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TAX INCREMENT FINANCING PRACTICE AND POLICY SEMINAR

TID STRUCTURE AND DEVELOPMENT AGREEMENTS

July 24, 2007

Marquette University

Council of Development Finance Agencies & Local Initiative Support Corporation

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- TID statute allows for significant flexibility in types of projects and ranges of expenditures
- No single prototype; one size does not fit all
- Can be municipality-initiated, developer-initiated, or combination

- "Field of Dreams" (build the infrastructure and they will come)

- Large, mixed use projects (Bayshore Town Center, Glendale)

- Small, single site/single purpose (Historic King Place, Milwaukee)

- Fundamental premise of TID is that there will be incremental taxes. Creating a TID is a bet on the future

- In making this bet, municipality takes on role of both developer (or developer partner) and lender

- When municipality is the sole developer, must think and act like a developer:
  - Manage amount and timing of expenditures
  - Adapt to changes in the market
  - Expect the unexpected

- When private developer is involved, municipality functions both as partner and lender

- Economics of the deal not only measure of success. Municipality has invested in project for broader policies/benefits

- Two principal goals of the municipality:
  - Completion of the project substantially as presented and substantially within timeframe promised
  - All project costs (whether public infrastructure or developer grant or both) repaid in full as soon as possible

- Primary tool used by municipalities to address goals is the development agreement

- Development agreement is required in connection with any project plan that provides for a developer grant. Not required for expenditure of funds for public infrastructure, but commonly used in all instances

- Essential purpose of a development agreement:
  - Identification and assignment of responsibilities in order to allocate and manage risk
- Developer and municipality each requires assurances that the other party will deliver

- Key concerns for the developer:
  - Assurance and timely delivery of municipal approvals
  - Conveyance of land
  - Timing and amount of funds provided by municipality
  - Timely completion of public improvements
  - Coordination of work schedules
  - Delivery of easements/rights of access
  - Cooperation with developer's lender (estoppel certificate, subordination agreements, consent to assignment, etc.)

- Note: Eminent Domain in connection with redevelopment projects
  - § 32.03(6) enacted March 30, 2006 in response to Kelo decision
  - Property may not be acquired for the purpose of conveying or leasing to a private party unless it is "blighted"
  - Single occupancy residential property cannot be blighted if occupied by owner or relative unless the crime rate in immediate vicinity is three times higher than overall municipality

- Key concerns for the municipality (ensuring delivery of the "goods"):
  - Project description/scope
  - Project design
  - Assurance of site control
  - Evidence of equity/financing commitments and satisfactory prerequisites for funding
  - Preleasing/presale commitments
  - Land dedications/easements for public components
  - Human resource/public policy issues

- Key concerns for the municipality (timely repayment of project costs):
  - Projected minimum assessed value throughout life of TID
  - Preleasing rates and terms/presale prices
  - Creditworthiness of tenants
  - Project budget
  - Construction and design contracts
  - Completion guaranties/performance bonds
  - Overall project feasibility

- Under TID statute, sole source of repayment of project costs is incremental property taxes over a defined period of time

- If municipality limits itself to this source, how can it manage the risk that incremental revenues will not be sufficient?

- Careful underwriting:
  - Close review of developer's pro forma, sources and uses, market assumptions, project pro forma, debt/equity commitments (review by outside consultants)
  - Adjustment of investment in project costs if other sources of funds materialize

- Careful underwriting (continued):
  - Conservative property tax projections (capitalized interest, ramp up on assessed valuations, mill rate projections, vacancy allowances, discount personal property)
  - Short amortization term (i.e., less than statutory life) in order to allow cushion

- Careful underwriting (continued):
  - Manage timing of investment (fund upon project completion, of entire project or certain key element; fund pro rata with debt—do not get ahead of developer; fund in phases, with “earn-out” formula)

- Beyond tax increments—what additional measures can be utilized to ensure recoupment of project costs?

- (Note: context is critical. These additional measures must always take into account the nature of the project, financial risks and burdens already being undertaken by the party being asked to provide additional assurances/collateral)

- Additional measures:
  - Completion guaranty
  - Assessed value guaranty
  - Debt service guaranty

- Additional measures (continued):

  - Collateral for guaranties (entity providing the guaranty; letter of credit; mortgage)
  - Special assessments

- Additional measures (continued):
  - Business Improvement District assessments (Third Ward TID, Milwaukee; Downtown Riverwalk District, Milwaukee)

- Additional measures (continued):
  - Revenue bonds (without municipal credit enhancement)
  - "Pay as you go," or developer-funded TID
    - Developer fronts project costs
    - Developer is repaid through future increments
    - If increments insufficient at time TID closes, Developer bears the loss

- "Pay as you go" TID:

  - Advantages: Developer pays for all costs (public and private) and assumes 100% of increment risk
  - Disadvantages: Developer's access to funds may be limited and cost of funds likely significantly higher

- Other features:
  - Structure portion of municipal advance as a loan (no or low interest, flexible amortization)
  - Cash flow/sale or refinancing participation

- Deal structure is a function of balancing and allocating risks among available resources in a specific context. There are numerous variables that come into play. Guidelines are important; flexibility is paramount.