

WARREN COUNTY BOARD OF SUPERVISORS

COMMITTEE: REAL PROPERTY TAX SERVICES

DATE: JUNE 23, 2011

COMMITTEE MEMBERS PRESENT:

SUPERVISORS BENTLEY
LOEB
MONROE

OTHERS PRESENT:

MICHAEL SWAN, DIRECTOR, REAL PROPERTY TAX SERVICES
DANIEL G. STEC, CHAIRMAN OF THE BOARD
JOANN MCKINSTRY, ASSISTANT TO COUNTY ADMINISTRATOR
JOAN SADY, CLERK OF THE BOARD

COMMITTEE MEMBERS ABSENT:

SUPERVISORS GOODSPEED
MCDEVITT

KEVIN GERAGHTY, BUDGET OFFICER

SUPERVISORS VANNESS
THOMAS
TAYLOR
GIRARD
STRAINER
WOOD
MCCOY

JOE HYLAND, PROJECT DEVELOPMENT MANAGER, C.T. MALE ASSOCIATES, P.C.

KIRK MOLINE, ENVIRONMENTAL ENGINEER, C.T. MALE ASSOCIATES, P.C.

GARY BOWITCH, ESQ., ENVIRONMENTAL LAW

DON LEHMAN, *THE POST STAR*

JOANNE COLLINS, LEGISLATIVE OFFICE SPECIALIST

In the absence of the Committee Chairman, Vice-Chairman Bentley called the meeting of the Real Property Tax Services Committee to order at 11:04 a.m.

Motion was made by Mr. Loeb, seconded by Mr. Monroe and carried unanimously to approve the minutes of the previous Committee meeting, subject to correction by the Clerk of the Board.

Privilege of the floor was extended to Michael Swan, Director of Real Property Tax Services, who distributed copies of his agenda to the Committee members; *a copy of the agenda is on file with the minutes.*

Mr. Swan presented a request to rescind Resolution No. 267 of 2011 which authorized the re-issuance of a tax deed for Town of Johnsborg Parcel No. 132.-1-88. He advised that the property owner had located and filed the lost deed.

Motion was made by Mr. Monroe, seconded by Mr. Loeb and carried unanimously to approve the request to rescind Resolution No. 267 of 2011 as outlined above and the necessary resolution was authorized for the July 15, 2011 Board meeting. *A copy of the resolution request form is on file with the minutes.*

Addressing the New Business portion of the agenda, Mr. Swan extended privilege of the floor to Joe Hyland, Project Development Manager for C.T. Male Associates, P.C., who would speak about the processes relative to parcels suspected of environmental contamination. Mr. Hyland stated C.T. Male Associates, P.C. was an engineering and architectural firm located in Albany, New York with an office in Glens Falls. Mr. Hyland noted that Kirk Moline, Sr. Geologist and Environmental Project Manager was present. Also in attendance, he stated, was Gary Bowitch, Environmental Law Attorney. He apprised that Mr. Moline and Mr. Bowitch had 25 and 30 years of experience in their respective fields.

Mr. Hyland cited three Warren County parcels located in the Towns of Hague, Queensbury and Johnsbury which may have environmental contamination. He advised that Mr. Bowitch would inform the Committee of the legal measures with which the County could gain access to the properties in order to determine the level of contamination.

Privilege of the floor was extended to Mr. Bowitch, who stated that uncertainty in terms of contamination levels was the foremost issue and he noted that many counties had not taken action on tax delinquent properties with possible contamination and therefore continued to pay school taxes. He reminded the Committee that the title holder was responsible for expenses associated with contamination clean-up efforts. Mr. Bowitch advised the first step was to gather information regarding the parcels. According to Environmental Conservation Law, he stated, the County Attorney could request and obtain an Order from a Judge for a Temporary Incidence of Ownership for the County which would enable assessment or investigation of the site. He asserted that the process to assess contamination levels would proceed as follows: the County would identify the parcels to be investigated; gather and compile public records for those properties; and contract for a focused Phase 2 assessment to include a cost estimate. The cost estimate, he noted, was imperative, especially when a potential buyer had expressed interest and the cost estimate report often led to further interest in the parcel. Mr. Bowitch apprised the three properties in Warren County were ideal examples of properties appropriate for this type of investigation.

A short discussion ensued and Mr. Bowitch noted that if a parcel were sold at auction, the purchaser would be required to reimburse the County for the cost of the environmental contamination investigation.

Continuing, Mr. Bowitch pointed out the viability of properties located in active communities or on well traveled roadways where the assessment could prove valuable for the possible future use of the site. Mr. Taylor asked if the current property owner could challenge a Temporary Incidence of Ownership and Mr. Bowitch stated that the completed analysis report would allow the County to determine if continuation or discontinuation of foreclosure activities was necessary.

Mr. Bowitch explained that the Temporary Incidence of Ownership would begin with the list of properties eligible for foreclosure with the County Attorney's Office. He advised that the County was required to provide notice of foreclosure to the property owners. If the County so chooses, they could stay the foreclosure and obtain a temporary incidence of ownership from a judge, which would allow for entrance on the property for investigative purposes. The main purpose, Mr. Bowitch noted, was to have the properties placed on the tax rolls.

Mr. Monroe noted that some Towns would have difficulty with the process and Mr. Bowitch concurred and noted that some municipalities, typically cities, had taxing authority. Mr. Monroe asked if there were guidelines for the cost of environmental contamination investigations. Mr. Bowitch cited the example of a former gasoline station where there was no exemption for liability on petroleum for the municipalities.

Pertaining to Phase 2 analysis, Mr. Moline noted that a variety of investigative tools were used and in some cases drilling was required. He noted that some counties had used in-kind services and County equipment. When determining cost, he said, an effort would be made to identify what appeared to be the most significant environmental peril first. Mr. Bowitch underscored the importance of the collection of information for each site prior to the assessment. He estimated the cost of investigation for a former gas station to be between \$5,000 and \$10,000. In terms of funding sources, he continued, the County could set up a specific fund for this purpose; Federal and

Environmental Protection Agency (EPA) support was available; and the Towns may be willing to contribute.

Regarding the cost of clean-up, Mr. Monroe noted if the property were found to be clean, the County could proceed with tax foreclosure activity. He asked if the cost of the investigation could be added to the tax foreclosure expenses for properties requiring clean-up and Mr. Bowitch replied affirmatively. Mr. Bowitch added that the engineering report also served as a marketing support tool for the property.

Mr. Moline advised that in the event of petroleum contamination, C.T. Male Associates was required to notify the State, and he asked if the State was obligated to do further investigation and clean up. Mr. Bowitch stated that although the State had a legal obligation, it was their prerogative to prioritize such matters. He cited a case for which the New York State Department of Environmental Conservation (NYS DEC) had not scheduled clean-up efforts and the County refrained from foreclosure proceedings due to the prohibitive cost of clean-up. He apprised that collaborative efforts between the NYS DEC and the County had allowed the project to move forward. The collaboration, he said, included a payment of \$40,000 from the County to the NYS DEC toward the \$125,000 clean up. He further explained that once the County took title, the State granted a full release which exempted the County from clean-up responsibility. The DEC proceeded with clean up and the parcel was eventually deeded to the Town and used as a park. Mr. Bowitch stated that although the property was not on the tax rolls, it had greatly improved the facade of the Town and Mr. Monroe added the County was no longer responsible for school tax payments.

Mr. Swan recommended that a procedure be drafted to address blighted parcels before they became a larger problem. He also suggested that a percentage of the proceeds from the County Land Auction be set aside for clean-up expenses; thereby removing the need to use Contingent and General fund monies for same.

Mr. Taylor asked at what point in the process would the cost for the investigation be made known to the County and Mr. Bowitch stated that Attorneys were typically paid by the hour and advised that legal services included budget management and fiscal planning. He stated the proposal could include a project budget and apprised that C.T. Male Associates could provide a range for the cost. Mr. Bowitch pointed out the back taxes of approximately \$93,000 and \$180,000 on the Johnsbury and Queensbury properties, respectively. With the added fiscal burden of school tax, he said, it was often in the best interest of the County to expend the necessary funds to make the properties viable.

Mr. VanNess opined that the Queensbury parcel located near the bike path on Bay Road could be a viable commercial property to be returned to the tax rolls. Mr. Swan confirmed the parcel was over an acre in size and was listed for sale. He informed that a prior effort to conduct an assessment on the Bay Road parcel had been stopped by the property owner.

A discussion ensued.

Mr. Swan recommended that a plan be developed to commence in 2012, to address clean up procedures. He stated that he would meet with Paul Dusek, County Attorney/Administrator, to formulate questions for the proposals and details for budget preparation. Mr. Bowitch noted that in some cases the Local Development Corporation and the Industrial Development Agency might offer assistance with various aspects of the project which could include a financial contribution. Mr. Monroe urged that suspect properties be identified early to avoid a long term tax delinquent accrual that reached a level which exceeded the value of the property and Mr. Swan agreed. Mr. Swan added that he would like to see the Bay Road property addressed first.

Continuing with his agenda review, Mr. Swan presented a request on behalf of Johnsburg property owner Richard Mosher, to waive back taxes in the amount of \$93,498 on Tax Map Parcel No. 133.-8-1-27, which would allow Mr. Mosher the ability to retain ownership of the site. Mr. Swan informed that this property was one of the parcels suspected of contamination and the NYS DEC had urged Mr. Mosher to remove the gasoline tanks and proceed with site clean-up. He further explained that Mr. Mosher had not paid taxes in approximately twenty years and had continued to do business on the site and he noted there was no precedent for the County to take such action.

It was consensus of the Committee to deny the request to waive back taxes on Johnsburg parcel No. 133.8-1-27.

As there was no further business to come before the Real Property Tax Services Committee, on motion made by Mr. Monroe and seconded by Mr. Loeb, Mr. Bentley adjourned the meeting at 11:46 a.m.

Respectfully submitted,

Joanne Collins, Legislative Office Specialist