Securing Up-Front Funds for Brownfields Projects

A Summary of Key Alternative Ohio Tools

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Scott J. Ziance
Partner
Vorys, Sater, Seymour and Pease LLP

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Scott J. Ziance, Esq.

Vorys, Sater, Seymour and Pease LLP
52 East Gay Street, P. O. Box 1008
Columbus, OH 43216-1008

Phone: 614-464-8287 . Fax: 614-719-5053 . E-mail: sjziance@vorys.com

Mr. Ziance is a partner in the Columbus office of Vorys, Sater, Seymour and Pease LLP. His practice is focused on the utilization of economic development incentives, tax incentives, economic development financing mechanisms, public-private partnerships and special economic development entities to assist developers, operating businesses and political subdivisions in developing and redeveloping property and creating jobs and economic growth.

Scott has significant experience with tax increment financing, joint economic development districts and zones, enterprise zone and community reinvestment area exemptions, Ohio job creation tax credits, Ohio historic tax credits, Ohio grant and loan programs, federal New Markets Tax Credits and the Ohio Job Ready Sites program. Scott has served as counsel to developers, operating businesses and political subdivisions in connection with the formation of dozens of tax increment financing districts and tax increment financing areas. In addition, he has served as economic development incentives counsel on two of the largest incentives projects in Ohio history, and he serves as incentives counsel to a majority of the largest ten public companies in Central Ohio. Scott also devotes a significant portion of his practice to real and personal property tax matters and to Ohio oil and gas tax matters.

Mr. Ziance, a former Chair of the Ohio State Bar Association Taxation Committee, served as the Chair of the Taxation Committee's Economic Development Incentives Subcommittee from 2000-2006. He also is a member of the National Association of Industrial and Office Properties (NAIOP), the Council of Development Finance Agencies and the Board of Directors for Heritage Ohio. He speaks several times annually on the subject of economic development incentives through organizations such as the ABA, NAIOP, CREW, the Ohio Municipal Attorneys Association, the Columbus Bar Association, Lorman and through the annual Ohio Tax Conference.

Scott is a graduate of Bowling Green State University, where he served on the Bowling Green City Council. He also is a graduate of Harvard Law School, where he authored "Making Economic Development Incentives More Efficient" (*Urban Lawyer*, Winter 1998).

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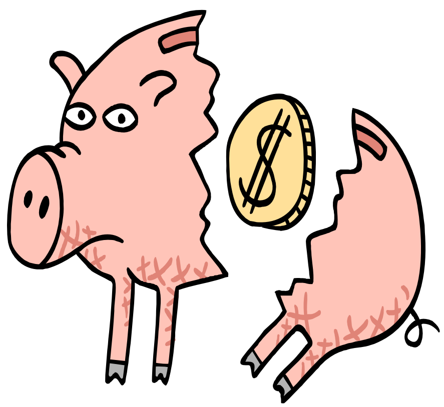
The Problem

- Brownfield redevelopment remains an important economic development component
- Can be expensive
- Future of Clean Ohio funding is uncertain



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The Solution

- Other existing State and local economic development programs, such as:
  - Tax increment financing (“TIF”) with or without a bond issuance
  - Joint economic development districts (“JEDDs”) and joint economic development zones (“JEDZs”)
  - Low-interest State loans
- Adoption of best practices for sources/uses management

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Case Study – Hamilton County Riverfront Transportation Project

Riverfront 1997…

Case Study – Hamilton County Riverfront Transportation Project

June 2011…

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TIF In General

- Diverts taxes associated with increases in real property value into a special fund
- TIF service payments used to finance "public infrastructure improvements"
- "Public infrastructure improvements" <u>includes "environmental remediation"</u>
- 10 years, 75%, or up to 30 years, 100%.

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Top Ten TIF Misconceptions

- Misconception #1 – Residential improvements can no longer be exempted
  - Simply restricted in recent years
  - TIF incentive districts can be used

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Top Ten TIF Misconceptions

- Misconception #2 – TIF requires the consent of property owners
  - Consent not required for most types of TIFs
  - Notice and hearing requirements, however, for incentive district TIFs when political subdivision intends to file the TIF exemption application

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Top Ten TIF Misconceptions

- Misconception #3 – TIF must be accompanied by an issuance of public debt
  - Not required under most TIF statutes

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Top Ten TIF Misconceptions

- Misconception #4 – TIF service payments can be used only for public infrastructure improvements
  - Incentive district TIFs can be used for private housing renovations when at least one commercial project
  - Definition of "public infrastructure improvements" is very broad
  - Very broad use, <u>including</u> <u>private</u> <u>improvements</u>, under urban redevelopment TIFs

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Top Ten TIF Misconceptions

- Misconception #5 – Public infrastructure improvements constructed with TIF funds must be adjacent to or contained within the TIF area
  - No precise geographic requirements
  - Example: Sewer pump station several miles away from a TIF area

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Top Ten TIF Misconceptions

- Misconception #6 – All taxing units with jurisdiction over an area must consent to the TIF
  - Simply a misconception, but …
  - For incentive districts, required sharing of TIF funds or approval of another taxing unit for TIF exemptions greater than 75% or more than 10 years, and …
  - To maximize value, board of education approval is needed

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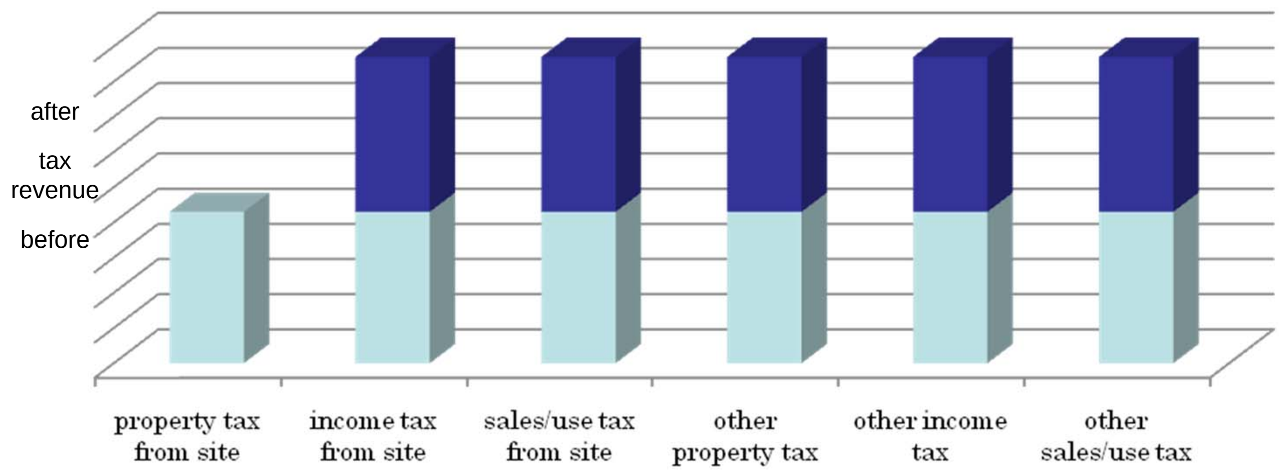
Top Ten TIF Misconceptions

Misconception #7 – Taxing units necessarily lose revenues as a result of TIF resolutions

- Tax revenues from base value
- Resulting economic development



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Top Ten TIF Misconceptions

- Misconception #8 – TIFs can only be established by cities and only in blighted areas
  - Simply more choices available for blighted areas of cities
  - “Pay as you grow” strategies

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Top Ten TIF Misconceptions

- Misconception #9 – TIFs prevent the utilization of other tax incentives
  - Regularly layered with other types of property tax incentives, such as CRA exemptions, and combined with tax credits, grants, etc.
  - Exemption priority rules

Top Ten TIF Misconceptions

- Misconception #10 – School districts cannot benefit from TIF
  - Often can be structured to benefit local school districts
  - Thorough understanding of the interaction of TIF and school funding needed, including understanding of the following:
    - Type of TIF
    - Current and future “guarantee” situation
    - Components of school district’s effective millage

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TIF With A Bond Issuance

- What is a bond?
  - Form of a debt and, most simply, a promise to pay
  - Most common way for public bodies to borrow money for their capital projects

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TIF With A Bond Issuance

- Bonds issued by local political subdivision, with TIF service payments used for debt service
- Sometimes also backed by a secondary revenue source (e.g., special assessments, new community authority development charges)
- Issuing authorities can include port authorities, community improvement corporations and new community authorities

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TIF With A Bond Issuance

- Often require some sort of developer-provided credit enhancement, such as:
  - Letter of credit
  - Corporate guarantee
  - Minimum service payment obligation

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TIF With A Bond Issuance

- Alternatively, political subdivisions can provide credit enhancements, such as:
  - Non-tax revenue pledge
  - Appropriation pledge

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TIF With A Bond Issuance

- Port authority financing
  - Typically conduit financing that is non-recourse to the port authority
  - Often uses ground lease arrangement with port authority constructing facilities to be used by private entities
  - Common bond funds can provide credit enhancement

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TIF With A Bond Issuance

- Advantages to TIF bond financing:
  - Up-front funds for brownfield redevelopment
  - May be able to structure so interest is not subject to tax
  - Very common financing method0

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TIF With A Bond Issuance

- Disadvantages to TIF bond financing:
  - Internal borrowing rates could be lower than bond interest rates, particularly for taxable bond issuances
  - Significant transactional costs
  - Challenging TIF bond market and market for credit enhancements

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TIF Without A Bond Issuance

- Private developer constructs “public infrastructure improvements” (e.g., remediates a brownfield site) and is reimbursed over time with TIF service payments
- Interest on cash paid and some soft costs are typically recoverable

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TIF Without A Bond Issuance

- Advantages to proceeding without bonds:
  - Transaction costs much lower
  - Less political subdivision involvement
  - Less risky than political subdivision-provided credit enhancements

TIF Without A Bond Issuance

- Disadvantages to proceeding without bonds:
  - Must seek outside financing or use available cash -- may not be available
  - Up-front funds provider bears risk of insufficient TIF service payments, declining property values, etc.

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JEDDs and JEDZs – In General

- JEDDs and JEDZs are contractual arrangements between one or more townships and one or more municipal corporations
- Main advantage to using a JEDD or JEDZ – imposition of an income tax in an unincorporated area

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JEDDs and JEDZs – Vote Requirements

- Most common type of JEDD does not require a vote of the electors if (i) unanimous approval of township trustees; (ii) establishment requested by majority of property owners; and (iii) zoning is appropriate to functions of proposed JEDD
- Most common type of JEDZ does requires a public hearing and a vote by the majority of electors in the township

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JEDDs and JEDZs – Income Tax

- Resembles a municipal income tax in operation
- Revenues can be used for a number of purposes, including public infrastructure improvements (e.g., environmental remediation) and compensation to affected taxing units
- Apply only within the JEDD or JEDZ boundaries

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JEDDs and JEDZs – Other Aspects

- JEDDs and JEDZs can be structured in connection with other incentives (EZ and CRA abatements, TIFs)

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JEDDs and JEDZs – Potential Brownfield Uses

- Income tax could be "pledged" (subject to annual appropriations) to be used to help finance remediation activities
- Could be used in combination with a TIF and serve as additional revenue for remediation activities
- Could be used to compensate school districts in return for their approval of TIF
- Could provide a source of fungible dollars to a developer that performs remediation as part of a larger project

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Low-Interest State Loans

- The State of Ohio offers several low-interest loan programs
- Could be used to:
  - Provide direct up-front money for environmental remediation projects; or
  - Serve as fungible dollars for a developer that undertakes remediation as part of a larger project

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Low-Interest State Loans

- The most relevant State loan program for these purposes is the 166 Direct Loan Program:
  - Take-out financing at below-market rates for certain eligible costs
  - Typical term is 10-15 years
  - Can finance up to 50% of eligible costs, but that limit can be waived by ODOD for large projects
  - Eligible costs include building/land acquisition, construction, leasehold improvements and fixed asset purchases

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Low-Interest State Loans

- Is remediation eligible for 166 financing?
  - Answer is not 100% clear
  - The definition of “allowable costs” includes voluntary actions under the VAP program
  - If the remediation is outside of the VAP program, it could be ineligible for 166 financing
  - Even if ineligible, a 166 Loan could serve as fungible developer dollars

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Low-Interest State Loans

- 166 Loans and TIF
  - TIF service payments can be pledged for debt service on 166 Loans
  - This is a fairly common arrangement, and tends to work well because TIF service payments provide a regular, reasonably predictable source of revenue

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Other Up-Front Sources Beyond the Scope for Today

- Federal and State New Markets Tax Credits
- Federal and State Historic Tax Credits (fungible money)
- Conservation Easement Equity Investments (fungible money)

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Questions?

Scott J. Ziance

(614) 464-8287

sjziance@vorys.com

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