An Overview of Relevant Legal Powers

Many New Jersey local officials are exploring how their municipalities might be able to acquire, hold and dispose of problem or vacant properties for productive reuse; that is, land banking. This short summary will provide an overview of the legal powers under which local governments can carry out those activities.

1. Municipalities have general power to acquire and dispose of properties for public purposes.

The manner in which municipalities can exercise those powers is spelled out in the Local Lands and Buildings Law NJSA 40A:12-1 et seq. Whenever a municipality acquires or disposes of property acting in its own name and behalf it must follow the Local Lands and Buildings Law.

Although under most circumstances, municipalities are required to sell municipally-owned properties through public auction, there are important exceptions:

- Leases to non-profit or public entities for a wide range of purposes, including “Any activity for the promotion of the health, safety, morals and general welfare of the community of any nonprofit corporation or association.” (C.40A:12-15)

- Private sales, which are limited to a narrower range of purposes (C.40A:12-21). Two such purposes are directly relevant to neighborhood revitalization:
  
  (j) Any duly incorporated nonprofit organization for the purpose of building or rehabilitating residential property for resale. Any profits from the resale of the property shall be applied by the nonprofit organization to the costs of acquiring and rehabilitating other residential property in need of rehabilitation owned by the county or municipality, and

  (l) Any duly incorporated nonprofit housing corporation or any limited-dividend housing corporation or housing association organized pursuant to P.L.1949, c.184 (C.55:16-1 et seq.) for the purpose of constructing housing for low or moderate income persons or families or handicapped persons.

Municipalities may also sell one to four family residential properties for a nominal sum to individuals to rehabilitate under the Urban Homesteading Act NJSA 40A:12-32 et seq. This only applies to properties taken by the municipality through in rem tax foreclosure.

A municipality may take properties that have been placed on the municipality’s abandoned property list through spot blight eminent domain, under authority provided by the Urban Redevelopment Act at NJSA 55:19-56(c)(2). The method of setting fair market value for such takings is found in the Abandoned Property Rehabilitation Act at NJSA 55:19-102.
2. Redevelopment entities have broad power to acquire and dispose of properties in areas that have been designated redevelopment areas or areas in need of rehabilitation.

The manner in which redevelopment entities can exercise these powers is spelled out in the Local Redevelopment and Housing Law, NJSA 40A:12A-1 et seq.

A redevelopment entity can be either:

- a redevelopment authority
- a housing authority which is granted redevelopment powers in addition to its role as a public housing entity; or
- the municipality itself, in which case the governing body acts as the ‘board’ for purposes of acting under the Redevelopment and Housing Law. If the municipality is located in a county with a County Improvement Authority, it can ask the County Improvement Authority to act as its redevelopment entity, in which case the Authority can exercise the powers granted by the Local Redevelopment and Housing Law.

Redevelopment entities are not bound by the auction requirements of the Local Lands and Buildings Law, and have extraordinarily broad powers to convey property to private parties:

Lease or convey property or improvements to any other party pursuant to this section, without public bidding and at such prices and upon such terms as it deems reasonable, provided that the lease or conveyance is made in conjunction with a redevelopment plan, notwithstanding the provisions of any law, rule, or regulation to the contrary. (C.40A-12A-8(g)).

The conveyance must be in conjunction with a redevelopment plan. In order to adopt a redevelopment plan, the area where the property is located must be designated an area in need of redevelopment or an area in need of rehabilitation. The requirements for designation of each are set forth in the law. The difference between the two is that the redevelopment entity is not allowed to use eminent domain to take property in an area in need of rehabilitation. The other powers, including disposition of property, are the same.

The conditions for designating an area in need of redevelopment are quite stringent, but for designating an area in need of rehabilitation much less so, and relatively easily met without unreasonable expense by any older, distressed municipality (C40A:12A-14). Some cities have designated the entire municipality as an area in need of rehabilitation, thus enabling the redevelopment entity to act anywhere within the city.

A city may choose to convey properties it has acquired for land banking to a redevelopment entity for disposition, in light of the redevelopment entity’s greater flexibility in that regard. A municipality may convey any municipally-owned property to a redevelopment entity for subsequent disposition, with or without compensation (NJSA 40A:12A-39).