



Request for City Council Committee Action from the Department of the City Attorney

Date March 2, 2005

To Dan Niziolek, Chairman, Public Safety & Regulatory Services Committee
Referral to

Subject Use of Eminent Domain Authority to Acquire Boarded and Vacant Property

Recommendation

Receive and file

Previous Directives

At the February 17, 2005 meeting of the PS&RS Committee, the Department of the City Attorney was directed to prepare a report indicating the City's authority to acquire real property using eminent domain powers

Prepared or Submitted by Gary Winter, Assistant City Attorney, 673-5132

Approved by _____

Permanent Review Committee Approval _____ Not Applicable X

Policy Review Group (PRG) Approval _____ Date of Approval _____ Not Applicable at this time Note: The Policy Review Group is a committee co-chaired by the City Clerk and the City Coordinator that must review all requests related to establishing or changing enterprise policies.

Presenters in Committee (name, title)

Financial Impact (Check those that apply)

X No financial impact - or - Action is within current department budget.

(If checked, go directly to Background/Supporting Information)

___ Action requires an appropriation increase to the Capital Budget

___ Action requires an appropriation increase to the Operating Budget

___ Action provides increased revenue for appropriation increase

___ Action requires use of contingency or reserves

___ Other financial impact (Explain):

___ Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact (use any categories that apply)

Neighborhood Notification

City Goals

Comprehensive Plan

Zoning Code

Other

Background/Supporting Information Attached

Issue

The Public Safety & Regulatory Services (PS&RS) Committee has asked whether the City of Minneapolis (the “City”) is authorized to acquire through the exercise of eminent domain powers, a property designated as “boarded and vacant” pursuant to Chapter 249 of the City’s Code of Ordinances.

Summary Conclusion

Yes, the City may exercise its eminent domain powers to acquire vacant and boarded properties under two state statutes.

Analysis

The PS&RS Committee has requested information as to the legality of acquiring “Vacant and boarded properties” using eminent domain authority. The PS&RS Committee would like to explore the possibility of acquiring vacant and boarded properties with the intention of renovating and retaining the improvements as opposed to using orders for their demolition pursuant to Chapter 249 of the Code of Ordinances (“Chapter 249”).

There are two state statutes that authorize the City to acquire properties using eminent domain powers. The first state statute, Minnesota Statutes, Section 463.152, authorizes the City to acquire hazardous properties through the exercise of its eminent domain powers. The second state statute, Minnesota Statutes, Section 469.012, subd. 1, authorizes the City, using powers granted in the Municipal Housing and Redevelopment Authorities Act, to acquire properties by eminent domain to either correct “substandard, slum or blighted conditions” or “to correct a shortage of decent, safe, and sanitary dwelling accommodations available to low income persons and their families.” Let us further consider each of these statutes.

(1) Nuisance Abatement Through Local Police Power Authority – Minnesota Statutes, Sections 463.15 through Section 463.261.

The nuisance abatement power authority granted in Minnesota Statutes, Section 463.15 through Section 463.26, provides additional police powers to the City. Whereas the focus of Chapter 249 is to: (a) cause property owners to rehabilitate properties to assure compliance with the City Building Code and Housing Code; or (b) demolish properties which are not capable of being rehabilitated, Minnesota Statutes, Section 469.152, authorizes the City to acquire these properties as an alternative to issuing and enforcing code compliance orders or demolishing the buildings and improvements on said properties. The City must determine that the property is a "hazardous building or hazardous property" as defined in Minnesota Statutes, Section 463.15, prior to acquiring such a property pursuant to Minnesota Statutes, Section 463.152.

Minnesota Statutes, Section 463.26 indicates that the police power authority granted by Minnesota Statutes, Section 463.15 through Section 463.26, is supplementary to other applicable state statutes and the regulatory and police powers granted by Chapter 249 and other City ordinances. Thus, the City may use this eminent domain authority in conjunction with other legislative authority to not only acquire "hazardous buildings and hazardous properties," but to also rehabilitate or to cause the rehabilitation of such properties subsequent to their acquisition by the City.

(2) Nuisance Abatement through Local Housing and Economic Development Authority - Minnesota Statutes, Section 469.001 through Section 469.047.

The Minnesota Housing and Redevelopment Authorities Act (Minnesota Statutes, Sections 469.001 through 469.047, the "HRA Act"), also provides the City with powers necessary to acquire and rehabilitate nuisance properties. These powers are the type of "supplementary powers" to those provided in Chapter 249 as referenced in Minnesota Statutes, Section 463.26, above.

The eminent domain powers contained in the HRA Act were delegated to the City when it transferred most of the authority of the Minneapolis Community Development Agency (MCDA) to the Department of Community Planning and Economic Development (CPED). Recall, the City was granted certain powers pursuant to the special legislation (Minnesota Laws 2003, Chapter 127, Article 12, Sections 31-34) that enabled the City to establish CPED. Among the powers transferred from the MCDA to the City were those found in the HRA Act.

The HRA Act allows the City to use the power of eminent domain for the following purposes: (a) to eliminate blight; (b) to alleviate a shortage of affordable housing; or (c) to carry out a Redevelopment project. The HRA Act generally requires the designation of a "project area" prior to the exercise of acquisition authority, but also permits acquisition under a "spot renewal" authority for individual properties.

Most acquisitions of property in the City using the eminent domain powers found in the HRA Act have occurred pursuant to Minnesota Statutes, Section 469.012, subd. 1(6). This subsection of the HRA Act allows the City to use the eminent domain powers to acquire property located within the boundaries of a "project area." There are presently approximately 110 project areas in the City (Source: City Finance Department, Development Services Division).

For nuisance properties not located within a project area, the City may exercise eminent domain authority pursuant to Minnesota Statutes, Section 469.012, subd. 1(7). This subsection of the HRA Act enables the City to acquire real property through the exercise of eminent domain powers outside "project areas." The basic difference between this "spot renewal" subsection of the HRA Act and the "project area" subsection is twofold. An acquisition under the spot renewal authority must be preceded by a finding that the

property is “substandard.” Furthermore, an acquisition using spot renewal authority does not require that the substandard property be located in a “project area” designated by the City Council.

Conclusion

The City may exercise the power of eminent domain to acquire “nuisance properties.” Two state statutes authorize the City to exercise eminent domain authority.

Minnesota Statutes, Section 463.152, authorizes the City to acquire a “hazardous building or hazardous property” using eminent domain powers.

Minnesota Statutes, Section 469.012, authorizes the City to acquire an individual “substandard property” or otherwise acquire property located within a project area to eliminate blight, to alleviate a shortage of affordable housing or to otherwise satisfy the plans for the redevelopment of the project area as a whole.