

LORMAN EDUCATION SERVICES SPEECH
Hot Topics in Real Property Law
April 1, 2005

SEMINAR AGENDA:

- I. Financing Redevelopment with Government Monies
 - A. Introduction to Redevelopment Options
 - B. Land Clearance for Redevelopment Law
 - C. Tax Increment Financing
 - D. Neighborhood Improvement Districts
 - E. Transportation Development Districts
 - F. Community Improvement Districts
 - G. Urban Redevelopment Corporation Law

BENEFITS PARAGRAPH:

This seminar will aid those professionals in and associated with the field of real estate relating to the tactics of financing land redevelopment projects. While this lecture will discuss the legislative and procedural avenues necessary to attain Tax Increment Financing, we will also suggest other methods of financing real property development with public dollars, such as Neighborhood Improvement Districts, Transportation Development Districts, and Community Improvement Districts.

HIGHLIGHT POINTS:

- 1) Discover the public financing options currently available to real estate developers.
- 2) Learn how developers and municipalities increasingly work together to use Tax Increment Financing.
- 3) Find out how and when to create NIDs (Neighborhood Improvement Districts), TDDs (Transportation Development Districts), or CIDs (Community Improvement Districts).

REDEVELOPMENT OPTIONS, GENERALLY:

A. Land Clearance for Redevelopment Law (Section 99.300 R.S. Mo)

Purpose: The LCRA (Authority) implements plans to redevelop “blighted” or “unsanitary areas” by affording maximum opportunity for the redevelopment of areas by private enterprise.

Formation: City Council adopts ordinance authorizing LCRA; City Council makes finding of “blight”; Mayor appoints Board of Commissioners of LCRA (5 members – taxpayers for 5 years); a redevelopment plan is drafted and submitted to City’s planning agency for review and recommendation; the planning agency submits its comments back to LCRA for review within 30 days; LCRA submits recommendation to City Council.

Public Hearings: City Council holds public hearing on Redevelopment Plan (or modification thereof) after publication for once/week/2weeks and 10 days notice before hearing; City Council approves the Plan thereafter.

Definition of “Blight”: inadequate street layout; unsafe/unsanitary conditions; deterioration of improvements; obsolete platting; or other conditions that “endanger”; or any combo...which constitutes a “liability” (economic or social)

Eminent Domain: permitted

**B. Tax Increment Financing (Section 99.800 -860R.S.Mo.)
Real Property Tax Increment Allocation Redevelopment Act (RPTIARA)**

Purpose: Method of financing development in “blighted” areas, “conservation” areas or “economic development” areas. For a certain period of years, a developer forego the payment of the anticipated and actual increased taxes [ad valorem tax (100%) and sales tax (50%)] resulting from the project, and, instead, makes payments in lieu of taxes (PILOTS) in order to pay off certain up-front development costs that were financed with bonds.

Adjudged to be constitutional: Consolidated School District No. 1 of Jackson County v. Jackson County 936 S.W. 2d 102 (Sup 1996).

Formation: **Creation of TIF Commission:**
(Nine to Twelve members depending on make-up of city/county).

6 – appointed by municipality; 3-6 remaining members- appointed by the TIF Commission: 2 - school board; 1 - other affected tax districts; 3-county) (See 99.820.2 RSMo.)

TIF Commission must meet to establish written procedures for its operation, e.g. charging private developers for submitting plans. See 99.820.1(3) RSMo.

Public Hearing: **Prior to adoption of ordinances:**
Details of notice: time, place, boundaries, description of the plan and project, location for viewing of details etc. See, 99.830 R.S. Mo

1. Notices of 1st hearing given 45 days to taxing districts;
2. Notices (certified) of 1st hearing given 10 days to property owners;
3. Notices of 1st hearing published twice in newspaper of general circulation 1st – not to exceed 30; and 2nd- not less than 10 days prior to hearing.
4. All other Notices of Hearings shall be entered in the minutes.
5. Changes in the Plans, Project or Area may be made prior to the conclusion of the Hearing provided 7 days notice given to the taxing districts (prior to the conclusion of the hearing.)
6. After conclusion of Public Hearing but before the adoption of the ordinances, changes may be made (without further hearing) only if Area not enlarged, general uses of the Plan and Project have not changed...provided notice is given to the taxing districts and notice is published not less than 10 days prior to the adoption of the ordinance.

See, Ste Genevieve School District R II v. Board of Alderman of City of Ste. Genevieve 66 S.W.3d 6, (Sup 2002) holding: School district has standing to seek the requirement that the City reconvene the TIF commission if any substantial amendment to the Redevelopment Project were to take place.

Ordinances Approved:

“Redevelopment Area” established by ordinance.

The RA should include only property to be directly or substantially benefited by the redevelopment project.

“Redevelopment Plan” established by ordinance.

(99.820(3)): TIF Commission must vote on all plans et.al within 30 days of the completion of the hearing and shall make recommendations to the governing body within 90 days of the hearing in 99.825.

(99.820.1(1)): City adopts an ordinance approving a Redevelopment Project and a Redevelopment Plan within 14-90 days from the aforementioned Hearing.

RP must include (99.810):

- a. Estimated project costs:
What costs will be a part of the “debt”?
(Costs of studies, plans and specifications, land acquisition, land preparation, profession service costs and fees, and construction costs of both the public and private improvements, financing costs, relocation costs, and PILOTS. See, 99.805 R.S. Mo wherein “redevelopment project costs” are listed.
- b. Anticipated sources of funds;
- c. Evidence of the commitments to finance costs and the type and terms of the sources of funds to pay costs;
- d. Anticipated type of bonds;

Bonds Issues: Bonds are issued by City or TIF Commission pursuant to Section 99.820 secured by the Special Allocation Fund, i.e. a Fund with 2 separate accounts for each TIF project:

- (a) the account for “payment in lieu taxes” (taxes that taxing districts would have received had the project been built w/o TIF) (KEEP IN MIND THAT THE TAXING DISTRICTS CONTINUE TO RECEIVE THE PREVIOUS TAX REVENUE.);
and
- (b) the account for “economic activity taxes” (50% of the additional revenue from sales taxes.)
and (for enterprise zones, urban core areas et. al.....new state revenues, see 99.845.8(2).

Marketability of bonds is the greatest obstacle to TIF projects' completion.

Missouri TIF does not require the municipality to back the bonds, so the bonds are backed only by the financial strength and credit of the developer.

The following would be analyzed by bond counsel to determine the marketability:

1. anticipated assessed valuation of the completed project (which determines the “increment”);
2. project is imminent, i.e. commitments from the developer, inclusive of good faith deposits;
3. creditworthiness of the developer.

The following could enhance the marketability of the bonds:

1. Letters of credit from the developer's bank as additional security for the bonds;
2. Enlarge the redevelopment area that will be benefited from the project and additional tax increments will be generated;
3. "Seed projects" – performing a small development project then issuing the bonds afterwards;
4. City pledges general revenue funds to pay debt service on bonds until the "increment" reaches a desired level.
5. City may issue general obligation bonds...with a vote of the people;
6. NID Bonds: Bonds are paid off by the special assessments levied against the benefited properties (and backed by the full faith and credit of the city) or by the increments from the project or a combination of both.

Note: Bond Counsel will not issue a legal opinion for "economic development areas".

Bonds are paid-off from receipts of "payments in lieu of taxes" and "economic activity taxes".

Subject to an annual appropriation (other than tax revenue), security for the bond repayment may be revenues from the project and the project itself.

REDEVELOPMENT PLAN ITEMS, continued.

- d. Recent equalized assessed value of “redevelopment area and Estimated equalized assessed value after redevelopment
NOTE: such is speculation and expert opinions by land planners.

- e. **FINDING OF “Blight”** or “Conservation Area” or an “Economic Activity Area”; (also an opinion of a land planner)

“Blight”: defined the same as LCRA

JG of St. Louis West Ltd. V. City of Des Peres

41 S.W.3d 513 (MoApp ED, 2001)

HOLDINGS: Westfield Shopping Center!!!

- i. Legislative decision will not be disturbed unless: (1) not supported by substantial evidence; (2) against the weight of the evidence; (3) the judgment erroneously declared or applied the law.
- ii. Plaintiff’s carry BOP as to whether City’s determination of “blight” was arbitrary, induced by fraud, collusion or bad faith.

“Conservation Area”: almost blighted; 50% are 35 years old.

“Economic Development Area”: Not Blight or Conservation, but needed to stop a company from moving, or to enhance the area. (Constitutional challenges loom here!!)

- f. **FINDING of “But For”:** TIF Commission and Municipality need to find that without TIF, there would be no development in the RA. Developer Affidavits required. (Yet another “expert opinion” by Land Planners.

Items addressed prior to the Finding are:

- a. lack of development interest to date;
- b. additional costs of redevelopment negating interest;
- c. lack of private funds;
- d. a projected pro-forma indicating the projected return on investment (without TIF) would be below the market rate of return.

Maplewood....”but for” failed.

See, Des Peres: Finding: The testimony of a shopping mall planner was “too speculative” to circumvent the “but-for” test because, although he testified that it was “possible” to develop the mall w/o TIF, he did not specifically explain how it would be possible.

REDEVELOPMENT PLAN ITEMS, continued.

- g. Plan conforms to the City's Comprehensive Plan;
See, City of St. Charles v. DeVault Management (959 S.W. 2d 815 (App. E.D. 1997).
- h. Completion of project and retire "debt" w/in 23 years from adoption of the ordinance approving the project;
(Redevelopment Project Ordinance – w/in 10 years from date of Redevelopment Plan Ordinance)
AND
Property acquired –w/in 5 years from the date of Redevelopment Project Ordinance.)
- i. A Relocation Assistance **Plan** has been developed;
See, 99.810 (4)

NOTE: Chapter 523.205- Relocation Assistance requires that municipality adopt a **policy** in the Redevelopment Plan and/or Agreement.

BUT, Section 99.810 (4) states that the Redevelopment Plan must state that a **relocation assistance plan for business and residences has been developed.**

A POLICY IS NOT A "PLAN".

A Plan:

- 1. How to inform people of their rights;
 - i. Who is entitled
 - ii. Notices
 - iii. The actual benefits to be allowed.
 - 2. How to administer the relocation assistance;
 - 3. How to handle claims;
 - 4. Time Frame for submitting claims;
 - 5. How to handle appeals.
- j. A Cost-Benefit Analysis has been completed. The C-B-A must show the economic impact on each taxing district w/in the Redevelopment Area.
"As If" the project is not built; and
"As If" the project is built.

("AS IF" seems appropriate!!!)
 - k. The Plan does not involve gambling

Eminent Domain”: Permitted. See, Hazelwood Yellow Ribbon Committee v. Klos 35 S.W. 2d 457 (MoApp E.D. 2000) wherein an initiative petition to amend the City’s charter to abrogate the city’s powers of eminent domain in a TIF project would unconstitutionally take away the City’s statutory right of eminent domain. Therefore, the petition could not be certified and placed on the ballot.

Further, such initiative petition proposed a 2/3 voter approval of every TIF project, but the TIF statute specifically prohibits no referendum could be required as a condition to the issuance of bonds.

CASE DOES NOT STAND AGAINST A REFERENDUM ON THE PROJECT ITSELF.

Citizens have a general power of referendum under the Constitution, See Article III, Section 49;

Missouri Statute, Chapter 116, outlines the powers and procedures for referendums.

Municipalities must comply with these constitutional provisions, See Section 71.010 RS Mo.

C. NEIGHBORHOOD IMPROVEMENT DISTRICTS:

Purpose: Neighborhood Improvement Districts were created in 1990 via a constitutional amendment authorizing the issuance of general obligation NID bonds to finance public improvements within designated NIDs. See Article III, Section 38© of MO Constitution. Chapter 67.453 to 67.475 RSMo.

Formation: The Boundaries

1st alternative:

A NID's boundaries may be established by approval of qualified voters residing within the proposed district. (Required % of voters is the same as the % required for the issuance of general obligation bonds.)

2nd alternative:

A petition signed by 2/3 of the voters within the proposed district. The Petition must include:

- a. The project name and nature of proposed development
- b. The boundaries of the NID
- c. The estimated cost of the project
- d. The proposed methods of assessing real property within the district
- e. An assessment of annual maintenance costs of this improved land after the General Obligation Bonds are paid in full
- f. A statement giving notification to voters that the final cost of such improvements (or aggregate amount of the General Obligation Bonds issued) will not exceed the estimated cost of the project by twenty-five (25%) percent.

In either case, because the NID is simply a special assessment area and not a political subdivision, the City maintains the control of the NID implementation and administration.

Public Hearing: Consider proposed improvements and assessments.

Ordinances:

Ordinance Approving the NID and ordering Plans and Specs.

Ordinance Requiring the Assessment for the Costs of Improvements.

Ordinance Adopting the Plan and Assessments and Financing (temporary NID Notes)

Assessment against any NID property - pays back any bonds sold to fund these improvements. General obligation bonds, if any, paid off first.

The assessments may be paid in installments over 20 years.

Eligibility for Financing.

1. Rehab – NID
2. Development – NID (favored)
3. Any improvement to the property for the residents and owners of property within the NID.
2. NIDs can be created for residential areas, as well as for a “neighborhood” of commercial properties.
3. Examples of authorized “improvements:”
 - a. Acquiring property or public facilities for NID use/benefit
 - b. Improving streets, sidewalks, drainage systems, assorted waterworks systems, and utility service connections
 - c. Improving street lighting systems
 - d. Improving parks, playgrounds, and recreational facilities
 - e. Improving public landscaping with trees, shrubs, or other plants
 - f. Improving vehicle and pedestrian bridges and overpasses
 - g. Improving property for off-street parking facilities
 - h. Improvements to public safety
 - i. Festus’ Neighborhoods are booming!
 - Maintenance and renovation of existing public facilities;
 - New construction;
 - Labor and material expenses;
 - Planning and design fees;
 - Underwriter’s costs;
 - Attorney fees and interest;
 - City’s own administrative expenses in project supervision costs.

See article in MO Municipal Review, September 2002

D. **TRANSPORTATION DEVELOPMENT DISTRICTS:**

Purpose: Transportation Development Districts are regional districts created to fund the construction of roads, parking facilities, and other transportation related improvements.

Chapter 238.200 to 238.275 RSMo.

Purpose is to allow local governmental entities to finance transportation infrastructure improvements where funds for such projects might not currently be available.

Formation:

1. A Petition to create a TDD must be drafted.
 - a. The Petition must include:
 - i. The names and addresses of each petitioner
 - ii. The names and Addresses of all Respondents, **always** including the Missouri Highways and Transportation Commission and any affected Local Transportation Authority
 - iii. The name and full description of the TDD boundaries
 - iv. The description and location of each project
 - v. The number of seats for the TDD Board of Directors, along with a Statement describing the Terms of Office for each seat.
 - vi. The Proposal for funding
 - vii. A request that both the proposal and funding proposal be submitted to qualified voters
 - viii. A statement that the TDD will not be an **undue burden** on any property owner located within the TDD
2. A Petition to create TDD must be filed with the Circuit Court (The costs of filing and defending the Petition, including publication, election, and other incidental court costs must be paid by the petitioners)
 - i. A valid Petition requires the signatures of at least 50 registered voters from each county partially or totally within the proposed TDD;
or
 - ii. If no registered voters reside within the proposed TDD, then the signatures of all owners of real property located within the district are required;
or
 - iii. The governing body of any Local Transportation Authority within any county in which the proposed TDD is located may file a valid Petition.

4. Responses to the Petition must be made within 30 days after the last notice is published to state agreement with or opposition to the TDD;
5. The Circuit Court hears the case without a jury to determine if the TDD, or its funding, is illegal or unconstitutional.

Public Hearing/Notice:

1. Within 30 days of the Petition being filed, the Circuit Clerk must **serve** the Respondents.
2. If the Petition was filed by registered voters or by a governing body, the Circuit Clerk must give **public notice by publication for four consecutive weeks** in at least one newspaper with circulation in the proposed district.
3. If the Petition is certified by the Circuit Court, **an election is called requiring a simple majority** of registered voters (or property owners) who reside in the boundaries of the proposed district.
4. A certified copy of the results are then filed with the Circuit Clerk.
If a simple majority is met, the Circuit Court will declare the district organized and certify the funding methods approved by the voters.
If a simple majority is not met, the TDD may not be proposed and submitted to voters for a period of two years.

Eligibility for Financing:

Any property may be included in a TDD as long as the improvements constructed are transportation related.

Revenue is raised from the issuance of bonds, if authorized by resolution of the District, and the district is solely liable for the debt.
40 years- timeline for the debt.

If District property to be merged into the State Highway system, the District may contract with MODOT/Commission to issue commission revenue bonds;
Likewise,
If the District property is to be merged with Local Transportation Authority, then contract with same to issue local transportation revenue bonds

Parking fees, user surcharges, or any special or increased tax (retail sales tax) are used to then retire the bonds. The property of the District may further secure the bonds.

Eminent Domain: **Applicable. See 238.247 RSMo, which incorporates Chapter 523 and references Uniform Relocation Assistance Act.**

E. COMMUNITY IMPROVEMENT DISTRICTS

Purpose: A Community Improvement District is created by property owners who assess or tax themselves in order to fund improvements on behalf of the entire community. By forming a CID, the citizens are empowered to fund community improvements without having to rely upon or wait for government intervention.
Chapter 67.1401 to 67.1571 RSMo

Formation:

1. A Petition to form a CID is drafted with Contents to include:
 - a. The name and Boundaries of the District;
 - b. A 5-year Capital Service Plan outlining the purpose(s) of the District (setting out the size, area, duration and type of CID, and maximum rates of real property taxes and special assessments);
 - c. A cost estimate of improvements to be provided;
 - d. The assessed value of all property located in the District;
 - e. Statement on whether a Declaration of Blight will be sought;
 - f. The proposed duration of the district;
 - g. Designation of whether the CID is formed as:
 - i. A Political Subdivision: (May levy real property taxes)

Statement must:
 - a. include the # of Directors (#5-30);
18 years of age;
owner of real property.
 - b. state whether the Board of Directors shall be appointed by (1) the municipality; or (2) the CID district election....see 67.1551 RSMo.
 - ii A Not-for-Profit Corporation:
 - a. Public Benefit (preferred due to constitution.)
 - b. Mutual Benefit
If the Petition calls for the creation of a non-for-profit corporation, a Board of Directors will be elected and qualified according to the provisions of Missouri Not-For-Profit Corporation Law, Chapter 355 RSMo.
2. The Petition must be signed by both:
 - a. Any number of property owners owning more than 50% of the assessed value of the real property in the District; **and**

- b. 50% per capita of all owners of property located in the District

CID Formation, cont.

3. The City Clerk reviews the Petition for compliance with the CID Act. Clerk has reasonable time, not to exceed 90 days.

Public Hearing:

Within 45 days of receiving the Petition, the governing body of the hosting municipality must provide notice of a public hearing on the possible adoption of the CID by:

1. publication (newspaper within municipality for 2 weeks/once per week prior to the week of the public hearing.)
2. mail (certified) not less than 15 days prior to the Public Hearing. Contents of Notice, See 67.1431 (3).

Ordinances:

Approve or disapprove of the proposed CID by way of an Ordinance.

Municipality may make any designations of blight.

A written report on the establishment of the CID must be sent to the Missouri Department of Economic Development.

Eligibility for Financing:

Public improvement projects and services, including any necessary construction, installation, repair, and maintenance, through real estate taxes, sales taxes, sales of business licenses, and other special assessments. See, 67.1461

Additionally, Annual expenses of administering the CID or even loan the CID the start-up costs for the first scheduled improvements.

IF City has determined that the CID is located in a blighted area, then the CID may also expend its finances on correcting blighted conditions on private property.

SOURCES of FUNDING:

Real Property Taxes:

Political Subdivision CIDs may levy real property taxes on non-exempt property within the CID. Must be approved by a majority.

Special Assessments:

Must be approved under the same method as the Petition.
Must state the purpose, method of assessment, amount and expiration of the assessment

Other Revenue:

Gifts, grants, donations of property-labor-services etc.
Charge and collect fees for use of its property

Eminent Domain:

Essentially applicable if municipality determines CID is located in a blighted area.

For Further Reference: Journal of MoBar, March-April 2003, Joe Lauber's article re: Mo Community Improvement District Act.

E. URBAN REDEVELOPMENT CORPORATION LAW Chapter 353 RSMo.

Purpose: Private parties contract with a municipality to assemble blighted land for redevelopment and to secure up to 25 years of tax abatement (100% for 1st 10 years and 50% for the next 15 years) to the owners of the redeveloped land. See 353.110.1

PILOTS may also be imposed by contract between the City and 353 Corp. which may limit the tax abatement. See 353.110.4

Formation:

1. Developer establishes a 353 Corporation by filing Articles of Incorporation with MO Secy. Of State.
2. Developer prepares a Redevelopment Plan, which will include a contract, a/k/a the Redevelopment Agreement, which outlines how the developer will repay the City for the taxes that have been abated
3. City Council establishes “blighted” area;
4. Notice of Public Hearing (see below) and written impact statement of the effect of tax abatement given to all political subdivision having taxing authority;
5. City grants 353 Corp power of eminent domain;
6. Development Agreement is executed.

Public Hearing:

10 days notice (or # of days required by local ordinance) is required to be given to political subdivisions affected by the tax abatement. Hearing’s purpose is for stimulation of comment from those affected.

Ordinance:

City adopts Ordinance designating area “blighted” and granting the power of eminent domain to the 353 Corp.

The City may assist in the acquisition process via the LCRA.

Financing:

Developer’s private funds.