

Memorandum



Date: September 9, 2026
To: Buchanan Downtown Development Authority
From: Tony McGhee
Subject: **Foreclosure of 205 East Front Street**

Purpose of the Discussion

The foreclosure involving the \$6,847.21 owed to the DDA by Buchanan Equity LLC has progressed to a Sheriff's Sale scheduled for Thursday, September 24, 2026. Before that date, we need direction from the Board regarding representation at the sale, whether the DDA wishes to bid, and the maximum amount it is willing to commit.

The primary question is whether our objective is limited to recovering the money owed to the DDA or whether the Board would like to authorize a higher bid to potentially acquire an interest in the property and preserve additional options for its future. Those are different objectives, with different financial implications.

The discussion below assumes that the September 24 sale is the foreclosure of the DDA's second mortgage, rather than the foreclosure of Honor Credit Union's first mortgage.

Sheriff's Sale Process

In a Michigan foreclosure by advertisement, the required publication and posting of notices lead to a public auction where the property interest is offered to the highest bidder. The foreclosing mortgage holder may participate in that auction, along with other interested buyers. This is not a sale of the loan itself. The successful bidder purchases an interest in the real estate through the foreclosure process. Given the small amount owed and the value of the property, it should not be unexpected that there will be other investors there looking to make a bid.

Berrien County generally conducts these sales at 11:00 a.m. on Thursdays in the second-floor jury room of the courthouse in St. Joseph. The County's published procedures give a successful third-party bidder one hour after the auction closes to provide a bank-certified check for the full bid. The attorney should confirm the specific arrangements for this sale, including how the DDA's credit bid would be submitted and

how any additional cash would need to be provided. We should not approach the auction expecting time afterward to arrange financing or obtain additional approvals.

From the mortgage holder's perspective, an important feature is the ability to make a credit bid. Generally, the foreclosing lender can apply the debt owed to it toward its purchase bid rather than tendering that same amount in cash. A successful full credit bid generally satisfies the mortgage debt and extinguishes that mortgage. It does not mean the DDA has received cash; it has exchanged its debt claim for the purchaser's interest in the property.

If another bidder pays enough to cover the entire foreclosed debt and allowable expenses, the DDA can recover its claim from the sale proceeds without acquiring the property. Any surplus is distributed according to Michigan law, potentially to subsequent lienholders or the property owner. The DDA does not receive additional profit simply because someone bids more than it is owed.

A successful bid also does generally provide immediate possession or unrestricted ownership. Michigan law provides a redemption period during which eligible parties can recover the property by paying the required redemption amount. That amount generally includes the winning bid, applicable interest, and certain statutory additions. The period is generally six months for qualifying commercial or industrial property. A higher bid can increase the amount required to redeem, but it does not eliminate redemption rights.

DDA Mortgage Position

The DDA's mortgage is in second position behind a mortgage held by Honor Credit Union. Foreclosing the DDA's mortgage does not eliminate Honor's first mortgage. A purchaser at the DDA's foreclosure sale generally acquires the property subject to that senior mortgage. Honor's loan is not automatically paid off by the DDA's bid or removed from the property through this junior foreclosure.

This distinction is central to our bidding discussion. A \$6,847.21 winning bid would not necessarily mean the DDA acquired an unencumbered property for \$6,847.21. Honor's senior mortgage would remain an obligation secured by the property. Purchasing subject to that mortgage does not, by itself, mean the DDA personally assumes the borrower's note. However, preserving the property interest could require addressing the senior loan through payment, a negotiated arrangement, refinancing, or another legally available approach.

Honor's superior rights would continue to affect the DDA's position, and a foreclosure of the senior mortgage could put the DDA's acquired interest at risk. Any higher bidding strategy therefore needs to account for the senior mortgage rather than looking only at the relatively small balance owed to the DDA.

Representation at the Sale

The first question for the Board is whether it would like to designate the City Manager to represent the DDA at the September 24 Sheriff's Sale, in coordination with the attorney handling the foreclosure.

That authorization should establish clear limits before the auction. I would recommend identifying both a maximum total bid and a maximum amount of additional cash that may be committed. Attendance at the sale should not be treated as open-ended authority to continue bidding, assume Honor's loan, or incur other property expenses. The Board should also distinguish between permission to attend and permission to bid. The City Manager could represent the DDA and monitor the sale without having authority to exceed whatever bidding instructions the Board has approved.

Options for the DDA's Bidding Strategy

Limit the objective to protecting the existing debt. Under this approach, the Board would establish a ceiling of \$6,847.21, or a separately approved amount reflecting the attorney's verified total secured claim. The objective would be recovery of the DDA's investment, not acquisition of the property at an additional cost.

If another bidder offers enough to satisfy the DDA's entire claim and allowable expenses, there may be no financial reason to continue competing. Allowing that bidder to purchase the property could meet the DDA's recovery objective without taking on ownership-related exposure. Conversely, if the DDA wins with a credit bid, its recovery depends on the value of the property interest it receives, rather than an immediate cash payment. In other words, protecting the DDA's financial interest does not necessarily require winning the auction.

Authorize a higher ceiling to preserve a potential property strategy. The Board could decide that remaining involved in the property's future has value beyond collecting the existing loan. A higher ceiling could allow the DDA to compete for the purchaser's interest and, subject to redemption and Honor's senior mortgage, consider an eventual sale, rehabilitation, redevelopment partnership, or another appropriate downtown development purpose. Michigan's DDA statute provides authority to acquire and

dispose of property when reasonably necessary to carry out the authority's statutory purposes. Any proposed use would still need to fit the DDA's applicable plans and approvals.

However, this should be understood as a potential property acquisition strategy, not a way to keep the existing mortgage in place. It also requires distinguishing the DDA's credit from new money.

For illustration only, if the approved credit were exactly \$6,847.21 and the DDA successfully bid \$40,000, the difference would be \$33,152.79 in additional cash, before separately payable expenses. The excess cannot simply be treated as more money owed to the DDA, and it would not pay off Honor's senior mortgage.

Staff would recommend setting any higher ceiling using a conservative estimate of the property's value, reduced by Honor's outstanding debt, other surviving obligations, anticipated repairs, holding and disposition costs, and a reasonable allowance for risk. That amount would then need to be further limited by the DDA's approved funding and the public purpose the Board intends to accomplish.

A maximum bid should be a ceiling, not a target. There is no reason to bid the full authorized amount if the property interest can be acquired for less.

Budget Requirements and Interim Financing

Whatever direction the Board chooses needs to fit within the DDA's legally approved budget and spending authority. Having money in an account is not the same as having authority to spend it on this purpose. Michigan law restricts expenditures beyond approved appropriations and expenditures inconsistent with the purposes for which funds were appropriated.

Michigan's DDA statute also requires the municipality's governing body to approve the authority's budget before the DDA Board adopts it. The Clerk and attorney should identify the DDA and City Commission actions necessary for any amendment or other authorization associated with this transaction.

If sufficient authority exists but cash is not available when payment is required, interim financing may be worth evaluating. A properly authorized City advance or another lawful short-term financing arrangement could be explored by the Treasurer and attorney. Any

arrangement would need an identified legal basis, required approvals, repayment source, term, and applicable interest or fees.

Interim financing is not a substitute for a budget amendment. Financing and the amendment can be developed at the same time, but the necessary spending and borrowing authority must be in place before making a binding commitment. Treasury guidance specifically calls for budget amendments to be approved before expenditures that deviate from the adopted budget. We should not proceed on the assumption that the DDA can purchase first and amend the budget afterward. Approvals for how to move forward can be conditional allowing legal counsel and staff to work through any outstanding items before the 24th.

Recommendation/Decision

Staff is asking the Board to determine whether it wishes to designate the City Manager as its representative, whether its objective is limited to recovery of the existing debt or includes a potential property acquisition, and what maximum financial exposure it is prepared to authorize.

Staff recommends that any authorization establish a firm total bid ceiling, a separate limit on additional cash, and a defined allowance for related expenses. A higher ceiling should not be selected solely to maintain involvement in the situation. It should be supported by the property's value after accounting for Honor's mortgage, a clear DDA purpose, and an approved funding plan.