

Oregon, Brownfields, and the Land Bank and Tax Abatement Authorities

How Does It All Work – And Why Cities and Counties Should Be Interested

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Agenda

- § Brownfield Properties In Oregon;
- § What Tools Exist To Help Remediate Brownfields;
- § HB 2734 - The Land Bank Authority Bill;
- § HB 4084 – The New Brownfield Tax Abatement Bill; and,
- § New Opportunities Under Both.

What is a “Brownfield”?

- § Generally – Any property with some environmental contamination that impedes development.
- § Per ORS 285A.185: “real property where expansion or redevelopment is complicated by actual or perceived environmental contamination.”
- § Can be anything from a former dry cleaner site to a large scale industrial setting such as the former blue heron site in Oregon City.

Why Are Brownfields Problems?

- § They present a potential health hazard to the people who live nearby;
- § They impair the value of surrounding properties, reducing property tax revenues;
- § They contribute to general blight conditions; and,
- § They can result in “dead areas” in what could otherwise be vibrant neighborhoods.

Impediments To Brownfield Redevelopment

- § Many brownfields owners have neither the will nor means to clean up or redevelop the property.
- § Private developers are reluctant to acquire brownfields due to unknown extent of liability and costs to clean up the properties.
- § Environmental laws provide limited ways for local governments to acquire brownfields without being subject to environmental liability as an “owner.”

- § Tools are both public and private;
- § There are EPA/state grants;
- § There is contribution litigation; and,
- § There are prospective purchaser agreements (“PPAS”).

What Tools Exist To Help Remediate Brownfields?

- § New tools now exists – the “Land Bank Authority” (HB 2734)
- § New legislation passed June 2015; effective January 1, 2016
- § Authorizes local governments to create separate land bank authorities to acquire and redevelop land
- § Tax abatement authority (HB 4084) – passed February 2016
- § Enable a local government to provide direct financial relief to potential developers similar to tax relief in enterprise zones

HB 2734 - The Land Bank Authority Bill

- § HB 2734, was enacted to enable local government to "create an authority for the purpose of acquiring, rehabilitating, redeveloping, reutilizing, or restoring brownfield properties that are located within the geographic boundaries over which the local government has jurisdiction."
- § Once established, a Land Bank Authority has "all powers necessary to accomplish the purposes of acquiring, rehabilitating, redeveloping, reutilizing or restoring brownfield properties."

HB 4084 - The Tax Abatement Authority Bill

- § HB 4084 enables local governments to adopt ordinance or resolution for a special property tax assessment on real property and/or a property tax exemption or partial exemption on improvements and personal property located on property that meets the definition of a "brownfield" under ORS 285A.185, (collectively "tax abatement").
- § Tax abatements will enable a local government to provide direct financial relief to potential developers similar to tax relief in enterprise zones.

How Does The Land Bank Authority Work?

- § Land bank authorities are created by resolution/ordinance of the local government.
- § Once established, the Land Bank Authority is managed and controlled by a board of directors, the composition of which is made up of individuals from the local government and local community.
- § A Land Bank Authority may also establish an advisory committee to provide guidance on "the interests of the community in the actions of the board and the authority."

How Does The Land Bank Authority Work?

- § Once set up, an LBA is a “municipal corporation” under Oregon law;
- § Subject to all public records requirements;
- § Must give public notice of proposed dispositions of land; and,
- § Prepare an annual report to the governor.

The Powers Of A Land Bank Authority

- § **Land Bank Authorities Have Extensive Authority:**
- § LBAs can buy and sell properties, lease properties, accept property by gift, issue bonds, and take on debt to acquire properties.
- § LBAs can initiate cleanup activities at brownfield properties and seek to recover cleanup costs from the parties that actually contaminated the properties.

The Powers Of A Land Bank Authority

- § LBAs can develop priorities for the use of the property it acquires (e.g. Industrial, residential, mixed-use, low income housing, and open space).
- § LBAs can acquire brownfields with an eye toward aggregating the properties into more developable parcels.
- § LBAs can serve as “patient capital” — acquiring brownfields and holding them until the right development opportunity arises.

Liability Protections Given To An LBA

- § HB 2734 reduces liability risks for local governments and for the Land Bank Authority itself.
- § LBA is a separate legal entity - LBA's actions are not attributable to the local government that creates it.
- § LBAs are exempt from both property tax and state income tax on their assets while they own them.

How Does The Tax Abatement Authority Work?

- § Created by resolution/ordinance of the city, county, or port
- § Requires agreement of at least 75% of the taxing districts
- § Must include certain eligibility requirements:
 - Property owner/applicant must sign an affidavit that the "owner has not, by any acts, or omissions where there is a duty to act, caused, contributed to or exacerbated the release of hazardous substances at the brownfield,"
 - That the property owner/applicant performed "all appropriate inquiry," and,
 - Any required response actions will be performed in compliance with an order, agreement, or program authorized by the DEQ.

The Dollars Eligible for Tax Abatement

§ Categories of dollars expended in the development process that qualify as "eligible costs" for tax abatement purposes are expansive:

- Remedial action costs per ORS 465.200;
- Demolition costs;
- Costs of abating the release of hazardous substances within existing improvements at the property;
- Costs of new improvements "for the purposes of containing hazardous substances or limiting exposure to the release of hazardous substances";

The Dollars Eligible for Tax Abatement

- Costs of managing, handling, removing, treating and disposing of solid waste and building materials containing hazardous substances; and,
- Essentially all dollars expended “addressing” the hazardous substances while redeveloping a brownfield are potentially eligible for inclusion in the overall value of the tax abatement benefit.

Other Key Features

- § The tax abatement is transferable to subsequent owners
 - The transfer of the brownfield must be the result of an "arms-length" transaction; and,
 - The new owner makes all of the required certifications

- § The tax abatement is time-limited - the tax abatement period may not exceed ten (10) years (though an additional five (5) year period may be permitted).

- § Properties that are part of a federal Superfund site and state appraised industrial properties are not eligible.

Conclusion

- § The Land Bank Authority Bill granted local governments an tool to assist in the acquisition of brownfields and to establish priorities for the redevelopment of those properties.
- § HB 4084 enables local governments to provide direct financial benefits to a potential developer too.
- § This should increase the pace of brownfield redevelopment, improving the health of the residents in the area, increasing jobs, tax proceeds, and local property values.

Any Questions?



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