YOU'VE GOT THE DREAM BUT WHERE'S THE CASH?
TIFs as a Source of Funding for Mixed Use Developments

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Driving through Howard Brown's emerging vision at the Metro Centre at Owings Mills, or through the blighted waterfront of Westport whose future exists only in the imagination of developers, you would not think the two have anything in common. However, in both cases developers envision mixed-use developments.

The term "mixed-use" development refers to real estate projects which combine a number of uses within one development – for instance, a development that has restaurants, residential units and a hotel and/or office space combined in one project. Mixed-use developments are increasing in popularity due to the demand for communities where residents can "live/work/play," all within walking distance.

Mixed-use projects are typically financed through a combination of multiple financing sources. The reasons a multi-tiered finance structure is needed include (i) that such developments are often constructed on real estate that is no longer being used for its original purpose, or are located in a blighted area, and therefore, State and/or local governments have developed "incentives" in order to entice developers to put such real property to new uses, and (ii) that the costs of such developments can be greater than with traditional single-use projects because often mixed-use developments require larger tracts of land comprised of multiple parcels.

Although there are a number of government programs providing incentives, tax abatements and/or financing for real estate development, one of the more popular financing methods is Tax Increment Financing ("TIF"). Legislation regarding TIFs is enacted at the State level[1]; however, TIFs are issued at the local government level. Using TIF bonds, local governments can finance infrastructure development for a project based on the additional tax revenue created by the increase in assessed values as a result of the redevelopment. Principal on the TIF bonds is paid down by the increase in the tax revenue. In Maryland, proceeds from TIF bonds can be used to finance, among other things, infrastructure (installation of utilities, lighting and roads), parking garages and government buildings.[2]

Regardless of whether there is a single funding source or multiple funding sources, a lender wants to ensure that its loan is adequately secured. All agreements (including development agreements) regarding the project entered into between the developer and the local financing authority (the "County") must be reviewed by the lender. These agreements provide that the lender will have a first lien secured interest in the real estate being developed with a second or subordinate lien being permitted in favor of the applicable County. The lender, the borrower and the County typically enter into a subordination and intercreditor agreement setting forth the rights and relative priorities in the event of a default under the lender's loan or the County agreements. The lender will also consider whether it requires a pledge of the TIF bonds as additional security for the lender's construction loan. The lender and the County must then work together to coordinate draws under the TIF bonds and the construction loan.

Financing mixed-use developments using proceeds from TIF bonds requires flexibility and communication between the lender, the County and the developer/borrower entities.

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[1] In Maryland, TIF legislation can be found in the Maryland Annotated Code, Economic Development Article, Sections 12-201 et. seq.

[2] Md. Code. Ann., Economic Development, Sec. 12-207 (Lexis Nexis 2014 Supp.)

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