Public Financing Tools for Development in the New Economy

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Topics for Today’s Discussion

- The ‘New Economy’ for development
- Types of public entities and revenue sources
- Tools for public financing in Colorado
  - Traditional tools and tools in the news
- Case studies
- Lessons
- Anticipated Issues for 2012
New Economic Challenges

• Higher unemployment
• Limited access to capital
• Core financial assumptions changing
  – Stability of US Debt as a baseline
• Politics effecting economics
• Decreased tax revenues
• TABOR
• Tougher Underwriting Standards

New Economic Opportunities

• Increased frequency of public and private sectors partnering on development
  – Malls, big box, Greenfield, Brownfield, TOD
• Public sector actively seeking private partners for development
• Opportunity to leverage public funding to accomplish development goals
• Population growth
  – Colorado: 5.1 million in 2010 to 8 million in 2040
  – Front Range: 2.8 million in 2010 to 4 million in 2040
Public Finance = Governmental Entity + Revenue Source

- Colorado authorizes a number of governmental entities to finance public improvements
  - USA, State, Cities, Towns, Counties, Title 32 Metropolitan Districts Urban Renewal Authorities, Downtown Development Authorities, BIDs, GIDs, LIDs, SIDs and PIDs
- Using a variety of revenue sources
  - State and local taxes (sales/use, property, income, lodging); federal dollars; fees, tolls and assessments; private dollars

Traditional Public Finance Tools

- Title 32 Metropolitan Districts
- Tax Increment Financing
- Improvement Districts
  - BIDs, GIDs, PIDs, SIDs, LIDs
- Public Improvement Fees
  - Private development fee
Developer Public Finance Options

Public Finance Tools Available to Serve Real Estate Development Projects In Colorado

"O.K., folks, let's move along. I'm sure you've all seen someone qualify for a loan before."
Developers can use a variety of tools in Colorado to finance residential and commercial developments. The most commonly used financing mechanisms are:

**Title 32 Metropolitan Districts**
- “Developer Districts” or “Dirt Districts”

**Tax Increment Financing**
- “TIF”
- Used in many different forms

### What is a Title 32 Metro District?
- Real Estate developers can form and control their own governmental entity (the “District”) whose boundary is the same as their development. Districts provide any two or more of the following services:
  - Street Improvements
  - Water Facilities and Services
  - Sanitation Facilities and Services
  - Park and Recreation Facilities
  - Traffic-related Safety Protection Improvements
  - Transportation Facilities and Services
  - Television Relay and Transmission Facilities and Services
  - Mosquito Control Facilities and Services
- State statutes allow for the District to issue tax exempt municipal bonds to design, construct and maintain public improvements benefiting the District
- District imposes a mill levy on all real property within the District boundaries.
  - The mill levy can be used to repay bonded debt of the District
Title 32 Metro Districts – Financing Steps

1. Develop Service Plan
   - Create a new governmental entity whose boundary is the development

2. Appoint Board of Directors
   - Developer appoints a Board of Directors, typically 5 people; made up of “qualified electors”. Electors must vote to authorize debt.

3. Issue Bonds
   - Issue Bonds secured by a District specific mill levy on the District properties

4. Construct Improvement
   - Construct Public Improvements such as sidewalks, roads, sanitation systems, sewer systems, lighting etc.

5. Operation and Maintenance
   - District can impose operation and maintenance mill to cover costs of annual maintenance.

Title 32 Metro Districts – Service Plan

- Governing jurisdiction needs to approve the Service Plan for the District to be legally formed
- SERVICE PLAN = DISTRICT CHARTER
  - Identifies the powers, obligations, limitations and procedures for the District
  - Typically includes an infrastructure cost model and a financial pro-forma
- Approval requires a public hearing with the Town Council or the County Commissioners
Title 32 Metro Districts – Service Plan

• Service Plans typically include the following:
  – Overall Debt Limitation
  – Term of Debt
  – Mill Levy Caps
  – Interest Rate Caps
  – Regional Obligations
  – Ownership and Maintenance of Improvements
  – Special Requirements
    • Public Art
    • Prevailing Wage
    • MBE / SBE
  – Permitted Powers of the District
  – Infrastructure Budget
  – Ballot Questions for Debt Election Approvals

Title 32 Metro Districts – Operating the District

• A District Board of Directors is typically made up of 5 people who are “qualified electors”
  – “Qualified Electors” are individuals who own or have a contract to purchase real property within the District
  – Must be Colorado citizens registered to vote
  – Board of Directors are typically employees or close associates of the Developer
  – Over time, residents of the District will get elected to the Board

NOW THE DISTRICT EXISTS!

• To serve development the District can finance, acquire and construct public improvements. These improvements typically include:
  – Roads
  – Water Systems
  – Sanitation Systems
  – Stormwater Systems
  – Parks
  – Plazas
  – Open Space
Title 32 Metro Districts – Issuing Debt

- Bonds are secured through tax revenues generated by the imposition of a mill levy on the Assessed Valuation within the District
- Issuing bonds can be used as an infrastructure cost subsidy to offset development costs normally paid for by the developer
- Unlike conventional bank debt, typically the only security for these bonds are the property taxes
  - Unsecured loan for the developer
  - May require credit enhancements
    - Guarantee
    - Letter of Credit
• Today, with the financial markets collapse in 2008 investors are requiring that the assessed valuation of a District must already be in place to issue bonds.
  – Bonds no longer sold based on speculative future absorptions
  – We can bond against existing assessed valuation today
• Often developers are reimbursed through bond proceeds for the expenses they have already incurred on public infrastructure improvements.
Title 32 Metro Districts – Case Study

- Located in the heart of Old Town Erie, 25 miles north of downtown Denver. Erie Commons was formed in November 2003 to finance improvements to a 214-acre mixed use development.
- 25-year, $8.5 million financing at a 6.75% interest rate.
  - The District currently contains 368 single family homes with an expected build-out of 745 residential units.
  - The District also includes 38 acres of commercial space, with 48,186 square feet of commercial and retail space currently constructed.
- The bond proceeds were used to redeem outstanding notes and pay accrued interest on outstanding bond anticipation notes.
- The bonds are secured by the 40 mill property tax, specific ownership taxes and a reserve fund – no developer guarantees were required.

Title 32 Metro Districts - Benefits

- Borrow at low Tax Exempt rates with debt that is usually amortized over a 20 or 30 year term
  - Real 30 year money, No Bullet
- Upon completion Districts often convey improvements to jurisdiction to own and maintain
- Governmental immunity for District activities
- Best of All..........
ONLY FINANCING A DEVELOPER CAN GET THAT OTHER PEOPLE PAY BACK!

...Repayment of debt is by the future residents when they make their annual property tax payment to the County
Tax Increment Financing – “TIF”

• Jurisdiction agrees to share a portion of the incremental tax collected on a site which is generated by new development
• Typically retail sales and / or property taxes are shared
  – Tax base needs to be identified to determine the level of increased valuation that private investment creates
  – Jurisdiction will rebate a portion of the incremental tax revenues back to the project over time
• Developers typically borrow against the revenue stream created by the TIF revenues

Tax Increment Financing – “TIF”

• Typical Structures
  – Urban Redevelopment Authority
    • Requires Blight
    • 25 Year Term
  – Downtown Development Authority
  – Contractual tax sharing agreement between developer and jurisdiction
  – Bonds are determined to be either taxable or tax exempt depending on the use of proceeds
  – TIF can be used in conjunction with a metropolitan district
Tax Increment Financing – Case Study

- Steamboat Springs created an Urban Renewal Authority in 2007 at the base of the Steamboat Springs ski area.
  - The area was determined as a blighted area in need of redevelopment.
  - Began collecting TIF property revenue
- On December 21, 2009 George K. Baum & Company structured the financing to issue $17.5 million in variable rate bonds for the Agency.
- Constructed public improvements to the base area with the financing.
- The Steamboat Springs urban redevelopment authority secured TIF property tax and sales tax financing for the repayment of the 2009 bonds.

Other Financing Mechanisms

- Ability to both finance improvements and provide services.
- Only commercial property may be in a district.

Business Improvement Districts

- Equitable, in that only benefited properties pay.
- Foreclosure remedy can result in municipality or county owning property in the event of non-payment of assessments.
- Higher interest rates.

Special Improvement Districts

- Only those in district can authorize and pay for improvements.
- Petition required for formation, i.e., may not be created solely by action of governing body.

General Improvement Districts

- Generally the developer has less, if any, ability to control these types of Districts
Political Considerations

- These types of public finance tools are most easily utilized when the developer’s interests are aligned with a jurisdiction’s policy objectives.
- Jurisdictions want to know that developers have a vested interest in the project (“Skin in the Game”).
- Conditions for approval of a District often include special requirements that support the jurisdiction’s policy objectives:
  - Public Art
  - Park Enhancements
  - Regional Improvements

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Traditional Public Finance Tools

- Improvement Districts- BIDs
  - Business Improvement Districts
    - Commercial property owners leverage increased property taxes to fund public improvements and provide services within specific area
    - Organized by municipality, initiated by petition of real property owners in the area
    - Comprised of commercial property only
    - May impose property taxes, fees and assessments

- Improvement Districts- SIDs and LIDs
  - Special and Local Improvement Districts
    - Assessment areas formed by municipality or county where improvements are constructed and funded through assessments levied in the area
    - Not separate political subdivisions
    - Can be created by property owners or political subdivision
    - Can fund street and sidewalk improvements, parking, sewers, drainage facilities
Traditional Public Finance Tools

• Improvement Districts- GIDs and PIDs
  – General and Public Improvement Districts
    • Authorized to construct and operate broader range of improvements that SIDs/LIDs
    • Fund improvements through assessments or property taxes
    • Separate political entities
    • Created by election or petition of 100% of the property owners

Traditional Public Finance Tools

• Public Improvement Fees
  – Private development improvement fee imposed by developer on tenants (usually retail)
  – In addition to existing sales tax
    • Example Colorado Mills (1.4%, total of 7%)
  – Can be pledged as a debt repayment source
  – Beware of competition across the street
Public Finance Tools in the News

• Regional Tourism Act
• Transit Oriented Development
• Public-Private Partnerships
• Tax Credits
  – New Market Tax Credits
  – Affordable Housing Tax Credits

Public Finance Tools in the News

• Regional Tourism Act
  – Essentially a State authorized, 30 year TIF (enacted in 2009, amended in 2011)
  – Allows local government opportunity to engage in TIF for an approved, large scale regional tourism project
    • Project must be extraordinary, unique, substantially increase out-of-state tourism, and a significant portion of sales tax revenue must comes from non-residents
    • Fiscal impacts to existing governments—should not cannibalize revenues
    • Gaylord, Glendale Riverwalk, Loveland Cultural Arts District, Douglas County Sports and Prehistoric Park
  – OEDC will choose two projects by 2012, six total by 2014
    • $50 million available for all projects
Public Finance Tools in the News

- **Transit Oriented Development**
  - Includes combination of public finance tools, plus ability to leverage federal dollars
    - Sustainable Communities Regional Planning Grants
  - RTD may partner with developers
    - RTD looks to private sector for development proposal, land assembly, entitlement, design, construction
    - Strategic Plan for TOD and Pilot Program
  - Many opportunities for future TOD development given potential of existing stations, new FasTracks stations and potential of streetcar

Public Finance Tools in the News

- **Public-Private Partnerships**
  - Contractual agreement between public entity and private sector for delivery of public infrastructure
    - Private sector assumes greater role in planning, financing, design, construction, operation, maintenance or operation of public facilities
    - Risk is generally transferred to the party best positioned to manage it
  - Range of potential structures and models exist
    - Usually used for very large projects
    - Stapleton, Eagle P3, Denver Convention Center Hotel, T-Rex, DUS
Public Finance Tools in the News

• Tax Credits
  – New Market Tax Credits
    • Designed to spur investment into businesses and real estate projects in low-income communities or targeted populations
      – 20% poverty rate / population earns 20% less than median family income in surrounding area
    • Investors receive a federal tax credit in exchange for equity investments in Community Development Entities (CDEs)
      – Intermediary vehicles for loans, investments, financial counseling
      – Projects can include job-training centers, charter schools, condos, hotels, office buildings, retail, community centers
      – 39% of investment paid out over seven years
    • Annual allocation ranges from $3.5 - $5 billion

• Affordable Housing Tax Credits (LIHTC)
  • Federal income tax credit program used to leverage private capital into new construction or acquisition and rehabilitation of affordable housing
    – Credit ranges from 4%-9%
  • Administered by CHFA in Colorado
  • Income restrictions, rent restrictions and extended-use requirements
    – 40% of property must be set aside for families below 60% of AMI; 20% of property must be set aside for families below 50% of AMI
    – Restrictions must be maintained for 30 years
Case Studies

• Stapleton
• Denver Union Station
• Eagle P3
• Olde Town Metropolitan District
• Cityset Metropolitan District
• Westminster Mall

Lessons from Major Projects

• Tap multiple sources (Metro Districts, URAs, DDAs, BIDs etc.) to access property tax revenue, tax increment revenue, special assessment revenue, etc.
• Utilize available federal and state funding
• Expect to provide credit enhancement or a guaranty
Lessons from Major Projects

• Search out substantial private investors looking for places to invest (but know that control or equity requirements may be steep)

• Public policy objectives have changed
  – Tools are easier to take advantage of if developer is advancing community’s public policy objectives

• Bring patience, creativity and tenacity to the effort

Anticipated Issues in the Legislature in 2012

• Narrowing TIF
  – Additional blight criteria?
  – Narrowing geographic scope
  – Increasing public entity’s share

• Updating TIF to make it more usable
  – Extending time period or phasing
  – Ability to create new urban renewal plans on existing plans
  – Expanding scope of TIF (e.g. RTA)