

BEST PRACTICES TO ENCOURAGE INFILL DEVELOPMENT

A White Paper Prepared for

**NATIONAL ASSOCIATION
OF REALTORS[®]**

By

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PREFACE

The White Paper on Infill Development has been prepared by Brian Blaesser, Michael Giaimo and Janet Stearns of Robinson & Cole LLP, pursuant to the NAR Land Use Initiative. The purpose of the paper is to assist NAR and State and Local REALTOR® Associations in identifying barriers to infill development and to recommend actions for overcoming these barriers in light of best practice techniques for infill development that have been implemented across the country.

We hope that this paper will provide the information and analysis necessary to address important infill development issues and existing barriers to infill development. The description and evaluation of best practice techniques and programs reviewed in Parts II of the paper can be used as a resource to provide State and Local REALTOR® Association and members with an understanding of the range of techniques that alone and in combination are available to overcome barriers to infill development.

State and Local REALTOR® Associations can be a leader in forging public private partnerships to promote infill development that recognizes and contributes to the vitality of urban neighborhoods. Toward that end, this paper will provide a basis for associations to advance an infill development strategy and to pursue actions that can help achieve a vision for infill development in their area.

Robinson & Cole LLP
October 2002

PART I. INTRODUCTION AND OVERVIEW

SECTION 1. PURPOSE

This paper was prepared at the request of the National Association of REALTORS® (NAR) for State and Local REALTOR® Associations pursuant to the NAR Land Use Initiative. The purpose of this paper is to identify steps as well as best practice techniques for infill development that have been implemented across the country.

1.1 SCOPE AND DEFINITION OF KEY TERMS

Urban infill development is often narrowly defined to include certain types of relatively high density development on vacant parcels of land in certain types of urban areas. For the purposes of this paper, the term “infill development” is used more broadly to include not only the development of vacant parcels of land, but also may include the demolition, reconstruction, or substantial renovation of buildings or underutilized sites that may have been previously developed.

As used in this paper, the term “best practices” means a type of technique or approach that has demonstrated potential to overcome a particular barrier or to achieve a desired outcome. Best practices for urban infill development addressed in this paper encompass a range of techniques that can be used to encourage infill development. These best practices are organized and described in this paper by category of approach. Categories addressed include: a category of organizational techniques; a category of financing techniques; and a category of other types of techniques that can be legislatively authorized and implemented separately or in combination. The objective is to analyze the advantages and disadvantages of those best practice approaches in order to examine the most effective approaches for addressing existing barriers to infill development.

1.2 LIMITATIONS OF THE PAPER

The analysis of best practices in this paper is limited to the evaluation of those infill practices that appear to have the greatest potential for encouraging infill development. In order to more fully explain certain best practices, examples are provided of how a technique has been used in a particular jurisdiction. These examples are intended to illustrate how a particular technique may be implemented and are not intended to serve as a definitive source of information for facts on a particular project or program. The best practice examples are also presented as a way to highlight general advantages and disadvantages a particular type of technique has the potential to offer. Please note that the details of the best practice example projects and programs may not always reflect the most recent regulatory changes or other modifications. Follow-up work to confirm the current status of a project or program may be necessary to learn more about how another jurisdiction implemented a particular technique.

SECTION 2. OVERVIEW OF STEPS IN INFILL DEVELOPMENT PROCESS

This section presents an overview of the major steps in the infill development process and discusses issues that frequently arise in each step of the process. As discussed in the next section, these issues can present real or perceived barriers to infill development in urban areas. Opportunities for and barriers to infill development vary by location and other factors. But there are some common issues that it is helpful to consider as a basis for understanding the best practice techniques that are available to overcome barriers to infill development within a particular area.

2.1 MARKET ANALYSIS

Opportunities for infill development in urban areas vary depending on location and characteristics of the market areas or submarkets within the larger urban area. Although the process of preparing a market analysis for a particular infill development may present a challenge, it is nevertheless one of the critical first steps in the infill development process. A market analysis can help focus decisions about the type, size and scale of a proposed infill development and may even be used to overcome perceptions that there is a weak or nonexistent market for a particular type of development in a particular infill area.

2.1.1 Analyzing Demand and Supply

A fundamental part of any market analysis, including analyses of infill developments, is an assessment of the demand for a particular type of project, taking into account the supply of available housing in the area.¹ However, the analysis of the demand for many types of infill development, particularly residential infill development in urban areas, may require a more creative approach than the traditional approaches to market analysis often used in the real estate and development industry.

In preparing market analyses for infill developments, demand and supply are evaluated for the specific types of uses proposed, such as residential, mixed-use, or commercial, and the specific product types to be developed, such as high-end residential rental units or middle-low end market rate residential condominium units. Depending on the type of use and product proposed, factors considered in analyzing demand range from employment and income trends at the national and regional level, to more localized factors, such as population and household trends and age and income distribution within a specific submarket. Supply is evaluated by analyzing the products that would compete with the proposed infill development project in the submarket. For example, in preparing a market analysis for a proposed infill residential condominium development, factors considered in analyzing supply would include the price, size, location, availability and absorption rates of existing and planned developments that would compete for buyers in

¹ Summary Report: National Forum on: Encouraging Market-Rate Infill Housing Development (Washington D.C. ULI –the Urban Land Institute, 1998).

the submarket. Based on the analysis of demand and supply, the market analysis assesses the performance of the project and the portion of the target market that the property would capture.²

2.1.2 Challenges in Analyzing the Market for Infill Development

When an infill development is proposed as a tool for revitalizing an urban core area that has experienced limited investment in infill or redevelopment, the traditional approaches to market analysis may be difficult to apply. In areas where no comparable residential infill projects have been constructed or planned it is more difficult to evaluate demand and supply. Even anecdotal or qualitative information about buyers in the market, what they are looking for and where they want to move, can lend support for a conclusion that a project can be positioned to capture a large share of a certain market segment.³ For example, anecdotal evidence regarding recent sales to young single professionals may show that such buyers are likely to be attracted to an infill development because of more competitive pricing or a lack of supply of a desired type of new or different product in other submarkets.

The first developers of infill projects in previously stagnant urban core areas may face greater risks than later market entrants. But if the project is properly positioned, there is an opportunity to capitalize on the absence of competitive projects by capturing a large segment of the targeted market and by having the units quickly absorbed.

2.2 SITE SELECTION AND ACQUISITION

The selection of a location or site for an infill development project is driven by a number of factors that are related to those considered in a market analysis. The physical, economic, and social characteristics of a particular location can have a major effect on the marketability of an infill project. For example, the characteristics a developer evaluates in selecting a site for a residential infill development may include:

- The type and character of surrounding land uses;
- The adequacy of public services and facilities, such as schools;
- The accessibility of the site to transportation routes and parking;
- The availability of retail stores and services;
- The proximity of amenities such as parks; and
- The safety and reputation of the area.⁴

Urban neighborhoods that are candidates for infill development may have competitive advantages and disadvantages with respect to the above characteristics. Urban neighborhoods in major metropolitan areas are often more accessible to public transit and

² Diane R. Suchman, *Developing Infill Housing In Inner-City Neighborhoods* (Washington D.C. ULI –the Urban Land Institute, 1998).

³ *Id.*

⁴ *Urban Infill Housing: Myth and Fact* (Washington D.C. ULI –the Urban Land Institute, 2001)

areas of employment than outlying suburban communities and neighborhoods. However, these same urban neighborhoods may be at a disadvantage if existing streets and other infrastructure are in poor repair, or if existing land use patterns, lot configuration or size, or street grids do not easily lend themselves to the types of infill development that is demanded in that submarket. The design of an infill development may necessarily be shaped by the historical or architectural context of the neighborhood, but the design must also meet the expectations and demands of the target market.

A major challenge in selecting and acquiring an infill development site is to locate a site that can meet the complex and, at times, conflicting objectives for a project to:

- accommodate the density of development needed to make the project financially feasible and generate the developer's expected return;
- be designed to a size and scale that is consistent with market demand and the desired character of the neighborhood; and
- provide the landscaping, parking, lighting, security and other amenities that are demanded by the target market.

The availability of infill development sites that can meet all of these objectives may be limited in some urban neighborhoods.

2.2.1 Land Assembly

Suitable infill development sites large enough to accommodate feasible projects are sometimes only available through the assembly of multiple parcels. Particularly when infill development is intended to revitalize an urban core area, many developers view a larger site as providing more of an opportunity to design a development that provides amenities that may be demanded in the market area and has a more significant revitalizing affect on the neighborhood. Overhead costs associated with developing larger sites are also typically lower per development unit than for smaller developments on smaller sites.

However, the need to negotiate with owners of multiple parcels to assemble a development site can add to the complexity and costs of site acquisition and is often perceived as a barrier to infill development. In addition, site preparation costs on assembled parcels in urban neighborhoods may also be high if the assembled parcels were previously developed and have a variety of obsolete or deteriorated improvements that must be demolished or removed before a new infill project can be constructed.

2.2.2 Tax Liens and Title Issues

Site acquisition for infill development can also be complicated by the existence of tax liens encumbering properties and by unclear title to properties targeted for acquisition. Tax liens and clouded titles are commonly perceived barriers to infill development as discussed in Part II below. In urban core areas in need of revitalization, properties that are potential infill development sites may be vacant or underutilized sites owned by

absentee owners who have minimized holding costs by choosing not to expend funds to improve or maintain the property, and who may even have failed to keep property tax payments current. In the extreme, properties may become available through the foreclosure of tax liens and purchasers of such properties must ensure that they obtain clear title to the property. Title issues may also arise in connection with easements that limit the development potential of a property or other encumbrances that must be cleared before a property can be conveyed.

2.2.3 Environmental Contamination

A key issue in undertaking infill development in urban areas is the need to evaluate the costs and risks associated with environmental contamination that may affect infill development sites. Until relatively recently there were few techniques to overcome the often insurmountable barriers presented by the contamination of abandoned industrial sites in urban areas. Such sites can have cleanup costs that exceed the value of the property. However, new techniques have recently been made available, through “brownfields” programs at the federal, state and local level, to respond to the risk of liability and other barriers to acquiring and redeveloping contaminated properties.⁵ Brownfield programs are discussed in detail in Part II as a best practice technique for infill development.

2.3 INFILL DEVELOPMENT PROJECT FINANCING

The financing of infill development in distressed urban core areas is complicated by certain common characteristics of property values in these areas that impact the financial feasibility of infill projects. The first characteristic that must be taken into account is that the value of improved property may be relatively low in distressed urban areas. For example, the value of a new infill development in a former urban industrial area may be relatively low because of its location in an area surrounded by predominately obsolete or deteriorated structures and the lack of comparable properties within the submarket. The value of an infill development project may be so low that the cost of constructing the project is higher than the market value of the completed project.⁶ For the reasons discussed in Sections 2.1 and 2.2 above, the added costs and risks associated with acquiring and preparing these infill sites contributes to infill development costs that are high compared to the value of the completed project.

In addition to development costs that may exceed the market value of the completed infill project, the financial feasibility of an infill development can be further impacted by speculation that results in above market pricing of infill development sites. Speculation is fueled by owners of land in urban areas targeted for infill development who may retain properties or price properties above market value in anticipation of increases in values that may result from planned infill development or infrastructure improvements.

⁵ Davis, Todd S. *Brownfields: A Comprehensive Guide to Redeveloping Contaminated Property*. Chicago, Ill.: American Bar Association. Second Edition 2002.

⁶ *Strategies for Successful Infill Development*, Northeast-Midwest Institute and the Congress for the New Urbanism, 2001.

The combination of comparatively low property values for completed infill developments and high prices for initial land acquisition can make market rate infill development in some urban core area financially infeasible unless a nontraditional source of funding is available to fill this financing gap.

2.4 LAND USE CONTROLS AND PERMITTING

An assessment of the government regulations applicable to a proposed development project is an important step in any development process. Municipal zoning codes, building codes and other local controls often present a major barrier to urban infill development projects.⁷ Depending on the local jurisdiction, existing local controls may implement land use policies that are biased toward lower density or suburban types of development and may not allow the flexibility to design financially feasible, market supported infill development. If a developer of an infill project is required to seek amendments to or variances from local codes in order to construct an infill development, the uncertainty in the outcome of that process and the costs and delays associated with obtaining such approvals may be perceived by the developer as an insurmountable barrier.

A related issue is the extent to which the development review and approval processes are streamlined to offer an efficient process that minimizes the costs and risks to the developer and promotes certainty in the outcomes of the process. In order to facilitate infill development, one basic technique local governments can implement is the streamlining of local land use decision-making processes to reduce the complexity and number of different approvals required for an infill development. Decision-making processes can be streamlined by simplifying and minimizing the different types of zoning decision-making processes and the number of approvals a developer is required to obtain in order to proceed with the construction of an infill development project.

Even if local codes allow the types of uses and densities needed for a specific infill development project, developers often need to work with elected and appointed government officials and neighborhood groups to overcome potential opposition that particular infill development projects may engender. Among the myriad of issues that may be raised by local officials and neighbors are concerns with the density of a development, its impact on infrastructure and other public services, its appearance or its impact on the availability of affordable housing. Developers may have to build support for a project by working with local political and neighborhood leaders to design quality developments that meet the objectives of both the developer and the community.

⁷ Diane R. Suchman, *Developing Infill Housing In Inner-City Neighborhoods* (Washington D.C. ULI –the Urban Land Institute, 1998).

PART II. INFILL DEVELOPMENT BEST PRACTICES

SECTION 1. OVERVIEW OF “BEST PRACTICES” FOR INFILL DEVELOPMENT

This Part presents several categories of “best practice” techniques that have been successfully used in various jurisdictions to overcome barriers to infill development. Each section begins with a description of the types of best practices available to address the particular issue or barrier of concern. This is followed by an example of how other jurisdictions have implemented the best practice, either alone or in combination with other techniques, to encourage infill development. These best practice examples are followed by a summary evaluation of the best practice techniques.

SECTION 2. SITE ACQUISITION AND ASSEMBLY

2.1 DESCRIPTION OF SITE ACQUISITION AND ASSEMBLY BEST PRACTICES

The acquisition and assembly of land are frequently cited barriers to infill development that many communities have recognized must be addressed if urban infill development strategies are to succeed. Many of the best practice techniques to overcome barriers to site acquisition and assembly that are described in this section relate to other types of best practices discussed in the sections that follow. For example, the best practices for financing of site acquisition and assembly that are reviewed in this section also relate to the best practices for financing presented in Section 5.

2.1.1 Financing for Site Acquisition and Assembly

A range of types of financing programs may be used to underwrite the high costs of infill development. Tax and financing incentives and government grant and loan programs can be used alone or in combination, depending on the nature of the financing gap for a particular project. These types of financing programs for infill development are discussed and evaluated more fully in Section 5. However, many of the techniques that provide gap financing in the form of tax incentives or grants or loans are designed to underwrite the costs of construction and the infrastructure needed to support an infill development, and are not specifically targeted at site acquisition and assembly costs. The need for gap financing is often a result of the relatively high land acquisition costs a developer may incur for a prime urban infill development site. The discussion of best practice examples below explores how different entities and organizations can become participants in the infill development process to overcome barriers presented by high site acquisition costs.

At the other extreme, infill development may occur on less desirable low value or no value sites. These types of sites require the use of techniques that overcome the problems associated with a site so that it can be made available for infill development at a low cost

or no cost as an incentive to revitalize a distressed urban area. Best practices for site acquisition and assembly on these types of problem properties also include organizational techniques for entities that can work to turn these types of problem properties into marketable infill development sites.

2.1.2 Targeting Infill Development Areas and Inventorying Parcels

A common approach used by local governments seeking to stimulate infill development is to identify a specific area in which to target urban infill development efforts. Once an urban infill area is delineated, site acquisition can be facilitated through techniques such as the inventorying of available development parcels and owners, and the marketing of specific infill development opportunities in the targeted area. In many states this approach is often supported by state legislation authorizing the establishment of infill development areas as a way to also focus state incentive programs on these priority areas.

2.1.3 Entities Involved in the Site Acquisition and Assembly Process

Assistance with site acquisition and assembly can be provided by local governments or other types of development authorities, planning agencies or nonprofit organizations working to facilitate infill development. Governmental assistance with land acquisition and assembly can also be obtained through more proactive approaches in urban infill areas, such as through the actual acquisition, assembly and marketing of sites for sale to potential infill developers.

At the extreme, eminent domain is a technique that may be used by local governments and other entities authorized to take property pursuant to state statutes, which identify the public purposes for which, and procedures by which, private property may be taken. However, there are policy concerns with the potential infringement on private property rights through adversarial eminent domain proceedings when a property owner has chosen not to negotiate with a government agency or not to accept the offered purchase price. For this reason, the wide use of eminent domain is not recommended as a substitute for other types of best practice techniques that rely upon voluntary transactions or the acquisition of property through foreclosure or other judicial process due to the failure of the property owner to meet financial or other obligations associated with ownership of the property.

2.2 EXAMPLES OF SITE ACQUISITION AND ASSEMBLY BEST PRACTICES

In urban areas that lack strong market support for infill development, the most effective best practice techniques for site acquisition and assembly are those in which a city actively facilitates the infill development process, either directly, through the establishment of a redevelopment authority or other type of agency, or by working cooperatively with nonprofit and for profit development groups and corporations. The best practice examples below illustrate how organizations and actions can be used to encourage infill development by facilitating site acquisition or assembly.

2.2.1 Example of Local Government Best Practices

City of Chicago, IL. The City of Chicago infill and redevelopment programs offer an example of how a city can effectively play a direct and active role in the development process. The City has a range of redevelopment-related programs targeted at site acquisition and assembly that have been successful in stimulating a variety of types of infill and redevelopment projects throughout the city. The City's efforts to proactively acquire and assemble infill sites have focused more on industrial sites, primarily because the City housing market is strong and requires less proactive intervention. However, the City has also undertaken efforts to promote infill housing development by streamlining the zoning and permitting approval process and providing infrastructure improvements in residential infill areas.

In order to promote the redevelopment of industrial districts, the City may designate specific geographic areas as redevelopment areas, which makes projects within the area eligible for a variety of government grant and loan programs. Designation as a redevelopment area also enables the City of Chicago to exercise its power of eminent domain to facilitate land assemblage. The City is an active participant in working through the land acquisition, relocation, site preparation and disposition process.⁸ If the City actually acquires title to a property, the City will market the development site to a developer through a competitive request for proposal process or a negotiated sale for specific purposes established by the approved Redevelopment Plan for the area. The City has also established tax increment financing (TIF) districts that overlay many of the planned industrial districts and redevelopment areas and has an active brownfields program to address contaminated properties. Both TIF and brownfields are discussed in more detail below as best practice techniques.

Examples of a infill projects in which the City of Chicago was actively involved in the site acquisition process, are described below.

- **Near West Side Residential/Retail Development.** The City of Chicago Department of Planning and Development recently issued a Request for Proposals (RFP) for the purchase and redevelopment of city-owned property in Chicago's Near West Side neighborhood. This neighborhood has historically been an industrial area with numerous industrial and commercial businesses located in the area to take advantage of the nearby access to the city's highway and public transit system. However, according to the City of Chicago Department of Planning and Development, the neighborhood has changed dramatically in the last five years as former industrial buildings, vacant lots and underutilized properties have been developed with new retail, office, and residential uses. The vacant property that is the subject of the RFP consists of 39,000 square feet. The RFP calls for the site's redevelopment with a residential building with retail uses on the ground floor and accessory

⁸ Northeast-Midwest Institute and the Congress For the New Urbanism. "*Strategies For Successful Infill Development*" at 91 (2001).

parking. Twenty percent of the residential units are required to be designated as affordable. The city anticipates working with the selected developer to rezone the property to be consistent with these designated uses.

- **West Pullman Industrial Park** is a 160 acre site on the far south side of Chicago, which consists of a number of former industrial parcels that were abandoned or unused. The stable residential neighborhoods surrounding West Pullman are viewed as a pool of labor for new businesses locating in the park and the area is served by public transportation. The City of Chicago actively acquired parcels within the area and assembled sites and marketed sites to industrial users through a competitive request for proposal process. The City also took advantage of local nuisance ordinances and demolition liens in the acquisition process. Although there was infrastructure already in place to serve the area, the city used approximately \$20 million in federal funds to acquire property and upgrade the existing infrastructure. Most recently, a new \$13.1 million industrial food service manufacturing facility announced plans to purchase 9.5 acres of vacant industrial land from the City for \$103,455, which equals a land cost reduction of \$724,185. The company reportedly will also apply for a county property tax reduction and an Industrial Revenue Bond.⁹

2.2.2 Example of Land Bank Best Practices

City of Cleveland, OH. The City of Cleveland's neighborhood revitalization and infill programs are frequently cited as examples of successful best practice techniques. In particular, the city has established the Cleveland Land Bank to hold approximately 6,000 parcels, primarily acquired as a result of tax delinquencies. The land bank's general policy is to review the list of properties that will be included in a Sheriff's Tax Sale to identify parcels that the city may be interested in acquiring based on their importance to the redevelopment of an area. The city's Department of Community Development manages the Land Bank Property Inventory and acquires and disposes of properties in the land bank. The land bank sells buildable vacant lots for \$100 and makes nonbuildable parcels available to adjacent homeowners at no cost. The Department also administers a land marketing program to promote the availability of city owned land for redevelopment and provides technical assistance to developers, neighborhood groups and individuals seeking to develop properties in Cleveland's urban neighborhoods.¹⁰

The City of Cleveland also has a range of tax and financial incentives to stimulate investment in its urban core neighborhoods. Many of these programs have a record of success and have been operating since the late 1980s and early 1990s. For example, several local foundations, civic associations, corporations and the Ford Foundation worked together in 1989 to form Neighborhood Progress, Inc. (NPI) to act as an intermediary to promote investment in Cleveland's neighborhoods.

⁹ See <http://www.ci.chi.il.us/PlanAndDevelop/PressReleases/croutonco.html>

¹⁰ See <http://www.city.cleveland.oh.us/government/departments/commdev/cdneigdev/cdndlandbank.html>

2.2.3 Example of Infill Site Inventory Best Practices

City of Baltimore, MD. Baltimore has had much success in providing infill housing for young professionals, students and higher income individuals in its urban center. Although perceptions of crime and poor schools have been a disincentive for some to locate in the downtown, the relative accessibility, proximity to employment and transit and mix of uses have provided a relatively strong market for infill development within certain market segments. Baltimore has had several successful urban infill development projects that have been undertaken by relatively large and sophisticated development companies that operate in the Baltimore-Washington-Philadelphia area.

The efforts of one area developer, METROVENTURE/USA, provide an example of how a private developer can take on the responsibility for inventorying infill development housing opportunities within a particular market. In undertaking such an inventory, METROVENTURE identified and ranked development sites based on the following criteria that it identified as characteristic of optimal infill sites: size of site is large enough to create critical mass and gain attention of buyer in market; site has natural boundaries to provide definition to community; site is located in inner ring where stable housing patterns exist; site is located in area characterized by owner-occupied units; site has access to major highways and public transportation; and site offers the potential for racial and economic integration.

Based on these criteria the developer selected a site and proposed an infill development project for the eight-acre former industrial site in the Barre/Circle/Washington Village district of southwest Baltimore. This residential townhouse infill development is further described below.

- **Camden Crossing** consists of approximately 150 market rate townhomes, which were to be moderately priced in the low \$100,000s and marketed to downtown workers employed by major institutions, the City of Baltimore and private sector employers. The site consists of 17 separate parcels and the land acquisition and assembly of the site reportedly took almost a year to complete. The site is located in an Empowerment Zone and the developer and buyers of units will be able to access financing incentives offered to projects with the zone, as well as other programs offered by the City of Baltimore.¹¹

2.3 EVALUATION OF SITE ACQUISITION AND ASSEMBLY BEST PRACTICES

The evaluation of the best practice techniques in this section are summarized in the table below. The techniques considered in this section encompass two different categories or types of techniques: *organizational* techniques that address what entity may act to implement a particular technique; and *actions* that constitute best practice techniques. In

¹¹ Urban Land Institute Baltimore District Council and U.S. Department of Housing and Urban Development. "Developing Market-Rate, Infill Housing in the City of Baltimore" at 11 (September 26, 2000).

addition to these two categories, a third category—*financing* techniques—is considered in the sections that follow. The table presents a summary of the key advantages and disadvantages of each technique based upon experience with the use of the technique as a best practice approach.

**Summary Evaluation of Site
Acquisition and Assembly Best Practices**

Best Practice Technique	Type of Technique	Major Advantages (opportunities)	Major Disadvantages (constraints)
Acquisition by Government, Land Bank or other Authorized Entity	Organizational technique	Entity may act to assemble parcels; shift burden from developer to negotiate and acquire multiple sites.	Requires source of funding and authorized entity with capacity to administer.
Tax Foreclosure and Sale (See Section 4)	Action by government agency or other authorized entity	May be used as technique to clear title and to shift burden from developer to negotiate and acquire multiple sites.	Depending on authorizing legislation, may be lengthy process.
Acquisition by Eminent Domain	Action by government agency or other authorized entity	May be used to assemble parcels; shift burden from developer to negotiate and acquire multiple sites.	Limited use may be acceptable, but negative perception associated with forced taking by government.
Delineation of Urban Infill Development Area	Action primarily used by local governments	Identifies area of focus for acquisition, other actions and funding.	Unless combined with other actions, burden remains with developer to negotiate and buy site(s).
Inventory of Parcels	Action by public or private sector	Relatively low cost; does not require major public investment.	Unless combined with other actions, burden remains with developer to negotiate and buy.

SECTION 3. BROWNFIELDS BEST PRACTICE TECHNIQUES

3.1 DESCRIPTION OF BROWNFIELDS BEST PRACTICES

Developers of infill development projects on sites that are contaminated from former industrial or commercial activities must gather extensive information about the costs and risks associated with any required environmental remediation of the site prior to site acquisition. Under the broad liability provisions of the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), or Superfund,

past and present owners and operators of contaminated sites can become potentially responsible parties (“PRPs”) that are liable for cleanup costs.

In order to overcome the barriers to redevelopment of contaminated sites, brownfields programs at the federal, state and local level have been developed to accomplish the following general objectives:

- (1) Offer financial incentives to investors and developers to encourage them to take on the costs and risks associated the redevelopment of a contaminated site;
- (2) Provide liability protection to those who successfully remediate sites to agreed upon standards and their tenants and successor owners;
- (3) Offer a streamlined process and assistance to facilitate the redevelopment of brownfields sites.

The most successful brownfields programs address each of these objectives and are offered as part of a larger, well-coordinated effort to revitalize an urban area.

3.1.1 Brownfields Best Practice: Financial Incentives

In January, 2002, President Bush signed into law federal brownfields legislation entitled the *Small Business Liability Relief and Brownfields Revitalization Act* (Public Law 107-118). The act brings needed relief from liability under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as Superfund, and more federal funding for the cleanup and assessment of brownfield sites. For individuals considering the purchase or development of presently or formerly contaminated sites, the new Brownfields Revitalization Act offers greater liability protections by clarifying the existing CERCLA “innocent purchaser” defense and creates new exemptions from liability for “bona fide purchasers” and contiguous property owners.

Even prior to the adoption of the new federal brownfields act, several federal agencies, including the U.S. Environmental Protection Agency (U.S. EPA) and the U.S. Department of Housing and Urban Development (HUD), had developed programs to simplify and accelerate the redevelopment of brownfields. These programs continue to provide financial incentives in the form of grants, loans or tax incentives. The key U.S. EPA brownfields programs are:

- Brownfield Assessment Demonstration Pilot Program
- Targeted Brownfield Assessment Program
- Brownfield Cleanup Revolving Loan Fund Pilot Program
- Brownfield Tax Incentives

Despite the above programs, many factors continue to present barriers to redevelopment of brownfields sites. These factors relate primarily to how the risks associated with a site translate to costs that impact the financial feasibility of a redevelopment project. For example, funding of site assessments remains a necessary first step if a developer is to secure project financing. Although the EPA has funded more than 350 pilot brownfields projects across the country, it remains difficult to find sources of funding to finance the site assessment stage of a project. Some states have provided funding programs, such as grants, loans and tax credits, to pay for site assessments, but even with these programs a major commitment of private funds is also often needed.

3.1.2 Brownfields Best Practice: Land Banks

In order to promote redevelopment of the lower market value brownfields properties, some cities have established a government agency or a separate entity to take on the responsibility of acquiring these least marketable brownfields sites. These entities may even be involved in the assessment and cleanup of properties to provide further incentives to stimulate private investment in the redevelopment of these contaminated sites. Local land banks are often established by a city or county to promote redevelopment of urban core areas, but have less often taken on an active role in the purchase and cleanup of contaminated properties. Similar to the approach used by the Cleveland Land Bank, the land bank typically acquires property by bidding on properties in the tax sale process if other bids equal to the full amount owed on the property are not received at the tax sale. As discussed above in connection with Cleveland Land Bank, land banks may be authorized to waive or forgive back taxes in order to provide an incentive for redevelopment of a property. As a best practice technique, the ability to clear back taxes, for some sites, can be a critical step in the infill development process.

If authorized under state law, local governments may take on such a role or, alternatively, an entity controlled by a local government, such as a local land bank, could also be established to assist in the brownfields redevelopment process. In general, the Superfund “innocent landowner defense” protects municipalities from liability for cleanup of properties involuntarily acquired due to abandonment, tax delinquency, foreclosure or through seizure of forfeiture authority. The land bank technique, with the proper authorization and funding, can provide a way to remove some of the barriers associated with brownfields, such as the clearing of title and tax liens. However, as discussed below, the costs associated with taking on this role have limited the use of this technique to date and have resulted in only a few best practice examples of entities that have successfully filled this proactive role in the brownfields process.

3.1.3 Brownfields Best Practice: Regulatory Incentives and Streamlining

Through its brownfields programs, the EPA has worked closely with states to overcome the barriers posed by the threat of liability for uncertain cleanup costs. Many states have enacted legislation and programs that include the following types of reforms: “prospective purchaser” agreements to offer protections for innocent purchasers of the property; voluntary cleanup programs (VCP) that offer accelerated cleanup and limit

liability; and other reforms, such as the removal of low-risk sites from state and federal lists of hazardous sites. To offer greater certainty to the standards applied in VCPs, many states have adopted the standards developed by the American Society for Testing and Materials (ASTM), known as the Risk-Based Corrective Action (RBCA) standards or other similar risk-based decision criteria that balance cost, exposure, community needs, technical feasibility and environmental outcomes.

3.2 BROWNFIELDS BEST PRACTICE EXAMPLES

3.2.1 Brownfields Best Practice Examples: Financial Incentives

State of Massachusetts. Massachusetts is one of the few states to have established a Brownfield Redevelopment Fund.¹² The Brownfield Redevelopment Fund, under the management of MassDevelopment, was given an initial appropriation of \$30 million that is to be kept separate from other agency funds. The income from the Fund is to be used to provide grants and loans to finance up to \$50,000 for environmental assessments and up to \$500,000 for environmental cleanup actions. Any returned funds are to be reinvested back into economically distressed areas of the state. Financing is available only if applicants can demonstrate that the funds are needed to make the proposed redevelopment of the site financially feasible. Among the additional criteria for MassDevelopment's grant and loan program are the following:

- The project is located in an economically distressed area.
- All projects are required to provide matching funds according to fund guidelines.
- Grants are available only to cities or towns, redevelopment authorities or agencies, economic or industrial corporations or authorities or community development corporations.

In addition to the Massachusetts Brownfield Redevelopment fund, Massachusetts also has a new Brownfield Redevelopment Access to Capital (BRAC) program to make private financing for the cleanup and redevelopment of contaminated properties less risky and more readily available through a state-subsidized and created insurance program for lenders and developers. The benefits BRAC offers include:

- Pre-negotiated, state supported environmental insurance coverage.
- Protection against cost overruns, and unanticipated environmental costs.
- Protection against third party lawsuits related to environmental issues.
- Protection for lenders against loss on loans for development projects involving contaminated property.
- State subsidy of 50% in most instances.
- Access for any size project to environmental insurance.

¹² See www.massdevelopment.com

A number of private insurers also now offer environmental insurance in Massachusetts and other states, which like many other brownfields initiatives has largely had the effect of shifting some of the concern associated with the risk of remaining potential for liability for brownfields cleanup to a cost issue.

3.2.2 Brownfields Best Practice Example: Land Bank

While there are other examples of successful land banks similar to the Cleveland Land Bank, to date there are few examples of land banks that have become actively involved in the brownfields redevelopment process. This may be in part because established land banks may have been formed for more limited purposes, such as land conservation, or due to a lack of funding to undertake such activities. However, another major deterrent to a land bank's acquisition and cleanup of contaminated property is the need to identify an end user and use for the property prior to cleanup by a land bank. In addition to land banks, there are also best practice examples of state agencies and nonprofit organizations that are taking on a more proactive role in the redevelopment of brownfields.

Louisville, KY. The Louisville/Jefferson County Landbank Authority (“L/JC Landbank”), located in Louisville, Kentucky, was established in 1989 as a partnership of four taxing districts: the City of Louisville, Jefferson County, the Commonwealth of Kentucky and the Jefferson County Board of Education. The L/JC Landbank broadened its mission in 1997 to allow any of its member organizations to acquire brownfields properties through the L/JC Landbank if the following four criteria are met: (1) the property is abandoned; (2) the property is known to be contaminated by hazardous material or substances; (3) the costs of remediating the contamination on the property is considered to be reasonable in relation to the value of the property; and (4) there exists a potential purchaser for the property after the remediation of the contamination. The L/JC Landbank is one of the few examples in the country of a land bank that has taken on this type of role in the brownfields redevelopment process.¹³

The L/JC Landbank Authority's efforts were coordinated with the City of Louisville brownfields redevelopment initiative, which received a Brownfield Pilot grant of \$200,000 in 1995 and also received the Enterprise Community (EC) designation along with \$3 million in grant funds. With these funds, the city began to undertake site assessment in the EC area. The Louisville brownfields pilot project, which focused on an abandoned chemical plating facility, and the L/JC Landbank Authority's role in this project are described below.

- **Ni-Chro Plating facility.** After undergoing an emergency contamination removal by the U.S. EPA, liens of almost \$200,000 were assessed by the U.S. EPA on the Ni-Chro Plating facility property, which had a value of only \$35,000. After these liens had expired, the Landbank Authority acquired the property

¹³ Green Leigh, Nancy. “Promoting More Equitable Brownfield Redevelopment: Promising Approaches for Land Banks and Other Community Land Development Entities” Lincoln Institute of Land Policy Working Paper. 2000.

through tax foreclosure and the city began to undertake a site assessment of the property in anticipation of sale to a neighboring business that had expressed interest in the property. The site assessment led to a risk based remediation strategy that allowed the low level contaminated soils on the site to be capped in place. The site received a No Further Action letter in 1997 by the state environmental agency requiring that the property be subject to review every five years and limiting uses of the site to industrial and commercial uses. By 1999, the L/JC Landbank was prepared to convey the site to the purchaser with the title and contamination issues having largely been resolved through the efforts of the city and the L/JC Landbank Authority. The state legislature and the L/JC Landbank Authority board authorized the L/JC Landbank to retain the proceeds of the sale to be used to remediate other brownfields sites.

3.2.3 Brownfields Best Practice Examples: Regulatory Incentives and Streamlining

CANDO Chicago, Illinois. CANDO, the largest citywide coalition of neighborhood development organizations in the country, provides an example of how best practice techniques for brownfields can be implemented by a nonprofit corporation. CANDO members work to promote economic revitalization in Chicago's neighborhoods, including the promotion of retail and industrial development. CANDO provides a number of services to groups involved in community economic development and has undertaken a Brownfield Initiative to offer technical assistance on complex brownfields issues and to identify opportunities for brownfields remediation and redevelopment.¹⁴ The Initiative's two main components include:

- The Brownfield Redevelopment Institute, which provides training in site identification, the brownfields regulatory process, environmental assessment and real estate market analysis; and
- The Brownfield Predevelopment Initiative, which builds the organizational capacity of non-profit groups to play key roles in identifying, remediating, and redeveloping brownfields by assisting with market analyses and conducting environmental assessments testing.

Atlanta, GA. Although the Atlanta and State of Georgia brownfields redevelopment efforts have been slow to develop, the Atlanta Brownfield Initiative is reportedly a key part of Atlanta's active infill development programs. Atlanta was the recipient of a 1997 EPA Brownfield Pilot grant to promote an industrial development strategy that includes site identification and inventory and pre-acquisition site assessment components. The strategy includes the development of a brownfields database linked to a GIS system. As discussed below in connection with tax incentive best practices, the Fulton County/City of Atlanta Land Bank Authority (LBA) is reportedly actively involved in revitalization efforts in Atlanta and is an entity that serves as a vehicle to carry out efforts to return

¹⁴ See http://www.candochicago.org/programs/ind_development/brownfield.cfm

abandoned and tax delinquent properties to productive use. Although the LBA could serve a similar role in providing assistance in the acquisition of brownfields sites, the LBA has not yet become as active in the brownfields redevelopment process.¹⁵

City of St. Louis, MO. Under Missouri law, the City of St. Louis is required to foreclose on properties that are tax delinquent for more than three years. Through the tax foreclosure process the city's Land Reutilization Authority has reportedly acquired title to approximately 12,000 parcels, many of which are brownfields sites.¹⁶ Unlike Louisville, the City of St. Louis directly manages the redevelopment of brownfields sites without the creation of a separate entity like a land bank to acquire and sell properties. However, many of these parcels are small parcels that the city, like a private developer, has difficulty in assembling to create marketable parcels.

3.3 EVALUATION OF BROWNFIELDS BEST PRACTICES

Unlike the other best practice techniques for infill development evaluated in this paper, most brownfields programs were established for the primary purpose of providing incentives for the cleanup of contaminated property rather than as an infill development technique. However, brownfields regulatory incentives have been increasingly recognized as an important incentive for infill development.¹⁷ Depending on the extent of contamination and the proposed end use of a site, the variable cleanup standards offered by most brownfields programs may significantly reduce development costs on brownfields sites. In economically distressed urban areas that face other barriers to infill development, brownfields regulatory incentives alone may not provide a sufficient incentive to the cleanup of brownfields sites. As discussed above, these lower value brownfields sites often require financial incentives, which may include funding assistance for site assessments or cleanup activities in addition to brownfields regulatory incentives in order to make a project financially feasible. Thus, like many other infill best practices, the potential of the various brownfields best practice techniques to encourage infill development varies depending on the type of infill site. On the lowest value sites in distressed urban areas, a combination of techniques may be required.

¹⁵ Green Leigh, Nancy. "Promoting More Equitable Brownfield Redevelopment: Promising Approaches for Land Banks and Other Community Land Development Entities" Lincoln Institute of Land Policy Working Paper. 2000.

¹⁶ See <http://stlouis.missouri.org/slde/lra.html>

¹⁷ ICF Consulting and E.P. Systems Group. "Assessment of State Initiatives to Promote Redevelopment of Brownfields". (HC #5966 Task Order 13) December 1999.

**Summary Evaluation of Brownfields
Best Practices**

Best Practice Technique	Type of Technique	Major Advantages (opportunities)	Major Disadvantages (constraints)
Financial Incentives (grant, loan, tax credits, etc.)	Financing Technique	May be used to close the financing gap on lowest value brownfields sites.	Funding for site assessments and cleanup may be limited and insufficient to close financing gap.
Land Bank	Organizational Technique	Provides entity to assist in overcoming barrier to development of most difficult brownfields sites.	Requires authorizing legislation and funding sources.
Regulatory Incentives and Streamlining Assistance	Action by government agency or other entity	May avoid need for financial incentives if regulatory incentives are sufficient to stimulate redevelopment.	On most difficult brownfields sites may not be sufficient incentive, financial incentives may also be required.

SECTION 4. CLEARING TAX LIENS AND TITLE

4.1 DESCRIPTION OF BEST PRACTICES

One barrier to infill development in distressed urban neighborhoods is the abandonment of property by owners when the amount of delinquent property taxes owed approaches or exceeds the value of the property. The procedures by which tax liens are foreclosed and cleared are primarily established by state statute. The best practice examples below show how state enabling legislation can be structured to offer a more streamlined approach for obtaining title to property through tax foreclosure and clearing tax liens to promote infill development in urban areas.

4.2 BEST PRACTICE EXAMPLES

4.2.1 Example of Judicial Foreclosure and Land Banks

The problems presented by the abandonment of tax delinquent properties are clearly recognized by the Georgia General Assembly in the legislative findings of the Georgia tax statutes authorizing the judicial foreclosure of delinquent property taxes. These findings are:

The General Assembly finds that the nonpayment of ad valorem taxes by property owners effectively shifts a greater tax burden to property owners willing and able to pay their share of taxes, that the failure to pay ad valorem taxes creates a significant barrier to neighborhood and urban revitalization, that significant tax delinquency creates barriers to marketability of the property, and that nonjudicial foreclosure procedures are inefficient, lengthy, and commonly result in title to real property which is neither marketable nor insurable. In addition, the General Assembly finds that tax delinquency in many instances results in properties that present health and safety hazards to the public. Consequently, the General Assembly further finds that the alternative to nonjudicial tax foreclosure procedures authorized by this article is an effective means of eliminating health and safety hazards by putting certain tax delinquent properties back on the tax rolls and into productive use.¹⁸

Many states like Georgia have developed tax foreclosure statutes to address the problems that occur when the total amount of accrued taxes equals or exceeds the fair market value of a property. When an owner stops paying taxes or investing in a property and the taxes owed exceed the value of a property, a local government will likely not be able to find a purchaser at a tax foreclosure sale if the required minimum bid for a property must cover the total amount of the delinquent taxes. One approach that is available in Georgia to address this problem is the creation of a public land bank authority to acquire properties to convert them to public use or to transfer properties to third party entities for development that is consistent with public purposes.¹⁹ The Fulton County/City of Atlanta Land Bank described below is an example of such a land bank.

Atlanta, GA. The Fulton County/City of Atlanta Land Bank Authority (LBA), established pursuant to state statute, has the authority to waive or forgive delinquent property taxes, which enables developers to obtain clear title to a property through a less costly and more streamlined process. The LBA can assist developers with tax-delinquent property as follows:

- A developer may apply to the LBA, after securing an option to purchase a property, requesting that the LBA limit the amount of back taxes a developer must pay for a tax-delinquent parcel. This may allow a developer to purchase a property at almost no cost, making it easier to structure feasible development projects.
- The LBA may purchase property through a tax sale. If there is no competitive bid at the sale, the LDA can issue a letter to secure a tax deed instead of making full payment. The LBA can then sell the property to a qualified developer for the amount of the costs and fees associated with the tax sale.
- The LBA is authorized to acquire property on behalf of a developer through a judicial foreclosure process, which as discussed above is an expedited process available to local governments pursuant to state statute in Georgia.

¹⁸ Ga. Code Ann. §§ 48-4-75.

¹⁹ Ga. Code Ann. §§ 48-4-60 to -64.

Georgia is one of the few states that offers an option of enforcing property tax liens through a judicial or nonjudicial procedure.²⁰ Almost every state allows a period of time for an owner to make a payment on taxes, even after the taxes are delinquent.²¹ One common approach is to grant a statutory right of redemption for a period of time following the foreclosure sale, which is typically in the range of one to three years. However, states such as Georgia have created even shorter redemption periods through the use of judicial foreclosure proceedings.²² For example, the Georgia judicial tax foreclosure process is available only when taxes are delinquent for one year, but the redemption period after the sale is only 60 days.²³

Unlike a nonjudicial process, the Georgia judicial foreclosure process results in an insurable title. Local governments in Georgia may adopt an ordinance or resolution establishing a judicial foreclosure process. Upon petition to superior court and proper notice, the court holds a hearing on a petition for judicial foreclosure no sooner than thirty days after filing of the petition and may order that a sale occur no sooner than ninety days (90) after issuance of the order and notification of the sale. After the sale, an owner has sixty (60) days to redeem the property compared with the twelve (12) month redemption period applicable to nonjudicial foreclosure. Within ninety (90) days after the sale, the petitioner must file notification of the sale with the court indicating whether the sale took place, the sales price and the purchaser. The LBA pays the costs of this process out of its LBA Acquisition fund.

4.3 Evaluation of Best Practices for Clearing Tax Liens

The table below summarizes the evaluation of the best practice techniques reviewed in this section.

***Summary Evaluation of Tax Lien
Foreclosure
Best Practices***

Best Practice Technique	Type of Technique	Major Advantages (opportunities)	Major Disadvantages (constraints)
Judicial Foreclosure	Legislatively authorized action	Can offer shorter redemption period after sale to encourage reuse of property; results in insurable title.	Property owners may object to shorter redemption period.
Land Banks	Organizational technique	If statutorily authorized, can be used as entity to acquire properties	Requires legislative authorization and source of funds to

²⁰ Ga. Code § § 48-3-3(a) (nonjudicial) and 48-4-76(a) (judicial).

²¹ Indiana Law Rev

²² Ga. Code Ann. § § 48-4-40, -81(c).

²³ Ga. Code Ann. § 48-4-78(a).

		through tax foreclosure and forgive delinquent taxes.	establish and administer.
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SECTION 5. FINANCING PROGRAMS AND INCENTIVES

In some urban infill markets projects with strong market support, such as high-end residential housing, can be financed using purely private sources. However, as discussed above, there is a financing gap for urban infill development in many markets that requires more creative financing solutions and often requires both public and private sector financing.

5.1 DESCRIPTION OF FINANCING PROGRAMS AND INCENTIVES

Public sector sources of funding for residential infill include a variety of loans and grants from state housing finance agencies, proceeds from bond issues, tax credit programs and a wide range of other types of grants and loans for specific purposes related to infill development. While some state grant and loan programs are discussed in the best practice examples below, this section focuses more on types or categories of financing techniques rather than specific programs. The examples in this section illustrate how these techniques can be used to effectively leverage private sector investment and financing.

For the purposes of this section, the best practice techniques reviewed focus primarily on techniques for financing market rate residential or mixed-use development and do not for the most part address the specific public sector funding programs available to finance housing for low and moderate income individuals or the brownfields financing programs addressed above. However, even though these funding programs are not specifically addressed, many successful residential infill developments are mixed-income developments and many of the public/private partnerships described below include the provision of affordable housing among their goals.

The categories of financing techniques for which best practices are presented below are: tax increment financing; special districts and redevelopment areas; and public/private sector partnerships and the Community Reinvestment Act (CRA). Best practices for tax incentives are discussed in Section 6 following this section.

5.1.1 Tax Increment Financing

One of the most effective best practice financing techniques to promote infill development is the tax increment financing (TIF) district. A TIF district generates revenues by establishing a base tax and capturing any increased property taxes generated by a new development. It then uses those revenues to fund infrastructure improvements in the district. Local governments have used TIF district revenues to pay for a wide range of improvements needed to support urban infill developments, such as water and

sewer lines, street and sidewalk improvements, parking and lighting. A TIF district can be used to offer incentives to developers to locate in urban core areas because property taxes are used to fund improvements in the district that will directly benefit new infill developments, rather than tax revenues going back in to the general fund. TIF districts are also attractive to local governments, because they do not require a large upfront investment of public funds.

A TIF district is typically established by a city, but can also be managed by a special authority or district. Once a TIF district is created, the base property taxes from the district continue to go to the local taxing jurisdictions, but the taxes derived from the future increases in assessed values can be placed in a separate fund or used to retire bonds. While the municipality is often the recipient of the taxes captured, some states have authorized private developers to use TIF district funds through a redevelopment agency to pay project costs. TIF districts are usually set up for a 10 to 25 year time period and after that time properties in a district are returned to the tax roles. When the district dissolves, the taxing districts begin to benefit from the taxes paid on the increased property values.

5.1.2 Special Districts and Redevelopment Areas

Depending on state authorizing legislation, other types of special districts can be formed as a way of financing improvements to support infill development. Many states have legislation authorizing the establishment of types of special assessment districts to fund infrastructure improvements or other types of special districts that allow taxes or assessments to be levied against property owners in a district.

A related type of technique is the establishment of redevelopment areas pursuant to state statute. While some states have recently enacted new legislation to authorize local jurisdictions to identify infill development areas, many states have long had legislation targeted at similar types of redevelopment areas

5.1.3 Public/Private Partnerships and the CRA

The public/private partnership examples below show how a consortium of lenders and other groups can come together to build support and creative financing solutions for infill development. Once the organizational or institutional structure is in place, many different types of funding sources, including grants and loans for low income housing, can be effectively combined.

5.2 BEST PRACTICE EXAMPLES

5.2.1 Tax Increment Financing Best Practice Examples

Most states authorize local governments to create TIF districts. As discussed below, there are many successful examples of use of TIF districts as a best practice technique for infill development. Examples of best practice techniques for TIF districts in Texas and

Georgia are illustrated below. These examples show how TIF districts can best be used to leverage private investment and finance infrastructure improvements needed to support urban infill development.

Dallas, TX. The City of Dallas has extensively used TIF districts since the 1980s, when the State/Thomas TIF district was established to encourage revitalization in a downtown Dallas neighborhood. Similar to the Miami area, the Dallas metropolitan area experienced rapid population growth between 1990 and 1998, increasing almost 17 percent, while the City of Dallas grew by a more moderate 6.5 percent. Downtown office vacancy rates in Dallas are also relatively high compared with its surrounding suburbs and, during the recession of the late 1980s, these rates were even higher. In the late 1980s, recognizing the opportunities presented by the abundance of vacant parcels in the downtown, the City began to formulate a long-range strategic plan and formed a nonprofit organization, the Dallas Plan, for this purpose.

One of the first major projects stimulating private investment as a part of the City's infill strategy was the State-Thomas Planned Unit Development, located close to the downtown area. The project was financed through a public-private partnership that included a real estate investment trust (REIT) as the primary developer. The City established a TIF to fund public improvements by issuing bonds backed by the future funds that would be generated from future increases in tax revenues in the TIF district. The State-Thomas TIF district reportedly resulted in \$6.1 million in public investment and leveraged more than \$55 million in private investment. This project succeeded in contributing to the successful revitalization of the area and has been followed by other projects using TIF district financing in Dallas. More recently, in the Dallas City Place TIF district, a \$1.7 million in public investment has reportedly leveraged over \$32 million in private investment.²⁴

Atlanta, GA. A type of tax increment financing, referred to under Georgia law as a tax allocation district, is one of the financing tools illustrated in the example below. The Atlanta Development Authority (ADA) has played a major role in facilitating and structuring the financing infill development projects in Atlanta using tax allocation districts and other public and private sources to close the financing gap that often exists with urban infill projects.²⁵

- **Atlantic Steel Brownfield Tax Allocation District.** This district was established for the purpose of publicly financing certain redevelopment and cleanup activities on the Atlantic Steel Mill site in the Atlanta. Due to the lack of public infrastructure on this site and the public's interest in developing the site in a manner consistent with plans for the region, a tax allocation district was established to help finance public infrastructure. Redevelopment costs for Atlantic Steel were financed through the issuance of tax allocation bonds. A tax allocation district generated funds to pay off the bonds from the increase in the

²⁴ Northeast-Midwest Institute and the Congress For the New Urbanism. "Strategies For Successful Infill Development" at 100 (2001).

²⁵ See <http://www.atlantada.com/>

redevelopment area's ad valorem taxes and other taxes levied by the city, county and school system. Through the issuance of the tax allocation bonds, the increased revenues generated from new development within the boundaries of the District were used to pay for infrastructure costs associated with the new development.

5.2.2 Special Districts and Redevelopment Area Examples

Texas. The Texas Public Improvement District Act (the "PID Act")²⁶ is a type of special assessment district that can be used as a funding mechanism to finance capital improvements and services to benefit a defined geographic area within a municipality or the extraterritorial jurisdiction of a municipality. An assessment formula to assess properties in a PID may be based on measures such as the square footage of land and/or building or assessed value, or other type of measure that would ensure that properties within the district that are similarly benefited are burdened with an equal share of costs. A PID may be created by local ordinance upon receipt of a petition signed by the following: (1) either more than 50 percent of the property owners or by owners of more than 50 percent of the taxable land area; and (2) by owners representing more than 50 percent of the appraised value of the taxable real property in the district. If there is property owned by a local government within a PID district, the municipality must pay the assessments.

An advisory body must be established for a PID and the advisory body must provide an ongoing service plan. Both general obligation and revenue bonds may be issued and paid by the income from the PID. The improvements and services that may be funded through a PID include a relatively wide range of projects, such as distinctive street lighting, pedestrian malls and off-street parking facilities.²⁷

Atlanta, Georgia. Like the common type of special assessment district described in the example above, infill development projects have also long benefited from traditional redevelopment area legislation, which empowers redevelopment authorities to undertake redevelopment activities based upon a redevelopment plan for an area. Many of the urban renewal efforts of the 1960s and 1970s were carried out under these types of statutes, as illustrated by the example below.

- **Siena at Renaissance Park** was one of the first infill housing developments to be developed in midtown Atlanta. The development is located on a 2.7 acre site in the Bedford-Pine Urban Redevelopment Area that was cleared as part of urban renewal efforts in the 1960s. The project developer, Ackerman & Company, purchased the site in 1980 as part of a larger 30-acre development parcel. The project received property tax exemptions for the first five years and low interest financing through the city's Urban Residential Finance Authority, which provided tax-exempt bond mortgage financing. The developer also paid points toward the acquisition and obtained commitments for financing from a local finance

²⁶ Tex. Loc. Gov't Code chapter 372.

²⁷ Tex. Loc. Gov't Code sec. 372.003.

company, which reduced required downpayments of unit purchasers to five percent. The project is in walking distance to a MARTA rapid-rail station and was marketed primarily to young single professionals working in the downtown area. The project consisted initially of 52 condominium units within three buildings sited on a courtyard. A second phase of the project included an additional 120 housing units and the developer also developed other townhouse and condominiums in the area to create a critical mass of activity to revitalize the area. The Siena project sold out quickly despite the declining residential market of the late 1980s and early 1990s.²⁸

5.2.3 Public/Private Partnership Examples

Because of the difficulty of documenting market support for many urban residential infill projects, many traditional lenders may be reluctant to provide construction financing of a project if there is not clearly demonstrated market support to document the financial feasibility of a project. In addition, mixed-use developments are also more difficult to finance through traditional lenders who separate residential and commercial lending. Private sector debt financing of urban infill development by traditional institutional investors is encouraged by requirements of the Community Reinvestment Act (“CRA”). However, in many cities public-private partnerships and networks have been established to promote better access to this financing and to strengthen private lenders’ participation in, commitment to and understanding of urban infill development as a part of a CRA strategy. Examples of this type of public-private partnership are presented below.

Pittsburgh, PA. The Pittsburgh Partnership for Neighborhood Development (PPND) was created in 1983 by foundations funding community development corporations (CDCs) in Pittsburgh, including the Ford Foundation, the Pittsburgh Foundation and the Heinz Endowments. Five CDCs were originally targeted for funding by this consortium. In addition to foundation funds, several local banks, including Mellon Bank and PNC and others, and the City of Pittsburgh are active supporters of PPND.

The PPND has become a vehicle to combine several funding sources in an effort to better coordinate community development funding in Pittsburgh and has resulted in an expansion of the pool of private funds for CDC real estate development projects. The PPND Development Fund, established in 1989, makes loans and grants to CDC real estate projects at low interest rates and flexible repayment terms. The Development Fund has reportedly invested over \$6 million in CDC real estate ventures to facilitate site acquisition and preliminary development work. The PPND also offers low-interest construction and bridge financing of commercial and residential development projects. The PPND investments have leveraged other public and private sector funding.

The PPND also provided an opportunity for large commercial banks and banking officers, including CRA officers and senior executives, to become more involved with

²⁸ Urban Land Institute Atlanta District Council & U.S. Department of Housing and Urban Development. “Barriers and Solutions to Developing Market-Rate Infill Housing in Inner-City Atlanta”. Atlanta, Georgia: October 4, 2000.

CDCs and redevelopment efforts in the city. Financial institutions have reportedly seen the PPND as an opportunity for identifying new business; a way to join together to collectively share risk by forming funding consortiums; and as a way to improve CRA performance and become more involved in the revitalization efforts of the community.²⁹

Atlanta, GA. Many groups in Atlanta are actively working to promote infill development. The Atlanta Neighborhood Development Partnership (ANDP) is a non-profit organization that was established in 1991 to develop and rehabilitate low-to-moderate income housing and to provide other neighborhood services and support to CDCs in Atlanta. Through its Mixed Income Communities Initiative, the ANDP is working to identify development opportunities for housing, commercial and other uses by collecting and distributing information about development opportunities. The ANDP works in partnership with developers, CDCs, and others.³⁰

- **Centennial House.** Most recently ANDP has worked on the Centennial House project, being developed by the Novare Group, a development firm with extensive experience in mixed-use revitalization projects in Atlanta. The Centennial House is located in downtown Atlanta, in the vicinity of the site of the Olympic Games and the Centennial Olympic Park. Centennial Olympic Park, a 21-acre urban park located on the western edge of Downtown Atlanta, is viewed as presenting an opportunity to revitalize the area. The Centennial House will consist of 101 residential lofts to be sold as condominium units starting in the \$170s. The project will also include approximately 2,500 square feet of retail space at the street level. The financing for the project is provided by a consortium of lenders including: Sun Trust Bank, Wachovia, Fannie Mae and the Atlanta Development Authority (ADA). A tax allocation district was also established for the project by the City of Atlanta and the ADA.

Jacksonville, FL. A development project that is currently underway in downtown Jacksonville, Florida, the Parks at the Cathedral, provides an example of a public/private partnership formed to finance a specific development project. At the request of the City of Jacksonville, the Bank of America CDC agreed to become the project developer. The Bank of America CDC and the City of Jacksonville formed a limited liability corporation with St. Johns Cathedral, which is one of the largest landowners in downtown Jacksonville. St. Johns donated a parcel of land valued at \$506,000 and other surrounding parcels, which were vacant or had been previously condemned by the city, were assembled to create the site for the planned 63 unit townhouse development. The site is located in the downtown, a few blocks from the St. Johns River.

Financing for the Parks at the Cathedral includes \$1.5 million in infrastructure financing by the City to pay for sidewalks, lighting, street improvements and other related improvements. The City is also investing another \$1.5 million in project construction

²⁹ Harrison, Bennett and Marcus Weiss ed. *Networking Across Boundaries: New Directions in Community Based Job Training and Economic Development*. (Vols 1-3). Boston, Ma. Economic Assistance Consortium, 1998.

³⁰ See <http://www.andpi.org/>

financing and a grant to buyers that will be equal to 75 percent of the county ad valorem property tax increment after the Homestead exemption. This financing, along with assistance from the County’s Housing Finance Authority, reduced the buyer’s monthly payments on the units initially priced at a starting price of \$129,500. These prices reportedly began appreciating prior to construction and occupancy of the units.³¹

5.3 EVALUATION OF FINANCING PROGRAM AND INCENTIVE BEST PRACTICES

The evaluation of the best practice techniques discussed in this section are summarized in the table below.

*Summary Evaluation of Financing
Best Practices*

Best Practice Technique	Type of Technique	Major Advantages (opportunities)	Major Disadvantages (constraints)
Tax Increment Financing District	Legislatively authorized financing technique	Provides a source of funding for public improvements without requiring up front public investment.	Limited to funding for public improvements and does not create source of funds to assist more directly in project financing.
Special Districts and Redevelopment Areas	Legislatively authorized funding technique	Legislation can authorize sources of funding for districts.	Techniques may place burden on properties in district or may exempt certain types of properties.
Public/Private Partnerships	Organizational and financing technique	Can be used to build financing consortiums and leverage private sector investment.	May not directly provide access to private sector institutional investors.

SECTION 6. TAX INCENTIVE BEST PRACTICES

6.1 DESCRIPTION OF BEST PRACTICES

An additional type of financial incentive frequently used for infill development projects are tax incentives, such as tax abatements, exemptions and credits. The basic premise underlying these types of tax incentives is similar to that of TIF districts, which is that an infill development project will result in an increased tax base. However, tax abatements and exemptions do not capture this tax increase. Instead tax abatements are typically

³¹ Urban Land Institute and U.S. Department of Housing and Urban Development. “Summary Report: National Forum on: Encouraging Market-Rate Infill Housing Development” Washington, D.C.: at 8 (April 10, 2000).

used as a gap financing method that allows the abated taxes to be expended directly on a private development rather than collected by a local government and used to finance public improvements. Best practice examples of tax abatement and exemptions are provided below.

6.2 BEST PRACTICE EXAMPLES

Texas. The State of Texas authorizes tax abatements, pursuant to the Texas Tax Abatement Act.³² Under this statute, tax abatements are authorized in designated reinvestment zones pursuant to an abatement agreement. A taxing unit, which may include a city, town, county or school district, may only enter into an abatement agreement after establishing guidelines and criteria for the agreements and after adopting a resolution stating that the taxing unit is an eligible participant. Abatement agreements are entered into with property owners to establish the period of the exemption (not to exceed ten years), and to provide that an owner agrees to make certain specific improvements. Before an abatement agreement can take effect, the taxing unit must hold a public hearing to determine whether the proposed improvements are feasible and practical and whether the improvements would benefit the land included in the reinvestment zone and the municipality after the expiration of the agreement.

Ohio. Under Ohio law, tax exemptions of improvement to property in a locally declared blight area are authorized for the full value of the improvement if school districts agree to participate and for 75 percent of value if the school districts do not participate.³³ A school may condition its agreement to participate on entering into an acceptable compensation agreement with the local government. The exemption is offered for up to 30 years for residential properties of three units or less or for 20 years for all other types of property.

6.3 EVALUATION OF TAX INCENTIVE BEST PRACTICES

The evaluation of tax abatements and tax exemptions best practice techniques are summarized below.

Summary Evaluation of Tax Incentive Best Practices

Best Practice Technique	Type of Technique	Major Advantages (opportunities)	Major Disadvantages (constraints)
Tax Abatement	Financing Technique	Provides source of gap financing without up front expenditure of public funds.	Depending on extent of abatement, developer may not significantly benefit
Tax Exemptions	Financing	Provides source of	Depending on

³² Tex. Loc. Govt. Code chapter 312.

³³ Ohio Rev. Code sec. 1728.10.

or Credits	Technique	gap financing without up front expenditure of public funds	extent of exemption, developer may not significantly benefit
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SECTION 7. LAND USE CONTROLS AND REGULATORY INCENTIVES

7.1 DESCRIPTION OF LAND USE CONTROLS AND REGULATORY BEST PRACTICES

Local government must be an active partner in the planning and implementation of infill development strategies. As discussed above, it is often the county or municipal government that leads the process of identifying urban infill development areas and developing strategies for how to promote infill development in these areas and on specific infill sites. These strategies should be part of the larger planning framework for the community. Many states authorize local governments to carry out a wide range of planning and regulatory activities to encourage infill developments. However, as discussed below, there are best practice examples in other states, such as Maryland, that provide further guidance on how local governments can become an even more effective participant in the infill development process.

7.1.1 Flexible Dimensional and Design Standards

An important part of a local infill development strategy is a review of local government land use controls to eliminate inflexible, burdensome or overly restrictive requirements that may serve as a barrier to infill development. For example, use regulations should be structured to allow a mix of uses and to encourage certain desired types of uses, such as residential infill development in urban core areas. Development standards should be drafted with the goal of promoting high quality development of a design and type that is consistent with the clearly articulated purposes of the particular district in which an infill project is being proposed. The standards for the district should be designed to achieve the desired land use patterns for a particular neighborhood, but should not impose prescriptive requirements that could adversely impact the financial feasibility of a particular infill development project. Incentives can be offered in the form of density bonuses or reduced parking requirements, if developers agree to provide certain publicly desired features or benefits, such as more affordable units or improved accessibility to transit service.³⁴

7.1.2 Streamlined Review and Approval of Infill Development

The local regulatory process for review and approval of infill development can be an equally, if not more, significant barrier to infill development. Lengthy development review procedures that require several different approvals, by multiple decision-makers and staff reviewers, can add significantly to the costs of a development project. The

³⁴ Northeast-Midwest Institute and the Congress For the New Urbanism. “Strategies For Successful Infill Development” 2001.

uncertainty in the outcomes of complex review and approval processes adds to the risk of a project, which may already be perceived as high risk when proposed for a location without a demonstrated market for infill development. One suggested approach that is discussed in the best practice examples below is a shift by local governments from a regulatory control focus to a more streamlined approach in which the focus is on achieving desired outcomes. The goal should be to streamline or minimize the degree of processing, so that there are fewer regulatory hurdles that must be cleared before an infill development can proceed, allowing infill development in urban areas to better compete with conventional projects in previously undeveloped areas.³⁵ Streamlining can be accomplished by a number of techniques that have been used in various states to promote infill development, such as:

- Allowing infill development as of right or with minimal review for compliance with objective standards for a district;
- Establishing thresholds for a more streamlined review for smaller infill development projects; and
- Waivers of fees and consolidated or “one stop” permitting for infill developments.

7.2 BEST PRACTICE EXAMPLES

Recognizing the benefits of infill development in urban areas, many local jurisdictions have undertaken efforts to revise development regulations to promote infill development by making regulations more flexible and streamlining review procedures. In some jurisdictions, city governments have found that additional resources are needed to streamline review procedures and have added staff or improved technology to facilitate on-line processing of applications. For example, recently in Tampa, Florida, the city reportedly increased permitting fees in order to be able to process applications electronically.³⁶ Other cities, such as Baltimore and Cleveland, have reportedly added a full-time staff person to act as the downtown housing coordinator to provide a contact point for applications in the downtown and to speed the review of applications.³⁷

While there are many examples of specific actions by individual cities and counties, at the state level Maryland has been one of the most active states in providing incentives for local governments to actively support infill development.

State of Maryland. Local growth management policies in Maryland are established pursuant to a mandatory local comprehensive planning process that is guided by seven growth management visions under the state’s Growth Act. In 1997, with the enactment of the Maryland Neighborhood Conservation and Smart Growth (the “Smart Growth”) Act, several initiatives to implement Smart Growth programs related to infill

³⁵ See *Urban Infill Housing Myth and Fact* (ULI: Washington D.C. 2001).

³⁶ *Id.* at 13.

³⁷ *Id.*

development were funded, including: priority funding areas for state funding of infrastructure improvements to encourage infill development within developed urban areas; a brownfields program designed to encourage redevelopment of abandoned industrial sites; a Live Near Your Work program providing grants to encourage employees to buy homes near workplaces; and a Job Creation Tax Credit program to encourage businesses to invest in smart growth areas in Maryland. The Governor of Maryland has recently created an Office of Smart Growth to oversee these programs.

As a part of Maryland's Smart Growth program, the state enacted legislation in 2000 for a Smart Codes Initiative, which consists of the Maryland Building Rehabilitation Code and the development of new models and guidelines for infill development and "Smart Neighborhoods." The Maryland Department of Planning has recently released a draft of its models and guidelines for infill development.³⁸ This report outlines the requirement for voluntary local programs that would qualify for state incentive programs to encourage infill development. The report identifies the following characteristics of local infill programs:

- Comprehensive plan policies and provisions for infill.
- Zoning that encourages infill on certain vacant, abandoned, passed over or underutilized parcels of land within built-up areas of the jurisdiction.
- Zoning tools that require connectivity of infill with surrounding streets and open spaces.
- Zoning that maintains or increases the density of surrounding community at or above applicable priority funding area density standards.
- Zoning that allows a mix of housing types where planned.
- Regulatory processes that make infill competitive with conventional development.

Maryland's draft report also presents a model infill ordinance and model development review techniques for infill development. Among the development review techniques is a matrix model that has been used by the City of Austin, Texas. This matrix, used in the review of infill development projects in Austin, provides a clear and objective scoring system for developers and local officials to use in evaluating infill development projects and lists specific thresholds for how a project becomes eligible for incentives. This technique used by the City of Austin and other development review techniques in the Maryland report provide good examples of how review and approval processes can be streamlined to encourage infill development.

An important consideration in reviewing these types of model techniques is that the local government must adapt any model to meet the unique characteristics of the community and to build local support for the revised regulations and procedures.

³⁸ Available at <http://www.mdp.state.md.us/smartgrowth/>

7.3 Evaluation of Land Use Controls and Regulatory Best Practices

The table below summarizes the evaluation of best practice techniques for land use controls to encourage infill development.

*Summary Evaluation of Land Use
Controls
Best Practices*

Best Practice Technique	Type of Technique	Major Advantages (opportunities)	Major Disadvantages (constraints)
Flexible Dimensional and Design Standards	Regulatory Technique	Facilitates the design of market supported infill development projects.	Possible neighborhood and political opposition to flexible controls.
Streamlined Review and Approval Process	Administrative Technique	Reduces risk and costs to developer.	Possible neighborhood and political opposition

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