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# Economic Development Toolbox for Municipal Officials

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# ECONOMIC DEVELOPMENT TOOLBOX FOR MUNICIPAL OFFICIALS

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# Introduction

Building a strong community and keeping it in sound economic condition are important jobs for municipal officials. There are many tools available to local governments to promote commercial, industrial and residential development, and to prevent the deterioration of existing homes and businesses. These tools include municipal bonds, impact fees, tax abatements, special service areas, tax increment financing, and others. The purpose of this booklet is to explain these tools: what they are and what they can do. It is not intended to be a detailed instructional manual or text book. For example, if you want to remodel your house and are wondering where to get the money, you don't have to understand international monetary policy. But you do need to know that you could use the money from your savings account, refinance your mortgage, or take a home improvement loan. Similarly, for municipal improvements, you need to know what methods of financing the project are available and which is best suited for the circumstances.

In the context of municipal economic development, these tools comprise methods by which a municipality can encourage development by raising money and using it in ways which promote investment in the community. It has been shown that the new investment will, in the long run, more than pay for whatever the municipality has spent. For example, a private developer might be interested in building a new shopping center in the community, but land might be so expensive or hard to acquire that if the developer has to pay full market price—or even a premium—for it, the project cannot make money. The municipality could decide to help the developer by acquiring the land itself using public funds on hand or anticipated future tax revenues (tax increment financing), then selling it to the developer at a reduced price. The difference between what the municipality pays for the land and what it receives from the developer is the community's investment in the project. Over a number of years, the increased sales taxes and property taxes from the new shopping center will pay back the municipal investment and then begin to generate new revenue to the municipality. In the meantime, new jobs will have been created and more private development attracted to the area of the shopping center, creating a need for more housing and additional service businesses in the community. These same results can often be obtained from renovating or converting a vacant or rundown commercial or industrial building.

The following discussion presents, in alphabetical order, the primary tools for municipal economic development, in enough detail to enable a non-specialist to understand what each can do and when it may be used. In the interest of readability, and because this Handbook is intended to be an overview, not a reference book, we have omitted legal citations. The successful fulfillment of a program of economic development is generally best accomplished by a coordinated team of elected and

appointed municipal officials and consultants. Some of these consultants are: land planners, appraisers, tax analysts, engineers, architects, financial analysts and bond counsel. Each of the steps from land acquisition to plan development to construction contracts to bonds and financing, involves legal issues. The lawyers at **ANCEL GLINK** have been helping municipal clients through this process for decades. Please contact any of the authors of this pamphlet for further information.

## **About the Firm**

Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C. was founded 75 years ago. As one of the preeminent local government law firms in Illinois, our firm of more than 35 lawyers has a tradition of excellence and innovation. Ancel Glink has adhered to the principle of providing the quality of work normally associated with the largest firms within a small firm environment. Our goal is to offer our clients effective and comprehensive representation at a reasonable cost. Our legal services and strategies match our clients' needs and resources. Although a substantial portion of our practice is in the Chicago Metropolitan Area (Cook County and the "collar" counties), we provide services statewide, often serving as special counsel and assisting local attorneys with complex matters.

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## Annexation Agreements

An annexation agreement is a device by which a municipality and a landowner seeking annexation can enter into a binding contract, prior to annexation, regarding development of the land. The agreement provides that the property will be annexed to the municipality subject to the terms and conditions set forth. Most often, the municipality is interested in controlling the type and intensity of development, while the owner desires relief from existing zoning restrictions, or guarantees that zoning will not change while a proposed development is in progress. The municipality can also use the annexation agreement to specify architectural design, site plans, infrastructure improvements and virtually any other aspect of a project, and to allocate costs for municipal services. In short, a well-crafted annexation agreement can take much of the uncertainty or unpredictability out of adding a new tract of land to the municipality. In addition to those already mentioned, among the issue which may be addressed in an annexation agreement are:

- Applicability or inapplicability of various municipal ordinances, and exclusion from future amendments;
- Abatement of taxes;
- Payments in lieu of real estate taxes for exempt property;
- Permits and permit fees;
- Contribution of land or cash for municipal, park or school purposes;
- Remedies and security in the event of default.

A public hearing before the village board or city council is required to approve an annexation agreement. An annexation agreement can be used for land which is not yet contiguous to the municipality but which may become contiguous as the municipality expands in the future. Thus, when the municipal boundary reaches land on which an annexation agreement was previously approved, the terms of the agreement go into effect. The land can then be annexed.

Many municipalities have used this technique to control development beyond their borders by extending streets and utilities to non-contiguous land in exchange for the owner's agreement to the terms of annexation in the future. For example, the owner of a large tract of vacant, unincorporated land near a village needed water and sewer service in order to develop the land for residential use. The village was not contiguous to the tract, but was growing in that direction. The village was concerned about the density of development as it would impact village resources. **ANCEL GLINK** represented the village in negotiating an annexation agreement with the developer, which provided that, in exchange for access to village water and sewer service, the developer agreed to limit density, to contribute cash to the school districts for the new students generated by

the new residences, and to pay for improving the village sewer system. When the village boundary reached the developer's land, the annexation ordinance was adopted.

## Bonds

Municipalities can issue bonds to raise cash for public projects. A bond is a written promise to pay a specified sum of money (the "face value" or "principle amount") on a specified date or dates (the "maturity date(s)") with periodic interest at a specified rate. There is a market for municipal bonds because, generally speaking, the interest received by the bondholder is tax-exempt, and because they are relatively secure; it is unusual for a municipality to default on a bond.

Municipal bonds can be divided into two broad categories: general obligation bonds and revenue bonds. General obligation bonds are paid from general property taxes levied by the municipality on all taxable property within its boundaries. Payment is guaranteed by the "full faith and credit" of the municipality; *i.e.*, a pledge of the general taxing power for payment. Revenue bonds are paid from revenue generated by some limited source, either an "enterprise" such as a water system, or a limited tax such as a special service area tax. A third category, "alternate bonds," is a hybrid. Also called alternate source bonds and double barrel bonds, these are general obligation bonds but are payable from a designated limited enterprise or revenue source, with the full faith and credit of the municipality serving as secondary security, should the revenue source ever be insufficient to pay the debt service.

A municipality's authority to issue bonds is largely determined by its status as either home rule or non-home rule. Home rule units have virtually unlimited authority to issue bonds. Non-home rule units are limited by state law as to how much debt they may incur (8.625% of all equalized assessed value), how much property tax they may levy, and they are required in many cases to obtain prior voter approval of a bond issue. In addition, many types of non-home rule revenue bonds are subject to the "back door referendum" process. That is, if a petition with a sufficient number of signatures is filed within a certain time after the bonds have been authorized, the municipality must submit to the voters the question of whether to proceed with the project and the bonds. If the voters do not approve, the bonds may not be issued. Bonds may be issued only for a legitimate public purpose. In addition, revenue bonds may be issued only for a purpose related to the source of the revenue. For example, bonds payable from water system revenues could not be used to build a municipal sports stadium. Moreover, for non-home rule units, the purpose of the bonds must be something the municipality is expressly authorized to do by state law.

## Procedures

To issue bonds requiring prior referendum approval, a municipality first enacts an ordinance placing the question on the ballot. The question must specify the purpose for which the bonds proceeds will be used, the maximum amount of the issue, maximum interest rate and maximum term. If the voters approve the bond issue, the municipality next enacts the bond ordinances themselves.

For bonds subject to a back door referendum, the municipality enacts the bond ordinance including a provision requiring publication of notice of the opportunity to require a referendum on the question by submission of a petition. If a petition with the required number of signatures is filed, the bonds may not be issued unless the voters approve the bond issuance at the next municipal election.

The ordinances and procedures necessary to actually issue bonds are highly technical. Many of the requirements are dictated by the banking industry in order to make the bonds marketable and tax-exempt. Most municipalities retain a financial consultant to advise on the best way to structure a bond issue and a broker to bring the issue to market. The municipality's regular attorney, or special outside counsel, normally acts as "issuer's counsel" to represent the interests of the municipality. The interests of the bond purchasers are represented by "bond counsel" who normally prepares first drafts of all the documents and issues a written opinion on the validity and the tax exempt status of the bonds.

## Private Activity Bonds

Special mention must be made of Private Activity Bonds, sometimes referred to as Industrial Development Bonds ("IDBs") or Industrial Project Revenue Bonds ("IRBs"). Broadly speaking, these are tax-exempt bonds issued by a government entity under an agreement with a private enterprise. The agreement provides that the proceeds of the bond issue will be paid to the private company for a specific project. Private investors will buy the bonds on the promise of the private enterprise to pay the debt service (principle and interest) of the bonds. Often the private company also pays a fee to the government entity. Because interest paid on PABs is exempt from income taxation, their use effectively lowers the cost of borrowing money for the private enterprise. Private activity bonds are not considered debt of the municipality. The municipality essentially acts as a conduit of the bonds for the benefit of the private entity.

IRS rules place strict controls on the tax exempt status of PABs and an annual limit on the amount of such bonds which may be issued in each state. Part of each state's allocation is made available to municipalities and other units of local government. Each eligible local government is given a portion of the allocation (its "volume cap") based on population. Thus, a municipality may issue PABs up to its annual volume cap.

If a municipality does not use its annual PAB volume cap, it may transfer that volume cap to another unit of government within the state, which can then issue more private activity bonds than it would otherwise be able to. The transferring entity earns a fee on the amount of volume cap it transfers.

## **Business Development Districts**

A Business Development District (“BDD”) is a device which can accomplish many things. A municipality which creates a business development district is empowered to use many typical “urban renewal” tools, but without the need to prove that the area is “blighted,” in contrast to tax increment finance districts, described below. A BDD can also serve as a mechanism for levying an additional sales tax to pay costs of economic development.

In its simplest form, creation of the business development district requires only a public hearing and enactment of one ordinance. There are no rules in the statute about what is to take place at the public hearing. The only requirement is that the municipality should develop “a specific plan” for the business development district which should conform to the municipality’s comprehensive plan. Thus, the hearing will normally serve as a forum for presentation and discussion of a plan for development or redevelopment of a business district. The plan can be “specific” without necessarily being detailed, so it can say as much or as little as may be useful about size, location, number, configuration, use, density and other elements of a development project. As a practical matter, creation of a business development district provides an umbrella of “public purpose” under which a variety of development activities might take place, such as:

- using condemnation power for acquisition of property
- conveying public property for business development
- applying for and receiving capital grants and loans from federal and state agencies
- borrowing money and issuing revenue bonds
- entering into contracts
- hiring employees
- using public funds for planning, and implementing plans
- creating a business development commission to oversee redevelopment activity.

For example, a municipality wanted to facilitate redevelopment of a one block area on the fringe of its business district. The area was occupied by taverns, adult entertainment establishments, liquor stores, and other marginal uses, but did not qualify

as a TIF district. By designating the area as a business development district, the municipality was able to show a public purpose to support the issuance of bonds, use of eminent domain to acquire the property, and hiring of consultants to plan the redevelopment.

If the municipality wishes to levy the BDD sales tax, it must meet additional requirements in the creation of the BDD, including determination that the area is blighted, and that the area would not redevelop without public assistance. If these requirements are met, the municipality may levy an additional sales tax, up to 1%, in the BDD. This tax is collected by the Illinois Department of Revenue along with regular sales taxes, and remitted to the municipality. The proceeds may be used for improvements within the BDD.

## **Connection Fees**

New land developments often require a municipality to construct, expand, extend or improve its water and sewer system. State law authorizes the municipality to recover its cost of such improvements by charging a “connection fee” to new users of the system. Connection fees must be reasonable in relation to the cost to the municipality of constructing the system. The fees can include costs of not only line extensions, but treatment plants as well. If the municipality requires a developer to pay the cost of extending a water or sewer line, and the line is capable of serving additional users, the municipality may enter into a “Recapture Agreement” with the developer, to enable the developer to recover some of its costs. Recapture agreements are explained below.

## **Eminent Domain**

Eminent domain refers to the power of the government to take private property for a public purpose. The exercise of this power is also called condemnation, which, in this context, has nothing to do with dilapidated or dangerous buildings.

The power to condemn land is inherent in a sovereign government and does not come from the United States Constitution. On the contrary, the Fifth Amendment to the United States Constitution actually restricts the use of eminent domain, by requiring the government to pay “just compensation” when it takes private property. Municipalities, both home rule and non-home rule, derive their power of eminent domain from the state.

As a tool for economic development, eminent domain enables the government to acquire ownership of land which is necessary for public improvements or facilities, or

which otherwise could not be developed or redeveloped. For example, a new commercial development might require a new or expanded roadway for access. Or a new fire station might be necessary to protect a newly-developing area of the community. If the private owner of the land where such public facilities would best be located refuses to sell at a reasonable price, the government may bring the owner into court by a condemnation suit, where a jury will decide the fair market value of the land and the court will confirm title in the government.

The private owner can dispute the government's right to take the property. Such a challenge will usually focus on the purpose for which the land is being taken. If the purpose is for a public use, such as a street or a fire station, it will be difficult to convince the court that no public purpose is being served. But if the government plans to take the land from one private owner and transfer it to another private owner, as often happens, the government will have to show that there is a significant benefit to the public. It has long been accepted that transfer of condemned property to a private owner does not, by itself, negate the public purpose behind the condemnation.

Taking of slums and blighted property for re-development by private enterprise is clearly a proper use of eminent domain. However, where the primary beneficiary of the transfer is the private enterprise, such as where condemnation simply enables an existing business to expand, incidental public benefit may not be enough to support the necessary finding of a public purpose. For example, a race track operator wanted to expand its facilities and needed more land to do so. A regional government development agency offered to use its eminent domain power to condemn part of an adjacent landfill site and sell it to the track. Expansion of the track would draw more spectators and generate more income for the businesses in the area. However, the Illinois Supreme Court held that this was not sufficient public benefit to justify taking property from one business and transferring it to another. The outcome of this case might have been different if the expansion of the track had been part of the redevelopment of a large blighted area.

Where there is no issue about the government's authority to condemn, the most common question in an eminent domain case is the value of the land being taken. This issue is decided by a jury, based on testimony by professional appraisers hired by the parties. There can be wide differences in appraisals of land value, depending on the methodology of each appraiser. The value of the property is determined as of the date the suit was filed. If the jury awards more than the government is willing to pay, the government may decide not to proceed with the condemnation, but it then must pay the attorney fees and court costs of the property owner.

Before a condemnation suit may be filed, the government must authorize use of eminent domain power and make a good faith offer to buy the property at a fair price. Thus, the government normally obtains an appraisal before filing suit in order to have a basis for negotiating a price.

## **Impact Fees**

Sometimes a new development is so extensive that existing municipal resources are inadequate to serve it. For example, the existing fire department equipment might be incapable of dealing with a new high rise office building, or a large shopping mall on the fringes of the community might necessitate a new fire or police substation. A new factory creating new jobs might attract so many new residents that a new school or park is necessary. One way to pay for the necessary new community services or facilities is through "impact fees" charged to the developer.

Impact fees are usually cash payments from a developer to a municipality to offset the financial impact on the community of the new development. Some municipalities have adopted an impact fee ordinance which requires the payment of a fee, usually set according a schedule, as a condition of approval of a new subdivision, particularly a residential subdivision. Or, such fees may be the product of negotiations between the developer and municipality. Municipalities must be careful not to get greedy about impact fees. The Illinois Supreme Court has ruled that a municipality can force a developer to pay impact fees only for municipal costs which are directly and uniquely attributable to the new development. So, for example, the cost of a new village hall probably is not a proper subject for an impact fee unless the development project requires knocking down the old one.

Sometimes what a municipality wants from a developer is not cash, but a piece of land. If the development involves creation of a new subdivision, special rules allow the municipality to require construction of streets, sidewalks and other necessary public facilities on land which is usually then dedicated to the municipality. The municipality also can require the developer to reserve land for development as a school, park, or other public facility. The municipality, school district or park district then has one year to decide whether to buy the land.

Outside the context of a new subdivision, it is very difficult to force developers to provide land for public amenities without compensation. Requiring a developer to permanently maintain a portion of land in its natural state as a "preservation" or "scenic" area or to provide an easement for a public bike path or similar amenity for the benefit of the public has been held to constitute "taking" private property for a public purpose, a

form of eminent domain, which is unconstitutional unless the developer is paid for the market value of the land.

On the other hand, most developers are willing to negotiate with municipal planners for the inclusion of public amenities in their plans. The community might be willing to trade a higher or more intensive degree of development on part of a site in exchange for more open space on another part, for example, or the municipality might agree to improve public right-of-way for the development if the developer will grant an easement for a sewer lift station, or some other public utility.

## **Property Tax Abatements**

A municipality may abate any portion of its own real estate tax on certain types of property. It does this by first determining the assessed value of the property and then enacting an ordinance by simple majority vote, ordering the clerk of the county to abate some or all of the municipal tax on specified real estate. The county tax collector then does not levy the designated municipal tax on that property. State law limits the total amount of tax which can be abated for all taxing districts to \$4 million for commercial or industrial property less than 500 acres and limits the number of years such an abatement may continue to ten years. There are other limits for other types of property, including:

- commercial or industrial over 500 acres: \$12 million and 20 years;
- academic or research property: \$5 million and 15 years;
- senior housing: \$3 million and 15 years;
- auto racing: no dollar limit and 10 years;
- horse racing: \$5 million and 10 years.

Property tax abatements are normally granted for the purpose of encouraging a business entity to establish, rehabilitate or expand the business facility within the taxing district. A written agreement normally provides that if the business entity moves or ceases business before a certain date, the abatement terminates and the abated tax must be repaid over a short period. A municipality may also abate taxes pursuant to a Redevelopment Agreement for property in a Tax Increment Finance district, discussed below.

While a tax abatement causes the taxing body to lose money in the short run, the objective is to strengthen the tax base in the long run by encouraging businesses to locate or improve their facilities in the community.

## **Recapture Agreements**

A recapture agreement may be used to reimburse a developer for a pro rata portion of the cost of improvements, required by the municipality, which benefit property or uses outside the development itself. This might be a water line or sewer line or other facilities such as roadways and traffic signals. The municipality enters into a contract with the developer providing that the municipality will require additional users of the facilities within a described area outside the development to pay a fee for connection to or use of the facilities, which fees shall be reimbursed to the developer. A recapture agreement can provide an economic incentive to a developer to put in larger or more extensive infrastructure improvements, knowing that some of the costs will likely be recovered as additional users access the infrastructure.

Suppose, for example, that a new subdivision requires that a new six inch water main be installed from the nearest connection point a mile away. The municipality expects that other subdivisions will be built along the intervening mile, but a six inch water main will not be large enough to serve all of the new developments. The municipality may require the first developer to build and pay for a twelve inch water main, on the condition that the municipality will force later developers to reimburse the cost of the excess capacity before connecting to the water main. Of course, the first developer is only entitled to recapture to incremental cost of the extra capacity, not the entire cost of the new water line.

Recapture agreements must be filed with the county recorder to be effective.

## **Sales Tax Rebate Agreements**

A non-home rule municipality may agree to rebate any portion of retailers' occupation tax (sales tax) generated by a commercial redevelopment project which meets certain criteria. Some of those criteria are that

- the property was either vacant or had substandard or vacant buildings;
- redevelopment will create jobs, enhance the development of adjacent areas, strengthen the commercial sector of the community, enhance the tax base; and
- the project will not be possible without the rebate.

A home rule municipality may establish its own criteria for sales tax rebate agreements, so long as it demonstrates a public purpose, such as attracting a major sales tax generating business to the community.

A typical rebate agreement provides for refunding a percentage of "new" revenue generated from the development, i.e., revenue in excess of that produced prior to the development project. Also, the nature of the improvements to be made in order to qualify for the rebate should be spelled out and a process created for documenting accomplishment of the tasks. Any such agreement should include a provision that the developer must repay the rebate if it moves, designates a "point-of-sale" outside the municipality, or ceases business within a given time.

In Illinois, a retailer with multiple stores can designate any one of them as the "point of sale" for all goods sold in all its stores. Sales tax is then paid only to the municipality in which the point of sale is located. Recently, some such retailers have been threatening each municipality in which they have a store with loss of all sales tax, by shifting the point of sale to some other municipality, unless the municipality agrees to kick back a large portion of the sales tax by way of a rebate. This is a controversial issue, which pits one municipality against another in a battle for sales tax revenue. Effective January 1, 2004, State law restricts the ability of municipalities to engage in this practice.

## **Special Assessments**

The Illinois Constitution empowers municipalities and counties to levy special assessments. The Local Improvement Act section of the Illinois Municipal Code spells out procedures for municipalities to levy special assessments to pay for construction of local public improvements. Generally, special assessments are utilized for public works projects such as roadways and infrastructure improvements (water, sanitary and storm sewer projects), but can also fund construction of alleys and sidewalks. The Act establishes a process whereby the municipality, through its Board of Local Improvements ("BLI"), determines the public improvements which are necessary within the municipality.

### **Method of Financing**

Imposing a special assessment requires the municipality to get approval from the circuit court. The property owners who are deemed to benefit from the particular improvement are assessed a proportionate share of the total cost of the improvement based upon benefit to the property. They are obligated to pay the municipality for their share in up to ten annual installments. Until payments are completed, the real estate remains impressed with a special assessment lien in favor of the municipality. Since no cash is immediately available for the project, the contractors, suppliers and vendors providing labor and services to construct the local improvement are paid with vouchers or negotiable bonds issued to them by the municipality. The vouchers or bonds are then usually sold at a discount for cash to a company which specializes in the purchase

of special assessment bonds. As and when funds are collected from the property owner, the bonds can be redeemed upon presentment to the municipality. The benefit to the municipality and the property owners of this method of financing an improvement is that the municipality need not utilize its own funds for the project. If a percentage of the benefit for an improvement can be attributed to the, "public," such as an intersection in a roadway or sewer lines which serve municipal buildings, the municipality can accept a "public benefit" assessment and repay the "loan" in annual installments like any other assessee.

The Special Assessment Supplemental Bond and Procedures Act recognizes recent changes in financial markets and practices by authorizing municipalities to issue special assessment bonds payable over 31 years and to include certain additional costs as part of the project cost. It also permits the BLI, in lieu of the court, to conduct all proceedings and take all actions otherwise performed by the court, if all owners of record consent to such alternative local procedure.

### Initiation of Project

An improvement financed under the Act can be initiated either by recommendation of the Board of Local Improvements or by means of a petition from a group of property owners. Depending upon the size and type of governmental organization of the municipal body, the BLI is composed of appointed or elected officials or employees of the municipality. The Act requires that before a project is finally approved, the BLI must adopt a first resolution and then hold a public hearing pursuant to notice so that property owners have an opportunity to be heard regarding the nature and cost of the improvement. At the public hearing, the Director or Superintendent of Public Works and the municipal Engineer (or their equivalents) will present general information regarding the nature and cost of the project and the general design plans to be used. If the BLI is in favor of the project, it will submit its recommendation to the corporate authorities by a second "adhering" resolution for the passage of an ordinance authorizing both the improvement and the taking of all necessary steps for confirmation of the special assessment by the Circuit Court. It should be noted that the BLI can pursue a project whether or not the affected property owners approve of it. While it is ultimately better as a matter of policy to have the support of a majority, if not all, of the property owners who will be assessed a share of the cost for the project, the statute does not require their consent.

### Court Proceedings

Following the passage of the ordinance authorizing the municipality to initiate the process of "making, levying and collecting" a special assessment local improvement, the local government body initiates a court case by filing a petition in the circuit court. The petition asks the court to approve the project and the assessment roll, which identifies

by legal description, tax number and title holder the various properties to be assessed and the amounts required to be paid by the participating property owners, as well as any property to be condemned for the project and an estimate of its value. Next, a court date is set for the confirmation hearing, and statutory notice is provided by means of publication and mail notice to all those property owners to be assessed. The primary purpose of the hearing is to enable those individuals upon whom the assessment is imposed to file objections to the project itself, the legality of the procedures followed by the municipality or the amounts levied against the owners, or to challenge the amount of "public benefit", if any, to be paid by the municipality. If objections are filed and cannot be resolved by agreement between the municipality and the objectors, a trial will be held. Objections to the benefit determination are heard by a jury. At that same hearing the municipality can seek to procure any easements or property rights needed to undertake the project, using its eminent domain power. Obviously, if the case is tried, the project could be delayed for several months, or longer.

### Methods of Assessment

Generally speaking, the amount assessed against each property owner is determined by the cost of the project itself and the individual benefit received. Calculations of individual costs are most frequently based upon the front footage of the property immediately contiguous to the improvement and its percentage of the total front footage, converted into a dollar amount based upon the total project cost. Other methods may be used where the nature of the improvements varies or where front footage calculations alone would create an injustice. For example, adjustments can be made for "depth factors" in situations where a parcel is approximately the same width as others but is extraordinarily deep. Land which is otherwise exempt from property taxes is not exempt from special assessments, including land owned by governmental and religious organizations.

### Collection of Special Assessments

After a special assessment has been approved by the court, the court clerk issues to the municipality a "warrant" for collection of the assessment. The municipality then must publish notice of the assessment and give written notice to each person on the assessment roll, requesting payment. When each person pays in full, the municipality issues a release of lien on the property. Delinquent assessments are dealt with in the same manner as unpaid property taxes.

### Time Periods

There are numerous steps to be taken both prior to the initiation of the court proceeding and following the filing of the original petition requesting confirmation of the special assessment. Some of the procedures are quite technical but routine for the special assessment expert. Many of these steps, however, require approximately 30

days notice by newspaper publication and mailings to the affected property owners. Therefore, even if uncontested by the individual property owners, a special assessment can take at least six months from the BLI's first resolution to the start of construction. For example, after court approval of the assessment and selection of the contractor through bidding procedures, a notice of the award must be published and an opportunity offered to the owners to hire their own contractor. Consequently, in order to assure with some reasonable degree of certainty that a project can be bid and completed during the prime construction season, a project financed by special assessment taxation should be initiated in the late summer or early fall for implementation in the spring of the following year.

### Special Characteristics

A number of characteristics unique to this financing mechanism should be mentioned. Because the contractors are paid not in cash but in vouchers subsequently sold to bond companies at a discount, the bids submitted by contractors for special assessment projects are generally inflated 10 to 20 percent. In addition, certain costs for engineering, administrative and legal services, as well as an interest reserve, are added to the construction estimate. Payment by the voucher and bond system, however, does permit financing when cash is not available. A benefit to assessed property owners is the opportunity to pay for their share over a period of 10 years. Although interest is imposed (at a maximum of 9%) as for any similar type of "loan," every property owner has the option of paying the entire amount assessed against the property, interest free, within the first 60 days following notice of the due date for the first installment. The same payment methods are likewise applicable to the municipality itself, if the municipality owes a share of the project cost because of a "public benefit" assessed against it by the BLI (or the court, following a trial.) For example, a municipality will often allocate as public benefit the proportional cost of constructing street improvements in an intersection which doesn't front any adjoining property. It should be noted that the Act authorizes municipalities to levy a public benefit tax not to exceed .05% for the purpose of funding the public benefit share.

## Special Service Area Taxation

Municipalities are authorized by Illinois law to provide special services to particular areas of the community and to impose a special tax in those areas to pay for such services. This kind of financing enables municipalities to construct improvements or provide services to a limited area of the community and to levy a tax only in the area which benefits from the special service. Special service areas have been created for physical improvements like storm water detention, flood basins, parking garages, streets, alleys and sidewalks, street lighting, plazas, and for services such as parking

enforcement, snow removal and landscaping. Special service areas have been created in commercial areas to generate funds for promoting tourism and bringing new revenues to the special service area business districts. Curiously, the Act expressly authorizes special services areas for “weather modification.”

Special service area tax revenues may be used to pay ongoing or recurring costs, such as for maintenance of a drainage facility or landscaping service; they may also be used to pay for capital costs, such as for building an enhanced drainage facility. They may also be pledged to pay for bonds issued to raise funds for a public improvement.

## Tax Basis

A special service area tax is normally based upon the equalized assessed value of each parcel of land in the SSA. In this respect, it is similar to ordinary property taxes. But the tax may be based upon any other criterion which provides “a rational basis between the amount of the tax levied . . . and the special service benefit rendered.” In this respect, an SSA tax can be similar to a special assessment. However, significant problems may arise in the collection of an SSA tax which is not based upon property value, and this method should not be used before consulting with the county tax assessor.

## Procedure

Compared to special assessments, the procedure for creating a special service area is relatively simple and inexpensive.

1. Proposing Ordinance. The formal process of creating a SSA begins with adoption of an ordinance “proposing” its creation. Before this “proposing ordinance” is enacted, decisions must be made about the boundaries of the proposed SSA (which must be contiguous), what special service is to be provided, whether bonds will be issued to be secured by the SSA tax revenue, and how much tax revenue will be required to pay for the service. An estimate must be made of the assessed value of the property within the proposed SSA, and a tax rate determined which is adequate to produce the required revenue. When the proposing ordinance is enacted, it must include

- a description of the boundaries of the SSA
- the maximum annual tax rate to be levied on the property in the area or, if the tax is based on anything other than property value, a special tax roll containing, (a) an explanation of the basis for calculating the tax, and (b) the amount of tax to be levied on each parcel
- a description of the special service to be provided

- if bonds are to be issued, the maximum amount of bonds, the maximum life of the bonds and the maximum interest rate of the bonds
- announcement of a date, time and place for a public hearing about the proposed SSA
- announcement that any interested person will have an opportunity at the hearing to comment or object to the special tax.

2. Notice. Once the proposing ordinance is enacted, notice must be given of the date, time and place of the public hearing. Notice must be published in the newspaper not less than fifteen days prior to the hearing. Notice must be mailed, not less than ten days prior to the hearing, to the taxpayer of record for each parcel within the proposed SSA. Identifying the taxpayer of record is usually done by obtaining from the county assessor a duplicate tax bill for each property in this area. It is normal to include a copy of the proposing ordinance in the mailed notice.

3. Public Hearing. The public hearing is normally conducted by the corporate authorities. Anyone may comment on any aspect of the proposed SSA. Written objections may be filed with the clerk. The hearing may be continued, if necessary. No action is required by the corporate authorities, but they may, as part of the public hearing or at the first regular meeting thereafter, remove property from the proposed SSA, so long as the remaining area is still contiguous. At the conclusion of the public hearing, the corporate authorities may, but need not, call for the enactment of a second ordinance, the "establishing ordinance," described below.

4. Objection Petition. A proposed SSA may be blocked if, within sixty days after the public hearing, a petition is filed with the municipal clerk, signed by 51% of the electors residing within the SSA and by 51% of the owners of all the land within the SSA. The municipal authorities are not required to assist in the petition process, but will necessarily be required to determine whether a petition meets the statutory requirements. Criteria should be established to determine the validity of the petition. Issues which will arise include: What evidence of ownership will be acceptable to establish the total number, and identity, of owners and thus, the number and identity of owners who must sign the petition? How will authenticity of signatures be verified?

5. Establishing Ordinance. Following the public hearing, the corporate authorities must enact a second ordinance, the establishing ordinance, which finalizes all terms of the SSA, including boundaries, the maximum tax rate or special tax roll, the duration of the tax if it is to end at some future date, and the amount, life and rate of any bonds to be issued. If the establishing ordinance is enacted before the expiration of the sixty day period for filing the objection petition, the ordinance should provide that it will not take

effect until some date after that sixty day period, and then only if there is not a successful objection petition.

6. Recording. Within sixty days of enactment, the establishing ordinance must be recorded with the county recorder of deeds. The process of establishing the SSA is then completed.

### Collecting: The Tax Levy Ordinance

Each year, the municipality must enact a tax levy for the SSA. The levy may not exceed the maximum amount stated in the establishing ordinance. The levy ordinance must be filed with the county clerk, as with all other tax levy ordinances. Collection of an SSA tax based on property value is handled exactly like all other property taxes. The SSA tax appears on each tax bill as a separate line item. However, the county tax assessor and collector may not be able, or willing, to collect a tax levied on a special tax roll rather than on assessed value of the property, leaving the municipality to devise another method of collecting the SSA tax, and resort to foreclosure proceedings if the tax is unpaid.

### Modification of SSA

Once established, an SSA may be enlarged or the tax rate increased, by repeating the notice, hearing and ordinance process. Territory of not more than 1.5% of the total SSA may be disconnected from the SSA by petition of a majority of electors and owners filed in the circuit court, after a hearing and order of the court granting the petition.

### Summary: Special Service Area or Special Assessment?

A special service area is generally the method of choice where all property within the area is to receive approximately the same improvements or services and each property is either assessed at a similar amount or the assessments vary in direct relation to the value of the benefit provided, and where a shorter time period for completion of the process is desired. If a territory is one of mixed uses or where one area is to get, for example, sewers and streets and another only sidewalks, then it will probably be necessary to utilize the somewhat more costly, lengthy and complicated special assessment process. Special assessment is also the better method when there is insufficient cash on hand to pay contractors, and where a large segment of the property to be benefited is tax exempt and so would not pay SSA taxes.

## Special Taxes

In addition to property tax and sales tax, state law authorizes municipalities to levy non-property taxes on a variety of specific transactions. Some of these taxes may be useful in funding aspects of an economic development project. Among such taxes are

- hotel/motel tax;
- sidewalk improvement tax;
- amusement tax.

Home rule units can tax virtually anything except occupations, income, gross receipts or sales price. Special taxes are administered and collected directly by the municipality. It is the responsibility of the municipality to enforce payment.

## **Tax Increment Financing**

Tax increment financing is a method of raising funds to pay for redevelopment from the increase in property value caused by that redevelopment. Tax increment financing “captures” the increase in property tax resulting from the improvements and channels the increased tax back into the project. The tax which is captured is not just the municipal portion of the tax bill but the taxes levied by all the taxing districts in which the project is located: school districts, park districts, library districts included. Under tax increment financing the increased property taxes generated by the redevelopment, which would otherwise go the various taxing bodies, go instead to the municipality. The other taxing bodies do not benefit from the increased property values until the TIF expires, or unless accumulated TIF funds are declared by the municipality to be surplus, in which case the surplus funds are returned to the other taxing bodies in proportion to their respective portion of the total tax bill.

A TIF project is created by action of the municipal authorities after feasibility studies, creation of a plan for redevelopment, a public hearing, a meeting of all affected taxing bodies, enactment of a series of ordinances and approval of an agreement with a developer.

### **When to Use TIF**

A municipality initiates a TIF project when it identifies a vacant or deteriorated site which will, if it is developed commercially, enhance the tax base and produce new tax revenue. The benefits of the redevelopment may extend beyond the boundaries of the TIF project itself if new businesses and other enterprises are attracted to the revitalized area. By definition, tax increment financing is used when the area would otherwise not be improved solely with private funds.

### **Eligibility**

In order for redevelopment to proceed with tax increment financing it must be determined that the project is TIF eligible. There are three separate tests of eligibility.

1. Project Eligibility. The law requires that to begin a TIF development, the municipality must determine that the project would not take place without TIF funds. This is the “but for” test: But for the use of incremental tax revenue the site would not be developed. There are specific factors to be considered by the municipal authorities in making this determination.

2. Site Eligibility. The site of a TIF project must qualify as a “blighted area”, a “conservation area” or “an industrial park conservation area”. There are detailed criteria in the statute for defining these areas. Briefly, the factors characterizing a blighted area are that the buildings are dilapidated, obsolete, deteriorated, violate building codes, have inadequate utilities, are overcrowded or the land is contaminated with hazardous material, is poorly planned, is in diverse ownership, is tax delinquent, the assessed value has declined for several years, or contains quarries, mines, railroad right-of-way, is subject to chronic flooding or is an illegal disposal site for construction, demolition or excavation material.

A “conservation area” is one which is not yet blighted but is likely to become so. Most of the buildings are at least thirty-five years old and the area has many of the same characteristics as a blighted area though to a lesser extent.

An industrial park conservation area must be within a designated area of higher unemployment and is a site suitable for manufacturing, industrial research or transportation facilities as defined in the statute.

3. Cost Eligibility. Only certain categories of development costs are eligible for reimbursement from incremental taxes. These are spelled out in the statute and include:

- Cost of studies, plans and professional services for architectural, engineering, legal, marketing and other services;
- Costs of marketing sites to prospective businesses, developers and investors;
- Costs of land acquisitions, site preparation, rehabilitation of existing buildings, construction of public infrastructure;
- Costs of financing;
- Costs mandated to be paid to school districts for their increased costs attributable to assisted housing units within the project up to 25% of the tax increment.

Specifically excluded from eligibility are costs of constructing new privately owned buildings, except for new housing units to be occupied by low income households as defined in the Affordable Housing Act.

### Feasibility Study

The ordinances which the municipality enacts to formally adopt tax increment financing for a project must include findings that show the project is eligible for tax increment financing. In order to have a sound basis for those findings, the municipality should conduct a feasibility study, which results in a written report documenting the manner in which the project meets the statutory tests of eligibility. It is almost always necessary—and is certainly advisable—to have such studies conducted by an independent consultant. In the event of a legal challenge to eligibility, the consultant’s report and the testimony of the expert witnesses will be critical to the success of the project. If the project will displace residents from ten or more housing units, a feasibility study is mandatory.

### Redevelopment Plan

The statute requires the municipality to adopt a redevelopment plan (this is not the same thing as the “redevelopment agreement” discussed below). The plan must describe the project and include

1. An itemized list of estimated redevelopment project costs;
2. Evidence indicating that the redevelopment project area on the whole has not been subject to growth and development through investment by private enterprise;
3. An assessment of any financial impact of the redevelopment project area on, or any increased demand for, services from any taxing district affected by the plan, and any program to address such financial impact or increased demand;
4. The sources of funds to pay costs;
5. The nature and term of the obligations to be issued;
6. The most recent equalized assessed valuation of the redevelopment project area;
7. An estimate as to the equalized assessed valuation after redevelopment and the general land uses planned in the redevelopment project area;

8. A commitment to fair employment practices and an affirmative action plan; and
9. If the project will result in the displacement of ten (10) or more housing units, or if the project area contains seventy-five (75) or more inhabited residential units, the redevelopment plan must include a Housing Impact Study describing the plan for relocating the residents.
10. Estimated date of completion and retirement of obligations.

## Procedures

Once a proposed redevelopment plan is completed, the municipality is able to begin the final process leading to creation of the tax increment finance district. The steps include:

1. Creation of Interested Parties Registry This is a list of persons or organizations which wish to be notified of any formal activities relating to the TIF process. Notice must be published in a newspaper that such a registry is available, and how to get on it.
2. Adopt Ordinance Authorizing Feasibility Study If a feasibility study is required, an ordinance must be adopted authorizing it to be prepared, including a housing impact study.
3. Publish Notice of Plan. Along with notice of the interested parties' registry, notice must be published that the redevelopment plan is available for inspection.
4. Give Notice of Housing Impact Meeting. If necessary (see next paragraph) send certified mail notice to taxing bodies and registered interested parties, and regular mail notice to residences in project area in both English and the predominant language in the area, if other than English, of Housing Impact Meeting date and place, boundaries of project area, purpose of the project, explanation of tax increment financing, and contact person.
5. Hold Housing Impact Meeting. If the project will displace residents from 10 or more housing units or if the project area contains 75 or more occupied housing units, hold public meeting at least 15 days after notice. Any interested person may be heard and submit written comments. Meeting is conducted by corporate authorities or any designated board or official.

6. Adopt Resolution or Ordinance Setting Public Hearing Set a date and time for the required public hearing. Because of notice requirements, the hearing date should be at least sixty (60) days in the future.
7. Mail Notice of Plan. Notice of the availability of the plan for inspection must be sent to all names on the registry, and to all residential addresses within 750 feet outside the boundary of the proposed redevelopment area.
8. Notice to Taxing Bodies. Not less than 45 days prior to the public hearing, affected taxing bodies and DCCA must receive a copy of the plan, notice of hearing, and notice of a meeting of the Joint Review Board.
9. Convene Joint Review Board The Joint Review Board consists of a representative of each taxing body in the project area and a member of the public designated by majority vote of the other members. Typically, the mayor or village president recommends a person to be designated as the public member. For TIF projects involving housing units, the public member must be a resident of the affected housing. The JRB must hold its first meeting not less than fourteen (14) nor more than twenty-eight (28) days after mailing of the notice. The JRB reviews the plan and other related TIF documents and, within thirty (30) days after convening, makes a recommendation to the corporate authorities whether to approve the TIF project. If the JRB recommends rejection, the municipality must meet and confer with the JRB. If differences cannot be resolved, the corporate authorities may nonetheless approve the TIF, but only by a 3/5 majority. The JRB also meets annually to review the TIF audit report.
10. Publish Notice of Public Hearing Notice must be published twice not more than thirty (30) nor less than ten (10) days before the hearing, of the time and location of the hearing, a description of the boundaries, and a description of the plan.
11. Mail Notice of Hearing Send notice by certified mail to each taxpayer of record for each parcel of land in the proposed redevelopment project area not less than ten (10) days before the public hearing. If the redevelopment plan involves a Housing Impact Study, also send notice to each residential address in the area.
12. Hold Public Hearing At the public hearing, the municipality presents the redevelopment plan and explains the proposed financing. All interested persons must be given an opportunity to comment and file objections

13. Introduce Ordinances Not less than fourteen (14) days nor more than ninety (90) days after the public hearing, the corporate authorities must consider ordinances (1) approving the redevelopment plan and (2) designating the project area. A third ordinance (3) adopting tax increment financing is required. This ordinance is typically introduced along with the other two although it may come later. The ordinances must contain certain language which is critical to their validity and effectiveness.
14. Certify Initial Equalized Assessed Evaluation Immediately upon enactment, the three TIF ordinances must be sent to the County Clerk, who must immediately determine the equalized assessed value of each parcel in the project area. The total EAV of all property in the project area becomes the baseline used to measure incremental property taxes as the redevelopment takes place.
15. Annual Meeting and Reports Each year, as soon as the municipality's audited financial statements are available, the municipality must convene a meeting of the JRB, and thereafter file certain reports with the State Comptroller.
16. Redevelopment Agreement The typical TIF project involves a private developer who will carry out the actual redevelopment work and own or control the private property involved. A written agreement between the municipality and the developer is an essential component of the TIF project. It is a comprehensive contract which spells out in detail what work is to be done, when, where, how and by whom. The redevelopment agreement also sets out the financial plan for the TIF including the list of eligible costs for which the municipality will reimburse the developer with TIF funds. Often, the agreement provides for transferring ownership of the property to the developer at no cost or a below-market price, in exchange for the developer's promise to improve the land in accordance with the approved plan. Sometimes the agreement is not executed until after the developer has secured an anchor tenant for the project.

## **Conclusion**

These are some of the most useful tools available to municipal officials who want to encourage economic development in their communities. Equipped with an understanding of what jobs these tools are suited for and what each can accomplish, elected and appointed officials will be able to have informed discussions with other officials, consultants and developers about the feasibility of particular projects. However, experienced financial and legal expertise is almost always necessary to the effective use of these tools. Any municipality thinking about undertaking economic

development should seek guidance and assistance from financial consultants, its regular legal counsel, and experienced special counsel.

## **About AncelGlink Consulting**

AncelGlink Consulting is a practice group within the law firm of Ancel Glink Diamond Bush DiCianni & Krafthefer, PC, which provides legal and consulting services to municipalities on a limited specific project basis. This team of experienced municipal attorneys work with the local village, city or other corporate attorney, elected officials and outside consultants to plan and execute major financial, developmental, organizational, legislative, and judicial projects. After the work is finished, we go home.

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