

DOWNTOWN
REVITALIZATION &
ECONOMIC
ASSISTANCE FOR
MISSOURI

February 2013

FULTON DOWNTOWN DISTRICT MARKETING AND IMPLEMENTATION PLAN

Fulton, Missouri



ACKNOWLEDGMENTS



DOWNTOWN REVITALIZATION AND ECONOMIC
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SECTION ONE

EXECUTIVE SUMMARY

PURPOSE

The purpose of this Memorandum is to guide and inform the City of Fulton (“City”) and the Brick District Association (“BDA”) through the process of establishing a Downtown District (“District”) such as a Community Improvement District (“CID”) and/or a Tax Increment Finance District (“TIF”). The implementation of a District would fulfill recommendations of the DREAM Initiative and establish a sustainable programmatic funding source for Downtown revitalization efforts and the BDA.

The Downtown Organizational Structure Review task of the DREAM Initiative recommends the implementation of a CID in Downtown Fulton in order to increase the City’s administrative and financial capacity for achieving economic development and infrastructure development goals for Downtown. The implementation and execution of CID projects will also be incorporated into the updated DREAM Initiatives recommendations for Fulton’s Downtown Strategic Plan as a central component for revitalization success. A CID will provide an additional tool to carry out the City’s revitalization plans. While a CID is the tool most recommended by the DREAM Initiative, many of the same features, specifically a sustainable funding source could be achieved through the establishment of a TIF or in the implementation of citywide Economic Development Sales Tax (EDS), where a portion of the revenue could be dedicated to Downtown revitalization.

This Memorandum lays out the primary steps toward successful implementation of a CID or a TIF, including public engagement. A companion document, the DREAM Financial Assistance Review includes revenues estimate tables for a CID, TIF, and EDS. The estimated CID revenues are based on gross sales figures for Downtown. The estimated TIF revenues are based on 2012 real property tax rates and the anticipated increase in value Downtown due to redevelopment. The estimated EDS revenue figures are based on gross sales figures in the entire City.

SECTION TWO

Section Two of this memo describes the vital step of implementing a strategy for public outreach and stakeholder involvement pointing out the necessity of a clear plan for the CID and a budget for CID expenditures in line with projected CID revenues. The major steps for implementing the CID are as follows:

1. Defining the boundaries of the District
2. Planning (defining the goals of, and outlining the expenditures for, the CID)
3. Budgeting

4. Marketing
5. Public outreach/stakeholder engagement
6. Determining number of board of directors (Identifying candidates and appointees, if any)
7. Petition approval
8. Election of board of directors
9. Election to approve imposition of CID sales tax (0.25%, 0.5%, 0.75%, or 1%)

The DREAM Downtown Organizational Structure Review recommended that a percentage of CID funds be earmarked to support the enhancement of organizational capacity for the BDA; however, in terms of public engagement it is important to emphasize a solid list of public improvements and other desired projects that will benefit the broader community.

SECTION THREE

Section Three of this Memorandum explains the legal steps that must be taken and qualifications that must be met to implement a CID and a TIF. This section also describes key points related to ongoing CID and TIF administration.

SUMMARY

In summary, prior to initiating a public outreach campaign for approving a CID it is absolutely paramount to prepare a preliminary CID “Plan” and a corresponding “Public Engagement Plan”. During the course of the public outreach campaign the City and BDA must anticipate the need to refine elements of the Plan (i.e. boundary, priority objectives, etc.) in order to build the necessary consensus to approve the CID and/or TIF. This effort will require significant time and effort on behalf of the BDA and the City. In the end, however, members of the Downtown community must be satisfied that a CID and/or a TIF will provide a direct benefit to their property/business/residence and Downtown generally.

SECTION TWO

PUBLIC OUTREACH

It is critical that the following tasks be undertaken by a coalition of the City, BDA, and other property owners, individuals, and civic organizations. This committee should demonstrate support for the establishment of the CID and/or TIF and work to broaden this base of support through various meetings, press releases, and public speaking opportunities.

ENGAGING DISTRICT AREA OWNERSHIP AND RESIDENTS

In order to establish the CID and to impose an additional sales tax and/or property tax to fund CID plans and projects, or to establish the TIF and the capture of additional future property tax revenues, the City and BDA (coalition) need to engage property owners and qualified voters within the proposed District to inform them on the proposed projects and the implications of the District for community, economic development and infrastructure improvements to Downtown Fulton. The coalition needs to inform real property owners and qualified voters in general and area stakeholders (e.g. predominant real property owners, business owners, active residents) in particular in order to build public good-will and “buy-in” to the process of District implementation and goals.

If a proposed CID is to be within a TIF, then the funding derived from the two programs must be fully understood. The City of Fulton will likely need to coordinate with the County Assessor’s office to determine the number of unique real property owners within the proposed CID, and will also need to coordinate with the local election authority to determine the number of eligible voters that reside within the district.

The coalition should also consider strategically establishing the CID boundary to include a majority of retail uses and property owned by those who are amenable to implementing the CID and seeing the CID carry out its goals while simultaneously incorporating Downtown’s existing and future retail locations/corridors. The coalition may also want to consider removing any properties that do not present current or future retail uses or that otherwise would not benefit the CID, unless the property owners are supportive of CID. In the case of a TIF, the boundaries must take in property owners who will be supportive of the District’s goals and objectives, as well as those properties where projects are likely to occur.

PUBLIC ENGAGEMENT

The City should work with the BDA to devise a plan for best engaging the area stakeholders, and the qualified voters. The success of the District hinges on voter support, in the case of the imposition a CID sales tax. Both a TIF and CID require the approval of

the City Council. The City and BDA should present the case for the CID and the extra sales tax to the stakeholders and others with a vested interest in Downtown.

Prior to developing the public engagement strategy, the coalition will need to formulate a “framework” for the District Plan, including:

1. The proposed boundary and description of the district.
2. Proposed plans, projects, and general goals of the district. Some suggestions:
 - i. Security
 - ii. Parking
 - iii. Events and marketing
 - iv. Street improvements and streetscape enhancements
 - v. Building repair and façade improvements
 - vi. Other projects or goals for the District
3. Number and terms of members of board of directors and officers, including identification of candidates and appointees (if any).
4. Proposed initial budget, or costs of plans and projects, of the district.
5. Proposed rate of additional sales tax or real property assessment from which revenues District activities will be funded.

OBJECTIVE

The following provides an outline for strategies educate the public regarding the need for, and purpose of, the implementation of a CID or TIF in the Downtown area. This District will be a key element to improving Downtown Fulton through a series of physical improvements, potentially including façade improvements, parking, streetscape enhancements and wayfinding signage. It can also help develop new community assets and potential revenue streams, such as new retailers and restaurants to Downtown. The District could also provide funds that would allow the volunteer-led BDA to develop into a more permanent function, capable of overseeing and driving the implementation of these new structural enhancements Downtown.

KEY MESSAGES

To support all communications relating to the implementation of a CID, TIF or EDS, the BDA should adopt a few — no more than three — key messages that would be woven into all supporting communications. Possible messages include:

1. By adopting a Downtown District, we can create new improvements and greatly enhance Downtown for residents and visitors to enjoy.
2. A Downtown District will bring new economic development opportunities to Fulton, without negatively impacting residents and businesses.
3. The BDA is an advocate for Downtown Fulton and a guiding force for continued improvement, growth and development.

Once those top-level messages are adopted, a complete message platform should be

developed that includes “proof points” – or supporting facts – to demonstrate the validity of each message. For example, the first message could be supported by a proof point such as, “The proposed CID could raise as much as \$3 million over 20 years that would be used to help fund façade and streetscape improvements, and their ongoing maintenance.” Other proof points supporting the first key message should also focus on tangible projects the District would fund. Proof points for the second message should detail the positive financial impacts of attracting new visitors and businesses to the region. This is also where the BDA should specifically address any concerns of a new tax and illustrate that a CID or TIF would have little to no impact on residents and business owners. The final message should be supported with points that demonstrate the BDA’s role and the potential for the long-term improvement and growth of Downtown, provided the right structure is put in place and properly funded.

STRATEGIES

Advisory Committee

By creating an advisory group for the District campaign, the BDA can effectively engage Downtown businesses and residents in this effort, while maintaining an appropriate level of autonomy. It is important that the group of individuals leading the charge for a new financing structure not be the same group of people perceived to benefit the most from the new funds. The advisory committee will help to:

- Identify the appropriate local spokespeople (independent from the leadership structure of the BDA).
- Serve as advocates for the work being done by the BDA and the District concept.
- Bring together other thought leaders from throughout the community to provide counsel regarding the campaign.
- Arrange for and hold briefings with key business leaders and residents.

Engage Downtown Business Owners and Property Owners

Campaign spokespersons, including members of the advisory committee and the BDA, can begin to approach the local business and property owners. This can happen informally at first, perhaps over a cup of coffee. *Please note, for the best possible results, it is critical that the outreach be initiated by the individual with the strongest relationship with the stakeholder.* Important points to focus on include:

- Reiterate how new structural enhancements and leadership by the BDA would benefit Downtown.
 - Remind Downtown business and property owners of the coordinated approach and effort that DREAM could bring to the area. Examples include: streetscape improvement and maintenance, marketing, structured parking, façade improvements, advancement and promotion for available retail locations, community marketing, etc.
- Encourage business and property owners to not let Downtown revitalization lose momentum without a more permanent funding mechanism.

- Gather opinions regarding business or property owner feelings about:
 - The direction of, and vision for, Downtown.
 - The BDA.
 - The idea of a structured financial mechanism to help fund physical improvements and allow the BDA's singular focus and oversight of all things Downtown.
- Leverage what is discovered by conversations with business and property owners to reinforce the value that a District could bring.

Materials Development

Demonstrating the value that a potential District could deliver will be an important part of this campaign. Community leadership will want to be sure that anyone discussing the topic has accurate information to ensure that the most important and pertinent points are discussed properly. To do so, we recommend:

- Message platform with accompanying proof points, such as the examples included above.
 - Create consistent and appropriate messaging to use during meetings, with the advisory committee spokesperson, the BDA leadership and spokespersons and business/property owners.
 - Detail benefits for Downtown businesses and property owners.
 - Promote additional benefits for other Fulton residents and visitors to the community.
 - Highlight the opportunity to continue positive improvements.
 - Address possible concerns or objections up front.
 - Demonstrate that a District would have little to no impact on sales, using quantifiable data from a successful nearby similar district (i.e. Downtown Columbia's CID).
 - Show that residents would not face an overwhelming new tax burden. Provide simple examples of what a CID sale tax would mean in terms of real dollars, such as \$0.50 on a \$100 purchase.
 - Show what percentage of the new revenue would come from non-residents if feasible.
 - Develop proof points that show the positive financial impacts of attracting new visitors and businesses to Downtown.
 - Emphasize that the District is a public/private funding partnership that will bring economic development.
 - Use these same messages when talking with any newspaper or radio stations in response to inquiries.
 - Provide this information to the Fulton Sun and consider doing a monthly column to update residents on progress Downtown.
 - In addition to reinforcing key messages, explain the process of getting a CID (and/or TIF) implemented.
- Mailer to be sent to property owners and city officials.

- Inform people about what a CID (and/or TIF) is and specifically how the Downtown Fulton District will work.
- Detail specific programs and services that would be funded by a Downtown Fulton District, “painting a picture” of what it could do.
- Explain the District process.
- Provide contact information and drive people to additional information online.
- To the most influential stakeholders, deliver in person or include with a letter requesting a meeting.
- Template presentation and “leave behind” flyer or pamphlet about the District and the BDA’s vision for the future.
 - Demonstrate the economic impact that new Downtown development has made or could make on the town — including job creation and new tax revenue.
 - Address any possible concerns that may be felt by businesses and consumers.
 - Briefly explain how the BDA works, provide background about projects the committee has led, and show the committee’s concrete vision for the future.
- “Frequently asked questions” (FAQs) to address issues surrounding the District.
 - Discuss how the District would have a positive impact on the Downtown as a whole without impacting retail sales.
 - Provide examples of projects that would be funded by the District, including streetscapes and park facilities.
 - Demonstrate District success rates, providing examples in similar-sized communities if possible.
- Follow-up letter to send to members of the voting body near the date of the vote.
 - Stress the importance of each individual vote.
 - Reinforce the case for Downtown revitalization and a more permanent Downtown funding structure.
 - Have the letter sent by a prominent community official or member of the advisory committee.
- Website landing page prominently linked to the Kingdom of Callaway Chamber of Commerce website.
 - To reach secondary influencers and garner broader public support, explain the vision for Downtown Fulton, made possible by the District.
 - Place a large icon on the home page to promote the opportunity to improve Downtown.
 - Include an opportunity to sign up for ongoing updates, whether that is through a blog or page RSS feed.
 - On the site, include relevant content such as:
 - The vision for Downtown, along with renderings of proposed improvements.
 - Information about what a CID (and/or TIF) is and can do for Downtown Fulton.

- General information about the CID (and/or TIF) voting process.
- FAQs.
- A list of District supporters with supporting quotes.
- A map of the proposed District.

Countering Negative Perceptions

No new tax or financing proposal will come without detractors. Fortunately for business owners in the case of the Downtown District, the small proposed increase to the sales tax should have little to no negative impact on sales. For residents, the minor increase in the sales tax will add very little to the purchase price of an item, while the funding source will pay for improvements that can make Downtown Fulton a more attractive destination.

In addition to building possible concerns into the core messaging, the BDA should develop a Questions and Answers (Q&A) document. This piece would be similar to the FAQs, but for internal purposes only. It would be used reactively to answer difficult questions posed by detractors and members of the media.

- Brainstorm a list of possible “hard-hitting” questions that would be asked by reporters, residents and/or property owners.
- Use the message platform to craft succinct answers.
- Provide the developed Q&A to spokespersons and other key advocates who may be questioned about the District.

NEXT STEPS

In the past several months, the BDA has received feedback from the community on potential funding options for Downtown. Feedback consisted of comment cards returned at a public meeting in October 2012 and an online survey in Fall 2012 / Winter 2013. The comments received did not indicate a strong consensus for or against a CID, TIF, or EDS. This being the case, the BDA must first develop a list of Downtown improvements and programming. Once the BDA has agreed upon the project/program list, it then may determine whether to pursue a CID or TIF (or both).

Due to the difference in funding mechanisms – CID being sales tax (and/or property assessment) based and TIF being dependent on an increase in real property assessments – the nature of the projects should determine what type, or types, of districts are pursued. If the projects, for example, include improvements that will substantially increase the assessed value of private property, a TIF is the best choice. If the projects will primarily benefit the district retailers and/or property owners, a CID may be the best choice. If the projects are a mixture of the two, a CID and a TIF are a powerful combination for supporting Downtown revitalization.

When ready to begin the formation of a District, the members of the BDA should meet to review and discuss the proposed public engagement plan and establish a District Formation Advisory Group. Then representatives can begin the process of engaging stakeholders within the proposed District boundaries, discuss which supporting materials are

needed to move forward with implementation of the plan and set a production timeline.

TIMELINE

On the following page is a potential timeline for enacting the recommendations outlined in this plan, assuming Fulton adopts the list of materials proposed in the strategies section. If materials are removed from the list, or additional assets requested, the timeline should be adjusted accordingly. This timeline may need to be significantly expanded, depending on how long the BDA feels it will take to achieve consensus among Downtown’s business owners, property owners, and residents.

Phase 1: First Month of the Campaign

Timing	Action/Deliverable(s)
Weeks 1-2	<ul style="list-style-type: none"> • Possible members identified • Invitations to join extended
Week 2	<ul style="list-style-type: none"> • Draft key messages and proof points (message platform) developed • Draft list of campaign materials developed
Week 3	<ul style="list-style-type: none"> • Introductory meeting • Edits to or approval of message platform • Edits to or approval of list of proposed campaign materials • Action plan for engaging individual business owners including who will make contact, and when • Action plan for campaign materials development, including timeline and responsible party
Week 4	<ul style="list-style-type: none"> • Final message platform adopted

Phase 2: Second Month of the Campaign

Timing	Action/Deliverable(s)
Weeks 5-6	<ul style="list-style-type: none"> • Presentation for Advisory Committee meetings • “Leave behind” flyer/pamphlet and mailer • FAQs and Q&A • Website copy
Weeks 7-8	<ul style="list-style-type: none"> • Advisory Committee meeting to review materials and confirm outreach strategy • Mailer delivered to voters and key stakeholders • Website development • Initial Advisory Committee meetings with voters and key stakeholders

Phase 3: Third Month of the Campaign, Ongoing

Timing	Action/Deliverable(s)
Week 9	<ul style="list-style-type: none">• Advisory Committee meetings with voters and key stakeholders wrap-up
Weeks 10-11	<ul style="list-style-type: none">• Information gained from meetings shared with other Committee members and the BDA• Follow-up letter to voters developed and mailed
Week 12	<ul style="list-style-type: none">• CID vote taken (or in the case of a TIF District, approval by the TIF Commission and City Council)

SECTION THREE

COMMUNITY IMPROVEMENT DISTRICT LEGAL REQUIREMENTS

PURPOSE

Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri, as amended, (the “CID Act”) require that a Community Improvement District (“CID” or “district”) must be a contiguous area and may be created for the purpose of financing a wide range of public facilities, improvements or services within a municipality. A CID is either a separate political subdivision with the power to impose a sales tax, a special assessment or a real property tax, or a nonprofit corporation with the power to impose special assessments.

IMPLEMENTATION

A CID is created by filing with the municipality, where the proposed district will be located, a proper petition signed by:

- (1) Property owners of at least 50% of the assessed value of the real property within the proposed district, and
- (2) More than 50% per capita of all owners of real property within the proposed district.

Once the petition is filed, the governing body of the municipality shall hold a public hearing and may approve the creation of the proposed district by ordinance.

The petition must include a five-year plan that describes the purposes of the proposed district, the services it will provide, the improvements it will make and an estimate of the costs of the project. The petition must also indicate the number of directors to serve on the board of directors as well as the term for the existence of the district, which may be defined as a minimum, maximum or definite number of years.

BOARD OF DIRECTORS

The CID may be governed by a board of directors numbering at least 5 but not more than 30 members. These members may be either appointed by the municipality or elected by the residents and property owners of the CID. The CID Petition may also state that certain officers or members of the Board of Directors are or will be appointed and that others will be elected.

In order to qualify for a seat on the board of directors, each potential director must be: at least 18 years of age; an owner of real property or a business within the CID; or a registered voter residing within the CID. The establishing petition may define any other qualifications, which any potential director would then have to meet.

The procedure for electing the Board of Directors is as follows:

- (1) The municipal clerk specifies a date for the election. The date must be a Tuesday not earlier than the 10th Tuesday, and not later than the 15th Tuesday, after the effective date of the ordinance adopted to establish the CID.
- (2) Candidates for the Board of Directors shall pay the sum of five dollars as a filing fee and shall file not later than the second Tuesday after the effective date of the ordinance establishing the district, with the municipal clerk a statement under oath that he or she possesses the qualifications for a director and thereafter, such candidate shall have his or her name placed on the ballot.
- (3) A notice of the election must be published in a newspaper of general circulation within the municipality two times. The first publication no more than 60 days prior to the date of the election; the second publication not less than 10 days prior to the date of the election.
- (4) Qualified voters consist of residents within the CID who are registered voters as of the 30th day prior to the date of the election; or if no registered voters reside within the CID then qualified voters consist of owners of real property within the CID.
- (5) The election will be conducted via ballot mailed to registered qualified voters within the CID. If registered voters fail to receive a ballot in the mail, they may pick up a mail-in ballot at the election authority's office.
- (6) Ballots are to be mailed to registered qualified voters not more than 15 days and not less than 10 days prior to the date of the election.
 - a. For purposes of mailing ballots to real property owners, only one ballot shall be mailed per owner to the address shown on the records of the county clerk.
- (7) The CID must reimburse the election authority for the costs it incurs in conducting the election.

The directors to be elected shall be elected at-large, with the person receiving the most votes receiving the position with the longest tenure, the person receiving the next most votes receiving the position with the next-longest tenure, and so on down the line. The tenures of each director should be stipulated in the establishing petition.

ELIGIBLE PROJECTS

A CID may fund public facilities or improvements within its boundaries, including the following:

- (1) Pedestrian or shopping malls and plazas.
- (2) Parks, lawns, trees and any other landscape.
- (3) Convention centers, arenas, aquariums, aviaries and meeting facilities.
- (4) Sidewalks, streets, alleys, bridges, ramps, tunnels, overpasses and underpasses, traffic signs and signals, utilities, drainage, water, storm and sewer systems and other site improvements.
- (5) Parking lots, garages or other facilities.
- (6) Lakes, dams and waterways.
- (7) Streetscape, lighting, benches or other seating furniture, trash receptacles, marquees, awnings, canopies, walls and barriers.
- (8) Telephone and information booths, bus stop and other shelters, rest rooms and kiosks.
- (9) Paintings, murals, display cases, sculptures and fountains.
- (10) Music, news and child-care facilities.
- (11) Any other useful, necessary or desired improvement.

A CID may also provide a variety of public services within its boundaries, including the following:

- (1) With the municipality's consent, prohibiting or restricting vehicular and pedestrian traffic and vendors on streets.
- (2) Operating or contracting for the provision of music, news, child-care or parking facilities, and buses, mini-buses or other modes of transportation.

- (3) Leasing space for sidewalk café tables and chairs.
- (4) Providing or contracting for the provision of security personnel, equipment or facilities for the protection of property and persons.
- (5) Providing or contracting for cleaning, maintenance and other services to public and private property.
- (6) Promoting tourism, recreational or cultural activities or special events.
- (7) Promoting business activity, development and retention.
- (8) Providing refuse collection and disposal services.
- (9) Contracting for or conducting economic, planning, marketing or other studies.

A CID may also demolish, renovate or rehabilitate any building or structure, if the area has been found blighted and the governing body of the municipality has determined that such action is reasonably anticipated to remediate the blighting conditions and will serve a public purpose.

FUNDING

A CID may be created as either a political subdivision or a nonprofit corporation. Once created, a CID that is created as a nonprofit corporation can finance the costs of a project through the imposition of special assessments for those improvements that specifically benefit the properties within the district. A CID that is created as a political subdivision can finance the costs of a project through the imposition of:

- (1) Special assessments for those improvements that specifically benefit the properties within the district;
- (2) Property taxes; or
- (3) A sales tax up to a maximum of 1%.

Either type of CID may finance the costs of a project through the imposition of fees, rents and charges for district property or services or grants, gifts and donations. A CID may also issue bonds, notes and other obligations and may secure any of such obligations by mortgage, pledge, assignment or deed of trust of any or all of the property and income of the district. However, the bonds or other obligations of a CID that is created as a nonprofit corporation will not be tax-exempt.

If the district wishes to impose a sales tax on all retail sales made in the district, the board of directors of the district must submit, by mail-in ballot, a proposal to authorize a sales tax. The proposal should stipulate the tax rate which may be imposed in increments of one-eighth of one-percent up to a maximum of one-percent. If a majority of the votes cast are in favor of the sales tax, then the resolution is adopted. If a majority of the votes cast are opposed, then the resolution is void. The mail-in ballot election procedure for the adoption of the resolution and imposition of the sales tax is conducted in the same manner as the election for the board of directors as described above, pursuant to Section 67.1551, RSMo.

REPORTING REQUIREMENTS

- (1) The CID's fiscal year shall be the same as the municipality's fiscal year.
- (2) No earlier than 180 days and no later than 90 days prior to the first day of each fiscal year, the CID board shall submit to the governing body of the municipality a proposed annual budget setting forth expected expenditures, revenues, and rates of assessment and taxes, if any, for such fiscal year. The governing body may review and make comments. If comments are given, they must be delivered no later than 60 days prior to the first day of the relevant fiscal year. Comments from the City do not constitute requirements, only recommendations.
- (3) The board shall hold an annual meeting to adopt an annual budget no later than 30 days prior to the first day of each fiscal year.
- (4) Within 120 days after the end of each fiscal year, the district shall submit a report to the municipal clerk and the Missouri Department of Economic Development stating services provided, revenues collected and expenditures made.

TAX INCREMENT FINANCING DISTRICT LEGAL REQUIREMENTS

PURPOSE

Tax increment financing (commonly referred to as “TIF”) is a statutory procedure available to cities, villages, incorporated towns or counties to encourage redevelopment of “blighted” or “conservation” areas.

ELIGIBLE COSTS

The TIF Act provides for the use of tax increment financing to pay all reasonable or necessary costs incurred or incidental to a redevelopment project. Such costs include the following:

1. Costs of studies, surveys and plans;
2. Professional service costs, such as financial advisory fees, bond counsel fees and planning expenses, subject to certain limitations as provided in the TIF Act;
3. Land acquisition and demolition costs;
4. Costs of rehabilitating and repairing existing buildings;
5. Initial costs for an economic development area;
6. Costs of constructing public works or improvements, such as street lighting, street repairs or parking;
7. Financing costs, including bond issuance costs, capitalized interest and reasonable reserves;
8. Capital costs incurred by any taxing jurisdiction as a direct result of the project;
9. Relocation costs; and
10. Payments in lieu of taxes.

IMPLEMENTATION

Any county that desires to implement a TIF project within the boundaries of a city within the county must first obtain the permission of the city’s governing body.

Before a municipality may implement tax increment financing:

- (1) The municipality must create a TIF commission made up of representatives of all taxing districts within the redevelopment area;
- (2) A redevelopment plan, including a description of the redevelopment area and the redevelopment project(s) therein, must be completed;
- (3) A cost-benefit analysis must be prepared;

- (4) The TIF Commission must hold a public hearing and make a recommendation to the municipality pertaining to the redevelopment plan, the redevelopment projects, and the designation of the redevelopment area; and
- (5) The municipality must adopt an ordinance approving the redevelopment plan, the redevelopment projects and the designation of the redevelopment area.

Once the ordinance is adopted, tax increment financing may be implemented for one or more redevelopment projects within a redevelopment area. Then, once a project is identified and underway, the municipality may also enter into one or more redevelopment agreements with a developer, or developers, who will execute the redevelopment plan and project.

The TIF Act requires the municipality to make two key determinations before approving a TIF project. The first is the “blight” or “conservation” determination; the redevelopment area must be classified as a “blighted” or “conservation” area. The second is the “but-for” determination.

BLIGHTED AREA

A “blighted area” is defined as an area which, by reason of the predominance of defective or inadequate street layout, unsanitary or unsafe conditions, deterioration of site improvements, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire or other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, morals, or welfare in its present condition and use.

CONSERVATION AREA

A “conservation area” is any improved area within the boundaries of a redevelopment area located within the territorial limits of a municipality in which fifty percent (50%) or more of the structures in the area have an age of 35 years or more. Such an area is not yet a blighted area but is detrimental to the public health, safety, morals, or welfare and may become a blighted area because of any one or more of the following factors: dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; abandonment; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; and lack of community planning. A conservation area shall meet at least three of the aforementioned factors.

THE “BUT-FOR” TEST

To satisfy this test, the developer must provide an affidavit of the determination that “but for” the adoption of the redevelopment plan and tax increment financing, the redevelopment area would not reasonably be anticipated to be developed.

FINANCING A PROJECT

Tax increment financing involves the issuance of bonds or other obligations that are secured by a pledge of payments in lieu of taxes attributable to the increase in assessed valuation of taxable real property within the designated area resulting from redevelopment improvements, as well as a portion of the incremental economic activity taxes (sales and utility tax, etc.) generated within the redevelopment area.

When a TIF plan is adopted, the assessed value of real property in the redevelopment area is frozen for tax purposes at the current “base” level before construction of improvements. The owner of the property continues to pay property taxes at this base level. As the property is improved, the assessed value of real property in the redevelopment area increases above the base level. By applying the tax rate of all taxing districts having taxing power within the redevelopment area to the increase in assessed valuation of the improved property over the base level, a “tax increment” is produced. The tax increments, referred to as “payments in lieu of taxes” or “PILOTS,” are paid by the owner of the property in the same manner as regular property taxes. The payments in lieu of taxes are transferred by the collecting agency to the treasurer of the municipality and deposited in a segregated account referred to in the TIF Act as a “special allocation fund.” In addition, the county and city transfer 50% of all incremental sales and utility tax revenues, referred to as “economic activity taxes” or “EATS,” to the treasurer of the municipality for deposit into the special allocation fund. All or a portion of the money in the fund can then be used to pay directly for redevelopment project costs or to retire bonds or other obligations issued to pay such costs.

STATE TIF

In certain limited cases, the State may make a portion of its revenues available to pay for redevelopment project costs. Among the conditions precedent for the appropriation of State revenues are the following:

- (1) Approval by the Department of Economic Development and the Office of Administration of an application for State rebate;
- (2) Submission of an affidavit signed by the developer stating the project would not be developed “but for” the rebate;
- (3) Submission of a fiscal impact study upon the State, demonstrating the “net new” benefit the State will receive from the project; and

- (4) Addition of the project by name to the Department of Economic Development’s budget legislation.

In addition, the redevelopment plan must ensure that 100% of the payments in lieu of taxes and 50% of the economic activity taxes will be used for eligible redevelopment project costs, and will not be distributed to taxing districts as surplus funds.

If a project is eligible for application of State revenues, up to 50% of any new State revenues generated within a redevelopment area may, under certain circumstances, be rebated to the municipality for reimbursement of eligible redevelopment project costs. “New State revenues” means either (1) State sales taxes except those that are constitutionally dedicated, school district trust fund taxes, and sales and use taxes on motor vehicles, trailers, boats and outboard motors OR (2) State income tax withholding.

If State revenues are used, the program is limited in any year to the amount appropriated by the General Assembly, not to exceed \$32,000,000 per year. State TIF may be awarded for a period of up to 15 years (a longer period may be requested, but not to exceed 23 years). Any expenditures made before approval of State TIF cannot be reimbursed with State funds.

PRACTICAL NOTES

TIF Review Committee

A “TIF Review Committee” or some other type of review board is an important administrative tool in the TIF Process. Such a committee should be charged with reviewing developers’ applications for TIF prior to appearance before the TIF Commission in order to ensure that the developer is presenting a project that: truly requires TIF, that will provide a benefit worth of utilizing TIF, and is both financially feasible and sustainable.

The Clawback

In addition, a community utilizing TIF should include a “clawback” function in any agreement they enter into with a developer. A “clawback” allows the municipality to go back to the developer after the project is complete and functioning – and, if it’s a residential project, all, or a majority, of the residences are sold – so that the municipality can make a determination whether the developer’s proceeds from the project have exceeded their original pro forma to an extent that the municipality should be owed, or given back, some of the tax revenue the municipality has invested in the project via TIF.

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