



Governmental Incentives for Real Estate Development

by Steven D. Reinbolt

Many commercial and industrial real estate developments are eligible for low risk governmental real estate tax incentives. Often the incentives make a project economically feasible; other times the incentives enhance the project's profitability.

Common incentives for real estate developments are real estate tax abatement and tax increment financing. Both incentives require the local government (county or municipality) to pass legislation exempting the development's increased assessed property value from real estate taxation. Local school district approval enlarges the incentives.

Tax Abatement

Industrial developments and certain commercial developments located in areas designated by the local government may qualify for real estate tax abatement. The Ohio Department of Development certifies the designated area as a qualified enterprise zone or community reinvestment area.

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The local government can exempt up to 75% of the increased tax assessed value of the new structures for up to 10 years. These exemptions are allowed without local school board consent. The exemption legislation must induce the development. In exchange for the exemption, the property owner agrees to invest an estimated amount in the development and to employ an estimated number of new employees at an estimated annual payroll. The exemption results in no real estate taxes on the percentage of the exempt assessed tax value of the new structures. Real estate taxes remain due and payable on the non-exempt tax value of the new structures and on the land's tax value.

After the exemption legislation, the local government and the owner enter a contract. The contract sets the terms and conditions of the exemption and establishes the owner's estimates of total project investment, the number of new employees and annual payroll. The contract requires the local government to review annually actual employment levels and payroll. Failure to achieve and maintain employment levels and payroll close to the estimates allows the local government to rescind the exemption and even recapture past real estate tax savings. The precise level of underachievement that triggers these remedies is left to the local government's reasonable judgment. The inclusion and the terms of the recapture remedy are negotiable.

Tax Increment Financing

New industrial and commercial developments may also benefit from tax increment financing (TIF). A TIF is advantageous if new public infrastructure (e.g. road improvements, water lines or sewer lines) is necessary for the project. A TIF project does not have designated area requirements like tax abatement projects. TIF is available for a broader array of commercial projects, including retail projects.


A local government can fund public infrastructure costs required for the development using TIF funds instead of its general tax revenue. Under a TIF, like a tax abatement, the local government exempts the increased assessed value of the new improvements. Unlike a tax abatement, the owner makes payments in lieu of taxes equal to the real estate taxes that would have been paid without the exemption.

A TIF agreement between the local government and the owner redirects these payments in lieu of taxes to the local government and away from tax levy recipients and school districts. The local government then relies on the payment in lieu of taxes to fund the costs of the public infrastructure for the new development. As an added feature, the local government may use any extra payments in lieu of taxes to fund additional public improvements only tangentially related to the project.

Unlike a tax abatement, a TIF does not result in direct savings to a developer. A TIF does permit construction of public infrastructure necessary for the development without additional funding demands on the developer.

School Consent

With local school board consent, an exemption up to 100% is possible for both tax abatement and a TIF. With local school board consent, a 15 year tax abatement and 30 year TIF are possible.



In exchange for its consent and the resulting added benefits to the parties, a school board can demand compensation from the local government, the owner or both. The parties negotiate the amount and terms of any school board compensation.

Conclusion

As part of deciding the location of a new industrial or commercial development project, the owner should explore the possibility of tax abatement, a TIF or a combination of both. If the local government is willing, these governmental real estate tax incentives may prove very advantageous.

In recent years, Eastman & Smith Ltd. has served as legal counsel for several of the largest industrial and commercial real estate developments in Northwest Ohio with regard to tax abatements and TIFs. This experience gives us the knowledge and insight necessary to advise any owner on these governmental real estate incentives for qualified real estate development projects.

For more information regarding tax abatements and TIFs, please contact Mr. Reinbolt (419-241-6000). He is a member of the Firm and part of its Real Estate Practice Group. Principal areas of practice for Mr. Reinbolt include property acquisitions, property divestitures and leasing, public and private real estate financing, land use planning, and business law.

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