

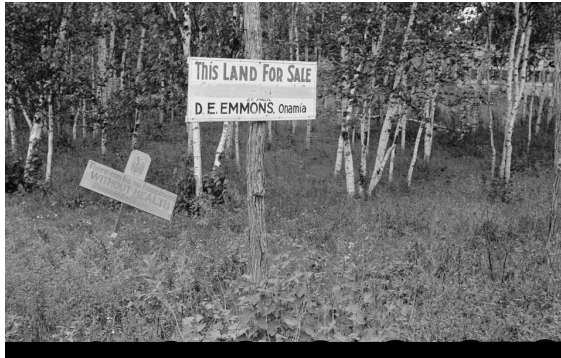


Community and Economic Development in North Carolina and Beyond Blog: Getting It Under Control: Acquiring Property for Redevelopment (Part 1)

By CED Guest Author

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Local governments in North Carolina that seek to shape or spur

downtown development must often gain site control of properties that have strong redevelopment potential. Frequently, a site with strong potential is privately owned, and a savvy local government will first need to obtain site control before proceeding with resource-intensive and site-specific pre-development activities (a process further illustrated in **this previous post**). Site control does not necessarily mean the local government must purchase the property. A local government might have the option to secure site control without purchasing the property outright, through negotiating an extended due diligence period. This is the first of two blog posts that will discuss Purchase and Sale Agreements and provide two examples of how a North Carolina community acquired site control through a Purchase Agreement to spur a transformative community economic development project in its downtown.

In North Carolina, a range of statutory authority is granted to local governments to acquire property, each with very specific considerations and permissions. For further discussion of the authorities through which acquisition transactions are made possible, including those that allow for community and economic development, see David Lawrence's ***Local Government Property Transactions in North Carolina*** as well as Tyler Mulligan's related blog post on **property acquisition procedures for local governments**. Additionally, entering into a purchase agreement likely triggers all of the procedural requirements for acquisition, so the local government attorney should be involved. See Tyler Mulligan's blog post, **Follow Procedures Prior to Acquiring Property for Redevelopment**.

A Purchase and Sale Agreement is a legal document that defines the terms of a conveyance transaction. There is no one form for this type of agreement although a more common version is the Offer to Purchase and Contract agreement provided by the **North Carolina Association of Realtors** (behind a pay wall).

These agreements include multiple material terms that can and should be negotiated by all parties involved, including the local government. Some of the key terms are discussed below.

Assignability:



Buyers may request the right to assign the purchase agreement to a different entity. For local governments, this assignability allows them to enter purchase agreements and then transfer the contract to a private developer without having to acquire the property. Again, the local government attorney should be involved in this process, as the assignment to a third party likely triggers the same notice and hearing requirements as a regular property conveyance. For an introduction to the statutes and procedural requirements for property conveyance, see Tyler Mulligan's **reference chart for conveyances of real property to private entities** as well as a related blog post on conveyance procedures, **Conveyance of Local Government Property to Nonprofit EDC for Industrial Park**.

Due Diligence Period:

Purchase Agreements typically include a due diligence period that provides an opportunity for the buyer to perform due diligence on the purchase, such as environmental site assessments. The length of the due diligence period is negotiable. Longer due diligence periods might come at a cost to the buyer as the seller might require compensation for opportunity cost of not selling earlier and/or carrying costs for continued ownership of the property. Local governments seeking to gain site control may be able to negotiate an extended due diligence period, one that is sufficiently long to complete pre-development activities and attract a private developer.

Earnest Money:

Commonly, sellers request a buyer provide an earnest money deposit either at or a few days following the execution of the Purchase Agreement. The size of the earnest money deposit varies, but is typically 3-5% of the sales price. Earnest money deposits will be held in escrow with a third party agreed upon by buyer and seller. The earnest money deposit amount is negotiable and can be fully refundable or non-refundable. Sometimes these earnest money deposits may also take the form of periodic option payments or installments.

Exclusivity:

When entering into an agreement as the buyer, a local government should insist on exclusivity. With the local government spending money on due diligence, it is strongly recommended the local government protect its investment by ensuring that it is the exclusive party that has the ability to purchase the property.

Local governments in North Carolina are vested with statutory authority allowing them to acquire, develop, and convey real estate property. This authority lends power to the efforts of many municipal and county governments to revitalize their communities and attract private investment. Despite this authority, the financial obligations and corresponding risks of property acquisition may steer many local governments away from redevelopment programs. Mechanisms that achieve site control through means other than traditional acquisition, such as extended due diligence periods, have the potential to mitigate these risks. In the next blog post in this two-part series, we will explore two examples of how extended due diligence periods were used by North Carolina local governments to both protect their financial interests and potentially catalyze downtown development.

For Part 2 of this series, please click [here](#).

Post co-authored by Matthew Hutton, Omar Kashef, Jordan Jones, and Andrew Trump. Matthew Hutton is a Community Revitalization Fellow with the Development Finance Initiative. Omar Kashef (Project Manager), Jordan Jones (Development Advisor), and Andrew Trump (Senior Project Manager) are all staff members of the Development Finance Initiative.