



Thompson Coburn LLP | One US Bank Plaza | St. Louis, MO 63101

## Proceed with Caution when Considering the Acquisition of a Busted Deal

Do not underestimate the importance of due diligence when evaluating the acquisition of a busted deal. In the world of land use and zoning, a busted deal is a planned real estate development that has failed, and the future of the asset is unknown. Acquiring such an asset without understanding the hurdles necessary to reposition the asset can be costly to lenders and buyers. The costs take the form of unexpected expense resulting from missed flaws in the entitlements and opportunities overlooked in repositioning the asset.

As with any acquisition, whether by foreclosure or otherwise, the general rule remains unchanged: Gather all land use related documents, identify and analyze the issues, strategize a resolution, and quantify the cost and time to remedy in *advance* of ownership. Following is a concise list of questions to contemplate before proceeding.

**Redevelopment or Annexation Agreements:** What affirmative obligations does the owner have? What are the associated deadlines for completion? What are the costs?

**Planned Developments, Zoning Map Amendments, Special Use, and Variations:** Has the entitlement lapsed? If the property is being used, is the use consistent with the provisions of the entitlement?

**Projects Involving Enhancements:** What steps are necessary to preserve the incentives in a transfer of the asset? Do the enhancements mandate any use restrictions?

**Zoning Lot:** What is your zoning lot versus your lot(s) of record? Is the zoning lot buildable?

**Plat:** Does the plat's legal description comply with state statute? Has a plat been recorded? Have the public ways been accepted by the City?

**Associations:** Has control been turned over and the common areas conveyed to the Association? Has the budget been formed and proper insurance put in place?

**Licenses and Use of Public Ways:** Will the licenses and/or right-of-ways transfer? Have the privileges expired?

**Code Compliance Litigation:** Is litigation related to code compliance pending in either Circuit Court or the municipality's administrative hearings division? What is the potential liability to the new ownership? What is the cost of abatement of the alleged violations?

**Vacant or Abandoned Properties:** Has the property been registered, if required? What existing or future obligations do local ordinances impose on vacant or abandon properties in various states of disrepair or disuse?

**Municipal Liens:** Has the municipality secured liens for unpaid water or sewer, or unpaid fines arising out of code compliance litigation? What is the aggregate cost of these liens?

**Real Estate Tax Issues:** Are the taxes current? If the taxes have been sold, has the redemption period lapsed? Does the property require a tax division?

As no two properties are alike, the appropriate scope of review will differ depending on the nature of the busted deal. If you have questions or concerns about your deal, please contact your Thompson Coburn attorney or one of the attorneys listed below:

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