

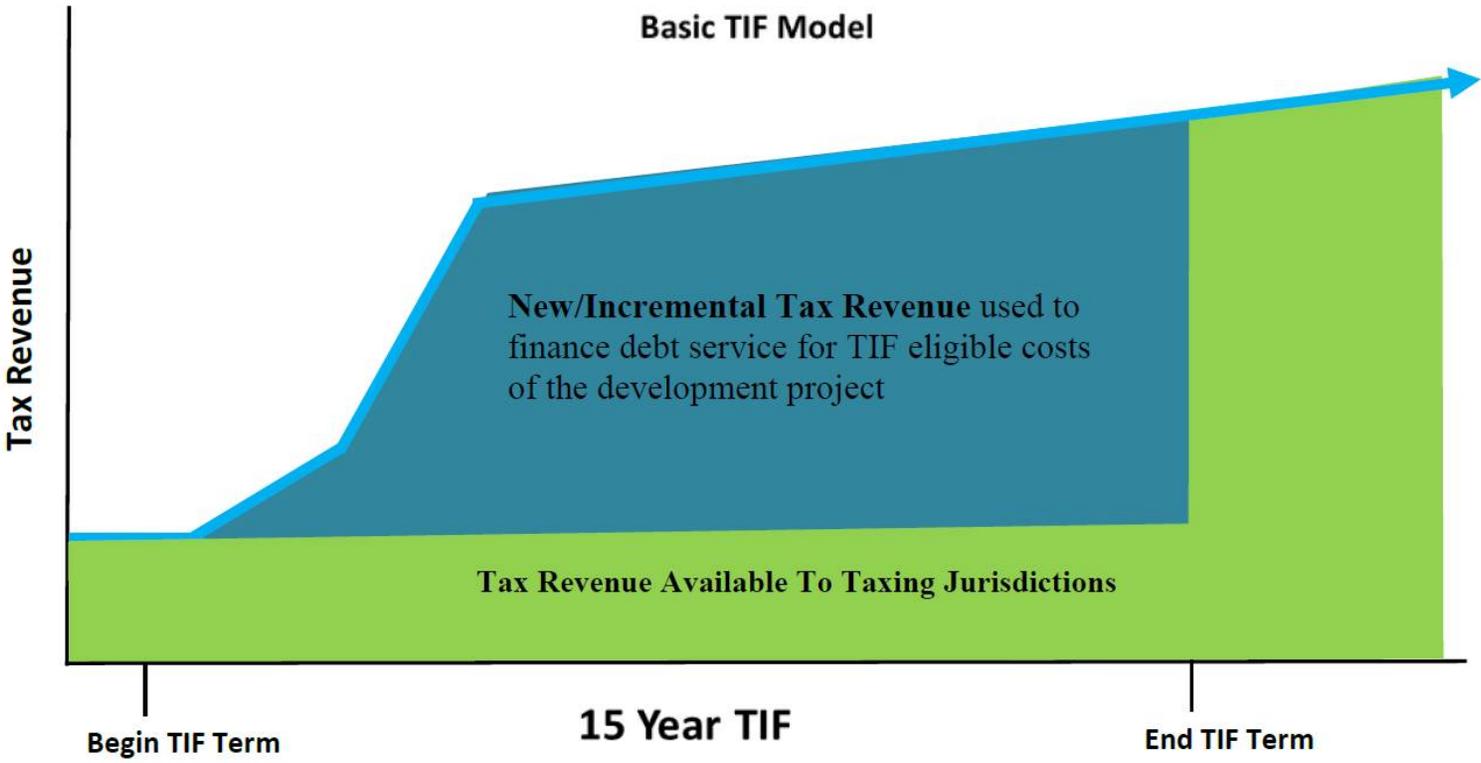
# Community Development Law: After the Audits

David C. Levy  
Baird Holm, LLP  
March 8, 2017

# Tax Increment Financing (“TIF”)

- TIF is a method of financing redevelopment projects, which allows the property taxes produced from the increased value of the improved property to be used to pay a portion of the development costs.
- Legal Authority
  - Neb. Const. Art. VIII, Sec. 12 (1978)
  - Community Development Law
    - Neb. Rev. Stat. §18-2101 to 18-2144
    - Neb. Rev. Stat. §18-2147 to 18-2153

# What is TIF?



# How Does It Work

- Adopt a General Plan
- Create a Community Redevelopment Authority/Agency
- Designate Area(s) Blighted and Substandard
- Create a Community Redevelopment Plan
- Enter into a Redevelopment Contract
- Issue Bonds (if applicable)
- Provide Notice to Divide (by August 1)

# General Development Plan

# General Development Plan

- Adopt a General Development Plan
  - Requirements vary by class of city
    - Generally relates to zoning ordinances
    - Notice to Planning Commission
      - Planning Commission may provide recommendations
  - Interaction with Counties

# General Development Plan

## What's Included

- Pattern and intensity of land use,
  - Provision of public facilities,
  - Effective development and utilization of human and natural resources,
  - Identification and evaluation of area needs including housing, employment, education, and health and the formulation of programs to meet such needs,
  - Surveys of structures and sites of historic, cultural, archaeological, or architectural significance or value,
  - Long-range physical and fiscal plans for governmental policies and action, and
  - Coordination of plans and activities between state and local governments.
- The plan, with the accompanying maps, plats, charts and descriptive and explanatory materials, shall show the recommendations concerning the physical development pattern of the city and land outside its boundaries as well as acquisition, extension, widening, narrowing, removal, vacation, abandonment, sale, and other actions affecting public improvements.

# Community Redevelopment Authority

# Community Redevelopment Authority Procedural Requirements

- A City or Village creates a community redevelopment authority by resolution or ordinance.
  - May submit the ordinance to a public vote
- The Agency may consist of the governing body of the city or village, a new or existing municipal division or department, or both.
- Within 90 days, the mayor or governing body appoints five or seven persons to govern the authority.
  - No member may have a direct or indirect interest in a contract for property, materials, or services required by such authority or in any redevelopment project or contract.
  - Disclosure of prior interests in property associated with a project.
- Adopt Bylaws

# Community Redevelopment Authority Governance

- An Authority has all the powers necessary or convenient to carry out and effectuate the purposes of the Community Development Law.
  - Levy property taxes (up to 2.6 cents), occupation taxes (enhanced employment areas) and special assessments
- Any action requires a majority of vote of the authority.
- Each authority must maintain an accurate account of all its activities, receipts and disbursements, and annually report on those activities, receipts, and disbursements to the governing body of the city.
  - Authority must segregate funds.
  - The governing body of the municipality must periodically audit all books and records of the authority.

# Community Redevelopment Area

# Community Redevelopment Area Blighted and Substandard Designation

- Cities designate areas within the City as “blighted” and “substandard” – low income areas, deteriorating areas where redevelopment is needed, areas where job creation is needed, housing is needed, and general infrastructure is needed.
  - CRA must meet blighted AND substandard designations
  - Governing Bodies may also remove blighted designations.
- City may modify CRA from time to time to include additional parcels.
  - *Fitzke v. City of Hastings*, 255 Neb. 46 (1998)
  - Emergency Declarations
- Limited Community Redevelopment Areas (LCRA)
  - Cities designate LCRA within their City as “blighted” – created for only one single specific limited pilot project

# Community Redevelopment Area

## Substandard Defined

- An area in which there is a predominance of buildings or improvements which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime, and is detrimental to the public health, safety, morals, or welfare.

# Community Redevelopment Area Blighted Defined

- Existence of factors that substantially impair the growth of the community and includes at least one of the following:
  - high unemployment,
  - average age of property is at least 40 years old,
  - half of the plotted and subdivided property in an area is unimproved land that has been within the city for forty years,
  - per capita income of the area is lower than the average per capita income of the city or village,
  - the area has had either stable or decreasing population based on the last two decennial censuses.
- Contract for Blighted and Substandard Study

# Community Redevelopment Area Documentation Requirements

- Copy of Blighted and Substandard Study
- City Council Documentation
  - Notice of meeting, minutes, acknowledgment of receipt
- Planning Commission Documentation
  - Notice to political subdivisions
  - Recommendations of Commission
- City Council Resolution

# Community Redevelopment Area

- Blighted and Substandard Designation Limits\*
  - 35% - metropolitan, primary, or first class cities
  - 50% - second class cities
  - 100% - villages

\*excludes redevelopment project involving a formerly used defense site.

# Community Redevelopment Plan

# Community Redevelopment Plan

## General Overview

- A plan for one or more CRA or projects, which conform to the general/comprehensive plan for the municipality and indicates in sufficient detail the redevelopment to be carried out, zoning and planning changes, if any, land uses, maximum densities, and building requirements.
- Any person or agency, public or private, may submit such a plan to an Authority.

# Community Redevelopment Plan Requirements

- Boundaries of the redevelopment project area, with a map showing the existing uses and condition of the property;
- A land-use plan showing proposed uses of the area;
- Information showing the standards of population densities, land coverage, and building intensities in the area after redevelopment;
- A statement of the proposed changes, if any, in zoning ordinances or maps, street layouts, street levels or grades, or building codes and ordinances;
- A site plan of the area; and
- A statement as to the kind and number of additional public facilities or utilities which will be required to support the new land uses in the area after redevelopment.

# Community Redevelopment Plan Adoption Procedures

- By resolution, a City or Village must adopt a redevelopment plan following a public hearing.
- The governing body of the city must submit substandard and blighted designation to the planning commission for its recommendation prior to making its declaration.
  - Planning Commission is not required to hold a public hearing.
- Planning commission must submit its recommendations (if any) within thirty days after receipt of the request.
- Upon receipt of the recommendations or after thirty days, the governing body may make its declaration.

# Community Redevelopment Plan Adoption Procedures

- Authority Recommendations to the City include:
  - A statement of the proposed method and estimated cost of the acquisition and preparation for the project;
  - Estimated proceeds or revenue from its disposal to redevelopers;
  - A statement of the proposed method of financing the redevelopment project; and
  - A statement of a feasible method proposed for the relocation of families to be displaced from the redevelopment project area.

# Community Redevelopment Plan Adoption Procedures

- Prior to making a recommendation to the Governing Body of the City or Village, the Authority must:
  - Consider whether the proposed land uses and building requirements in the redevelopment project area are in conformance with the general plan; and
  - Conduct a cost-benefit analysis for each project utilizing the tax increment taxes, including: tax shifts, public infrastructure and community public service needs impacts and local tax impacts; impacts on employers and employees of firms locating or expanding within or outside the boundaries of the area; and any other impacts determined by the authority to be relevant.

# Community Redevelopment Plan Notice Requirements

- Notice is required for any redevelopment plan or substantial modification of any redevelopment plan at least once a week for two consecutive weeks.
- Notice to each registered neighborhood association located within one-mile of the redevelopment area.
- Mail notice to the president or chair of the governing body of each county, **school district**, community college, educational service unit, and natural resources district in which the real property subject to such plan or major modification is located and whose property tax receipts would be directly affected.

# Community Redevelopment Plan Adoption Procedures

- A City may approve a Plan (by resolution) if:
  - (1) The Plan is feasible and in conformity with the City's General Plan and legislative declarations in the Community Development Law.
  - (2) The project would not be economically feasible without the use of TIF, would not occur in the CRA without the use of TIF (**But-for Test**), and the costs and benefits of the project are in the long-term best interest of the community impacted by the project.

# Redevelopment Contracts

# Redevelopment Contracts

## Application Process

- Developer locates a property in a CRA.
- Each City has its own TIF Application.
- Developer provides a City with an outline of proposed the project, project costs, infrastructure improvements, and summary of “But For” Analysis.

# Redevelopment Contracts

## Eligible Expenses

- Public Improvements,
- Acquisition costs (offset by current assessed value),
- Site prep work (demolition, grading, architectural, and engineering (including environmental)),
- Utility extensions,
- Major renovations to existing building (not repairs),
- Public parking,
- Feasibility studies (market studies, appraisal etc.), and
- TIF Fees.

# Bond Issuance

# Bond Issuance

- Resolution of Authority
  - Notice, meeting minutes, etc.
- Copy of Bond
- Certificate by City , Authority Officers, Planning Commission
- Notice to Divide for Community Redevelopment Project
- Auditor Filings
- Redevelopment Contract and Closing Certificate
- Receipt of Treasurer of Authority, Bond Purchaser
- Investor Letter
- Sources and Uses
- Accounting

# Other Considerations

# Failure to Comply

In considering a challenge to actions taken by a community redevelopment authority pursuant to the Community Development Law, a district court may disturb the decision of the community redevelopment authority only if it determines that the decision was illegal or is not supported by the evidence and is thus arbitrary, unreasonable, or clearly wrong. *Fitzke v. City of Hastings*, 255 Neb. 46, 582 N.W.2d 301 (1998).

# Other Issues

- Blighted and Substandard Property Outside City Limits
  - You cannot divide property taxes until the real property in the redevelopment project is within the corporate boundaries of the city.\*
- August 1 Notice of Division
  - Failure to provide notice by August 1 results in a loss of division.
  - Project valuation remains the last certified valuation for the taxable year prior to the effective date of the resolution to divide the taxes.

\* Excludes a redevelopment project involving a formerly used defense site.

# Annual Reporting Requirements

By December 1, each City and Village must provide the following:

- A copy of the redevelopment plan (and any amendments), including the date upon which the redevelopment plan was approved, the effective date for dividing the ad valorem tax, and the location and boundaries of the property in the redevelopment project; and
- A short narrative description of the type of development undertaken by the city or village with the financing and the type of business or commercial activity locating within the redevelopment project area as a result of the redevelopment project.

# State Auditor Requests

- General Plan
- Blighted/Substandard Designation Resolution and Survey
- Redevelopment Plan
  - Cost-Benefit Analysis
- Redevelopment Agreement
- Annual Accounting for Authority and Projects
- Redevelopment Contract(s)
- Bond or Debt Documentation
- Annual PTA Reports

\* Notice, meeting minutes, proof of publication, etc.

# Audit Targets

- Grant exceeds project expenditures;
- Verification of expenditures (w/ supporting documentation);
- Project expenditures were allowable;
- Conflicts of interest;
- Taxes levied did not exceed statutory \$2.60 limit;
- Redevelopment area was declared substandard and blighted;
- Compliance with public hearing requirements for the redevelopment plan;
- Redevelopment Plan required elements;
- Public notice for bidding of the redevelopment contract;
- Annual reports were filed with the Property Tax Administrator;
- Ad valorem tax levied has not exceeded 15 years;
- Taxes were appropriately calculated, collected, and distributed;
- Property tax payments for the TIF property was current.

# 2017 Legislation

## In Committee

- LB 496 (Stinner) - redefines redevelopment projects to include construction of workforce housing projects in first and second class cities and villages if the municipality follows certain procedures. Williams priority bill.
- LR 16CA (Wayne) - amends the Nebraska Constitution to allow the use of TIF for 20 years for areas designated as “extremely blighted” instead of the current 15-year limitation.

# 2017 Legislation

- LB 262 (Groene) - prohibits the use of TIF bonds for the acquisition, planning, and preparation for development or disposal of undeveloped vacant land or designation of land as blighted and substandard unless more than half of the plotted and subdivided property in an area is unimproved land that has been within the city for forty years and has remained unimproved during that time.
- LB 489 (Groene) - redefines "redevelopment project" to exclude plans for a program of voluntary or compulsory repair, rehabilitation, or demolition of any improvements other than buildings.
- LB 597 (Groene) - requires municipalities to apply to the county assessor and the Tax Commissioner to approve a TIF application.

# 2017 Legislature

- LB 95 (Crawford) –
  - requires municipalities to establish an auditing plan to provide regular review of redevelopment plans that use TIF;
  - extends notice period to neighborhood associations and political subdivisions from 10 days to 30 days;
  - requires planning commission hearing on redevelopment plan;
  - requires that the impact on school district student population be considered as part of cost-benefit analysis;
  - requires a review and update of cost-benefit analyses every five years;
  - requires that municipalities which have approved redevelopment plans using TIF retain copies of all redevelopment plans, substandard and blighted studies or analyses, cost-benefit analyses, and supporting documents associated with the redevelopment plan or any related substandard and blighted declaration; and
  - Prohibits reimbursement of costs incurred prior to the approval of the redevelopment plan, except for costs related to the preparation of the redevelopment plan, the substandard and blighted study or analysis, or the cost-benefit analysis.

# Questions?

David C. Levy, Esq.

Baird Holm LLP, Omaha, Nebraska

Phone: 402-636-8310 (O) / 402-213-9063 (C)

Website: [www.bairdholm.com](http://www.bairdholm.com)

E-mail: [dlevy@bairdholm.com](mailto:dlevy@bairdholm.com)