

## **Tax Increment Financing Study and Formulating Committee**

### **Draft Minutes of Meeting**

**December 7, 2018**

On December 7, 2018, the Tax Increment Financing Study and Formulating Committee (the “Committee”) held a meeting in the Peabody Conference Room on the first floor of Lindsley Hall, 730 2nd Avenue, in Nashville, Tennessee. The meeting began at 1:00 P.M. The following members of the Committee were present in person:

Dr. Paulette Coleman, Brian Kelsey, Talia Lomax-O’Neal, Richard Warren, and Bob Mendes. Mr. Mendes chaired the meeting and called it to order. Bert Mathews and Charles Robert Bone were out of town and unable to attend the meeting.

The meeting was open to the public and there were several other people in attendance. The meeting was recorded on video and made available following the meeting on Channel 3 and the Metro YouTube channel.

#### **Agenda**

An agenda for the meeting was posted on the Committee’s SharePoint site in advance of the meeting.

#### **Approval of Minutes**

The minutes of the meeting of November 8 were approved after the correction of a typographical error and will be posted to the public facing SharePoint site marked “Approved.”

#### **Discussion of applicable State TIF laws**

Mr. Mendes then asked Mr. Warren to lead the committee through the memorandum that he has prepared summarizing the requirements of the various state TIF statutes. A copy of that memorandum is attached to these minutes.

Following this presentation Mr. Mendes made a few additional points. He noted that MDHA’s work on affordable housing is done pursuant to a different statute than the TIF statute. He also asked Mr. Warren to clarify whether money from a TIF redevelopment district could be used for affordable housing. Mr. Warren responded that it could be used for eligible expenses such as parking or land acquisition but not the housing component itself.

Mr. Mendes noted that TIF has historically been done on a parcel by parcel basis but now, due to a change in the law, can be done on the entire district. He noted that this will require some changes in thinking if we use district wide TIFs in the future.

Ms. O’Neal asked about the process for amending plans. Mr. Warren replied that it is the same process as to approve the initial plan, it would have to be approved by both the MDHA Board and the Council after a public hearing. Mr. Mendes plans to propose that in the future

amendments to plans can be initiated by either Council or MDHA so long as the other group signs off.

### **Discussion of the flow of funds**

Ms. O'dNeal then invited Joe Cain from MDHA to join the discussion to walk through the flow of funds on TIF projects. Mr. Cain noted that Council sets a cap on the amount that MDHA can borrow in each redevelopment district. MDHA then accepts applications for TIF. When a TIF loan is authorized MDHA then goes to a third party lender to borrow the money. The funds are then disbursed for eligible expenses. The future tax increment is pledged to secure the loan and is guaranteed by the developer. Once a year the Tax Assessor generates a report that shows all of the increment that is allocated to MDHA. MDHA uses this to prepare a letter invoice to the Metro Finance Department which remits those funds back to MDHA. Ms. O'dNeal discussed information that MDHA could provide finance that would allow for more accurate forecasts. MDHA then takes these funds, , retains a 3.5% administrative fee and distributes the balance of the increments to the various lenders.

Mr. Mendes asked what if more increment comes in than expected. Mr. Cain noted that the note provides that all increment will be applied to the loan rather than pay on a specific amortization schedule so the loan may be paid off sooner than expected.

Mr. Mendes noted that the owner pays the same amount of property taxes even if there is a TIF agreement in place. The TIF distribution occurs within Metro. Mr. Warren noted that a payment in lieu of tax agreement ("PILOT") can take the property off the tax rolls for a period of time. Mr. Cain noted that the difference is that the TIF loan provides some up-front money to assist with construction.

### **Discussion of applicable local law**

Mr. Mendes then led a discussion of applicable local law. His Power Point is available on the Committee web site. He used the Rutledge Hill Redevelopment Plan which started in 1980, was completely rewritten in 1986, and has been amended a number of times since then.

He then picked nine topics that the amendments have touched over the years.

The first issue is blight. The 1980 plan called the area a slum with substandard housing which needed to be removed or improved. In 1986 there was a finding of blight which was repeated in the later amendments through 2005 until 2013 and 2014 which did not reaffirm the findings of blight.

The next topic was housing. In 1980 there were references to substandard housing. By 1986 there was a discussion of the need for mixed use residential.

Length of the Plan. In 1980 it was twenty years. It is now extended to 20140. That seems to be too long.

The amount of TIF allowed has grown. In 1980 it sounded like an experiment. No TIF was done before 1986 when the plan created a \$2.5 million cap where it stayed for quite a while as

this area did not develop quickly. In 1997 TIF was bumped to \$15.5 million, eventually to \$60 million as SoBro caught fire.

Originally all of the increment went to TIF loans. Now some Metro funds are excluded to pay bond debt.

In 2014 we substantially increased the scope of what TIF could be used for. Two years earlier the state had changed the law and people wanted to build a baseball stadium so this was extended beyond the Rutledge Hill district. Mr. Mendes does not think that the state law authorizes using increment from one district to another district although some people disagree with him and say that state law is silent on this. The Council now restricts this unless expressly authorized by the Council.

How can you use the proceeds from the sale of land? Originally it had to go back into the district to meet plan goals (dilapidated housing). The current plan is silent on this. Council has approved some land sale proceeds to be used to fund Envision Cayce. An issue for this committee is whether we should permit this.

Since 2016 there have been TIF reporting requirements. We have discussed affordable housing. The 2016 Council TIF Reform Bill imposed several limitations on using funds from one district in another without Council approval.

Mr. Cain added some historical background of past practices on how practices have changed on the use of funds. Mr. Mendes agreed that there is a lot of transparency about MDHA including an annual audit and similar measures such as reports to the Comptroller since 2012. One of our goals is to increase this transparency. Mr. Cain agreed and said that MDHA shares that goal.

### **Discussion of local TIF practice**

Mr. Cain then led a discussion of how TIF practice has changed. This program originally came out of Urban Renewal which was about slum removal heavily funded by the federal government. It had both positive and negative reactions in all communities. This program ended in the 1970s. Eventually TIF was added to the early redevelopment districts, first the Capital Mall plan that attacked some of the worst areas in downtown.

He then went through a list of all of the Redevelopment Districts. Some districts have continued to be extended because of protections within the plan for land use control such as protecting the Capitol view shed or restrictions to protect land use in Five Points,

He then walked through what is required to obtain TIF beginning with a discussion of what is a plan and how it benefits the community. Many stakeholders have input into these decisions until a consensus is reached.

He then discussed the definition of "blight." This definition changed after the US Supreme Court decision on the use of eminent domain in the Kelo case. These days the discussion is whether the buildings are obsolescent and detrimental to the value of the property. Ms. O'dNeal noted that there is a lot of confusion in the community about blight that needs to be improved.

He then discussed the process for approving plans within Metro including public notices, Planning Commission review and approval by the Council.

Mr. Cain noted the transit oriented development (“TOD”) does not require a finding of blight.

As for process MDHA does have a form of application and encourages preapplication discussions. Factors include whether it fits within the plan, is there a gap in funding, is the budget reasonable or too luxurious and then what public benefit is there. Then there is a financial analysis of eligible expenses and available increment. If approved, a development agreement is drafted and approved by the MDHA Board. Mr. Mendes asked if they would be willing to begin posting their Board packet and not just the agenda.

Mr. Cain then led a discussion of the development agreement which includes a summary of the public benefit generated by this project.

He also summarized reporting done to the State Comptroller and the Council.

Ms. O’Neal asked if there should be additional criteria in the TIF application to meet the state requirements. Mr. Warren noted what those requirements are. Mr. Cain clarified that this analysis is done when the Plan is adopted. Ms. O’Neal said that this needs to be more visible and Mr. Cain agreed that the process can be improved.

Ms. O’Neal asked about the Diversified Business Goals and how the standards are set. Mr. Cain said that there is a goal of 20% and the developer is asked to show how they plan to meet that goal and there is a final report of how they succeeded. Mr. Cain noted that it is a goal and there is no enforcement mechanism but it could have an impact on future TIF awards. Ms. O’Neal suggested that this should be reported to the MDHA Board and then made public.

Mr. Mendes said it would be useful for the public to understand what role the mayor’s office has played in this process over the years. Some think that this is an insider’s club. It would help if this were more formal. Mr. Warren noted that developers will either go to the Mayor’s office, the Planning Department or the councilmember.

Mr. Mendes asked what role the mayor’s office support of opposition plays. Mr. Warren noted that every mayor has projects they support and it helps if you are aligned with one of those goals. Mr. Cain agreed with this analysis. Referrals come from many places, including the Council, Planning, and Public Works as well as the Mayor’s office.

Mr. Mendes noted that these types of discussions do not trigger the public meetings laws and that is okay but this process needs to be less opaque.

Mr. Kelsey then asked if all applications are public. Mr. Cain said that they are. He asked if applications that are denied by staff results in a record. Mr. Cain said that they are. With respect to applications that are approved what is given to the full Board. Mr. Cain said that they receive the actual development agreement but no analysis unless requested by the Board. The Board does have a list of preferred types of projects such as historic preservation, open space, etc.

In response to another question Mr. Cain responded that there are regular requests, perhaps one a quarter, for new districts but often they do not meet the definition of blight. The last two were Bordeaux where the old land fill was and Cayce which is substandard housing from the 1940s. Others are told they will have to wait for TODs. They do look at the Nashville Next plan to keep the two aligned.

With respect to districts that are ready to expire but the neighborhood requests they stay in place for the land use restrictions. Mr. Cain discussed how they did that analysis in Five Points.

Mr. Kelsey then asked about third party financing when the developer goes bankrupt or the increment is not sufficient to repay the loan. Mr. Cain responded that there is no recourse to the city or MDHA.

### **Discussion of syllabus for future meetings**

Mr. Kelsey reviewed the list of topics in the committee materials on the web site. The committee discussed dates and topics for future meetings.

### **Next Meeting**

The next meeting will be on December 20, 2019, at 1 P.M. also in the Peabody Conference Room in Lindsley Hall. The topic will be a review of the fiscal impact of TIF and property tax by Ms. O'dNeal and a discussion led by Mr. Mendes of the impact of TIF projects on surrounding projects.

There being no further business, the meeting was then adjourned at approximately 3:15 P.M.

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Richard Warren, Secretary

## MEMORANDUM

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TO Tax Increment Study and Formulating Committee  
FROM Richard F. Warren.  
DATE December 3, 2018  
SUBJECT Tennessee TIF Statutes

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This memorandum will briefly summarize key provisions in the State of Tennessee statutes related to tax increment financing (“TIF”), all of which are included in the State Law tab on the Committee’s SharePoint site.

**The Housing Authorities Law Tenn. Code Ann. §13-20-101; Redevelopment Plans Under §13-20-202**

Chapter 20 of Title 13 provides for the creation of housing authorities. The Metropolitan Development and Housing Authority (“MDHA”) operates under this statute.

Part 202 gives housing authorities the power to create “redevelopment plans” pursuant to which the agency can undertake “redevelopment projects” in and around “blighted areas.”

“Blighted areas” are defined in Part 201 as areas (including slum areas) with buildings and improvements which are detrimental to the safety, health, morals, or welfare of the community. Not all land covered by a Redevelopment Plan must be blighted and a particular Redevelopment Project need not be blighted as long as it is located in a Redevelopment District.

T.C.A. §13-20-203(a) sets forth the mandatory content of each Redevelopment Plan as well as notice and public hearing requirements for Davidson County and Shelby County. If the Redevelopment Plan includes TIF authority it must be approved by the Redevelopment Agency (MDHA) and, for Davidson County, the Metro Council after a public hearing. The Plan is required to provide an outline for the development or redevelopment of a designated area sufficiently complete to:

(A) Indicate its relationship to defined local objectives as to appropriate land uses and improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements;

(B) Indicate proposed land uses and building requirements in the area; and

(C) Indicate the method of the temporary relocation of persons living in such areas, and also the method of providing, unless already available, decent, safe and sanitary dwellings substantially equal in number to the number of substandard dwellings to be cleared from the

area, at rents within the financial reach of the income groups displaced from such substandard dwellings.

Redevelopment Plans may contain other provisions that are not required by the statute. For instance, it is common to require new development in the Plan district to be approved by an architectural review committee even though that is not a statutory obligation.

Part 205 permits the Plan to include a tax increment financing provision. If TIF is included then the Plan must also describe the following:

- (A) An estimate of the cost of the redevelopment project;
- (B) The sources of revenue to finance the costs of the project, including the estimated tax increment;
- (C) An estimate of the amount and the final maturity of bonded or other indebtedness to be incurred; and
- (D) An estimate of the impact of the tax increment financing provision upon all taxing agencies in which the redevelopment project is to be located.

The total amount of authorized TIF is established when each Redevelopment Plan is approved or amended. The TIF cap may be a gross amount for each Redevelopment District; under this approach the Redevelopment Agency has the power to allocate TIF to various projects without further governmental approvals or public hearings. In the alternative, a TIF cap may be established for each development by amending the Redevelopment Plan in each instance; this requires governmental approvals and public hearings for each project.

Pursuant to Part 205, the amount of TIF available is calculated by first determining the Base Assessment. For Redevelopment Plans adopted or amended prior to July 1, 2006, this is the most recently determined valuation for tax assessments prior to the date of the Redevelopment Agency's acquisition of the property. For Plans adopted or amended after July 1, 2006, the valuation is the most recently determined value prior to the date on which the municipality approved the Redevelopment Plan or amendment. The municipality retains an amount equal to the Base Assessment multiplied by the tax rate adopted for the current tax year. The balance of the taxes (the "increment" above the tax on the Base Assessment) is paid to the Redevelopment Agency and can be pledged to secure a TIF loan, subject to the limitation that the municipality and County (in our case, Metro) can retain that portion of Tax Increment Revenues that is attributable to taxes levied for the payment of principal and interest on all bonds, loans or other indebtedness of the taxing agency.

TIF loans are authorized in Part 202(a)(8) and may be secured by the Redevelopment Agency's pledge of the Tax Increment Revenues arising from a Redevelopment Project for a specific period of time which cannot extend beyond the expiration date of the applicable Redevelopment Plan.

The Redevelopment Agency may acquire title to each redevelopment parcel for an agreed value (not more than market value) and can then “write down” the land by selling it to a developer for its “use value” which can be nominal.

The developer then acts as the Redevelopment Agency’s agent to undertake certain activities or make improvements that are “eligible” for TIF expenditures. Local legislation authorizing TIF may be more restrictive as to eligible uses but cannot be broader than the Housing Law. “Eligible uses” as set forth in Part 202(a) may include the following:

- Acquisition of blighted areas or other real property for the purpose of removing, preventing or reducing blight
- Acquisition of real property where the condition of the title, the diverse ownership of the real property to be assembled, the street or lot layouts, or other conditions, prevent a proper development of the property
- Site clearance and site preparation (including utility and street construction and relocation)
- Remediation of any environmental condition
- Parks, public open spaces, public playgrounds, pedestrian ways, and parking garages in accordance with a Redevelopment Plan
- Architectural, engineering, planning and legal expenses but only to the extent that they relate to an eligible improvement
- Pay the design costs, commissioning costs and fees and costs of required documentation associated with meeting the requirements of the Leadership in Energy and Environmental Design (LEED) and similar programs as well as greening costs for new construction, existing buildings and other projects
- Construction period interest on TIF loans (i.e. interest due before the TIF revenue is generated) is generally considered an eligible expense

The concept of eligible expenses is the key factor in the awarding of TIF. The type of project can include any of the following which have eligible expenses:

- Residential – Apartments and Condominiums, often with a mixed use component
- Office – Bell South, Caremark Headquarters
- Retail – Eckerds, Church Street Centre
- Restaurants – Jubilee Restaurant
- Manufacturing – Fluffo Mattress



- Other – Bennie Dillon Parking Garage

The Redevelopment Agency has the power to acquire property within Redevelopment Districts by eminent domain. The U.S. and Tennessee Constitutions require that any taking be for “public use.” The acquisition of land needed to implement a Redevelopment Plan in a blighted area is a “public use” under Tennessee statutes.

### **Transit-oriented Redevelopment Plans Under §13-20-701**

In 2017 the Tennessee legislature added Part 701 et seq. to the Housing Act, finding that there are areas in counties and municipalities that have a transit deficiency lacking adequate high capacity transit options and granting various powers to housing authorities to address these concerns. Thus it authorized housing authorities to take various actions to carry out transit-oriented redevelopment projects. The list of activities set forth in Part 703 is very similar to the list of eligible uses set forth in Part 202(a) for traditional TIFs but adds subsection (a)(4)(D), installing, constructing or reconstructing “privately-owned affordable housing or workforce housing as those terms are defined in §5-9-113” making those costs eligible expenses under this statute. It also permits the use of eminent domain to acquire or lease land for public infrastructure including high capacity transit facilities.

Part 702 offers a number of definitions. “High capacity transit” is defined as carrying more people or offering more frequent service than buses. A “high capacity transit facility” is defined very broadly to include a right of way for high capacity transit, boarding stations, rail track, bridges and park-and-ride lots. A “transit-deficient area” is one that needs additional transit.

Such projects must be undertaken pursuant to a transit-oriented redevelopment plan approved by the municipality in which the project is to be located meeting the requirements of Part 704 which includes a public hearing. Pursuant to Part 705, the plan may make available land at its use value so long as it is used to support the transit plan.

The plan may also include a tax increment financing provision permitting the use of incremental taxes generated by properties within the boundaries of the transit-oriented redevelopment plan area for years after the effective date of the approval of the plan. This is set forth in Part 706 which further sets forth matters that must be included in the plan if it allows the use of TIF. These include cost estimates, funding sources, and an estimate of the fiscal impact on all taxing agencies in the district.

### **Industrial Development Corporation TIFs Tenn. Code Ann. §7-53-101**

This statute authorizes the creation of Industrial Development Boards (“IDBs”) which are authorized, through the adoption of an economic impact plan (“Plan”) to designate an area (“Economic Impact Area”) with respect to which the IDB is entitled to receive the incremental property tax. The Economic Impact Area must be located in the municipality that created the

IDB and also must include either an industrial park as defined in §13-16-202 or a project as defined in §7-53-101(15).

The definition of “projects” which an IDB can own or finance include land, buildings, facilities and personal property suitable for:

- Manufacturing or assembling of products, warehousing and distribution
- Canals, ports, parking, and railroads
- Office buildings
- Certain healthcare facilities and educational facilities
- Certain recreational facilities, theme or amusement parks
- Low or moderate income, elderly or handicapped multifamily housing
- Planetariums or museums
- Hotels and motels (with restrictions)
- Pollution control, coal gasification & energy production
- Buildings or improvements for farming, ranching and agricultural

A Plan is required to (i) identify the boundaries of the area subject to the plan, (ii) identify the industrial park or project located within the Economic Impact Area, (iii) discuss the expected benefits to the municipality from the development of the Economic Impact Area, and (iv) limit the allocation of TIF to 20 years unless approval is obtained from the Comptroller and the Commissioner of Economic and Community Development.

The IDB is required to hold a public hearing after giving two weeks’ notice before approving the Plan and submitting it to the municipality that created it whose approval is also required. If the increment is to pay for anything other than public infrastructure, the Commissioner and Comptroller must approve it.

### **The Uniformity Act Tenn, Code Ann §9-23-101**

In 2012 the Tennessee legislature added the Uniformity Act to the Code overriding certain provisions relating to tax increment financing whether done under a redevelopment plan approved by a housing authority, an IDB or a community redevelopment plan pursuant to the CRA Act.

Part 103 provides that base taxes and dedicated taxes (the portion of property taxes that a taxing agency has designated to pay debt service on the taxing agency’s debt) are allocated to the taxing agency and the increment may be allocated to the tax increment agency although the taxing agency has the authority to retain more than the base and dedicated taxes. Once the

eligible expenses have been funded from the tax increment any remaining excess reverts to the taxing agency general fund.

The Act also imposes time limitations on allocations of tax increments in Part 104 of no more than 20 years for an IDB TIF or the term of the Redevelopment District not to exceed 30 years in the case of a Redevelopment TIF unless both the Comptroller and the Commissioner of Economic and Community Development approve a longer term as in the “best interests of the State” (defined as meaning that the project would not have occurred “but for” the payment or that an extended term is reasonably required for completion of the plan).

It also authorizes an administrative fee of up to 5% of the incremental tax revenues for administrative expenses and requires that certain reports be filed by the tax increment agencies with the assessor of property and the Comptroller.

Finally, Part 108 limits the use of TIF by IDBs to public infrastructure costs unless a “best interests of the State” determination is made in writing by the Comptroller and the Commissioner of Economic and Community Development.

#### **The Inner-City Redevelopment Act of 2003 Tenn. Code Ann. §7-84-602**

I am not familiar with the operations of this statute. Recognizing that inner-city area within certain municipalities have deteriorated, this act authorizes municipalities to create one or more inner-city redevelopment districts. A public hearing is required before the creation of a district. Municipalities are authorized to construct certain public improvements and parking facilities and may delegate this authority to a district management corporation set up to manage the district. The municipality may also levy special assessments against all properties located within the inner-city development district to cover the costs and expenses of making public improvements within the district and may borrow money and issue bonds to finance such improvements.