneys then developed a specific set of statutory recommendations most appropriate for Indianapolis and for all counties throughout the state to facilitate efforts to reclaim abandoned property in all Indiana counties.[4]

The statutory recommendations developed through this process became the basis for substantial and significant legislative changes proposed in a bill to the 2006 Indiana General Assembly. In March 2006, the Indiana General Assembly passed and Governor Mitch Daniels signed into law an important set of statutory amendments that reforms and improves code enforcement (i.e., the Unsafe Building Law), property tax collection and enforcement, and redevelopment law. The statutory reforms in HEA 1102 were explicitly written to benefit all Indiana counties, so that all county executives have access to these improved legal tools designed to more effectively and efficiently deal with abandoned residential properties.

In Indiana, the primary legal tools for addressing property abandonment are:

- IC 6-1.1, Chapters 22–25 that establish property tax collection and enforcement procedures;
- IC 36-7-9 (Unsafe Building Law) that establishes standard building codes and the enforcement thereof; and
- IC 36-7-14 and IC 36-7-15.1 (redevelopment laws) that establish the authority of local governments to acquire, manage, and dispose of properties as part of redevelopment initiatives.

Public Law No. 169-2006 (HEA 1102) amendments to the Unsafe Building Law and to redevelopment laws are effective July 1, 2006. Changes to the tax collection and enforcement process are effective January 1, 2007.

GRAPHIC 1 | **NEW LEGAL TOOLS**

THE 2006 STATUTORY AMENDMENTS PROVIDE COMPLEMENTARY LEGAL TOOLS that improve the efficiency of pre-tax sale code enforcement, the tax sale process itself, and post-tax sale property disposition.

Increasing the carrying costs of abandoned and vacant properties	• Increased and multiple civil penalties are allowed for Unsafe Building Law violations. • Civil penalties may be collected as special assessments and, as such, included on property tax bills. • Performance bonds may be required as a condition for allowing additional time to bring a property into compliance with an Unsafe Building order.
Improving the efficiency of the tax sale process	• One tax sale per year (rather than two) shall be conducted. • Properties not sold in the single, annual tax sale are transferred to the county executive. • The tax sale process is shortened by six months for vacant or abandoned properties with tax or special assessment delinquencies. • A broader range of properties may be certified to the expedited tax sale. • Unsafe Building Law violators are excluded from the tax sale.
Expanding the range of property redevelopment options	• Establishment of a land bank is allowed under the law. • Multiple disposition options are provided for all Indiana counties.

Property Tax Collection & Enforcement

Property tax liens represent an important public asset—or tool—for governments seeking to collect tax revenues.

Collection of the property tax carries with it an important power that is not associated with any other form of tax debt—a property tax lien on the property. It is a first priority claim on a property if taxes are not paid when due. This lien in favor of the assessing government takes priority over all other liens or claims against the property. In this way, property tax liens are considered to have "super priority status" which facilitates the collection of property tax revenues by local governments.

Property tax liens represent an important public asset—or tool—for governments seeking to collect tax revenues. And, they can be used as a community development tool by facilitating the transfer of property to owners (whether individual or institutional) who will invest in the community. The presence of a delinquent property tax lien typically signals that a property owner is either willfully neglecting a property or is struggling financially to maintain the property at minimal standards.[5]

Indiana law establishes the process for property tax collection and enforcement in IC 6-1.1, Chapters 22 through 25. The March 2006 statutory amendments (i.e., Public Law No. 169-2006 (HEA 1102)) enhance this tool and are designed to accomplish two primary objectives:

Objective 1— Provide more effective legal mechanisms by which county executives and their agents can move chronically delinquent, abandoned, and vacant properties through the tax sale process and toward rehabilitation and regeneration.

Objective 2— Make the full range of these legal mechanisms available to all Indiana county executives and their agents.

All of these reforms are effective January 1, 2007.

Tax Sales

One Tax Sale Per Year

ONE TAX SALE PER YEAR

Policy Implications. Ultimately, the most significant tool provided by state law to facilitate the collection of property taxes is the ability of county executives to sell properties within their jurisdictions on which property taxes are sufficiently delinquent, as established by law. In an effort to address the problem of current and future property abandonment, there is value in both improving the efficiency of the tax sale process and in allowing county executives to participate more fully in the housing market. Several significant and meaningful changes to the way in which tax sales occur have these effects.

Practical and Legal Application. Effective January 1, 2007, the state provisions authorizing a second tax sale (IC 6-1.1-24-5.5) are repealed. All references to the second tax sale are eliminated from the state statutes.

Related amendments that describe the operation of the single, annual tax sale establish that:

- The tax sale must take place not later than 171 days after the county treasurer certifies a list naming the tracts or items of real property to the county auditor (IC 6-1.1-24-5);

Case Study A

Effective January 1, 2007, the state provisions authorizing a second tax sale (IC 6-1.1-24-5.5) are repealed. Prior to this repeal, local governments could only acquire a lien on a property after it had been offered and not sold at two consecutive tax sales – referred to as the "A Sale" and the "B Sale." By simply eliminating the requirement of a "B Sale"—using none of the other new tools allowed under Public Law 169-2006 (HEA 1102)—local governments can save six months in their efforts to exercise control over properties that are not sold at auction.

As an example, the owner of a property on Marlowe Avenue stopped paying taxes after paying the fall installment in 2002. The property was first offered at the September 2005 tax sale (the "A Sale") and was not purchased. The property was offered again in the March 2006 tax sale (the "B Sale") and, again, was not sold. In July 2006 – 120 days after the "B Sale" and nearly four years after the owner's abandonment—the county could finally exercise control over the property.

State law now provides for a single, annual tax sale. County executives are issued a deed for vacant and abandoned houses not sold in the tax sale. County executives may now acquire liens to all properties not sold in the first and only tax sale and have the same rights as other purchasers.

- Property that has been certified by the county executive as vacant or abandoned must be offered for sale separately from other property being offered for sale (IC 6-1.1-24-5);
- County executives are eligible to be issued a deed for vacant and abandoned houses not sold in the single, annual tax sale (IC 6-1.1-25-4);
- County executives now have broader discretion over the range of properties they may certify to the expedited tax sale, since conditions limiting the type of properties that may be designated for the expedited tax sale have been deleted from the law. The law now allows vacant lots, commercial properties, and industrial properties to be designated for the expedited tax sale (IC 6-1.1-24-1.5);
- County executives acquire liens to all properties not sold in the first and only tax sale and have the same rights as other purchasers (IC 6-1.1-24-6; see section below); and
- For all properties not sold in the single, annual tax sale where the certificate of sale is issued to the county executive, the redemption period is expedited—so property must be redeemed within 120 days (rather than the standard 365 days) after the date of the tax sale (IC 6-1.1-25-4).

Property Not Sold at Single Tax Sale is Transferred to County Executive

PROPERTY NOT SOLD AT SINGLE TAX SALE IS TRANSFERRED TO COUNTY EXECUTIVE

Policy Implications. In an effort to improve the efficiency and effectiveness of the process by which properties enter the tax sale, have the opportunity to be redeemed, and have the opportunity to be reclaimed and renovated, there is value in allowing delinquent properties to be transferred to the county executive after only one attempt to sell them in a single, annual tax sale. Previously, properties had to be offered in two consecutive tax sales before they could be acquired by the county. Additionally, the specification that properties not sold in the delinquent tax sale are transferred to the county executive (rather than the county) provides the county executive with more control over the disposition and use of properties and more ability to choose uses that are in accordance with public redevelopment initiatives.

Practical and Legal Application. IC 6-1.1-24-6 has been amended so that county executives acquire liens to properties not sold in the first and only tax sale, acquire the tax certificate for these properties, and have the same rights as other purchasers. Subsequently, county executives have access to multiple avenues for disposal and use of the properties they acquire—and many of these avenues are new as a result of the statutory changes passed in Public Law No. 169-2006 (HEA 1102). (Refer to the Land Bank section later in this manual, for a complete discussion of avenues for disposal and use of properties acquired by county executives and redevelopment commissions.)

Indiana law now provides for the following:

- County executives may offer for public sale the tax certificates they acquire on properties not sold at the tax sale, and the purchasers of these certificates are then eligible to petition the court for a tax deed (IC 6-1.1-24-6.1);
- County executives may transfer tax certificates to nonprofit corporations for "use for the public good" (IC 6-1.1-24-6.7);
- County executives may sell the properties at a public auction (IC 36-1-11-4);
- County executives may sell properties having a certain value to adjacent (i.e., abutting) property owners (IC 36-1-11-5);
- County executives may retain ownership of the properties for subsequent sale or lease (IC 6-1.1-25-9); and
- Properties not sold in the single tax sale and transferred to a county executive have an expedited or 120-day redemption period (IC 6-1.1-25-4).

Unsafe Building Law Violators are Excluded as Bidders

Policy Implications. Prior to the 2006 amendments, persons who owned property that was violation of the Unsafe Building Law were not explicitly excluded from participating in tax sales. IC 6-1.1-24-5.3 said that persons owing "delinquent taxes, special assessments, penalties, interest, or costs directly attributable to a prior tax sale" were barred from purchasing property at a subsequent tax sale. But, the law did not say that persons who own property that was in violation of the Unsafe Building Law were barred from participating in the tax sale.

UNSAFE BUILDING LAW VIOLATORS ARE EXCLUDED AS BIDDERS

Excluding current violators of the Unsafe Building Law from tax sales accomplishes two major objectives: (1) it prevents property from coming into the hands of persons who have a history of code violation and tax delinquency; and (2) it provides a salient incentive for persons currently in violation of the Unsafe Building Law to resolve code violations in order to be able to participate in the market (i.e. at future tax sales). The changes to the law in this regard are designed to create a system whereby current violators of the Unsafe Building Law and/or laws regarding property tax collection and enforcement are legally and strongly discouraged from buying more property at the tax sale until they resolve violations and tax delinquencies on properties they already own.

Practical and Legal Application. Public Law 169-2006 (HEA 1102) makes four significant changes to IC 6-1.1-24-5.3:

1 – More persons—including current violators of the Unsafe Building Law—are now barred from purchasing tracts or items of real property;

2 – Sale of property to an ineligible bidder is subject to forfeiture;

3 – In the event of forfeiture, the amount forfeited is applied to amounts already owed by the ineligible bidder; and

4 – In the event of forfeiture, the county auditor shall issue a certificate of sale for the property to the county executive.

Effective January 1, 2007, persons explicitly barred from purchasing tracts or items of real property include:

- persons who (a) own a fee interest, life estate interest, or the equitable interest of a contract purchaser in an unsafe building or unsafe premises in the county in which a tax sale is being held and (b) are subject to an order under IC 36-7-9-5(a)(2) - 5(a)(5)—that is, proper sealing of a vacant building, extermination of vermin in and about the unsafe premises, removal of trash, debris, fire hazards, and repair/rehab of an unsafe building to bring it into compliance with standards for building condition or maintenance required for human habitation, occupancy, or use by a statute, a rule adopted under IC 4-22-2, or an ordinance;

- persons who (a) own a fee interest, life estate interest, or the equitable interest of a contract purchaser in an unsafe building or unsafe premises in the county in which a tax sale is being held and (b) are subject to any orders other than an order under IC 36-7-9-5(a)(2) - 5(a)(5);
- persons who are defendants in a court action brought under the unsafe building law—specifically, injunctions (IC 36-7-9-18), civil forfeitures (IC 36-7-9-19), appointment of receivers (IC 36-7-9-20), order authorizing performance of work (IC 36-7-9-21), and emergencies, court orders authorizing action to make premises safe, judgments for costs (IC 36-7-9-22);
- persons having any of the following relationships with a person, partnership, corporation, or legal entity described in the three bullets above: a partner of a partnership, an officer or majority stockholder of a corporation, the person who directs the activities or has a majority ownership in a legal entity other than a partnership or corporation;
- any person in the county in which a sale is held under this chapter who owes delinquent property taxes, special assessments, penalties, interests, or costs directly attributable to a prior tax sale; and
- an agent of any of the persons named in this subsection.

Sale to an Ineligible Bidder is Subject to Forfeiture

SALE TO AN INELIGIBLE BIDDER IS SUBJECT TO FORFEITURE

Policy Implications. The 2006 statutory changes allow a county treasurer to forfeit—rather than simply void—the sale of a property to a bidder who is determined post-sale to be legally ineligible. This creates a potentially more salient disincentive for individuals and corporations to bid on properties in a tax sale when they know that (a) they are explicitly and legally barred from purchasing tracts of real property because of their current tax-related delinquencies and/or Unsafe Building Law violations, (b) they have to sign a statement, under penalties of perjury, that they are, in fact, not delinquent or in violation in these regards, and (c) they have the potential to forfeit the full amount of their bid to cover these delinquencies and violations.

Practical and Legal Application. Effective January 1, 2007, a sale to an ineligible bidder is subject to forfeiture, based on the determination of a county treasurer and within six months of the sale. In the event of forfeiture, the amount of the bid is applied to amounts owed by the ineligible bidder, and a certificate of sale for the property on which the bid was made is issued to the county executive.

The following specific conditions apply to this forfeiture (IC 6-1.1-24-5.3):

- County treasurers shall require that each person who will be bidding at the tax sale sign a statement affirming, under penalties of perjury, that s/he does not owe delinquent taxes, special assessments, penalties, interest, costs directly attributable to a prior tax sale, amounts from a final adjudication in favor of a political subdivision of the county in which they are bidding, civil penalties imposed for the violation of a building code or ordinance of the county, or civil penalties imposed by a health department in the county;
- The statement also requires the bidder to acknowledge that any successful bid made in violation of the statement is subject to forfeiture whereby the amount of the bid will be applied to the delinquent taxes, special assessments, penalties, interest, costs, judgments, or civil penalties owed by that bidder;
- If a person who purchased property at the sale is determined to be an ineligible bidder, the sale of that property is subject to forfeiture within six months of the sale;
- The ineligible bidder must be notified in writing that they have 30 days after the date of the notice to pay amounts s/he owes;
- If these amounts are not paid within 30 days after notice, the surplus amount of the person's bid (i.e., the amount of their bid over the minimum bid established at auction) is applied to delinquent taxes, special assessments, penalties, and interest;
- The amounts owed from a final adjudication or civil penalties in favor of a political subdivision are remitted to the appropriate political subdivision;
- The county auditor must be notified of the forfeiture;
- The county auditor shall issue a certificate of sale to the county executive (under IC 6-1.1-24-6 of this chapter);
- The county treasurer may decline to forfeit a sale—for any "substantial" reason—in which case the county treasurer must explain this decision in writing and keep that written explanation as an official record; and

- If a sale is forfeited and the property is redeemed from the sale, the county auditor shall deposit the amount of the redemption into the county general fund and notify the county executive of the redemption. Upon being notified of the redemption, the county executive shall surrender the certificate to the county auditor.

Vacant or Abandoned Properties Where Taxes or Special Assessments are Delinquent as of Prior Year's Fall Installment May Be Certified for Sale

VACANT OR ABANDONED PROPERTIES WHERE TAXES OR SPECIAL ASSESSMENTS ARE DELINQUENT AS OF PRIOR YEAR'S FALL INSTALLMENT MAY BE CERTIFIED FOR SALE

Policy Implications. Effective January 1, 2007, the aggregate length of the delinquent tax enforcement process for vacant and abandoned properties is shortened by six months, increasing the efficiency of the process used to deal with chronically abandoned properties. There are many mechanisms currently built into the law to protect home owners who are simply delinquent on a couple of property tax payments. Those protections remain in place, so that these home owners still have substantial time and many opportunities to come into compliance both before and after the tax sale.

Practical and Legal Application. With this change to IC 6-1.1-24-1, a county executive certifies to the county auditor that (a) a property is vacant or abandoned and (b) property taxes and/or special assessments from the prior year's fall installment or before are delinquent (as determined under IC 6-1.1-37-10). Then, the county executive must make certification under this subdivision not later than 61 days before the earliest date on which application for judgment and order for the tax sale may be made.

The only change with respect to real property that is not vacant or abandoned is that the county treasurer shall certify those properties on or before July 1 of each year or—and this is the new language—51 days after the tax payment due date. The change in the deadline to either July 1 or 51 days after the spring installment due date applies to all properties—whether or not they are vacant or abandoned. The change was made to accommodate postponement of the due date caused by reassessment.

Case Study B

The owner of a property on Boulevard Place abandoned their property sometime after paying the spring 2003 property tax installment. The property is currently certified for tax sale in 2006.

Had the amendments to IC 6-1.1-24-1 been in effect at the time of abandonment, this property could have been certified as abandoned by the county executive or county commissioners, placed on the tax delinquent list on or before July 1, 2004, and included in a tax sale that year—rather than two years later.

Actual Costs of Postage and Publication May Be Included in Minimum Bid (No $25 Limit)

ACTUAL COSTS OF POSTAGE AND PUBLICATION MAY BE INCLUDED IN MINIMUM BID

Policy Implications. As part of an effort to improve the means by which notice of tax sale is provided, it was important to amend the $25 limit on postage and publication costs (as established in IC 6-1.1-24-2). By so doing, the actual costs of providing notice can be recovered by adding these amounts to the minimum bid at the tax sale.

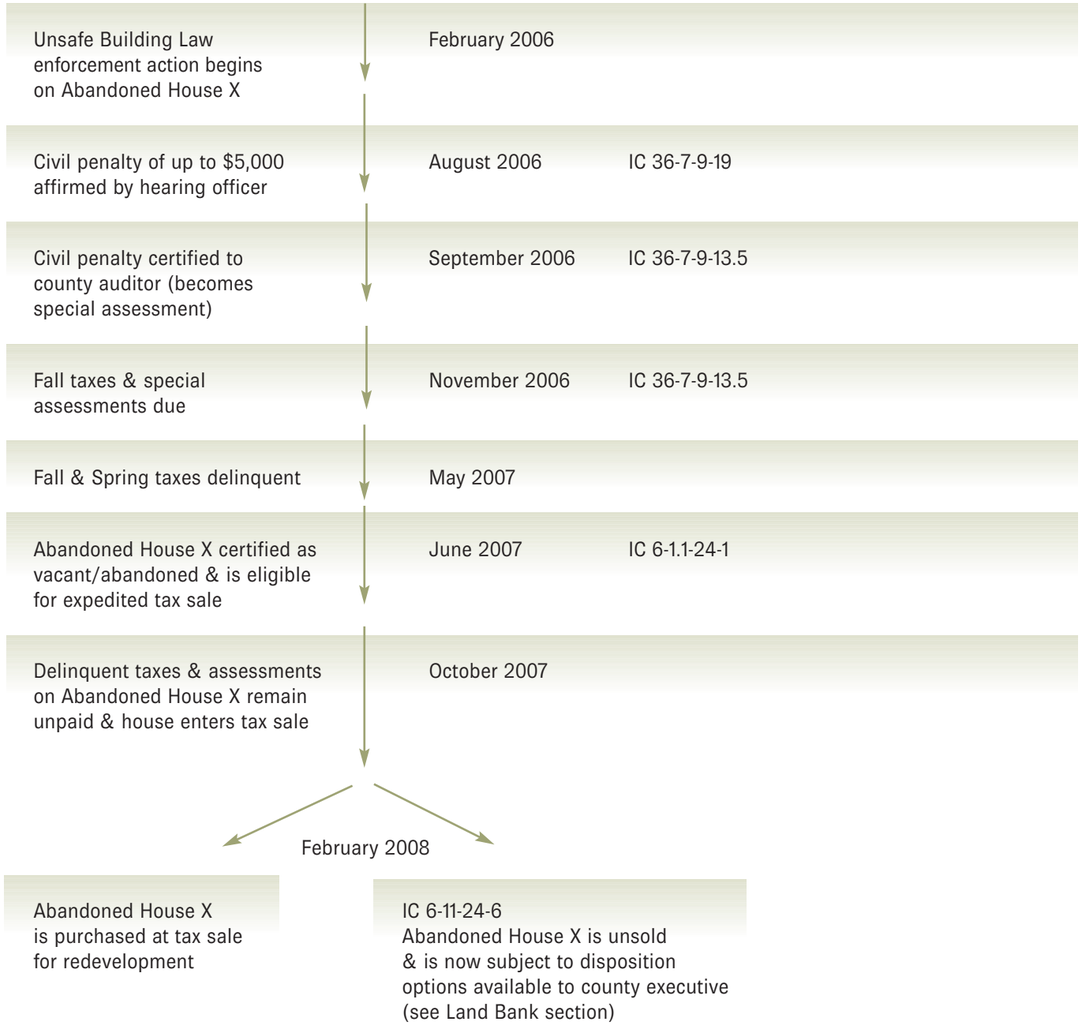
Practical and Legal Application. IC 6-1.1-24-2 now allows that the actual cost of providing notice (i.e., postage and publication costs) regarding delinquent taxes and associated costs can be included in the minimum bid for which a property is offered for sale at the tax auction. And, the cost prescribed by the county auditor for notice can now be the greater or $25 or the actual postage and publication costs.

Expedited Tax Sales

Policy Implications. All county executives now have greater authority to identify tax delinquent properties for redevelopment and other public purposes and to move these properties more efficiently through a post-tax sale redemption process.

Practical and Legal Application. Two significant changes to state law regarding expedited tax sales are effective January 1, 2007. These two changes are described directly below.

GRAPHIC 2 | **APPLICATION OF NEW TOOLS**



ALL COUNTIES MAY CONDUCT AN EXPEDITED TAX SALE

All Counties May Conduct an Expedited Tax Sale

All counties (not just Marion County, as under previous law) now have the right to designate properties for an expedited tax sale (IC 6-1.1-24-1.5). The redemption period for properties in this expedited tax sale is 120 days after the date of the sale (IC 6-1.1-24-2.2). So, owners of these delinquent properties have 120 days—rather than the standard 365 days—to redeem their properties by paying the tax bill and penalties in full.

SCOPE OF PROPERTIES THAT CAN BE CERTIFIED TO EXPEDITED TAX SALE IS BROADENED

Scope of Properties that Can Be Certified to Expedited Tax Sale is Broadened

County executives now have broader discretion over the properties they may certify to the expedited tax sale. They may now designate for inclusion in the expedited tax sale any property on which at least one installment of property taxes is delinquent at least 10 months (IC 6-1.1-24-4.5). Previous conditions limiting the type of properties that may be designated for the expedited tax sale have been deleted from the law. The law now allows vacant lots, commercial properties, and industrial properties to be designated by the county executive for the expedited tax sale (IC 6-1.1-24-1.5).

Improved Mechanisms to Collect Taxes and Related Costs

LIENS FOR SPECIAL ASSESSMENTS HAVE SAME PRIORITY STATUS AS LIENS FOR PROPERTY TAXES

Liens for Special Assessments have Same Priority Status as Liens for Property Taxes

Policy Implications. Collection of the property tax carries with it an important power that is not associated with any other form of tax or debt—a property tax lien on the property. This lien in favor of the assessing government takes priority over all other liens or claims against the property—giving it super priority status which facilitates the collection of property tax revenues by local governments.

IC 6-1.1-22-13 specifies that the state acquires a lien on a property for property taxes levied against the property and for all associated costs and penalties. This lien is unaffected by the sale or transfer of that property. And, this lien is superior to any and all other liens against the

property, making it an important public asset and tool. A special assessment is assessed on property separate from property taxes and, like taxes, is collected by the county treasurer (IC 6-1.1-1-17). Special assessments include such costs as ditch or drainage assessments, sewer charges, trash collection charges, and liens for cutting grass or weeds. In practice, special assessments have often been included in establishing the amount of the minimum bid for which a property will be offered in the tax sale. The law has now been amended to reflect this practice.

Practical and Legal Application. IC 6-1.1-22-13.5 is a new section added to the code. It establishes that a political subdivision acquires a lien on a tract of real property for all special assessments levied against the tract and all subsequent penalties and costs resulting from special assessments. The lien is superior to all other liens, except for the lien of the state for property taxes. The lien attaches on the tax installment due date of the year for which the special assessments are certified for collection, is not affected by the sale or transfer of the property, and continues for 10 years from May 10 of the year in which the special assessments first came due, unless that limitation is extended (which it can be) to permit termination of a proceeding instituted to enforce the lien during the 10-year period. Political subdivisions may institute a civil suit against a person or entity liable for delinquent special assessments. And, after obtaining a judgment in their favor against the person or entity, a political subdivision may collect delinquent special assessments, penalties, costs, and expenses incurred in collecting the delinquent assessments.

Relatedly, IC 6-1.1-22-8 was amended so that special assessments may be included on the tax bill that is mailed by the county treasurer. They were not previously included. So, tax statements mailed by the county treasurer may now include the amount of the tax rate, the entity levying the tax owed, the dollar amount of the tax owed, and the dollar amount of each special assessment owed.

Case Study C

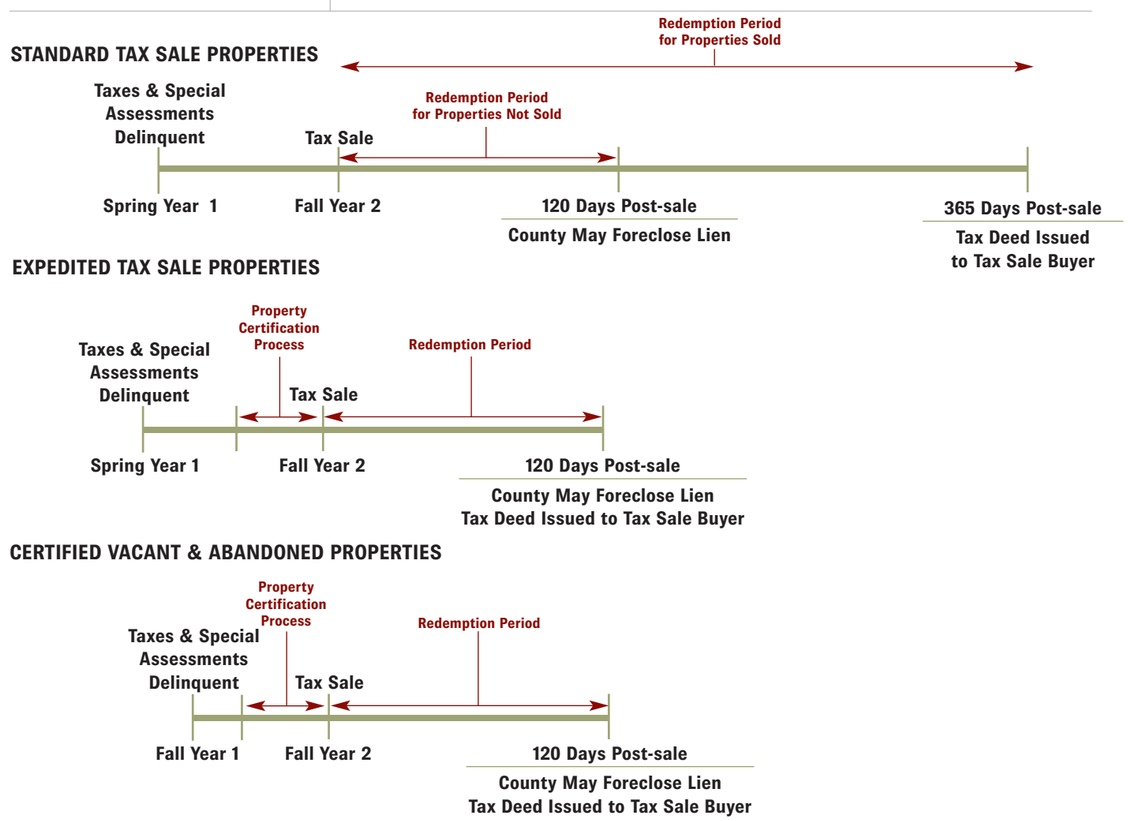
An administrative hearing authority and a court may now impose civil penalties (that can be thought of as "blight penalties") of up to $5,000 in situations where property owners are "willful" in their failure to maintain their properties according to standards required by law. Under Public Law 169-2006 (HEA 1102), an administrative hearing authority may also impose additional penalties of up to $5,000 each time. And, these penalties may now be collected under special assessment procedures – so that they are due when property taxes are due and have the same priority status as property taxes. Therefore, failure to pay these penalties makes a property eligible for a tax sale.

Here's how it works, in practice. The City of Indianapolis' cost of boarding and sealing a property on Nowland Avenue is $423. In addition, the Unsafe Building administrative hearing officer has issued two blight penalties totaling $8,000. The $8,423 in total costs has been certified to the county auditor as special assessments for inclusion in the fall 2006 tax statement. If the special assessments remain unpaid after the property tax due date, the property may be included in the tax sale. The minimum bid at the tax sale would include any amounts of unpaid taxes and special assessments.

Since 2000, the City of Indianapolis' costs of mowing high weeds and grass on private properties have been included as special assessments. From 2000 to 2005, the City's Department of Public Works collected more than $1.4 million in special assessments for mowing high weeds and grass.

In 2004 and 2005 (combined), the Marion County Health Department collected over $1.5 million in special assessments related to mowing high weeds and grass.

GRAPHIC 3 **TAX SALE TIMELINES**



Unsafe Building Law

The Unsafe Building Law (IC 36-7-9) is the primary tool used by local governments to address the problem of abandoned houses and buildings. Through this chapter of the Indiana code, the State authorizes local governments to require the owner of an unsafe building to take corrective action and authorizes local governments to take corrective action themselves to deal with unsafe building conditions. The Unsafe Building Law applies to a building that is determined to be in an impaired structural condition that makes it unsafe, a fire hazard, a hazard to public health, a public nuisance, dangerous because it violates a statute or ordinance concerning building condition or maintenance, or is vacant and not maintained so that habitation or use is not allowed by statute or ordinance.

The Unsafe Building Law provides valuable administrative tools and judicial remedies that local government may apply to address and resolve unsafe building conditions, including property abandonment. The 2006 amendments to the Unsafe Building Law are designed to enhance the effectiveness of efforts to address property abandonment. These reforms are in Public Law 169-2006 (HEA 1102), and they became effective July 1, 2006.

The Unsafe Building Law provides valuable administrative tools and judicial remedies that local government may apply to address and resolve unsafe building conditions, including property abandonment.

Penalties

Hearing Authority May Impose Additional Civil Penalties Under Certain Circumstances

HEARING AUTHORITY MAY IMPOSE ADDITIONAL CIVIL PENALTIES UNDER CERTAIN CIRCUMSTANCES

Policy Implications. Property owners who let their properties deteriorate and willfully fail to comply with an Unsafe Building order are currently subject to a civil penalty imposed by the administrative hearing authority. A 2006 amendment to state law allows a hearing officer to impose one or more additional penalties of up to $5,000. Civil penalties increase the carrying costs of properties that remain in a state of disrepair and are designed to serve as an incentive for property owners to either improve their properties in ways that at least bring and keep their properties up to legally established standards or to avoid these higher carrying costs over time by selling their properties—and potentially to persons who are more likely to improve and maintain the properties. This 2006 amendment helps internalize the costs of abandonment to owners of these properties themselves. In this way, the costs of abandonment are not merely externalities (i.e., externalized costs) that accrue to the surrounding neighborhood and its residents, but, instead, these costs are directly assigned to the owner and, therefore, have the potential to influence the owner's behavior.

Practical and Legal Application. IC 36-7-9-7(e) and (i) now provide the following:

- In situations where a civil penalty was previously assessed by an administrative hearing authority, that hearing authority may sequentially impose additional civil penalties of up to $5,000 if significant work required by affirmed orders has not been done and if either the property has a negative impact on property values or quality of life of the neighborhood or if a local government has had to provide services to the property in excess of the services required for ordinary properties;
- If the civil penalty is unpaid for more than 15 days after it was due, the penalty may be collected from any person against whom the hearing officer assessed the civil penalty;
- If it is unpaid, the civil penalty may be collected as a special assessment in accordance with IC 36-7-9-13.5; and
- When collected, the amount of the civil penalty that is collected is to be deposited into the unsafe building fund.

Amount of Civil Penalty that a Court May Impose for Unsafe Building Law Violations is Increased

AMOUNT OF CIVIL PENALTY THAT A COURT MAY IMPOSE FOR UNSAFE BUILDING LAW VIOLATIONS IS INCREASED

Policy Implications. From community and economic development perspectives, there is substantial value to giving a court the authority to impose significant, meaningful civil penalties in situations where property owners are particularly "willful" in their failure to comply with the law in regards to the condition of the properties they own. Increasing the costs that such property owners face is intended, of course, as a disincentive to this "willful failure to comply" with the law and an incentive to improve the condition of their properties.

Practical and Legal Application. Public Law 169-2006 (HEA 1102) makes judicial powers to impose civil penalties more consistent with such powers of the administrative hearing authority. A 2003 amendment to IC 36-7-9-7(d) of the Unsafe Building Law allows an administrative hearing authority to impose a civil penalty of up to $5,000 in situations where there is a "willful failure to comply" with orders issued by the hearing authority. However, before the adoption of the 2006 amendment, a court that imposed a civil forfeiture (a term that, in this setting, has the same meaning as civil penalty) in a civil action regarding an unsafe premise was limited by section 19 to $1,000.

IC 36-7-9-19 was amended in March 2006 in three ways:

1 – The word "forfeiture" is replaced by "penalty" throughout the section. The use of "penalty" here is consistent with the way "penalty" is used in other statutes;

2 – A court acting under IC 36-7-9-17 (whereby civil actions regarding unsafe premises may be initiated) may now impose a civil penalty that does not exceed $5,000; and

3 – The 2006 amendment establishes a minimum amount for the civil penalty. It provides that the civil penalty imposed may not be substantially less than the cost of complying with the order, unless that cost exceeds $2,500.

Civil Penalties May Be Collected Under Special Assessment Procedures

CIVIL PENALTIES MAY BE COLLECTED UNDER SPECIAL ASSESSMENT PROCEDURES

Policy Implications. Certain costs, specified by law, are considered special assessments. Special assessments become governmental liens—like property taxes—that have super priority status and may be included on a home owner's property tax bill. Allowing civil penalties to be collected as special assessments improves the likelihood that these costs will actually be collected. And, it is designed to provide an incentive to property owners to keep their properties in a condition that precludes the necessity of a hearing authority imposing civil penalties that will become governmental liens against their property if those penalties are not paid.

Practical and Legal Application. Amendments to two sections of the code are relevant here.

First, IC 36-7-9-7(i) now establishes that if a civil penalty is unpaid for more than 15 days after it was due, the civil penalty may be collected as a special assessment under section 13 or section 13.5.

Second, several important changes were made to IC 36-7-9-13.5 which describes the special assessment procedure for the Unsafe Building Law.

1 – Judgments entered under sections 13, 19, 21, or 22 may be certified to the county auditor to be collected as special assessments. These four types of judgments are:

- costs associated with the performance of work required by an administrative hearing authority (section 13);
- court imposed civil penalties (section 19);
- costs associated with the performance of court authorized work (section 21); and
- costs of performing emergency work authorized by a court in a civil action (section 22).

2 – Section 13.5 augments notice requirements in an effort to both (a) expand the scope of persons who receive notice and (b) protect local governments that are responsible for serving notice. A significant change is that "any mortgagee that has a known or recorded substantial property interest" is now included in the list of persons who must be served notice that payment is required.

Requiring a Performance Bond

Performance Bond May Be Required

PERFORMANCE BOND MAY BE REQUIRED

Policy Implications. IC 36-7-9-7(f) authorizes an administrative hearing officer to require a performance bond as a condition for allowing additional time to bring a property into compliance with an order. However, courts do not currently have the right to do the same. Giving a court this ability to require a performance bond provides another tool intended to encourage property owners to bring their properties into compliance. Failure to bring a property into compliance, under the terms specified by the court in this situation, results in forfeiture of the amount of the performance bond.

Practical and Legal Application. IC 36-7-9-18.1 is a new section in the code. It states the following:

- A court acting in a civil action brought under section 17 (whereby such actions may be initiated by local government or a community organization) may grant a period of time to accomplish work required by an order and may require the posting of a performance bond to assure that the work will be done within the period of time granted;
- As the court considers whether to allow additional time with the posting of a bond, the court may require the presentation of a workable and financially supported plan. The court may also require that the bond specify interim completion standards and provide that the bond is forfeited if those interim completion standards are not substantially met;

Case Study D

The City of South Bend requires that a property owner post a cash performance bond if the owner seeks to repair a building that has been ordered to be demolished. If the administrative hearing officer agrees to modify the demolition order to a repair order, the full amount of the bond must be posted with the Department of Code Enforcement by a specified date. The amount of the bond can be up to one-third of the City's estimated cost of repairs to the structure. Estimates are based on a standard guide used by City inspectors. After the bond is posted, the City's Building Department is notified so that the owner may obtain permits necessary to make repairs.

The City places several conditions on return of the cash performance bond. These include the owner (a) completing repairs by a date the hearing officer specifies and scheduling and passing inspection by the Department of Code Enforcement by that date, (b) keeping the property clean, secure against entry, and unoccupied and keeping the grass cut until it passes inspection, and (c) providing updated information on the ownership and agents responsible for the property, if appropriate. If the property owner meets these conditions, the bond is returned. If not, it is forfeited. The City documents failures to meet any of the required conditions.

Owners may make the case to an administrative hearing officer that they would rather spend their resources making repairs rather than posting a bond. In these situations, the City considers the specifics of each case and may, for instance, treat a single family owner or small investor differently than a larger investor.

- The performance bond is forfeited if the action required by the order is not accomplished within the period the court allows;
- The amount of any forfeited performance bond is to be deposited in the unsafe building fund.

Notice Requirements

NOTICE REQUIREMENTS ARE AMENDED

Notice Requirements are Amended

Policy Implications. Substantial legal concerns exist with respect to the adequacy of notice that is given in enforcing the Unsafe Building Law and in response to delinquent taxes. It may be valuable to consider whether adequate *Mennonite* notice, as required by the federal Constitution, is being provided. If constitutionally required notice is not being provided, Indiana counties are at risk of their code enforcement actions being legally challenged.

The United States Supreme Court case of *Mennonite Board of Missions v. Adams 462 U.S. 791 (1983),* a case involving an Indiana statute, deals with the question of whether a person holding a mortgage interest (i.e., a mortgagee) must be notified in a tax sale transaction and what manner of notice must be given. Subsequent Indiana appellate cases have applied *Mennonite* in tax sale transactions and have elaborated on the constitutional notice requirements that *Mennonite* establishes.

Practical and Legal Application. In an effort to improve the service of notice, two sets of changes were made to Indiana code in 2006: (1) notice of important transactions is provided to mortgagees, and (2) the means of serving notice is improved.

Several sections of the Unsafe Building Law that set forth administrative (i.e., non-judicial) procedures are changed to provide for notice to mortgagees. It should be noted that several of these sections now require notice to persons with a "mortgage interest" because of the modification of the definition of "substantial property interest" found in IC 36-7-9-2. The definition of "substantial property interest" is expanded to include a "mortgage interest." It should also be noted that the

changed definition of "substantial property interest" has been constricted to no longer include a "present possessory interest."

Notice provisions now include the following:

- IC 36-7-9-10(b) allows the enforcement authority to cause the action required by more serious orders to be performed if, among other requirements, notice of the order has been given to persons with a "known or recorded substantial property interest" in the unsafe premises, thus including mortgagees. Subsection 10(b) also states another precondition to action by the enforcement authority in relation to such orders. That is, the affirmed order must apply to all persons having a "known or recorded substantial property interest"—thus including mortgagees.
- IC 36-7-9-11(a)(1) requires that, before specified kinds of work can be accomplished by the workers and equipment of the enforcement authority, notice must be given to persons with a "substantial property interest that is known or recorded" in the unsafe premises, thus including mortgagees.
- IC 36-7-9-11(c), (e) requires that, before specified kinds of work can be accomplished pursuant to public bid, notice of the statement that public bids are to be let must be given to persons with a "known or recorded substantial property interest" in the unsafe premises, thus including mortgagees.
- IC 36-7-9-13, which provides a procedure for securing a judgment, requires notice of the record (that sets forth, among other things, the name of the owner, location of the premises, the work accomplished, and the amounts owed) be given to "mortgagees with a known or recorded substantial property interest" in the unsafe premises.
- IC 36-7-9-13.5, which provides a procedure for the certification of Unsafe Building costs as special assessments, requires that "mortgagees with a known or recorded substantial property interest" in the unsafe premises be notified of such proceedings.

- IC 36-7-9-25 describes the manner of serving notice for official actions taken under the Unsafe Building Law. Changes to this section are intended to make notice more constitutionally adequate. Two significant changes are made:

  1 – IC 36-7-9-25(a) requires a follow-up mailing by first class U.S. mail to the last known address of the person to be notified, if the method of service selected is to leave a copy of the notice at the residence of that person;

  2 – IC 36-7-9-25(b) requires the hearing authority to take a special, new step, if there is desire to carry out service by publication. To justify notice by publication, the hearing authority must conclude that a reasonable effort has been made to achieve notice by registered or certified mail, delivery to the person, or leaving notice at the person's residence (i.e., registered or certified mail, delivery, or leaving). This conclusion need not be reached at a hearing, but must be in writing. For the sake of administrative convenience, IC 36-7-9-25(f) allows the enforcement authority to provide notice by publication at the same time as the attempt is made to achieve notice by registered or certified mail, delivery, or leaving and before the hearing authority concludes notice by publication is justified. If the hearing authority concludes that the effort to achieve notice by registered or certified mail, delivery, or leaving is insufficient, the published notice would not be valid. In that instance, the enforcement authority would have to make additional efforts to notify by registered or certified mail, delivery, or leaving.

Persons administering the Unsafe Building Law should be aware of a recent United States Supreme Court decision that addresses what steps must be taken to achieve adequate notice when initial efforts are not successful. *Gary Kent Jones v. Linda K. Flowers* was decided April 26, 2006 and deals with the issue of adequate notice in a tax sale proceeding. The same principles would apply to important Unsafe Building Law transactions. The court held "that when mailed notice of a tax sale is returned unclaimed, the State must take additional reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable to do so."

The holding in *Gary Kent Jones v. Linda K. Flowers* should be kept in mind by the hearing authority as that authority decides whether an adequate attempt has been made to achieve service by registered or certified mail, delivery, or leaving. IC 36-7-9-25(b) anticipates that the decision by the hearing authority will be made after an attempt to achieve service by registered or certified mail, delivery, or leaving has been made; so, the hearing authority will be able to consider what was learned in the attempt to achieve service by these methods.

Existing Tool to Apply

Obtain Personal Judgment

Policy Implications. The intention of *in personam* remedies is to impose obligations in relation to persons (i.e., on property owners). On the other hand, *in rem* remedies are taken in relation to real property. Acquisition of the abandoned property is the relief sought in applying *in rem* remedies. *In personam* code enforcement and *in rem* foreclosure strategies complement one another and, when applied in conjunction with one another, can help promote the renovation of abandoned properties.

The threat of a personal judgment against a property owner (i.e., an *in personam* remedy) has the potential to serve as a disincentive to a person abandoning a property or not making repairs as ordered. One *in personam* tool that is currently available under Indiana law (and was available prior to the 2006 amendments) is the ability of an enforcement authority to hold property owners personally accountable for unpaid costs and fees.

Practical and Legal Application. IC 36-7-9-13 allows an enforcement authority to hold each person having a known or recorded fee interest, life estate interest, or equitable interest of a contract purchaser responsible for the unpaid bid price of work that was accomplished under the Unsafe Building Law and the amount of the unpaid average processing expense. An enforcement authority may prepare a record (as described in section 13) and file it with the clerk of the circuit court where it is entered as a civil action. Any judgment against persons named in the record is a debt and a lien on all the real and personal property of the persons named—so, this is an *in personam* remedy.

OBTAIN PERSONAL JUDGMENT

Case Study E

Because of these 2006 reforms to the Unsafe Building Law, counties now have an expanded set of tools that can be applied to deal with properties in situations where the property owner is identifiable and responsive, where the property owner is identifiable and not responsive, and where the property owner cannot be located.

Responsive Owner
At a hearing that the property owner attended, the enforcement authority considered a repair order for a house on East 33rd Street where ordered repairs had not, in fact, been made. The hearing authority affirmed the order, determined that the owner demonstrated a willful failure to comply with the order, and imposed a $3,000 civil penalty. The enforcement authority scheduled another hearing in 30 days.

During those 30 days, the property owner completed repairs necessary to bring the property into compliance. At the second hearing, the property owner provided evidence that repairs were completed. Subsequently, the enforcement authority, exercising its continuing jurisdiction under IC 36-7-9-7, rescinded both the repair order and the civil penalty.

Unresponsive Owner
A house on North Temple Avenue was undergoing renovation and caught fire. The owner received an order to repair the property, but has stopped attending administrative hearings. The house is located mid-block on a street that has not suffered from any other demolition.

At a regularly scheduled hearing, the enforcement authority invoked its right to make necessary repairs to bring the property into compliance. Under IC 36-7-9-13.5, the total cost associated with the necessary work, plus an average processing expense, is subject to collection as a special assessment.

The owner currently has 30 days during which to respond. If the owner is unresponsive, the City of Indianapolis has requests for bids to conduct repair work that are ready to go out on day 31, so that repair work can begin promptly. Once the work is completed, the City may add the cost of these repairs plus a $1,500 average processing expense to the property tax bill as a special assessment.

Unidentifiable Owner
A double residence on Nowland Avenue was the possible subject of mortgage fraud, and the owner of record cannot be located. The property has been abandoned for eight years. The house is structurally sound, but keeping the property boarded and secured is an ongoing challenge.

Enforcement at the administrative level has stalled because service of the notice has been impossible. Under the law, there are now viable options for how to deal with such properties:

- IC 36-7-9-25 allows the hearing authority to make a determination in writing as to whether a reasonable effort has been made to obtain service. If the hearing authority determines that service was adequate, the hearing authority may determine that the property owner has demonstrated a willful failure to comply with the order and impose a blight penalty. The enforcement authority may also choose to conduct the necessary repairs itself. The cost of these repairs is subject to collection as a special assessment—which, if left unpaid, can trigger the sale of the property through the tax sale, since special assessments have the same priority status as property tax liens.
- Under IC 36-7-9-20, the enforcement authority may choose to file a civil action, asking the court to appoint a receiver for the property. The receiver would be responsible for making the necessary repairs to bring the property into compliance and would be entitled to a lien on the property for the total amount expended. The lien holder could then subject the property to foreclosure and sale.

Land Bank

A land bank serves as a virtual repository for abandoned houses and vacant lots that have the potential to be renovated, rebuilt, or reused. Local land bank authority allows local governments to secure, maintain, and dispose of property that has development potential.

Acquiring, Managing, and Disposing of Properties

Policy Implications. A land bank can be a useful and important tool in the efforts of counties and redevelopment commissions to slow the cycle of property abandonment and to exercise some control over a range of properties within their jurisdictions. A land bank serves as a means by which abandoned properties and vacant lots can be placed into productive use within a reasonable period of time—either as a part of government redevelopment initiatives and/or private development efforts whereby these properties are delivered to entities and individuals who have the capacity and intention to renovate them. And, a land bank is also a means by which properties can be held until sufficient market demand exists for properties to have meaningful value.

Practical and Legal Application. Public Law 169-2006 (HEA 1102) has the effect of augmenting the power of county governments and redevelopment commissions to hold and maintain property, and it enables county executives and redevelopment commissions to choose among multiple avenues for property disposition. These 2006 amendments do not expand the powers of eminent domain to acquire property.

Public Law 169-2006 (HEA 1102) augments land bank powers in three settings:

- under redevelopment law applicable to Marion County;
- under redevelopment law applicable to counties other than Marion County;
- for county executives in areas not served by a redevelopment commission.

While the statutory changes for these three settings reflect common themes, there are statutory differences; so the three settings are discussed separately.

MARION COUNTY

Marion County

Amended IC 6-1.1-25-9(e) authorizes the county executive—the mayor, in the case of Marion County—to turn over properties the county acquires through the tax sale process to a redevelopment commission at no cost to the commission for sale, grant, or other disposition for a broad range of eventual uses. Before this amendment, such property could only be used by the commission for grant or sale to a nonprofit corporation, community development corporation, or urban enterprise association to benefit low to moderate income families. Previously, the City of Indianapolis could dispose of property to a nonprofit through a request for proposals (RFP) process; but that process was defined by law to have narrow parameters and was administratively cumbersome. This amended section of the code now allows for easier and broader disposition options and was written to apply to all redevelopment commissions—in Marion County and outside of Marion County.

Case Study F

The City of Indianapolis acquired a house on Marlowe Avenue after it failed to sell at tax sale (IC 6-1.1-24 and IC 6-1.1-25). The property was transferred to the redevelopment commission under IC 6-1.1-24-9(e), since it is in a Redevelopment Project Area as designated by the commission under 36-7-15.1-8.

The City transferred the property to a community development corporation (CDC) with whom the City is working. The property was transferred at no cost and for the purposes of redevelopment that will benefit low or moderate income families. The CDC, subsequently, will work with a for-profit developer and builder to rehabilitate the house on the property.

Under new section IC 36-1-8-16, when the county executive disposes of real property, 100% of the property taxes collected for the first year post-conveyance are disbursed to the county executive. The property on Marlowe Avenue generates approximately $1,145 per year in property taxes. At the discretion of the county executive, property tax revenue for the first year post-conveyance may be deposited in the county general fund, redevelopment fund, unsafe building fund, or the housing trust fund.

IC 36-7-15.1-15.5 is a new statutory section that applies only to Marion County. This section applies to real property that:

a - is acquired by a redevelopment commission to carry out a redevelopment project, economic development area project, or urban renewal project but is not needed to complete any of those projects (as so determined at a public hearing);

b - is acquired by a commission and is not in a redevelopment project area, economic development area, or an urban renewal project area;

c - is acquired by the county through the tax sale process; or

d - is donated or transferred to the commission to be held and disposed of under this section.

Under IC 36-7-15.1-15.5, a commission may do the following:

- examine, classify, manage, protect, insure, and maintain the property;
- eliminate deficiencies (including environmental deficiencies), carry out repairs, remove structures, and make improvements;
- control the use of the property;
- lease the property;
- use any of the multiple powers listed under section 7(a) or section 7(b) of 36-7-15.1 (i.e., the Indianapolis/Marion County redevelopment statute);
- enter into contracts to carry out any of the functions described in all of the above bullet points;
- extinguish all delinquent taxes, special assessments, and penalties on property donated to the commission to be held and disposed of;
- sell, exchange, transfer, grant, or donate the property;
- grant or sell the property at no cost to qualifying nonprofit corporations and neighborhood development corporations for low to moderate housing under IC 36-7-15.1-15 and 15.1;
- grant or sell the property at no cost to an urban enterprise association under IC 36-7-15.1-15.2;

- sell property to an "abutting landowner" under IC 36-7-15.1-15.6;
- sell property after two joint appraisals and a public hearing by the commission for not less than the appraised value under IC 36-7-15.1-15.7;
- sell, exchange, transfer, grant, donate, or otherwise dispose of property according to the urban homesteading program under IC 36-7-17;
- group together properties for disposition in a manner that will best serve the interests of the community from the perspective of both human and economic welfare; and
- group together similar properties to facilitate convenient disposition.

REDEVELOPMENT COMMISSIONS OUTSIDE OF MARION COUNTY

Redevelopment Commissions Outside of Marion County

Amended IC 6-1.1-25-9(e) applies to redevelopment commissions outside of Marion County. For counties outside of Marion County, the county executive is the board of county commissioners.

Case Study G

The City of Indianapolis acquired three vacant lots on a block of North Yandes – two had not sold at the tax sale, and the third was donated. The properties are not located within a redevelopment area, but are in a neighborhood where private investment is on the rise.

In order to facilitate effective and convenient disposition, IC 36-7-15.1-15.5 allows a redevelopment commission to group nearby or similar properties. The redevelopment commission may negotiate a sale of the properties – for not less than their appraised value – to a local developer who is working in the neighborhood. Under IC 36-7-15.1-15.7, property appraisals may be conducted by municipal employees familiar with the value of the property. The sale of the property must be approved by the redevelopment commission at a public hearing.

Under new section IC 36-1-8-16, when the county executive disposes of real property, 100% of the property taxes collected for the first year post-conveyance are disbursed to the county executive and may, at the discretion of the county executive, be deposited in the county general fund, redevelopment fund, unsafe building fund, or the housing trust fund.

Outside Marion County, IC 6-1.1-25-9 and IC 36-7-14-22.5 offer the same authority to counties that have redevelopment commissions. For counties that do not have redevelopment commissions, IC 6-1.1-25-9(f) and IC 36-1-11 apply.

IC 36-7-14-22.5 is a new statutory section that enhances the flexibility of a redevelopment commission outside of Marion County to dispose of property it owns or will acquire. This new section mimics IC 36-7-15.1-15.5 so that all of the same authority is granted to redevelopment commissions outside of Marion County as in Marion County.

IC 6-1.1-25-9—one of the existing tax sale sections—is amended to allow properties for which the county acquires title through the tax sale process to flow to the redevelopment commission at no cost to the commission for sale, grant, or other disposition. It is this reference to "other disposition" that is new; and the amended statute references the two new statutes discussed directly above in setting forth multiple means by which this sale, grant, or other disposition may occur. Importantly, this transfer of title to the redevelopment commission occurs at the discretion of the county executive—who may also repair, maintain, equip, alter, and construct buildings upon such properties.

Areas Not Served by a Redevelopment Commission

AREAS NOT SERVED BY A REDEVELOPMENT COMMISSION

IC 6-1.1-25-9 was amended to allow counties that do not have a redevelopment commission to effectively carry out land bank functions. Counties already have powers to dispose of property under IC 36-1-11. IC 6-1.1-25-9(f) was added to the code and states that, for geographic areas not served by a redevelopment commission, the county executive may hold property acquired through the tax sale process for later sale or transfer, and the county executive may:

- examine, classify, manage, protect, insure, and maintain the property;
- eliminate deficiencies (including environmental deficiencies), carry out repairs, remove structures, and make improvements;
- control the use of the property;
- lease the property; and
- enter into contracts to carry out the above functions.

The most significant statutory changes are the enhanced ability of county executives in Indiana to dispose of property and the fact that all county executives have the same authority to acquire, manage, and dispose of property. A county executive may also delegate their authority to another agent, including another unit of local government.

Recapturing Costs of Maintaining a Land Bank

RECAPTURING LAND BANK COSTS

Recapturing Land Bank Costs

Policy Implications. Property that ends up in a municipal inventory is often property that has little to no value at the time it is acquired. These properties are often difficult to redevelop in the short term; and there are costs associated with holding these properties—mowing, boarding, maintenance. Over time, as properties in the inventory are returned to productive use and gain assessed value, capturing some of this value to "repay" the holding costs makes good sense from a public finance perspective.

Practical and Legal Application. IC 36-1-8-16 is a new section added to Indiana code. It addresses how property taxes that are collected in the first year of taxation after a property is conveyed as land bank property are to be disbursed. The section specifies that when a county executive disposes of real property, for the first year after conveyance, 100% of the property taxes collected for each item of real property shall be disbursed to the county executive. At the discretion of the county executive, those disbursements are to be deposited by the county executive into the county general fund, the redevelopment fund, the unsafe building fund, or the housing trust fund to be used only for one of more of the purposes authorized by IC 36-7-14-22.5 or IC 36-7-15.1-15.5. The county executive must forward to the county auditor a copy of each resolution that disposes or otherwise conveys real property. This disbursement of 100% of the property taxes is only applicable in the first year the property is subject to taxation after the year in which the property is sold or otherwise conveyed.

Conclusion

In terms of enhancing efforts to meet the challenge of property abandonment, the 2006 amendments represent a major accomplishment—from legal, practical, and policy perspectives.

Indiana county executives and their staff now face the task of learning the nuances of applying these changes in the context of existing code enforcement, tax sale, and redevelopment processes. This manual is intended to serve as a first step in that regard—a source of primary information and guidance for county executives and their agents and advisors. Undoubtedly, questions of policy, law, and implementation will arise. Undoubtedly, there is more work to be done—in all three regards.

Endnotes

[1] The Abandoned Houses Work Group reports are available on the City of Indianapolis' web site: www.indygov.org/eGov/City/DMD/Abandoned/reports.htm.

[2] The National Vacant Properties Campaign is designed to identify best practices in communities, share these best practices with other communities, and ensure creativity and leadership in communities. For more information on the Campaign, their web site is: www.vacantproperties.org.

[3] The National Vacant Properties Campaign's technical assistance team was Frank Alexander, Professor of Law at Emory University and Lisa Mueller Levy, Director of Technical Assistance for the Campaign.

[4] The two Indianapolis attorneys who were instrumental in constructing the legislative reforms that were ultimately passed in HEA 1102 are Eugene Lausch, private attorney, and Andrew Seiwert, Feiwell & Hannoy, P.C.

[5] It is important to note that there are existing mechanisms under current law that are designed to protect home owners who are simply delinquent on a couple of property tax payments. These protections remain in place so that these home owners still have substantial time and many opportunities to come into compliance both before and after the tax auction.

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