Item #3:
Proposed Public Water Downtown SSA & TIF Incentives

FILIPPINI
LAW FIRM

Tel 312.300.6554
Fax 312.324.0668

Filippini Law Firm, LLP
990 Grove Street
Suite 220
Evanston, IL 60201
www.filippinilawfirm.com

Victor P. Filippini, Jr.
312.300.6549
Victor.Filippini@filippinilawfirm.com

Memorandum

Date: April 27, 2016

To: David Lothspeich, Village Manager

From: Victor P. Filippini, Jr.

Re: Follow-Up Considerations Relating to Development Incentives in the TIF District

CONFIDENTIAL / ATTORNEY-CLIENT PRIVILEGED

As a follow-up to my 15 April 2016 memorandum and our recent discussion, below is a brief framework of what might be an initial presentation of an incentive agreement relating to the Village's TIF District. Obviously, any of these elements can be changed or replicated for other areas within the TIF, but in order to start somewhere, I present the following:

1. General Eligibility Considerations. Incentive agreements will be made available to property owners or businesses in the Village's historic downtown area of the TIF for purposes of undertaking physical improvements to their property that will either: (a) bring the building into code compliance; (b) upgrade the existing building; or (c) enlarge the building.

2. Timetable for Improvement Work. In order to qualify for an incentive agreement, there should be a schedule for benchmark activities. Because of the correlation of quick action to the success of the TIF, the schedule is very important. At the same time, the Village should recognize that the size and scope of the project will affect the time for completion. As such, the schedule might be expressed differently for the size of the project, as follows:

	Projects under $XX,XXX	Projects greater/equal to than $XX,XXX but under $YYY,YYY	Projects greater than/equal to $YYY,YYY but under $ZZZ,ZZZ	Project greater than or equal to $ZZZ,ZZZ
Incentive Agreement signed				
Building Permit Application and Plans submitted				
Construction Commenced				
Construction substantially				

completed (C/O)				

3. Expenses that Can Be Reimbursed. For purposes of determining the size and scope of a project, the following can be included as eligible costs:

   - Engineering, architectural, and other professional services;
   - Costs for marketing properties to prospective businesses;
   - Demolition and site preparation costs; and
   - Costs for rehabilitation, reconstruction or repair or remodeling of existing public or private buildings, fixtures, and leasehold improvements

   The Village might consider connection to the water system as a requirement to eligibility for an incentive agreement. The costs for the service line would be TIF-eligible (as would be the connection fee, if the Village so desires to make that subject to reimbursement).

4. Reimbursement Criteria Based on Property Taxes. If a property owner or business seeks to participate in an incentive agreement, it can receive a partial reimbursement for the investment made in improving the property based on the relative increase in equalized assessed valuation ("***EAV***") to which the improvements contribute. One way of measuring this is to state that, to the extent that the EAV of the property results in an EAV that is at least ***[110%]*** of the greater of (i) the EAV for the property at the commencement of the TIF District, or (ii) as of the date of the incentive agreement (the "***Enhance EAV***"), the property owner will receive ***[90%]*** of the taxes attributable to the Enhanced EAV up to ***[50%]*** of the eligible costs associated with the building improvements; *provided that* no reimbursement payments will be made unless and until: (i) the existing Village TIF bonds are fully paid; (ii) the anticipated TIF bonds not exceeding ***[$5,250,000]*** are fully paid; and (c) there are sufficient incremental real estate taxes to make the reimbursement payments after customary TIF administrative expenses are paid ("***Excess Incremental Revenues***"). To the extent that there are multiple incentive agreements, payments will be made ratably based on available Excess Incremental Revenues.

5. Reimbursement Criteria Based on Sales Taxes. If a property owner or business seeks to participate in an incentive agreement, it can receive a partial reimbursement for the investment made in improving the property based on the relative increase in State Sales Tax receipts that the Village receives from such businesses or properties to which the improvements were made. This would be measured from increases in State Sales Tax (exclusive of the Village's infrastructure sales tax) received by the Village from the business. It can be expressed as the increase over the baseline sales taxes for an existing business [say, 110% of the sales taxes paid at the time of the incentive agreement, subject to an annual CPI adjustment], with the business receiving ***[50%]*** of the sales taxes over the baseline up to ***[50%]*** of the eligible costs associated with the building improvements. The reimbursements would be available for the duration of the TIF District.

   The advantage of this approach to the property owners is that the reimbursement will likely start being realized sooner. At the same time, there would be no reason to limit the sources from which reimbursements are made; that is, a property owner or business could seek reimbursement both from increased EAV and increased sales taxes.

FILIPPINI
LAW FIRM

Tel 312.300.6554
Fax 312.324.0668

Filippini Law Firm, LLP
990 Grove Street
Suite 220
Evanston, IL 60201
www.filippinilawfirm.com

Victor P. Filippini, Jr.
312.300.6549
Victor.Filippini@filippinilawfirm.com

Memorandum

Date: April 15, 2016

To: David Lothspeich, Village Manager

From: Victor P. Filippini, Jr.

Re: Overview Relating to Development Incentives in the TIF District

CONFIDENTIAL / ATTORNEY-CLIENT PRIVILEGED

I. Introduction

As a follow-up to the Village Board discussion on Tuesday, I am offering some initial thoughts on the framework that the Village might employ to encourage development within the Village's Tax Increment Financing District (the "***TIF District***"). The objective is to encourage private investment within the TIF District, but to do so in a way that does not jeopardize the Village's own investments in the TIF District (the "***Incentive Program***").

Regarding the Village's own investments in the TIF District (the "***Village TIF Investment***"), it can be considered in terms of either: (i) the investment already made, which is represented in the Village's approximately $4.55 million in outstanding TIF bonds due to the Village (the "***Downtown TIF Bonds***"); or (ii) the estimated $5.3 million in additional investment that the Village Board has identified for downtown infrastructure (the "***Infrastructure Program***"); or (iii) both the Downtown TIF Bonds and the Infrastructure Program. Obviously, it will be a policy decision of the Village Board to define what TIF-related investments have priority over the reimbursements that will be made available to property owners and occupants in the TIF District.

In setting up the Incentive Program, several questions should be considered, including: (a) which properties will be eligible? (b) what type of investments in properties will be eligible? (c) by what metric are reimbursements to be measured? (d) when must the investment be started and finished? (e) what is the minimum amount of investment for eligibility in the Incentive Program? (f) what is the maximum reimbursement that may be obtained? (g) what is the priority for receiving reimbursements through the Incentive Program? (h) what conditions (if any) should be placed upon eligibility in the Incentive Program? All of these questions will be discussed below.

II. Incentive Program Framework

There are myriad ways that the Village can set up the Incentive Program. It can be very uniform in its provisions, or it can opportunistic with each participant having a tailor-made redevelopment agreement. Of course, the costs of establishing and implementing the Incentive Program will be less if the program is uniform, but even a uniform approach to the Incentive Program can be customized for the right opportunity.

In any case, the Incentive Program should be memorialized through redevelopment agreements with participating property owners or businesses ("***Incentive Agreement***"), which agreements will set forth the terms under which reimbursements will be authorized, the amount of the reimbursements, and when the reimbursement will be paid. To prepare such Incentive Agreements, it will be helpful for the following questions to be considered.

A. Which properties are eligible to participate in the Incentive Program?

Under the TIF Act, 65 ILCS 5/11-74.4-1 *et seq.*, only the redevelopment of properties within the TIF District can be eligible for an Incentive Agreement. Although the Village Board's initial discussions regarding a potential Incentive Program focused on the downtown, the Village's TIF District actually has several areas where a kick-start to redevelopment could be beneficial, including without limitation the South 15acres along Route 83, the Triangle area south of the downtown, and the downtown area itself.

Because each of these areas have different needs for and impediments to redevelopment, each area may need different strategies for implementing a meaningful Incentive Program. Likewise, the way that an Incentive Program is presented to property owners may differ in each of these areas. Rather than trying to delve into these issues, however, I will simply present the question of which properties will be eligible for the Incentive Program.

B. What type of investments in properties will be eligible?

The TIF Act defines what type of "redevelopment project costs" are appropriate for using incremental revenue from a TIF District ("***TIF Eligible Costs***"). 65 ILCS 5/11-74.4-3(q). When considering TIF Eligible Costs for the redevelopment of private property by private owners, key expenses that would qualify (at least in part) as TIF Eligible Costs include:

- Engineering, architectural, and other professional services;
- Costs for marketing properties to prospective businesses;
- Site assembly, demolition and site preparation costs; and
- Costs for rehabilitation, reconstruction or repair or remodeling of existing public or private buildings, fixtures, and leasehold improvements.

Although the TIF Act has some limitations for determining which of these expenses are TIF Eligible Costs, design costs, rehabilitation expenses of an existing building, site improvements (including water service lines and related plumbing work) would likely qualify as TIF Eligible Costs. Significantly, site assembly costs can include land "write-down" expenses for a developer who is unwilling to pay an asking price of a property owner but for the TIF reimbursement.[1]

[1] This may be a form of incentive that could spur development of the South 15 acres.

C. By what metric are reimbursements to be measured?

As an initial measure, the amount of reimbursement that can be offered through the Incentive Program cannot exceed the amount of TIF Eligible Costs. There is a more critical question to ask with respect to the Incentive Program, however: what benefit will the TIF District receive as a result of the reimbursement that is made available? With respect to this metric, we have discussed two objective measures: (i) the incremental property taxes generated, and (ii) the incremental sales taxes generated.

With respect to incentives based on incremental property taxes, there may be some hesitancy with this as the basis for an incentive if the reimbursement is subordinate to the Village TIF Investment. Nevertheless, it is an incentive and it would cause the property owners (particularly in the downtown, where so much of the Village TIF Investment has been or will be directed) to have more "skin in the game" regarding the performance of the TIF. This metric would provide that a property owner receives nothing until the Village TIF Investment is either repaid or defeased, and then the reimbursement would be limited by (a) the amount of TIF Eligible Costs, (b) the availability of excess TIF incremental property tax revenues,[2] and (c) a percentage of the increase in property taxes derived from the property[3] based on the impact of the improvements to be made to a property on the property's equalized assessed valuation ("***EAV***").[4]

Using incremental sales taxes generated from a property has a much higher opportunity for a quicker return for a property owner, and it is a reasonable proxy for the enhanced incremental property taxes. Of course, it will only be a useful incentive for buildings being used for retail operations. In an Incentive Agreement based on increased sales tax revenue, the reimbursement would be limited by (a) the amount of TIF Eligible Costs, and (b) a percentage of the annual increase in State sales taxes received by the Village from the property.[5] The Village might also consider a minimum number of consecutive months of sales tax generating activities before the incentive is triggered.

Of course, there would be no problem having Incentive Agreements that use both incremental property tax revenues and incremental sales taxes as sources for reimbursement.

D. When must the investment be started and finished?

Because the earlier redevelopment occurs the more likely it will have a favorable impact on the TIF, the Incentive Agreements should be made available only for a limited window of time, and they should be structured so that a property owner will need to commence construction by a certain date and complete it by a certain date. Opportunities can be provided

---

[2] The "excess" would need to be defined, but it would presumably include the amount needed to pay the Village TIF Investment and administrative expenses relating to the TIF.

[3] If the Village TIF Investment is fully covered, it would not be unreasonable if that percentage is 100%.

[4] It would seem that the appropriate baseline for measuring the increase in EAV would be the greater of a property's EAV at the time the TIF was created or the property's EAV at the time the Incentive Agreement is signed.

[5] In setting a baseline for sales taxes, the Village could use the sales taxes being generated during the past four quarters before the Incentive Agreement is signed, but the Village might consider using a different percentage of State sales tax revenue to be shared based on what the baseline sales taxes are. Additionally, the Village might consider using the baseline sales taxes times a CPI adjustment. In any event, the sales tax sharing would not include the Village's infrastructure sales tax revenues.

for extensions and to accommodate for *force majeure* events. Additionally, the time for undertaking and completing redevelopment activities can vary based on the building and the scope of the redevelopment activities. The point of such a provision would not be to keep all property owners in lockstep, but to encourage any property owner with an Incentive Agreement to perform a minimum amount of investment and to complete it within a prescribed period of time or, failing that, lose the opportunity for reimbursement.

E. What is the minimum amount of investment for eligibility in the Incentive Program?

Although the Village Board may choose to make the Incentive Program available to any property in the TIF District, presumably there are either types or minimum amounts of investment that the Village Board may want to encourage through an Incentive Program. Setting the minimum can be important both in terms of the objectives that the Board wishes to encourage and in terms of the administrative burden of running the Incentive Program. In any event, it is a consideration for developing the terms of the Incentive Program.

F. What is the maximum reimbursement that may be obtained?

Although the TIF Act establishes the maximum that can be obtained from the Incentive Program (i.e., the total TIF Eligible Costs), the Village may wish to only provide reimbursement for a percentage of the investment made to private property. The percentage can also vary based on the size or timeliness of the investment. Again, these are deal elements that the Village Board may wish to consider.

G. What is the priority for receiving reimbursements through the Incentive Program?

Theoretically, the Incentive Program can be structured to ensure that certain investments receive higher priority for purposes of payback, presumably because they are investments that will be more impactful to the TIF. Of course, the theoretical may be difficult to implement, especially if the Village does not have all the potential Incentive Agreements before it at the same time to evaluate and rank. On the other hand, the Village can simply describe the Incentive Program to potentially interested property owners, set a date for submission, at which point the Village can decide whether to accept any, some, or all of the proposals.[6]

H. What conditions (if any) should be placed upon participation in the Incentive Program?

In structuring the program, the Village Board may want to ensure that any proposal selected for an Incentive Agreement meets certain objectives, such as becoming fully code-compliant or being connected to the extended water system.

Although this memorandum does not create an Incentive Program, I am hopeful that it offers a sense of what types of things might be incorporated into structuring an Incentive Program. Please contact me with any questions.

---

[6] In the extreme, the Village can just make a call for proposals without any general criteria, but that may make the selection of proposals more difficult.