

**Comparative Legal Analysis:
Indy Land Bank + Land Bank of Indianapolis
4 November 2010**

WORKING DRAFT 3: FOR DISCUSSION

A. Comparative Summary

In 2006, the Indiana Legislature passed Public Law 169-2006 that, among other provisions, created the authority for county governments in Indiana to perform land banking functions. This law permits significant and meaningful land banking activities. Exercising this authority to perform land banking, the City of Indianapolis created the Indy Land Bank program in 2007 – a city-county program authorized by state law and operated by the City of Indianapolis' Department of Metropolitan Development (DMD) under the supervision of the Metropolitan Development Commission (MDC). The Indy Land Bank program's authority is defined by state law, city-county ordinance, and DMD policy.

At present, the creation of a new, nonprofit land bank is being considered and evaluated. That nonprofit land bank – referred to as the Land Bank of Indianapolis – is being considered to enhance the capacity and/or replace the existing, municipal Indy Land Bank program. This evaluation – funded by the Indianapolis Housing Trust Fund – includes the following analyses:

1. Outline necessary and robust land banking functions based upon national best practices;
2. Outline existing statutory in Indiana to perform these functions;
3. Identify where existing statutes are resistant to necessary and ideal land banking in Marion County;
4. Describe optional institutional structures to perform robust land banking in Marion County;
5. Assess the structure, functions, and outcomes of the current municipal land bank, Indy Land Bank;
6. Identify any questions for City of Indianapolis Corporate Counsel related to existing Marion County land banking authority, as currently established by local ordinance;
7. Outline capital needs related to start-up and operation of a nonprofit land bank;
8. Identify any revenue that is theoretically available for land banking through current funding sources and streams but is not being accessed because we do not have the mechanisms in place to direct that money toward land banking – land banking that occurs within the municipal structure or through a private, nonprofit entity.

The summary table, below, outlines the existing authority of both the Indy Land Bank program and the proposed Land Bank of Indianapolis as well as concerns that relate to this existing legal authority or the exercise thereof. As such, it directly addresses numbers 2, 4, and 5 (above).

NO.	INDY LAND BANK	LAND BANK OF INDIANAPOLIS
ADVANTAGES + AUTHORITY		
1	<p>Through the authority of MDC, the Indy Land Bank program may enter into contracts to:</p> <ul style="list-style-type: none"> (1) examine, classify, manage, protect, insure, and maintain its properties; (2) examine deficiencies, carry out repairs, remove structures, and make improvements on its properties; (3) repair, improve, clear, maintain, or otherwise manage the properties in the Indy LB program's inventory; (4) bring privately owned properties up to code through remedial acts (e.g., boarding). 	<p>The Indy LB program could contract with LBI to:</p> <ul style="list-style-type: none"> (1) examine, classify, manage, protect, insure, and maintain its properties; (2) examine deficiencies, carry out repairs, remove structures, and make improvements on its properties; (3) repair, improve, clear, maintain, or otherwise manage the properties in the Indy LB program's inventory; (4) bring privately owned properties up to code through remedial acts (e.g., boarding).
2	<p>Through the MDC, the Indy LB program has the ability to extinguish all delinquent taxes, special assessments, and penalties.</p>	<p>As a non-governmental, nonprofit corporation, LBI has general powers enumerated in state statute including the ability to purchase, receive, acquire, own, hold, lease as lessee, and improve real property.</p>
3	<p>Through DMD, the Indy LB program may exercise the power of eminent domain.</p>	<p>As a non-governmental, nonprofit corporation, LBI may sell, convey, mortgage, pledge, lease as lessor, and exchange all or any part of the corporation's property.</p>
4	<p>The Indy LB program has expedited access to properties that do not sell at the annual tax sale.</p>	<p>As a non-governmental, nonprofit corporation, LBI may make contracts and guaranties, borrow money, and issue notes and bonds.</p>
5	<p>The current inventory of the Indy LB program is not subject to property taxes.</p>	
CONCERNS		
6	<p>Indy LB is a program of DMD, not a separate legal entity with sufficient control, flexibility, or resources.</p>	<p>May be difficult to transfer property between the City and LBI for uses other than affordable housing.</p>
7	<p>As a program of DMD, all of Indy LB's actions with regard to disposition of property must go before MDC for approval – which must occur at a public meeting.</p>	<p>Properties transferred to LBI by the Indy LB program will not be tax-exempt – unless they were transferred pursuant to the Urban Homesteading program in which case the property would have to be rehabilitated by LBI and put back on the market within 12 months.</p>
8	<p>MDC – and, therefore, the Indy LB program – has limited disposition authority according to Indiana statute in that it is only permitted to transfer properties to a nonprofit that meet certain statutory requirements:</p> <ul style="list-style-type: none"> (1) one of the nonprofit's major purposes must be providing affordable housing to low income residents; (2) the development of the property – which must occur within five years from the date of transfer – must serve or benefit low or moderate income families. <p>If more than one qualifying nonprofit is interested in a property, MDC is required to hold a public hearing to determine the disposition of that property.</p>	<p>LBI has no ties to tax foreclosure system – such as the automatic transfer of tax certificates for unsold properties at the annual tax sale.</p>

NO.	INDY LAND BANK	LAND BANK OF INDIANAPOLIS
CONCERNS (cont.)		
9	<p>In addition to the statutory limitations defined in the cell directly above, the city-county municipal code further restricts the Indy LB program's disposition authority:</p> <ul style="list-style-type: none"> (1) nonprofits must be in existence for at least one year prior to the date of the transfer; (2) nonprofits must have demonstrated development capacity; (3) before MDC can transfer the property, the nonprofit receiving it must file a "project development agreement" with the Indy LB program. 	Properties acquired by LBI at the annual tax sale would not have the expedited redemption period.
10	<p>A third source of constraints on disposition is local government policy:</p> <ul style="list-style-type: none"> (1) nonprofits are preventing from purchasing more than three Indy LB program properties in a six-month period until they can demonstrate the capacity to successfully acquire and renovate the properties; (2) a nonprofit wishing to purchase a property from the Indy LB program must submit an RFP for each piece of property, and the RFP must include proof of financing and a development plan. 	Absence of financing mechanisms to support operation of LBI.
11	<p>As a program of city government, Indy LB faces serious resource constraints and does not, subsequently, have the ability to proactively exercise the full range of its authority to manage the inventory of properties that are not sold at the annual tax sale. Yet, all properties offered at the annual tax sale and not sold are automatically transferred to MDC – and, therefore, are designed to be managed by the Indy LB program. This is not happening.</p>	As a non-governmental, nonprofit corporation, LBI would not have the authority to discharge government liens.

B. Key Points

1. Under current state statute, local ordinance, and DMD policy, the Land Bank of Indianapolis cannot completely replace the Indy Land Bank.
2. Current law would prevent the Land Bank of Indianapolis from having the strongest possible powers and those necessary to robust and efficient land banking, with limitations most obvious in the:
 - a. lack of ties to the tax foreclosure system;
 - b. difficulty with the transfer of property between the City and LBI;
 - c. absence of financing mechanisms for the operation of LBI.
3. Indiana law already permits significant land banking activities. A large portion of these activities can be performed by a nonprofit corporation through a series of contracts with local government.

4. MDC is authorized through the enabling legislation to enter into contracts to:
 - a. carry out part or all of the powers enumerated therein;
 - b. examine, classify, manage, protect, insure, and maintain property;
 - c. examine deficiencies, carry out repairs, remove structures, and make improvements.
5. MDC may engage in bulk transfers of properties when it will “best serve the interests of the community.”
6. All properties that are offered at the annual tax sale and are not sold are automatically transferred to MDC. On behalf of the MDC, the Indy Land Bank program is designed to be responsible for property obtained by the MDC through the property tax foreclosure proceedings if they are not sold in the tax sale. Instead:
 - a. the tax certificates for these properties are not transferred to MDC – they remain in the name of the tax delinquent owner(s);
 - b. these properties are considered “surplus” properties that are managed by the County Treasurer’s Office and typically continue to cycle through multiple tax sales;
 - c. the Indy Land Bank program, given its current structure and resources, does not have sufficient capacity to manage (i.e., “bank”) all of the properties not sold in the tax sale.
7. State law authorizes MDC to bypass the public auction and grant or sell its properties to nonprofits – nonprofits whose purpose is affordable housing development and that agree to develop the transferred property to serve low or moderate income families within five years. It appears that the public auction is not a requirement of state law or the municipal code, as the state statute provides multiple, non-exclusive avenues for disposition.
8. In the short term – before legislative reform – LBI could potentially acquire properties by submitting a structured bid at the annual auction.
9. This affordable housing development restriction (discussed in number 7, above) does not apply if MDC transfers property to an urban enterprise association. While LBI does not qualify as such, a short term solution could be structuring a pass-through transfer from a UEA to LBI.

C. Interim Role for Land Bank of Indianapolis

Outside of a forthcoming discussion regarding recommended statutory reforms related to improve land banking and redevelopment authority in Indiana, several immediate options can be explored to engage the Land Bank of Indianapolis in a way that enhances the functional capacity of the existing Indy Land Bank program and to support the ability of the Office of the Treasurer to strategically manage the properties that do not sell in a public auction (i.e., those properties currently referred to as “surplus” properties).

1. **Contractual relationship with the Land Bank of Indianapolis.** Indiana law already permits significant land banking activities. A large portion of these activities can be performed by a nonprofit corporation through a series of contracts with local government. These activities may include – but are not necessarily limited to – the following:
 - a. carry out part or all of the powers enumerated therein;
 - b. examine, classify, manage, protect, insure, and maintain property;
 - c. examine deficiencies, carry out repairs, remove structures, and make improvements;
 - d. advise on and even undertake strategic redevelopment approaches to existing “surplus” properties;
 - e. advise on and undertake strategic redevelopment approaches to parcels from which structures will be removed through the Unsafe Building Program.
2. **Land Bank of Indianapolis participates in the public tax auction.** In the short term – before legislative reform – LBI could potentially acquire properties by submitting a structured bid at the annual auction.
3. **Bypass the public auction.** It appears that the public auction is not a requirement of state law or the municipal code, as the state statute provides multiple, non-exclusive avenues for disposition. State law appears to authorize MDC to bypass the public auction and grant or sell its properties to nonprofits – nonprofits whose purpose is affordable housing development and that agree to develop the transferred property to serve low or moderate income families within five years.
4. **Engage an Urban Enterprise Association to serve as a conduit to transfer property to the Land Bank of Indianapolis.** The affordable housing development restriction (discussed in number 3, above) does not apply if MDC transfers property to an urban enterprise association. While LBI does not qualify as such, a short term solution could be structuring a pass-through transfer from a UEA to LBI.

D. Formation and Phased Implementation of Land Bank of Indianapolis

Through a contractual relationship with the City of Indianapolis (i.e., Indy Land Bank/MDC, Treasurer's Office, DPW) made possible through Indiana statutes, the Land Bank of Indianapolis can add value by engaging in the following, phased work that directly builds on the pre-development work (Phase 1) completed since April 2010:

Phase 2 – Start-up Tasks

A. Governance

1. Identify founding board members
2. Identify board structure
3. Identify advisory board(s) structure
4. Prepare 5-year strategic plan
5. Outline operational structure – immediate and planned
6. Identify and secure IT tool for comprehensive data collection and management
7. Lead identification and promotion of statutory amendments

B. Financing

1. Identify and pursue low cost, patient capital
2. Identify sustainable funding source(s)
3. Identify and secure project or element specific funding
4. Prepare 5-year funds development plan

Phase 3 – Enhance Existing Marion County Land Banking Capacity

- A. *DMD*: Immediately enhance the capacity of Indy Land Bank and prepare for transition
- B. *Treasurer's Office*: Work with Treasurer's Office to advise on future action to address "surplus" property
- C. *Rebuild Indy*: Strategically manage Unsafe Building Program-associated properties
- D. *National Community Stabilization Trust*: Structure pilot initiative for single lender request regarding 200 – 300 "shadow" properties
- E. *Neighborhoods not served by CDC or nonprofit housing redevelopment entity*: Address this void in the current legal structure
- F. *Brownfields*: Work with the City of Indianapolis' brownfields coordinator to identify longer term, strategic plan for these properties
- G. *City and neighborhood redevelopment objectives*: Identify City and neighborhood-specific priorities, and identify related LBI policies and plan

Phase 4 – Perform Comprehensive Land Banking in Marion County