Nuisance Advanced: The Deep Clean

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INTRODUCTION

When the property owner will not or cannot abate a nuisance property, the city will have to consider various remedies, such as:

Tax sale remedies can be used to get nuisance property into the hands of private individuals. Terry Timmins will lead this discussion.

The municipal infraction approach provides a pathway for inspection of the property, civil penalties and injunctive relief. Rick Franck will lead this discussion.
Iowa Code 657A.10A provides a means for cities to take title to abandoned residential property. Rick Franck will lead this discussion.

Commercial property is an additional challenge. As commercial property turns into nuisance property the liability and costs to the city increases. Mahlon Sorensen will lead this discussion.
ABANDONED NUISANCE RESIDENTIAL PROPERTY
TAX SALE REMEDIES FOR ABANDONED NUISANCE RESIDENTIAL PROPERTIES

IOWA CODE SECTION 446.19A
CITY PURCHASE OF ABANDONED RESIDENTIAL PROPERTY AT TAX SALE

• Under an ordinance passed by county:
  ✓ City can purchase tax sale certificate for “abandoned residential or commercial multifamily housing property”.
  ✓ City can assign certificate to a person who demonstrates the intent to rehabilitate the abandoned building for habitation or build a residential structure on the property.
The city incurs no cost because the taxes owing on the property are charged off to the city and all other taxing bodies.
TAX SALE REMEDIES FOR ABANDONED NUISANCE RESIDENTIAL PROPERTIES

IOWA CODE SECTION 446.19A
CITY PURCHASE OF TAX SALE CERTIFICATE FOR ABANDONED RESIDENTIAL PROPERTY

• Under an ordinance passed by county:
  ✓ After tax sale, city can require purchaser of tax sale certificate for “abandoned residential or commercial multifamily housing property” to assign the certificate to the city upon payment of the amount of principal and interest owing to the certificate holder.
TAX SALE REMEDIES FOR ABANDONED NUISANCE RESIDENTIAL PROPERTIES
IOWA CODE SECTION 446.19A
CITY PURCHASE OF TAX SALE CERTIFICATE FOR ABANDONED RESIDENTIAL PROPERTY

✓ City may assign (sell) the tax sale certificate to person who demonstrates the intent to rehabilitate the abandoned building for habitation or build a residential structure on the property.

✓ The **cost to the city** is the principal and interest due on the tax sale certificate which it must pay to the certificate holder.
TAX SALE REMEDIES FOR ABANDONED NUISANCE RESIDENTIAL PROPERTIES
IOWA CODE SECTION 446.19B
PURCHASE OF TAX SALE CERTIFICATE FOR ABANDONED RESIDENTIAL PROPERTY BY REDEVELOPER AT “PUBLIC NUISANCE TAX SALE”

- Under an ordinance passed by county:
  ✓ The county treasurer holds a separate “public nuisance tax sale” for “abandoned residential or commercial multifamily housing properties” that are identified by the city and that “are, or are likely to become, a public nuisance”. 
TAX SALE REMEDIES FOR ABANDONED NUISANCE RESIDENTIAL PROPERTIES
IOWA CODE SECTION 446.19B
PURCHASE OF TAX SALE CERTIFICATE FOR ABANDONED RESIDENTIAL PROPERTY BY REDEVELOPER AT “PUBLIC NUISANCE TAX SALE”

✓ Only redevelopers who have entered into an agreement with the city to rehabilitate the property as housing are eligible to bid at the public nuisance tax sale.

✓ There is no cost to the city because the redeveloper who bids at tax sale pays all amounts due at tax sale.
ABANDONED NUISANCE HOUSE

Case involved lack of maintenance over a period of years

Cited numerous times for housing code and nuisance violations
  Several appeals to Board of Adjustment
  Municipal Infraction – judgment for $500

Pictures of front of house
NUISANCE HOUSE
NUISANCE HOUSE
NUISANCE HOUSE

After municipal infraction judgment attempted to inspect the interior of the house. Despite repeated requests, City not permitted to inspect interior of house. Obtained administrative search warrant to check for housing code violations. Even with warrant, entry denied. Returned with police officers and inspected.
NUISANCE HOUSE

Following interior inspection cited for housing code violations

Owners appealed to Board of Adjustment

Board affirmed the violations

After Board decision

Housing Inspector posted order banning further occupancy

Owners moved out in December

Gas & Electric service disconnected in January because furnace a fire hazard
NUISANCE HOUSE

Following July – Six months after Owners moved
City served notice that house was abandoned structure
Under City abandoned structures ordinance
Required to bring up to code or demolish

No corrective action taken
City brought suit under Chapter 657A Abandoned or Unsafe Buildings
Sec 10A allows City to be awarded title to property
657A.10A Petition by city for title to abandoned property.

“1. . . . a city in which an abandoned building is located may petition the court to enter judgment awarding title to the abandoned property to the city. . . . The owner of the building and grounds, mortgagees of record, lienholders of record, or other known persons who hold an interest in the property shall be named as respondents on the petition.

The petition shall be filed in the district court of the county in which the property is located. Service on the owner and any other named respondents shall be by certified mail and by posting the notice in a conspicuous place on the building. The action shall be in equity.”

Hearing No sooner than 60 days after filing
3. In determining whether a property has been abandoned, the court shall consider the following . . .
   a. Whether any property taxes or special assessments on the property were delinquent at the time the petition was filed.
   b. Whether any utilities are currently being provided to the property.
   c. Whether the building is unoccupied by the owner or lessees or licensees of the owner.
   d. Whether the building meets the city’s housing code for being fit for human habitation, occupancy, or use.
DETERMINATION OF ABANDONMENT

e. Whether the building is exposed to the elements such that deterioration of the building is occurring.
f. Whether the building is boarded up.
g. Past efforts to rehabilitate the building and grounds.
h. The presence of vermin, accumulation of debris, and uncut vegetation.
i. The effort expended by the petitioning city to maintain the building and grounds.
j. Past and current compliance with orders of the local housing official.
k. Any other evidence the court deems relevant.
DETERMINATION OF ABANDONMENT

Abandonment does not mean owner severs all ties with house

Council Bluffs v. Harder

Fire damaged house – uninhabitable with no utility service

Insurance company refused to pay

Sat vacant and boarded up 3 ½ years

Neighbor complaints – break-ins
DETERMINATION OF ABANDONMENT

Owner continued to pay taxes, hired her nephew to maintain and continued to pay her mortgage but could not afford to repair without her insurance proceeds.

Court found despite those efforts that house was abandoned under 657A.10A.

Affirmed on appeal.
NUISANCE HOUSE

Trial in our case was in December (1 year after abandoned)

City called Housing Inspector and Fire Chief regarding violations of Housing Code and Nuisance and fire hazards

City offered testimony of its real estate appraiser that cost of commercial demolition exceeded value of property

Also testified that ignoring cost of demolition at most property worth $1200.
JUST COMPENSATION ISSUE

Statute does not provide for any compensation for taking title to the property.

City attorneys have debated whether or not that complies with the “takings” due process clause. To avoid issue City used appraiser to establish value of the property ignoring cost of demolition.
NUISANCE HOUSE

Court found property to be abandoned
Also found no effort to comply with ordinances
Awarded title to City upon payment of $1200 to the Clerk of Court
After 30 days, City paid $1200 to Clerk and Clerk issued Change of Title to City
City demolished the house
JUST COMPENSATION ISSUE

Two appellate decisions under Sec 657A.10A

**Council Bluffs v. Harder**
- Fire case just discussed

**Waterloo v. Bainbridge**
- Supreme Court held 657A.10A action can cut off lien of purchaser at tax sale

In both cases argument that statute took property without just cause raised

Both courts ducked the issue without deciding because of procedural flaws in raising the argument
657A.10A AND TAX SALES

Following the Waterloo case, 657A.10A amended Now city required to file copy of action and verified statement of abandonment with Treasurer who then cancels tax sale and refunds what certificate holder paid No interest paid to certificate holder Sections 657A.10A (6) and 448.13
FIRE DAMAGED HOUSE

Second Case involved a rental property damaged in a fire
House was non conforming use because of front and side set backs and size of lot
House was insured for $25,000
As a result of fire insurance company totaled house
Section 515.139
Demolition reserve on fire and casualty claims on property.
1. An insurer shall reserve ten thousand dollars or ten percent, whichever amount is greater, of the payment for damages to the property excluding personal property on which the insurer has issued a fire and casualty insurance policy as demolition cost reserve if the following are applicable:
   a. The property is located within the corporate limits of a city.
   b. The damage to the property renders it uninhabitable or unfit for the purpose for which it was intended, without repair.
   c. Proof of loss has been submitted by the policyholder for a sum in excess of seventy-five percent of the face value of the policy covering the building or other insured structure.
FIRE DAMAGED HOUSE

Insurer required to Notify City of Payment

“An insurer which has received a proof of loss in excess of seventy-five percent of the face value of the policy covering a building or other insured structure, shall notify the city council of the city within which the property is located. The notice shall be made by certified mail within five working days after receipt of the proof of loss.”
FIRE DAMAGED HOUSE

City must act within 6 Months

“3. The city shall release all interest in the demolition cost reserve within one hundred eighty days after receiving notice of the existence of the demolition cost reserve unless the city has instituted legal proceedings for the demolition of the building or other insured structure, and has notified the insurer in writing of the institution of the legal proceedings. Failure of the city to notify the insurer of the legal proceedings terminates the city's claim to any proceeds from the reserve.”
FIRE DAMAGED HOUSE

Under City Ordinance non conforming structure damaged more than 50% of its replacement cost cannot be reconstructed.

Owners notified could not reconstruct without complying with setback & side yard requirements.

Owners disputed extent of damage.

Selected pictures.
FIRE DAMAGED HOUSE
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Two major issues at trial
   Extent of damage
   Meaning of City Code Provision
      More than 50% of replacement cost at time of fire
Assessed value of structure was $14,800
Both parties had experts of cost to repair
Owners offered opinion as to cost of new house of same size
City argued replacement cost was not for new house but house in same condition before fire
City prevailed and house demolished
NUISANCE COMMERCIAL BUILDINGS

Does your city have the old store building on main street?

Does your city have the old school building?
Does it hinder economic development?

Does the property belong to someone that the city council is reluctant to make demands upon?

Will the building cause damage to neighboring property?

Does the property contain asbestos?

Is the building likely to collapse?
TYPICAL CHAIN OF EVENTS

Property goes vacant

Maintenance and repairs are absent

Condition of property worsens

Each successive owner maintains less
If you have a financially responsible owner, demand their involvement.

City can budget forward for these types of expenditures.

City can encourage the removal of asbestos prior to building collapse.
City can file a Complaint For Municipal Infraction and demolish the property.
(Unfortunately there is no 657A.10A for commercial property)
If you can control the sale of the building, you can prevent a responsible owner from selling to someone with no resources.
A Certificate of Occupancy Compliance is something that can be used to encourage code compliance.
Some grant money has been available.

Some help has been available for asbestos testing and removal.

Some help has been available for demolition.
No change in the use or occupancy of land nor any change in use or occupancy of an existing building, other than for single-family dwelling purposes shall be made, nor shall any new building be occupied for any purpose other than a single-family dwelling until Occupancy Compliance Certificate has been issued.
CONCLUSION

Nuisance properties are an ever growing challenge to city resources.

The early recognition of problem properties provides an opportunity to address problems in a timely manner.

Tax sales, complaints for municipal infraction, taking title to property, and early identification of problem commercial properties are some ways to deal with nuisance properties.
NUISANCE COMMERCIAL PROPERTY
NIGHTMARE ON ELM STREET!!
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