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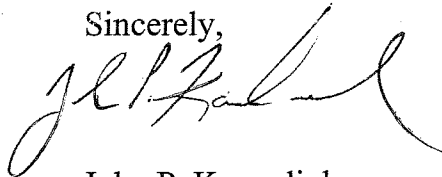
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October 8, 2012

To Whom It May Concern:

Ms. Helen Burns Sharp has requested that we assist her. In that regard, we have provided assistance in reviewing certain aspects of the proposed tax increment financing project for the construction of a road (the Black Creek project). Enclosed is a position paper which identifies issues that Ms. Sharp and others believe should be addressed.

Sincerely,



John P. Konvalinka

Enclosure

MEMORANDUM

TO: Members of the Chattanooga Industrial Development Board
(Ray Adkins, Richard Ebersole, Henry Ireland III, James Miller, Theodore W. Mills, Chris L. Ramsey, James Woods)

FROM: Helen Burns Sharp *HBS*

DATE: October 9, 2012 for the October 15 IDB Meeting

SUBJECT: Black Creek Mountain Request for Tax Increment Financing

ACTION REQUESTED: DO NOT PASS THE RESOLUTION in your agenda packet that would issue and secure the TIF note to finance the road and sewer line at Black Creek. Instead, HOLD A PUBLIC HEARING on this project and give Developers the opportunity to respond to questions and issues raised, including those in my Position Paper. Then reconsider the Resolution at a later meeting after you have heard and reflected on the testimony.

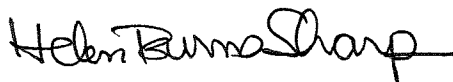
I retired several years ago after a long career in land use planning, community development, and economic development. As Community Development Director for the City of Albany, Oregon, I became familiar with tax increment financing in our urban renewal and economic development program. I believe that TIF is a great tool for the City's toolbox, but I believe it should be used judiciously for the right projects after the right questions have been asked and answered satisfactorily.

I attended your meeting on July 24 and came away with the impression that the Board consists of intelligent members with financial acumen who volunteer their time to foster economic development in Chattanooga. I regret putting you in the hot seat on this matter. A lot of the issues that I bring up in my Position Paper should have been raised and debated at the County Commission and City Council. However, there was no opportunity for members of the public to speak on these topics at their meetings. Your upcoming meeting(s) provides the last opportunity for discussion on whether or not you believe issuing the TIF note is in the best interest of Chattanooga.

You may want to pay particular attention to the Legal Issues I raise at the beginning of the position paper and to the last heading, which is called "Precedent." I strongly recommend that you not vote to approve the TIF note unless and until you have an unqualified legal opinion that states that this project is clearly and unambiguously within the prescribed definitions of the state statute for eligibility.

Public trust in government has taken a beating of late. You have a chance to give this project what it has lacked from the outset: transparency—openness, communication and accountability.

Thank you.

A handwritten signature in black ink that reads "Helen Burns Sharp". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

Helen Burns Sharp
129 Walnut Street Unit 444
Chattanooga, TN 37403

423 305-1406 (home)
423 994-2382 (cell)

POSITION PAPER (HBS, 10/09/2012)

Legal Issues That Should Be Addressed Prior to Issuance of Bonds

1. Project Eligibility. The Economic Impact Plan for Black Creek Mountain says that it is an eligible project within the meaning of TCA § 7-53-101(13) but does not cite the applicable subsections. The statute requires that the Plan meet the definition of two or more subsections. It is easy to see the subsections that it does not meet. It is difficult to ascertain even one in the list of 19 that it clearly meets.
2. Authorship of Economic Development Plan. State law [TCA § 7-53-312(a)] states that Industrial Development Corporations are to prepare Economic Impact Plans. This is the document that the Industrial Development Board, the County Commission, and the City Council voted to approve. The resolutions approving the Plan state that MSBC Black Creek, LLC (Developer) prepared the Plan.
3. Zoning. In its very general description of the “project,” the Economic Impact Plan references such components as a town center, office park, corporate retreat center, and resort lodge. These facilities are presumably on top of the mountain, since the taxpayer subsidized road is needed to serve them. All of the property on top is presently zoned R-1, low density residential. None of these uses are allowed in this zone. Is it OK to presume future zone changes? A Developer recently withdrew two zoning applications at the base of the mountain because of opposition from neighbors in the subdivision.
4. Reservation of Lots Prior to Plat Approval. State law (TCA §13-4-306) prohibits transferring lots in an unapproved subdivision. On October 12, 2011, this wording appeared on the Black Creek Facebook page: “Three of brow lots already gone. Better come and reserve one.” The Planning Commission has not granted plat approval for this phase of the development. Was Developer negotiating to sell prematurely?

Other Policy Issues That Should Be Addressed Prior to Bond Issuance.

5. Citizen Participation. The only public hearing for a \$9 million tax subsidy approved by three governing bodies was held by the Industrial Development Board at the very beginning of the process (May 1) when virtually no members of the public were aware of the project or the meeting. Seven members of the development team were present at the hearing; no member of the public was present to speak. Developers’ bond counsel is quoted in the minutes as saying the IDB vote on the Economic Impact Plan (the Plan) “just gets the process going...and that a hearing needs to be held to allow members of the public to express their views.” Was he talking about this “hearing” in a small conference room where no one except the developers, city staff and the media were present?

The County Commission (9-0) and City Council (5-2-1-1) approved the Plan in June. Neither body held a public hearing. IDB May 1 minutes quote the IDB (and City) Attorney as saying that “He understands that attorneys for the developers have been around to discuss with the City Council and County Commission and that he understands that Mayor Littlefield supports the project.” Several members of development team were allowed to speak at the two City Council meetings where this project was discussed. There was no opportunity for members of public to speak about this agenda item. Councilor comments reinforce that developers had approached/lobbied them about this project prior to the meetings.

6. Decision Making Criteria. This was the first TIF request in Hamilton County/Chattanooga, yet there was no presentation by city or county staff at meetings about tax increment financing; its origins; how it has been used in other places; some factors the policy makers might want to take into account in determining whether or not to approve the request. Two basic criteria might be to ask the applicants to demonstrate public benefit and to show that the project would not happen without taxpayer help.
7. Public Benefit. Given that public taxpayer dollars are involved, developers should be asked to demonstrate public benefit. For up to 20 years, new property taxes generated in the project area would go to pay back the developers, with interest, for the bonds they purchased for the road. During this period, other city taxpayers will in effect pay the cost of providing the new Black Creek residents with fire and police, garbage and road maintenance. (Unlike the roads up Lookout and Signal Mountains, this road will be a city street and not a state highway. So the City will be spending from its limited pot of road maintenance money to address the inevitable slides.) This is primarily a residential development. Studies from throughout the country show that residential development, particularly suburban, does not pay for itself. According to the American Farmland Trust, for every \$1.00 in property taxes paid by homeowners, it costs local government at least \$1.15 to provide services. So even after the 20-year period, the city very likely will be spending more to provide services to the mountaintop than it will be collecting in tax revenues. The permanent “jobs” projected for this project are very loosely referenced in the Plan. There is no mention of how many jobs, how much they will pay, where they will be, when or where they are expected to happen, or what happens if they don’t.
8. The “But For” Test. If the public benefit test is satisfied, it is common for local governments to evaluate TIF requests based on the “but for” test. The applicant is asked to demonstrate that the project wouldn’t happen at all without the tax subsidy. If this project weren’t going to happen without the public subsidy, why have the marketing materials for over a year referenced “brow” lots? Why did the Black Creek Facebook page over a year ago encourage people to reserve their “brow” lots? This was seven months before the public process started and Developers claimed that the public funds were necessary for the project to

happen. Why does one of the developers' attorneys publish on his firm's web site that: "Had the City Industrial Development Board, Hamilton County Commission and Chattanooga City Council not approved the TIF, the project would have taken **much longer** to launch." (Emphasis added.) All of this could lead one to believe that the project is likely to have happened one way or another, but with the public TIF subsidy the project will go at full speed ahead.

9. Protection of the Public. There is no "claw back" clause in the Development Agreement to address what happens if the "economic development" doesn't happen. Developers should be required to back up their promises in writing. Since they are projecting commercial jobs as their economic impact, it would address what would happen if these jobs never materialize. (Mixed use is a wonderful concept but the commercial component almost always lags behind and sometimes never happens.) The Agreement should address what happens if the project hits a major snag due to the economy or other factors. Developers' Economic Impact Plan projects over 1,500 new residential units at completion. What happens if the road is built and only a handful of houses get built? (We have an nearby example of what can happen--the Rarity Development on Nickajack Lake in Marion County.) Unless this issue is addressed now, the City could be responsible for costly fire, police, trash and road maintenance, while receiving precious little property tax revenue.
10. Plan Area. It consists of approximately 190 acres of developing "flat" land on the southeastern side of the existing Black Creek Mountain community and approximately 2,000 acres on top of Aetna Mountain. Developers do not make clear where any of the commercial components will be located. It appears that some would be at the foot of the mountain, including improvements at the existing clubhouse. (These improvements were underway before the Plan was approved earlier this year.) At the IDB meeting on May 1, Developers' bond counsel indicated that the TIF funds would be used to finance a road that makes facilities and utility improvements accessible for certain commercial facilities. Given those comments, why does the Plan Area also include land that is not on the mountain, including a 10,000 square foot village center within the existing Black Creek development and the restaurant and banquet additions at the existing clubhouse? The Plan does not discuss, let alone make a finding, that the property at the base of the mountain would be directly improved or benefited due to the undertaking of the road project.
11. Public Access to Facilities They Are Subsidizing. The existing commercial facilities at Black Creek are available to homeowners and members and not to the general public. It stands to reason that if city and county taxpayer dollars are helping to build this public road up the mountain, the commercial facilities and improvements called for in the Plan should be required to be open to the public. This could be addressed in the Development Agreement.

12. Cost Estimate for the Road. Developer is requesting a tax taxpayer subsidy in the amount of \$9,000,000 for the road and sewer line up the mountain. The "Plan" provides no information on how they came up with this number and how it is split between the project components. None of the three governing bodies inquired or asked if a neutral, knowledgeable third-party had reviewed this estimate or if City Engineering staff has reviewed the estimate. Nor do we know if the required geotechnical and wetlands investigations have been done. The findings in these studies would influence the cost.
13. Interest Payments Go to Developers. The loan agreement states that "the outstanding balance of the TIF note shall bear interest at a variable rate per annum equal to the Prime Rate, as it may change from time to time, plus 200 basis points." The public is the bank through the TIF note and in effect we pay the interest to the developers.
14. Timing. Throughout the project Developers appear to have pushed for speedy decisions. A City Council member asked the Black Creek developers in June if a one-week deferral would be acceptable to give the Council time to learn more about TIFs. A member of the development team ominously warned the Council that even this short a delay would have a "chilling effect" on potential developments and would send the message that Chattanooga is not open for business. The governing bodies of the city should not allow themselves to be rushed to approve a project that may ultimately hurt the area instead of help. One wonders if part of the reason for the pressure was that more and more members of the public were raising questions about the project. Also, the State Legislature in their last session passed amendments to TIF provisions (Public Chapter 605) that became effective July 1. One of the major changes was to increase the oversight of the state on local TIFs. Perhaps Developers were trying to beat this deadline. Once they got the necessary approvals of the Plan, their urgency seemed to go away. It took four months (June-October) for them to request to be on the agenda at the IDB October meeting for issuance of the TIF note to finance the road and sewer line.
15. Precedent If this project is approved without addressing the issues raised in this paper, it would open the door to an endless stream of requests for tax abatement for other general commercial and residential projects. How can you say no to other requests if you approve an unfettered taxpayer subsidy for a new private development that does not substantially leverage job growth or urban redevelopment, the two core principles for tax abatements? Without a higher standard of review for TIF applications, governing bodies will be seen as nothing more than an ATM for developers. TIF funding should be done right in Chattanooga from day one. Approval of this request, as currently structured, is destined to be blight on the City's business development record, instead of a success story.

West's Tennessee Code Annotated

Title 7. Consolidated Governments and Local Governmental Functions and Entities

Local Government Functions

Chapter 53. Industrial Development Corporations (Refs & Annos)

Part 1. General Provisions

T. C. A. § 7-53-101

§ 7-53-101. Definitions

Currentness

As used in this chapter, unless the context otherwise requires:

- (1) "Bonds" means bonds, notes, interim certificates or other obligations of a corporation issued pursuant to this chapter;
- (2) "Contracting party" or "other contracting party" means any party to a sale contract or loan agreement except the corporation;
- (3) "Corporation" means any corporation organized pursuant to this chapter;
- (4) "Eligible headquarters facility" means a facility, located in a county with a population in excess of eight hundred thousand (800,000), according to the 2000 federal census or any subsequent federal census, that houses an international, national or regional headquarters facility of an entity that agrees, at a minimum, to make payments to the municipality in lieu of any special assessments or other fees or charges that would be levied on the project pursuant to chapter 84 of this title if the project were privately owned;
- (5) "Enterprise" means the manufacturing, processing, assembling, commercial, service and agricultural operations to be carried on with or otherwise using the facilities of the project;
- (6) "Governing body" means the board or body in which the general legislative powers of the municipality are vested;
- (7) "Lease" includes a lease containing an option to purchase the project for a nominal sum upon payment in full, or provision for payment in full, of all bonds issued in connection with the project and all interest on the bonds and all other expenses in connection with the project, and a lease containing an option to purchase the project at any time, as provided in the lease, upon payment of the purchase price, which shall be sufficient to pay all bonds issued in connection with the project and all interest on the bonds and all other expenses incurred in connection with the project, but which payment may be made in the form of one (1) or more notes, debentures, bonds or other secured or unsecured debt obligations of the lessee providing for timely payments, including, without limitation, interest on the obligations sufficient for such purposes and delivered to the corporation or to the trustee under the indenture pursuant to which the bonds were issued;
- (8) "Loan agreement" means an agreement providing for a corporation to loan the proceeds derived from the issuance of bonds pursuant to this chapter to one (1) or more contracting parties to be used to pay the cost of one (1) or more projects and providing for the repayment of such loan by the other contracting party or parties, and that may provide for such loans to be secured or evidenced by one (1) or more notes, debentures, bonds or other secured or unsecured debt obligations of the contracting party or parties, delivered to the corporation or to the trustee under the indenture pursuant to which the bonds were issued;
- (9) "Mayor," as used in § 7-53-314, means the chief executive officer of any county having a metropolitan form of government and having a population in excess of five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census, with respect to which a corporation has been organized;

(10) "Municipality" means any county or incorporated city or town in this state with respect to which a corporation may be organized and in which it is contemplated the corporation will function;

(11) "Pollution" means the placing of any noxious or deleterious substances, including noise, in any air or water of or adjacent to the state of Tennessee affecting the physical, chemical or biological properties of any air or waters of or adjacent to the state of Tennessee in a manner and to an extent that renders or is likely to render such air or waters inimical or harmful to the public health, safety or welfare, or to animal, bird or aquatic life, or to the use of such air or waters for domestic, industrial, agricultural or recreational purposes;

(12) "Pollution control facilities" means any equipment, structure or facility or any land and any building, structure, facility or other improvement on the land, or any combination thereof, and all real and personal property deemed necessary therewith having to do with or the end purpose of which is the control, abatement or prevention of water, air, noise or general environmental pollution, including, but not limited to, any air pollution control facility, noise abatement facility, water management facility, waste water collecting systems, waste water treatment works or solid waste disposal facility;



(13) "Project" means all or any part of, or any interest in:

(A) Any land and building, including office building, any facility or other improvement on the land, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, that shall be suitable for the following or by any combination of two (2) or more thereof:

(i) Any industry for the manufacturing, processing or assembling of any agricultural, mining, or manufactured products;

(ii) Any commercial enterprise in selling, providing, or handling any financial service or in storing, warehousing, distributing or selling any products of agriculture, mining or industry;

(iii) Any undertaking involving the use of ship canals, ports or port facilities, off-street parking facilities, docks or dock facilities, or harbor facilities, or of railroads, monorail or tramway, railway terminals, or railway belt lines and switches;

(iv) All or any part of any office building or buildings for the use of such tenant or tenants as may be determined or authorized by the board of directors of the corporation, including, without limitation, any industrial, commercial, financial or service enterprise, any nonprofit domestic corporation or enterprise now or hereafter organized, whose purpose is the promotion, support and encouragement of either agriculture or commerce in this state or whose purpose is the promoting of the health, welfare and safety of the citizens of the state;

(v) Any office or other public building for any city, county or metropolitan government of the state of Tennessee or any board of public utilities, or any public authority, agency, or instrumentality of the state of Tennessee or of the United States;

(vi) Any buildings, structures and facilities, including the site of the buildings, structure and facilities, machinery, equipment and furnishings, suitable for use by any city, county or metropolitan government of the state of Tennessee or any for profit corporation operating buildings, structures and facilities, including the site of the buildings, structures and facilities, machinery, equipment and furnishings, under contract with any city, county or metropolitan government of the state of Tennessee as health care or related facilities, including, without limitation, hospitals, clinics, nursing homes, research facilities, extended or long-term care facilities, and all buildings, structures and facilities deemed necessary or useful in connection therewith;

(vii) Any nonprofit educational institution in any manner related to or in furtherance of the educational purposes of such institution, including, but not limited to, classroom, laboratory, housing, administrative, physical education, and medical research and treatment facilities;

(viii) Any planetarium or museum;

(ix) Any facilities for any recreation or amusement park, public park or theme park suitable for use by any private corporation or any governmental unit of the state of Tennessee, including the state of Tennessee;

(x) Any multifamily housing facilities to be occupied by persons of low or moderate income, elderly, or handicapped persons as may be determined by the board of directors, which determination shall be conclusive;

(xi)(a) Any undertaking involving the operation or management of the Job Training Partnership Act program pursuant to 29 U.S.C. § 1501 et seq. It is the legislative intent to include such project in order to increase employment opportunities pursuant to § 7-53-102;

(b) Subdivision (13)(A)(xi)(a) shall not apply in any county having a population, according to the 1980 federal census or any subsequent federal census of:

<u>not less than</u>	<u>nor more than</u>
14,940	15,000
49,400	49,500
56,000	56,100
74,500	74,600
85,725	85,825
477,000	500,000

(xii) Any land, buildings, structures and facilities, including the site of the building, structure and facilities, machinery, equipment and furnishings that constitute "recovery zone property" as in § 1400U-3(c) of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 1400U-3(c); and

(xiii) Facilities or expenditures paid or incurred for "qualified conservation purposes" as defined in § 54D of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 54D, in connection with the issuance of "qualified energy conservation bonds", as defined in § 54D of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 54D;

(B)(i) In any municipality in which there has been created a central business improvement district pursuant to chapter 84 of this title, "project" also means any hotel, motel or apartment building located within an area designated by appropriate resolution or ordinance by the municipality as the center-city area; and, in any municipality, "project" also means any hotel, including any conference or convention center facilities related to the hotel, or motel within an area that could provide substantial sources of tax revenues or economic activity to the municipality;

(ii) In counties with a metropolitan form of government, "project" also means any hotel, motel or apartment building located on property owned by or leased from an airport authority created pursuant to title 42, chapter 3 or 4, but this subdivision (13)(B)(ii) shall not apply in any county having a population of not less than one hundred twenty thousand (120,000) nor more than one hundred thirty thousand (130,000), according to the 1970 federal census or any subsequent federal census;

(iii) In the county seat of any county having a population of not less than nineteen thousand six hundred fifty (19,650) or more than nineteen thousand seven hundred fifty (19,750), according to the 1980 federal census or any subsequent federal census, "project" also means the purchase, acquisition, leasing, construction and equipping of hotels, motels, and apartments in any area within the county seat of such county;

(iv) In any municipality in which there is a closed or substantially downsized facility, including, but not limited to, a facility formerly operated by the United States department of defense or department of energy, "project" also means the purchase, acquisition, leasing, construction and equipping of hotels, motels, conference centers and apartments, on or adjacent to the site of the closed or substantially downsized federal facility;

(C) Pollution control facilities, coal gasification facilities, and energy production facilities, as defined in § 7-54-101, and any buildings, structures and facilities, including the site of any buildings, structures and facilities, machinery, equipment and furnishings, for the production of electricity, that shall be suitable for use by any person including any public utility whether publicly or privately owned, board of public utilities, public authority, municipality, or agency or instrumentality of the state of Tennessee or the United States, or by any combination of two (2) or more. The board of directors of the corporation shall find, with respect to any office building or any hotel, motel or apartment building financed under this chapter that the acquisition and leasing or sale of such building, or the financing of the building by loan agreement, as the case may be, will develop trade and commerce in and adjacent to the municipality, will contribute to the general welfare and will alleviate conditions of unemployment, and with regard to any apartment building that the construction of an apartment building will increase the quantity of housing available in the municipality, and such finding by the board of directors shall be conclusive;

(D) Land or buildings or other improvements to land or buildings, or any combination thereof, and any breeding stock and machinery or equipment necessary or suitable for use in farming, ranching, the production of agricultural commodities, including the products of agriculture and silviculture, or necessary and suitable for treating, processing, storing or transporting raw agricultural commodities;

(E) A tourism attraction involving an aggregate investment of public and private funds in excess of two hundred million dollars (\$200,000,000) that is designed to attract tourists to the state, including a cultural or historical site, a museum or visitors center, a recreation or entertainment facility, and all related hotel or hotels, convention center facilities, administrative facilities and offices, mixed use facilities, restaurants and other tourism amenities constructed or acquired as a part of the attraction;

(F) In any municipality in which there has been created a central business improvement district pursuant to chapter 84 of this title, "project" also means any public infrastructure, public improvement, public facilities, or combination thereof, located within an area designated by appropriate resolution or ordinance by the municipality as the center city area, including without limitation, any alleys, auditoriums, bridges, culverts, curbs, drainage systems, including storm water sewers and drains, garages, parks, parking facilities, parkways, playgrounds, plazas, public art, roads, sewers, sidewalks, stadiums, streets, street equipment, tunnels, and viaducts;

(G) Any economic development project as defined in § 7-40-103; and

(H) Land or buildings or other improvements to land or buildings, or any combination thereof, and any machinery or equipment necessary or suitable for use in the production of biofuels, biopower, biochemicals, biomaterials, synthetic fuels and/or petroleum products, or necessary and suitable for treating, processing, storing or transporting raw materials used in such production or in storing and transporting the finished product, intermediate products or co-products;

(14) "Revenues" of a project, or derived from a project, include payments under a lease or sale contract and repayments under a loan agreement, or under notes, debentures, bonds and other secured or unsecured debt obligations of a lessee or contracting party delivered as provided in this chapter; and

(15) "Sale contract" means a contract providing for the sale of one (1) or more projects to one (1) or more contracting parties and includes a contract providing for payment of the purchase price in one (1) or more installments. If the sale contract permits title to the project to pass to the other contracting party or parties prior to payment in full of the entire purchase price, it shall also provide for the other contracting party or parties to deliver to the corporation or to the trustee under the indenture pursuant to which the bonds were issued one (1) or more notes, debentures, bonds or other secured or unsecured debt obligations of such contracting party or parties providing for timely payments, including, without limitation, interest on the obligations for the balance of the purchase price at or prior to the passage of such title.

Credits

1955 Pub.Acts, c. 210, § 1; 1957 Pub.Acts, c. 287, § 1; 1959 Pub.Acts, c. 222, § 1; 1961 Pub.Acts, c. 285, § 1; 1965 Pub.Acts, c. 210, § 1; 1965 Pub.Acts, c. 307, § 1; 1965 Pub.Acts, c. 344, § 1; 1969 Pub.Acts, c. 55, § 1; 1971 Pub.Acts, c. 304, § 1; 1971

§ 7-53-101. Definitions, TN ST § 7-53-101

Pub.Acts, c. 357, § 1; 1972 Pub.Acts, c. 779, § 1; 1973 Pub.Acts, c. 304, § 1; 1974 Pub.Acts, c. 587, § 1; 1974 Pub.Acts, c. 661, § 1; 1976 Pub.Acts, c. 515, § 1; 1978 Pub.Acts, c. 739, §§ 1, 2; 1980 Pub.Acts, c. 918, § 1; 1981 Pub.Acts, c. 515, §§ 1, 2; 1981 Pub.Acts, c. 529, § 1; 1982 Pub.Acts, c. 587, § 1; 1982 Pub.Acts, c. 841, §§ 1, 2; 1982 Pub.Acts, c. 896, §§ 1 to 3; 1983 Pub.Acts, c. 150, § 1; 1985 Pub.Acts, c. 67, § 1; 1989 Pub.Acts, c. 83, § 1; 1989 Pub.Acts, c. 581, §§ 1 to 4; 1995 Pub.Acts, c. 364, § 1, eff. May 30, 1995; 1998 Pub.Acts, c. 983, § 1, eff. May 18, 1998; 2007 Pub.Acts, c. 461, § 5, eff. June 19, 2007; 2007 Pub.Acts, c. 524, § 1, eff. June 26, 2007; 2008 Pub.Acts, c. 694, § 1, eff. April 7, 2008; 2008 Pub.Acts, c. 770, § 2, eff. July 1, 2008; 2009 Pub.Acts, c. 180, § 1, eff. May 7, 2009; 2009 Pub.Acts, c. 608, § 5, eff. July 9, 2009; 2010 Pub.Acts, c. 800, § 1, eff. April 19, 2010; 2011 Pub.Acts, c. 420, § 13, eff. July 1, 2011; 2012 Pub.Acts, c. 944, § 1, eff. July 1, 2012.

Formerly § 6-2801.

Notes of Decisions (10)

T. C. A. § 7-53-101, TN ST § 7-53-101

Current through end of 2012 Second Reg. Sess.

End of Document

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West's Tennessee Code Annotated

Title 7. Consolidated Governments and Local Governmental Functions and Entities

Local Government Functions


Chapter 53. Industrial Development Corporations (Refs & Annos)

Part 3. Operation and Powers

T. C. A. § 7-53-312

§ 7-53-312. Economic impact plans; allocation of tax revenues

Currentness

 (a) The corporation is authorized to prepare and submit to the municipality for approval an economic impact plan in the manner described in this section.

(b) An economic impact plan shall be a written document and shall specifically identify the area to be included in the plan. The area to be included in the plan must be located in the municipality and must also include an industrial park within the meaning of § 13-16-202, or a project that is either owned by the corporation or with respect to which the corporation has loaned or will loan funds or has otherwise provided or will provide financial assistance. In addition to such industrial park or project, the area that is the subject of the economic impact plan may also include such other properties that the corporation determines will be directly improved or benefited due to the undertaking of the industrial park or project. The economic impact plan shall:

(1) Identify the boundaries of the area subject to the plan;

(2) Identify the industrial park or project located within the area subject to the plan;

(3) Discuss the expected benefits to the municipality from the development of the area subject to the plan, including anticipated tax receipts and jobs created; and

(4) Provide that the property taxes imposed on the property, including the personal property, located within the area subject to the plan will be distributable in the manner described in subsection (c) for a period of time specified in the plan.

(c) Upon the approval by the municipality of an economic impact plan with respect to an area, all property taxes levied upon property located within such area by any taxing agency after the effective date of the plan shall be divided as follows:

(1) That portion of the taxes that is equal to the amount of taxes, if any, that were payable with respect to the property for the year prior to the date the economic impact plan was approved, the "base tax amount", by the municipality shall be allocated to and, when collected, shall be paid to the respective taxing agencies as taxes levied by such taxing agencies on all other property are paid; provided, that in any year in which the taxes on any property are less than the base tax amount, there shall be allocated and paid to the respective taxing agencies only those taxes actually imposed; and

(2) Any excess of taxes over the base tax amount shall be allocated to and, when collected, shall be paid into a separate fund of the corporation established to hold such payments until applied for the purposes described in subsection (h).

(d) Notwithstanding any provision in subsection (a) to the contrary, the corporation may prepare, and the municipality may approve, an economic impact plan that allocates an amount greater than the base tax amount to the taxing agencies.

(e) An economic impact plan shall not provide for an allocation of taxes to the corporation for a period in excess of thirty (30) years.

(f) The governing body of a municipality may approve an economic impact plan by resolution, notwithstanding any local charter provision or other provision to the contrary. If the area subject to an economic impact plan is located within the corporate limits of a city or town, the taxes that would otherwise be payable to the city, town or county that is not the municipality that created the corporation shall not be paid to the corporation unless such city, town or county has also approved the economic impact plan.

(g) Before the corporation submits an economic impact plan for approval to the municipality that created such corporation or to any other city or county, the corporation shall hold a public hearing relating to the proposed plan after publishing a notice of such public hearing in a newspaper of general circulation in the municipality at least two (2) weeks prior to the date of such public hearing. Such notice shall include the time, place and purpose of the public hearing, and notice of how a map of the area subject to the plan can be viewed by the public.

(h) All taxes allocated to the corporation pursuant to this section shall only be applied by the corporation to pay expenses of the board in furtherance of promoting economic development in the municipality, to pay the cost of projects, or to pay debt service on bonds or other obligations issued by the corporation to pay the cost of the projects. The corporation is authorized to pledge any or all amounts received by the corporation pursuant to this section to the payment of such bonds or other obligations.

(i) After the approval by a municipality of an economic impact plan, the clerk or other recording official of such municipality shall transmit to the appropriate assessor of property and to each taxing agency to be affected, a copy of the description of all property within the area subject to the economic impact plan and a copy of the resolution approving that plan. If the plan is approved by any taxing agency other than the municipality, the clerk or other recording official of that taxing agency shall also provide a copy of the resolution approving the plan to such assessor of property and taxing agencies. A copy of the plan and any resolutions approving the plan shall be filed with the comptroller of the treasury, and an annual statement of amounts allocated in excess of the base tax amount shall be filed with the state board of equalization.

(j) Notwithstanding anything to the contrary in this section, taxes levied upon property within an economic impact area by any taxing agency for the payment of principal of and interest on all bonds, loans, or other indebtedness of such taxing agency, and taxes levied by or for the benefit of the state of Tennessee, shall not be subject to allocation as provided in subsection (c), but may still be levied against such property and, when collected, paid to such taxing agency as taxes levied by such taxing agency on all other property are paid and collected.

(k) This section shall not apply to any county having a metropolitan form of government and having a population in excess of five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census. With respect to a county with a metropolitan form of government and having a population in excess of five hundred thousand (500,000), § 7-53-314 shall apply.

(l) If the project identified in an economic impact plan will be located in a mixed-use development, including commercial and residential uses, of more than five hundred (500) acres and if such project will be located in a county where, as of 2008, at least thirty-one and one half percent (31.5%) of such county's population between ages five (5) to seventeen (17) years is in poverty as determined by the United States census bureau, small area income and poverty estimates (SAIPE) program, then the costs of all roads, streets, utilities and public improvements located in, adjacent to or directly serving the mixed-use development shall be costs of the project for such purposes of this section and may be financed by a corporation pursuant to this chapter. Notwithstanding any provision of this chapter or title 47, chapter 14, to the contrary, for purposes of calculating the "applicable formula rate" under § 47-14-103 and the related provisions of title 47, chapter 14, to determine the maximum effective rate applicable to bonds or other obligations issued in whole or in part by a corporation to finance the costs as described in this subsection (l) or other costs of a mixed-use development authorized in this subsection (l) that would otherwise constitute a project or projects under this chapter, the language "four (4) percentage points above the average prime loan rate" in the definition of "formula rate" in § 47-14-102 shall be replaced with the language "seven (7) percentage points above the average prime loan rate". This subsection (l) shall apply to any bonds or other obligations issued on or before June 30, 2012, by a corporation organized pursuant to this chapter, and this subsection (l) shall cease to be effective July 1, 2012.

(m) In the event of any conflict between the provisions of this section and Title 9, Chapter 23, the provisions of Title 9, Chapter 23, shall control.

Credits

2004 Pub.Acts, c. 662, § 1, eff. May 14, 2004; 2008 Pub.Acts, c. 770, § 1, eff. July 1, 2008; 2008 Pub.Acts, c. 1013, § 4, eff. May 22, 2008; 2010 Pub.Acts, c. 940, § 1, eff. May 26, 2010; 2012 Pub.Acts, c. 605, § 3, eff. March 21, 2012.

T. C. A. § 7-53-312, TN ST § 7-53-312

Current through end of 2012 Second Reg. Sess.

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West's Tennessee Code Annotated
Title 13. Public Planning and Housing
Chapter 4. Municipal Planning (Refs & Annos)
Part 3. Municipal Planning Regulations

T. C. A. § 13-4-306

§ 13-4-306. Sales without approval of plat; penalty

Currentness

Whoever, being the owner or agent of the owner of any land, transfers or sells or agrees to sell or negotiates to sell such land by reference to or exhibition of or by other use of a plat of subdivision of such land without having submitted a plat of such subdivision to the municipal planning commission and obtained its approval as required by this part, and before such plat be recorded in the office of the appropriate county register, commits a Class C misdemeanor; and the description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties. The municipality, through its solicitor or other official designated by its chief legislative body, may enjoin such transfer or sale or agreement by action for injunction.

Credits

1935 Pub.Acts, c. 45, § 5; 1989 Pub.Acts, c. 591, § 113.

Formerly 1950 Code Supp., § 3407.14; § 13-606.

Notes of Decisions (2)

T. C. A. § 13-4-306, TN ST § 13-4-306

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