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Advancing the abatement of blighted mill buildings through court-supervised mastership - by John Dorsey Jr.

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In Rhode Island, there is a well-established precedent of Court-supervised proceedings to liquidate insolvent real estate projects, including projects that have a historical mill building component, through what is known as a Receivership. The primary goal in this type of proceeding is through a liquidation process, to preserve and ultimately maximize the value of the mill building for the benefit of its creditors. Frequently, this type of liquidation process involves re-development contingencies such as specified development approvals, seeking tax credits, tax increment financing, re-development grants and other similar incentives.

However, there are situations where the deteriorating condition of a mill building has already substantially impaired its value in a customary sale process, and it is unclear at the outset whether a traditional liquidation is a viable option, despite the backdrop of economic bridges. Further, these situations often present a substantial public interest aspect, in that the mill building has public nuisance conditions that present immediate health and safety hazards to the general public. Unfortunately, the burden of trying to address the public safety issues often falls on the municipality. In turn, this type of underutilized property can be a substantial drain on municipal resources.

Under certain circumstances, the law allows for parties, including a municipality to seek the Court's appointment of a fiduciary, a/k/a Special Master, to take over the affairs of a property, including properties with a mill building component. The grounds for this type of appointment may originate from prior failed development efforts, the financial distress encumbering a mill building or may stem from the immediacy of the public health and safety hazards that the municipality is contending.

In the current economic cycle, this unique type of Court-supervised proceeding has been successful in working with blighted and public nuisance mill buildings that have not benefitted from traditional economic re-development opportunities. These proceedings have arisen in situations where the primary focus is placed on addressing the blight and public nuisance conditions by: (1) advancing public interests, including interim steps to try to mitigate imminent health and safety hazards; (2)

abatement by way of either removing the blight, by way of preservation and re-development, or demolition protocols; and (3) through such abatement, creating new economic development opportunities.

In this type of a matter, advancing the public interest is the first step in stabilizing the situation. In a Mastership proceeding, the Court can grant the Special Master the powers of a traditional Receiver and the Court can also tailor the appointing order to address some of the measures to be taken during the proceeding to try to preserve the public's health and safety interest. Examples of the measures that can be considered as risk mitigation strategies include municipal site access, site security, temporary property management and/or remedial measures, vacating occupants of dilapidated building structures, and interface with state and local environmental, healthcare, fire and other regulatory and/or enforcement agencies.

From there, the long term abatement of these situations comes by way of identifying the potential obstacles to abatement and the utilization of the Court proceedings to implement protocols in an attempt to either resurrect the project for re-development or to reposition the mill building far enough that another potential future use is feasible. The Special Master's role in this process is to identify and bring together the key stakeholders. Typically, this involves officials from the municipality, state environmental and other regulatory agencies, as well as current and neighboring landowners.

In working towards developing abatement options, the depoliticized atmosphere created in the Court-supervised proceeding provides a workshop type setting for the municipal and regulatory stakeholders to partner with the Court-supervised process and utilize creative development concepts that highlight the abatement priorities of the stakeholders. Additionally, as part of this process, the Special Master can step out of the shoes of a traditional seller and engage with the development community for a period to brainstorm potential re-development or re-use concepts. This process is extremely efficient in creating synergy between the development community and the stakeholders.

Examples of the types of abatement protocols utilized in these proceedings include advancing grant funded environmental work, providing certain developer liability protections during abatement activities, and Court-oversight of abatement compliance. From a land use and planning standpoint, these proceedings have also been able to utilize protocols such as subdividing a project in order to highlight development opportunities and preserve natural resources in a manner that is not traditionally available in a liquidation situation. Also, these proceedings are equipped to resolve complicated title issues (i.e. ownership disputes, restrictive covenants, easements, taxes, liens, etc.). These proceedings can be tailored to provide many of the benefits of a traditional liquidation or receivership type sale, with an equitable process specifically focused on addressing the overall blight as well as public nuisance health and safety issues.

While the current economy has provided opportunities for the re-development of many mills in Rhode Island, these specialized Court proceedings have provided a platform to advance these types of blighted properties to a point where public safety is mitigated, and economic re-development or re-use is a real possibility.

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