

INTERNAL PROTOCOL/QUESTIONNAIRE FOR COMMUNITY-IMPROVEMENT-IN-REM-FORECLOSURE-ACTIONS.

The following is the City Attorney's protocol under Common Council Resolution File No. 030680 (passed September 23, 2003). It is intended to assist in determining whether Community-Improvement-In-Rem-Foreclosure-Actions should be undertaken for particular parcels.

STEP ONE. REPORT TO THE CITY ATTORNEY.

An alderperson or department wishing the City to acquire a parcel that is tax delinquent by means of a "Community Improvement In Rem Property-Tax Foreclosure Action" (formerly known as "fast-track in rem") shall report the following information to the City Attorney:

1. Identification of the subject parcel.

A. Address: _____

B. Tax key number: _____

C. Most recent assessed value? \$_____ For year _____

D. Who is the owner of record? _____

E. Attach printout from Assessor's website at:

<http://isdweb1.ci.mil.wi.us/citygov/assessor/assessments.htm>

2. Identification of the years that the parcel is tax delinquent.

A. Identify specific years that are delinquent. _____

B. Specify payout information for the parcel from the Treasurer's website. What is the total amount due, with interest and penalties, as of the month of this request?

Total amount due: \$_____ as of _____

C. Attach payout statement from Treasurer's website at:

http://isdweb1.ci.mil.wi.us/treasurer/taxsearch/Balance_Address.htm

D. Check City Treasurer's "listing of delinquent-tax accounts" at <http://www.city.milwaukee.gov/DelinquentTaxAccount11810.htm>. What is listed as the "enforcement status?" A "7" listing means the owner is in bankruptcy and in-rem foreclosure may be prohibited by an "automatic stay."

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3. Confirm that the parcel is eligible for in rem foreclosure.

Per Wis. Stat. § 75.521(3)(a)2., the City may not commence an in rem foreclosure action unless one year has elapsed from the date of the delinquency that the City seeks to foreclose. For example, the tax bill for year 2003 taxes gets mailed in December of 2003, and is payable in January, 2004. Wis. Stat. § 74.87. *Example.* If the owner fails to elect the installment method and fails to pay the full amount due by January 31, 2004, a tax certificate will be issued by the Treasurer, effective as of February 1, 2004 for the year-2003-tax delinquency. Add one year to that, to get to February 1, 2005 as the soonest the parcel would be eligible for in rem foreclosure on the year-2003 delinquency.

Yes, the parcel is eligible for in rem foreclosure.

No, the parcel is not yet eligible for in rem foreclosure.

4. Reason to foreclose.

Explain why you want the City to bring an in rem foreclosure action at this time against this parcel. A rational reason must be articulated. Explain particulars.

A. Acquire for purposes of a Wis. Stat. § 75.106 deal? Yes No

1. Has the Common Council approved the § 75.106 deal? Yes No
Wis. Stat. § 75.106(2)(g) requires the Common Council to approve the 75.106 assignment contract.

2. If the Common Council has approved the 75.106 deal:

(a) the Common Council file No. is _____

(b) that file was passed by the Council on _____

(c) a certified copy of that resolution is attached hereto: Yes No

B. Acquire as an alternative to having to acquire via condemnation? Yes No

If yes, explain: _____

C. Acquire to stop or reduce blight or nuisance? Yes No

If yes, explain: _____

D. Acquire as part of a City-development deal or to assist a private party with a development deal? Yes No

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If yes, explain: _____

E. Other? Yes No

If yes, explain: _____

5. Environmental.

A. Is the parcel on the “do not acquire list?” Yes No

If so, why? _____

B. Has a Phase I been done? Yes No.

If yes, what is the past use that gave rise to the concern?

C. Do we have results of any Phase II testing? Yes No

If yes, explain: _____

D. Are there aboveground containers with unidentified substances? § 292.11(9)(e)2.c.
 Yes No

E. Has DCD reported any unusual conditions? Milw. Code of Ordinances § 304-55.
 Yes No

If yes, explain _____

F. If the property is on the DNA list, and a Phase I suggests an environmental problem or recommends environmental testing, unless a 75.106 deal is involved, the City Attorney will require that the proposed acquisition be approved by a ¾ vote of the Common Council as a condition to acquiring via “Community Improvement In Rem” without further testing being done. Milw. Code of Ordinances § 308-22.

1. Does this apply in this case? Yes No

2. Is acquisition under the “safeharbor” (i.e. the municipal-liability exemption under Wis. Stats. § 292.11(9)(e)1m.a.) contemplated? Yes No

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If yes, explain _____

H. Cost Recovery Action under § 292.33.

If, for example, City does foreclose on tax-delinquent property by taking advantage of the municipal-liability exemption (safeharbor) under 292.11(9)(e)1m, the City can recover certain restricted costs from certain restricted persons who possessed or controlled the hazardous substance or caused the discharge.

Is this contemplated? Yes No

If yes, explain _____

I. Insurance Archaeology. Is insurance archaeology being considered (was there a policy affecting the parcel at one time that still covers environmental matters)? WI Supreme Court decision in *Johnson Controls, Inc. v. Employers Insurance of Wausau, et al.* (July 11, 2003) (rethinking the old *Edgerton Sand and Gravel* decision – *City of Edgerton v. General Casualty Co.* (1994)).

Yes No

If yes, explain _____

6. Lease.

A. Is the property currently being leased? Yes No

B. If so, to whom (_____), and is it the current intent to keep the tenants on after their leasehold interest is effectively terminated by the in rem foreclosure action?

Yes No. See Milwaukee Code of Ordinances § 304-59. (DCD maintenance, repair, leasing of in rem parcels).

If yes, explain _____

7. Timing and Costs.

A. Is there an upcoming in rem foreclosure action that the Treasurer is already planning on bringing in which this parcel could be included (or piggy-backed)?

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Yes No

If yes, when does the Treasurer plan on filing that action?

And, what in rem filing will it be (for example 2004 No. 1)? In rem file number is:
_____.

B. If timing of the desired transaction/acquisition does not allow for “piggybacking” this parcel into a contemplated in rem action that the Treasurer would otherwise routinely bring, the department requesting the commencement of a special in rem foreclosure action will be charged for the following costs of bringing that action:

- filing fee, approx. \$216 per in rem action
- guardian ad litem fee, approx. \$500-\$800 per in rem action
- publication costs, approx. \$1,000-\$3,000 (depending on number of parcels)
- letter report, approx. \$60 per parcel
- document production/duplicating approx. \$200-\$300 per in rem action
- postage and lettershop costs associated with mailing required notices by certified mail, approx. \$5-\$20 per parcel
- skip tracing, approx. \$50 per interested party (if applicable)

C. (1) A special in rem foreclosure action is contemplated. Yes No

(2) If yes, the requesting department has the funds available to pay to the Treasurer the costs that will be charged therefore (see item B above for approximate costs).
 Yes No

(3) And, if a special in rem foreclosure action is contemplated, indicate your thought on when that foreclosure action should be commenced.

Date _____

Explain _____

8. **Receivership.** Is court-ordered receivership desired or contemplated?

Yes No

If yes, explain. In your explanation, include the primary purpose of the receiver (e.g., collect taxes [in personam receiver]; or appoint receiver to abate a nuisance; etc).

9. **Contact person for alderperson or department making this request for foreclosure.**

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Aldersperson or department: _____

Contact person: Name: _____

Phone: _____

E-mail: _____

Fax: _____

10. Date of this request: _____.

STEP TWO. CITY ATTORNEY REVIEW

Upon receipt of this document, as completed by the requesting department, the City Attorney shall then review the above report and:

A. **Rational Reason.** Determine whether, in the City Attorney's discretion and experience, the articulated explanation for bringing an in rem action constitutes a rational basis for bringing a "community improvement in rem property-tax foreclosure action." Rational Basis?

Yes No

B. **Kohn/In Personam.** Make inquiry of the City's outside collection attorney (currently the Kohn Law Firm) to ascertain the status of any in personam collection efforts against the owners of record.

(1) Where is collection at the Kohn Law? _____

(2) Has Kohn already started an action? Yes No.

If yes, what is the Milwaukee County Court case number?

(3) Has Kohn taken a judgment? Yes No.

If yes, when (what is the date of the judgment)?

For what years and what amount? Years _____ Amount _____

(4) Has Kohn collected? (For example, if Kohn has collected the entire tax debt already, the foreclosure action cannot be commenced on the tax liens that have been paid and satisfied). Yes No

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(5) Did Kohn not bring an action and refer matter back to the Treasurer?

Yes No.

If yes, why? _____

STEP THREE. CITY ATTORNEY COMMUNICATION TO CITY TREASURER.

If the City Attorney determines that a defensible rational basis exists, and that commencement of an in rem foreclosure action is advisable in light of information obtained under STEP ONE and STEP TWO above, then the City Attorney shall forward the underlying alderperson or department report to the Treasurer with an accompanying notation that the City Attorney has reviewed and approved the same in accordance with this protocol so that a “community improvement in rem action” may be initiated against the subject parcel.

If, on the other hand, the City Attorney does not approve the commencement of the “community improvement in rem action,” the City Attorney shall inform the requesting alderperson or department.

City Attorney approves in rem against the parcel.

Comment _____

City Attorney disapproves in rem against the parcel, and will return this to requesting department.

Comment _____

STEP FOUR. COMMENCEMENT OF IN REM.

1. The Treasurer, with assistance from the City Attorney, and after receipt of City Attorney approval of in rem per STEP THREE above, shall then proceed to foreclose against the parcel.
2. The City Attorney, the City Treasurer, and the requesting alderperson or department shall coordinate with respect to expense and staffing associated with the particular in rem action.

DISCLAIMER

This is an internal City form.

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Notwithstanding anything to the contrary contained in this protocol, the City does not waive any rights, remedies, or protections to which it is entitled under law or at equity, including, but not limited to, “safeharbor” and other statutory protections. For example, even if “safeharbor” protection under Wis. Stat. §292.11 may not now be contemplated because the City does not, at this time, believe there are adverse environmental conditions at or affecting the subject parcel, if, after foreclosure, environmental problems are discovered, the City retains and does not waive any protection to which it is entitled. Likewise, and for sake of illustration, the City retains all rights it has to collect the tax debt (or otherwise) owed to it, all rights of eminent domain, all police power rights, all cost-recovery rights, etc.

The requesting alderperson or department must realize that if it is discovered that the owner of record has filed a bankruptcy action, there may be an “automatic stay” in place that prohibits or restricts collection actions – including in-rem-property-tax foreclosure.