
Coates' Canons Blog: How a North Carolina Local Government Can Operate a Land Bank for Redevelopment

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If America's cities and towns are to realize their greatest potential as attractive and welcoming places—and as drivers of the new American economy—they must be able to repurpose their vacant, abandoned and foreclosed properties. Those properties—whether the product of the current foreclosure crisis or the remnants of the old economy—diminish the sense of community among neighbors, erase the value of lifelong investment in a home, and make it nearly impossible for cities and towns to attract and keep the creative, innovative, entrepreneurial citizens who will build the next economy.

Dan Kildee, founder of Genesee County Land Bank, in the foreword to Land Banks and Land Banking

Dan Kildee's sentiment is shared by local governments across North Carolina, but how can they “repurpose” their vacant and abandoned properties and revitalize distressed communities? The answer in Genesee County, Michigan, was a redevelopment tool called a land bank, which is a public authority created to acquire and redevelop vacant and abandoned properties. In the span of a decade, the Genesee County Land Bank acquired more than 10,000 parcels to hold or redevelop, and during the “great recession,” catalyzed more than \$60 million in new private investment. Land banks continue to spring up across the nation and are playing an increasingly important role in revitalization efforts in places such as Cuyahoga County, Ohio, and Fulton County, Georgia. A complete explanation of land bank policies and approaches across the nation can be found in a downloadable text, *Land Banks and Land Banking*.

In Michigan, forming a land bank is rather straightforward, because the Michigan state legislature enacted specific enabling authority for the establishment and operation of land banks. No such land bank legislation exists in North Carolina. Nonetheless, local governments in North Carolina can perform the basic functions of a land bank by cobbling together existing statutory authority. In this way, *the local government itself serves as the land bank and performs the major activities of a land bank*:

1. Acquire and hold troubled properties
2. Stabilize properties and eliminate encumbrances
3. Convey properties to a redeveloper

Each activity will be addressed in turn.

Acquire and Hold Property

As noted in *Land Banks and Land Banking*, the first task of a land bank is to acquire troubled properties and hold them until ready for sale. In North Carolina, there are several statutes upon which a local government may rely for acquiring and holding property for land bank purposes:

- **Acquisition and disposition of property for redevelopment:** G.S. 153A-377 (counties) & G.S. 160A-457 (cities). Cities and counties are authorized to acquire “by voluntary purchase” real property that is “[b]lighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth”; “[a]ppropriate for rehabilitation or conservation activities”; ... or “[a]ppropriate for ... the guidance of urban development.” Furthermore, the local government may “retain property so acquired for public purposes....” No particular notice or hearing requirements are prescribed. This acquisition authority may be

exercised without “the necessity of compliance with the Urban Redevelopment Law” (G.S. Chapter 160A, Article 22). This is important because the Urban Redevelopment Law requires the formation of a redevelopment commission, designation of a redevelopment area, and formal approval of a redevelopment plan as prerequisites for most purchases of property (G.S. 160A-513(c)).

- **Urban Redevelopment Law** (G.S. Chapter 160A, Article 22). North Carolina has long permitted local governments to form redevelopment commissions “to purchase, obtain options upon, acquire by gift, grant, devise, eminent domain or otherwise, any real or personal property or any interest therein” within designated redevelopment areas (G.S. 160A-512(6)). However, as already noted, property may not be acquired until a redevelopment plan has been approved—a rather involved process (G.S. 160A-513(c)). Once property is acquired, a redevelopment commission is authorized to hold the property for resale (G.S. 160A-512(6)). Governing boards may approve a redevelopment plan and directly exercise all of the powers of a redevelopment commission pursuant to G.S. 160A-456(b) (cities) and G.S. 153A-376(b) (counties). The process for approval of a redevelopment plan is outlined in this blog post. Case law related to the Urban Redevelopment Law is mentioned in this law review article.
- **Local Development Act**: G.S. 158-7.1. Cities and counties are authorized to “acquire, assemble, and hold for resale property that is suitable for industrial or commercial use” pursuant to G.S. 158-7.1(b)(2). Prior to any appropriation or expenditure for this purpose, G.S. 158-7.1(c) requires the governing board to hold a public hearing, properly noticed, as described in blog posts here and here. For a discussion of case law related to this statute, see this blog post and this law review article.
- **Acquisition by purchase at tax foreclosure**. It is not uncommon for owners of distressed or dilapidated properties to be delinquent on property taxes. Additionally, distressed properties are often the subject of code enforcement actions under minimum housing codes (G.S. Chapter 160A, Article 19, Part 6) and nonresidential building codes (G.S. 160A-439), and the costs of local government enforcement of those codes become a lien on the property that is collected as a special assessment tax lien. As blog posts written by my colleague Chris McLaughlin describe, the tax foreclosure process presents an opportunity for local governments to bid for the property and obtain ownership in order to redevelop the property. See also G.S. 153A-163.
- **Acquisition by other means**. Occasionally, a local government will purchase property in anticipation of using it for some other purpose, such as constructing new government facilities, and those plans will fall through. Sometimes property owners will make a gift of property to a local government. Cities and counties that own such property are permitted to change the use of such property and hold it pursuant to G.S. 160A-265.
- **UPDATE**: A subsequent post describes the procedural considerations before acquiring property: Follow Procedures Prior to Acquiring Property for Redevelopment.

Stabilize property and eliminate encumbrances

The second task of a land bank is to stabilize properties and remove encumbrances that prevent the property from being purchased and redeveloped in the private real estate market. The encumbrances may come in many forms: unpaid liens, aging infrastructure, or environmental contamination, to name only a few. Local governments have ample statutory authority to address encumbrances and prepare property for resale:

- **Acquisition and disposition of property for redevelopment**: G.S. 153A-377 (counties) & G.S. 160A-457 (cities). Cities and counties that acquire property under this statute are authorized to “clear, demolish, remove, or rehabilitate buildings and improvements on land so acquired.”
- **Urban Redevelopment Law** (G.S. Chapter 160A, Article 22). A redevelopment commission (or a governing board exercising the powers of a redevelopment commission) may “improve, clear or prepare for redevelopment” any property it has acquired in furtherance of the approved redevelopment plan.
- **Local Development Act**: G.S. 158-7.1. Counties and cities may develop industrial parks “by installing utilities, drainage facilities, street and transportation facilities, street lighting, and similar facilities; may demolish or rehabilitate existing structures; and may prepare the site for industrial or commercial uses.” Local governments are permitted to “construct, convey, or lease a building suitable for industrial or commercial use” and may engage in site preparation for industrial properties or facilities. Expenditures for these purposes are subject to procedural requirements as described in blog posts here and here.
- **Eliminate encumbrances through tax foreclosure**. Some properties are so encumbered with liens and conflicting claims—even among joint owners in the case of heirs property—that purchase through normal means is difficult or impossible. However, as described in this blog post, a tax foreclosure extinguishes all claims except for tax liens, so the property comes out of the process “free and clear of all interests, rights claims and liens.” (G.S. 105-374

(k).

Convey property to a redeveloper

Although local governments possess ample authority to redevelop property directly themselves, as described above, most land banks seek to place property in private hands for redevelopment. Local governments are always permitted to sell property through competitive bidding procedures (G.S. 160A-268, G.S. 160A-270, or 160A-279), but land banks often seek to place restrictions on property sales to ensure the property is developed in accordance with local priorities. The authority for restricted sales by local governments—either by selecting a specific buyer through “private sale” or by imposing restrictions on how the property is used by the buyer—is very limited under North Carolina law. A comprehensive discussion of property conveyance laws is beyond the scope of this post; Professor David Lawrence devoted an entire book to the topic: *Local Government Property Transactions in North Carolina*. However, the following are a few key statutes that permit a local government to deviate from competitive bidding procedures in limited circumstances:

- **Acquisition and disposition of property for redevelopment:** G.S. 160A-457 (cities). Cities—not counties—that acquire property “in a community development project area” pursuant to this statute are authorized to convey property “to any redeveloper at private sale” for the appraised value “in accordance with the community development plan.” The reference to community development signifies that the transaction should be undertaken for the benefit of low- and moderate-income persons and should otherwise qualify for a federal Community Development Block Grant (e.g., Neighborhood Revitalization Strategy Areas). In such cases, the sale may be “subject to such covenants, conditions and restrictions as may be deemed to be in the public interest.” These sales must be preceded by a properly noticed public hearing.
- **Urban Redevelopment Law** (G.S. Chapter 160A, Article 22). Procedures for disposal of real property in redevelopment areas are contained in G.S. 160A-514. Conveyance is permitted only for purposes that accord with the redevelopment plan, and the governing body must approve any sale. Competitive bidding procedures must be employed, but the statute authorizes the sale to be subject to covenants and conditions to ensure that any redevelopment complies with the redevelopment plan.
- **Local Development Act:** G.S. 158-7.1. Counties and cities may convey property “by private negotiation and may subject the property to such covenants, conditions, and restrictions as the county or city deems to be in the public interest....” The consideration “may not be less than” the “fair market value of the interest,” and the sale must be preceded by a properly noticed public hearing (G.S. 158-7.2(d)). The conveyance may be subsidized under limited circumstances as described in this blog post (G.S. 158-7.2(d2)).
- **Public-Private Partnerships:** G.S. 160A-458.3 (Downtown development projects) and G.S. 143-128.1C (Public-private partnership construction contracts). Counties and cities may participate in joint developments with private developers in which public capital facilities are constructed as part of a larger *private* development project. A participating local government may contribute land to the larger project. No subsidy to the developer is permitted through these statutes, and the cost of constructing the public facilities must be reasonable and cannot exceed 50% of the total project costs. The local government and the developer may enter into agreements governing the development project, thereby offering the local government some control over the outcome of the development process.
- **Conveyance of property obtained through tax foreclosure:** Property purchased to secure a debt to the local government may be sold by private sale for not less than the amount of the unit’s bid for the property, or at any price obtained through competitive bidding (G.S. 153A-163).
- **Other means of conveyance.** Local governments may also convey property for other purposes, such as for historic preservation (no subsidy permitted), for affordable housing, or for entities carrying out a public purpose. See David Lawrence’s book, *Local Government Property Transactions in North Carolina*, for further treatment of these alternatives.
- **UPDATE:** Chapter 14 of Introduction to Local Government Finance (3rd ed.), addresses property disposition in greater detail. In addition, the following subsequent posts provide detailed treatment of specific types of property disposition:
 - Conveyance of Local Government Property for Affordable Housing
 - Conveyance of Local Government Property to Nonprofit EDC for Industrial Park
 - Sale of Historic Structures by NC Local Governments for Redevelopment

This post described how North Carolina local governments can perform all of the major functions of a land bank by cobbling together several disparate sources of statutory authority. The next step is to learn how to use that authority to



redevelop troubled areas. To that end, this post will be followed by additional posts on the Community & Economic Development blog featuring case studies of land banks from around the country.

UPDATE: Follow-on case studies have been posted: (1) Genesee County Land Bank Authority, [here](#), (2) Fulton County/City of Atlanta Land Bank Authority, [here](#), (3) Cuyahoga Land Bank, [here](#).

Links

- www.communityprogress.net/filebin/Land_Banks_and_Land_Banking_Book.pdf
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-377.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-457.html
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- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=143-128.1C
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