

MCDONALD & SECHRIST LLP

ATTORNEYS AT LAW

2277 Plaza Drive, Suite 280
SUGAR LAND, TEXAS 77479

JEANNE H. MCDONALD P.C.
Telephone: (281) 313-2213
Telefax: (281) 313-2513
jmcdonald@mcdonaldsechrist.com

TERRIE L. SECHRIST, P.C.
Telephone: (713) 395-4200 x102
Telefax: (713) 395-4201
tsechrist@mcdonaldsechrist.com

November 9, 2007

Economic Development and Infrastructure Financing Tools for Counties

Why would a County agree to participate financially in a development?

1. To Increase the County's Tax Base. The County's participation will result in a development that greatly increases the tax base.
2. To Have Input into the Development. The County gets a voice and input into the details of the development by participating financially.
3. To Get Better Development. The County gets a development better than what would be built without the County's participation.
4. To Accomplish County Goals. The County has goals and plans for certain types of development and wants to incentivize those specific types of development, i.e. livable centers, master-planned communities, commercial development.
5. To Obtain Financing of County Projects through Developer Advances. The County has a mobility plan it wants to implement and the developer agrees to comply with that plan in exchange for County participation.
6. To Have Earlier Construction of County Projects. The County would like to see certain County projects built sooner rather than later, and to that end, agrees to participate in the costs of a project if the developer will advance the money for the project subject to reimbursement from the County from a public finance mechanism.
7. To Leverage County Funds. The County can get other entities to bear a portion of the costs of projects the County wants to see implemented, i.e. County, City and Developer all participate in the construction of a major road.

Financing Tools

1. Tax Increment Reinvestment Zone (“TIRZ”)/(TIF) Chapter 311, Texas Tax Code
 - a. County created
 - b. No additional tax but can generate property tax and/or sales tax increments
 - c. No vote required
 - d. Public works projects that a County could undertake
 - e. County cannot sell TIRZ bonds (See Art. 8 Sec. 1-g Texas Constitution and Section 311.015 Texas Tax Code)

2. Tax Abatement, Chapter 312, Texas Tax Code
 - a. City creates reinvestment zone over land in the City; County creates over land outside the City
 - b. No additional tax
 - c. No vote required
 - d. No specified projects
 - e. County can give extra credit for applications that support County goals such as livable centers

3. Public Improvement Districts (“PID”), Chapter 372, Texas Local Government Code
 - a. County creates over land not in a city or its extra-territorial jurisdiction (“ETJ”) (can be done with or without owner request)
 - b. Additional assessment (like property tax)
 - c. No vote required
 - d. 2005 changes to the law -- Counties with a population of 825,000 or more may create a PID that (1) is a separate political subdivision of the state, (2) has, in addition to PID powers, the powers of a county development district and a road district and a municipality to make grants under Chapter 380 and (3) can levy a property tax, sales tax, assessment and/or a hotel occupancy tax.
 - e. Projects:
 - i. landscaping;
 - ii. erection of fountains, distinctive lighting, and signs;
 - iii. acquiring, constructing, improving, widening, narrowing, closing, or rerouting of sidewalks or of streets, any other roadways, or their rights-of-way;
 - iv. construction or improvement of pedestrian malls;
 - v. acquisition and installation of pieces of art;
 - vi. acquisition, construction, or improvement of libraries;
 - vii. acquisition, construction, or improvement of off-street parking facilities;

- viii. acquisition, construction, improvement, or rerouting of mass transportation facilities;
 - ix. acquisition, construction, or improvement of water, wastewater, or drainage facilities or improvements;
 - x. the establishment or improvement of parks;
 - xi. projects similar to those listed in Subdivisions (1)-(10);
 - xii. acquisition, by purchase or otherwise, of real property in connection with an authorized improvement;
 - xiii. special supplemental services for improvement and promotion of the district, including services relating to advertising, promotion, health and sanitation, water and wastewater, public safety, security, business recruitment, development, recreation, and cultural enhancement; and
 - xiv. payment of expenses incurred in the establishment
4. County Development District, Chapter 383, Texas Local Government Code
- a. Created by counties with populations of 400,000 or less upon petition from the owners of all land included in the district
 - b. Additional sales tax up to 0.05% and/or property tax
 - c. Vote required to confirm the district and levy a tax
 - d. Projects
 - i. All projects allowable for a municipal management district
 - ii. All projects allowable for a municipal utility district (“MUD”)
 - iii. Projects that promote tourism and market the district
5. Economic Development Agreements. Chapter 381, Local Government Code
- a. County may enter into economic development agreements to stimulate business and commercial activity in the City
 - b. Very flexible tool
 - c. County has full discretion to negotiate the terms of payment and the uses for the payments i.e. can be made to mimic a TIRZ, a MUD or a grant
6. Levee Improvement Districts (“LID”), Chapters 57 and 49, Texas Water Code
- a. County creates upon petition of owners of a majority of value in the district
 - b. Additional property tax
 - c. Vote required
 - d. Drainage (flooding)
 - e. Projects
 - i. levees and other improvements on, along, and contiguous to rivers, creeks, and streams;

- ii. reclamation of lands from overflow from these streams;
 - iii. controlling and distributing the waters of rivers and streams by straightening and otherwise improving them; and
 - iv. providing for the proper drainage and other improvement of the reclaimed land.

- 7. Fresh Water Supply Districts (“FWSD”), Chapters 53 and 49, Texas Water Code (may include land that is in a city)
 - a. County creates upon petition with the signatures of 50 or a majority of the electors of the proposed district who own land in the proposed district;
 - b. Additional property tax
 - c. Vote required
 - d. Water, water rights, sewer and under certain circumstances, roads

- 8. Water Control and Improvement Districts (“WCID”), Chapters 51 and 49, Texas Water Code
 - a. Created by the County
 - b. Additional property tax
 - c. Vote required
 - d. Projects – water, sewer and drainage

- 9. Drainage Districts, Chapters 56 and 49, Texas Water Code
 - a. County creates
 - b. Additional tax
 - c. Vote required
 - d. Drainage projects

- 10. Municipal Management District, Chapter 375, Texas Local Government Code, if legislatively created
 - a. Additional tax or assessment
 - b. Vote required to levy tax or sell bonds; no vote required to levy assessments
 - c. Projects
 - i. Water, sewer, drainage, parks, and fire fighting facilities under its Chapter 54 Water Code powers;
 - ii. landscaping; lighting, banners, and signs; streets and sidewalks; pedestrian skywalks, crosswalks, and tunnels; seawalls; marinas; drainage and navigation improvements; pedestrian malls; solid waste, water, sewer, and power facilities, including electrical, gas, steam, cogeneration, and chilled water facilities; parks, plazas, lakes, rivers, bayous, ponds, and recreation and scenic areas; historic areas; fountains; works of art; off-street parking facilities, bus

terminals, heliports, and mass transit systems; and the cost of any demolition in connection with providing any of the improvement projects;

- iii. other improvements similar to those described above;
- iv. the acquisition of real property or any interest in real property in connection with an improvement, project, or services authorized by this chapter, Chapter 54, Water Code, or Chapter 365 or 441, Transportation Code;
- v. special supplemental services for advertising, economic development, promoting the area in the district, health and sanitation, public safety, maintenance, security, business recruitment, development, elimination or relief of traffic congestion, recreation, and cultural enhancement; and
- vi. expenses incurred in the establishment, administration, maintenance, and operation of the district or any of its improvements, projects, or services.

11. Developer Participation Agreements, Section 232.105, Texas Local Government Code

- a. County may contract with the developer of a subdivision in an unincorporated area of a county to pay for up to 30% of public improvements and 100% of oversizing of improvements required by the County
- b. Competitive bidding is not required

12. Interlocal Agreements, Chapter 791, Texas Government Code

- a. Projects to be financed
 - i. Administrative Services
 - ii. Regional Correction Facilities, Regional Jail Facilities and State Criminal Justice Facilities, Community Correction Facilities
 - iii. Purchases
 - iv. Road Construction
 - v. Regional Records Centers
 - vi. State Highway System

FINANCING TOOL	ADDITIONAL TAX/FEE IMPOSED
1. TIRZ	NO
2. TAX ABATEMENT	NO
3. PID	YES (ASSESSMENT)
4. COUNTY DEVELOPMENT DISTRICT	YES (SALES TAX AND/OR PROPERTY TAX)
5. COUNTY INDUSTRIAL DISTRICT	NO (MAY ALLOCATE UP TO \$0.05 OF THE COUNTY TAX RATE TO PROMOTE BUSINESS)
6. LID	YES (PROPERTY TAX)
7. FWSD	YES (PROPERTY TAX)
8. DRAINAGE DISTRICT	YES (PROPERTY TAX)
9. WCID	YES (PROPERTY TAX)
10. MANAGEMENT DISTRICT	YES (PROPERTY TAX/ASSESSMENTS)
11. INTERLOCAL AGREEMENT	NO (CONTRACTING ENTITIES CONTRIBUTE THEIR FUNDS)

USEFUL COMBINATIONS	PURPOSE
TIRZ & WATER DISTRICT	MUD can finance only water, sewer, & drainage without its tax rate going so high as to make the development unmarketable TIRZ finances roads and other public with tax increments
TIRZ & PID	TIRZ cannot generate enough tax increments to finance all public improvements and an additional fee is needed
LID & MUD	LID finances levees MUD finances WS&D and the City does not get ownership of the levees when it dissolves the MUD
TIRZ & MANAGEMENT DISTRICT	TIRZ finances the construction costs and MANAGEMENT DISTRICT takes over long term maintenance of the facilities
INTERLOCAL AGREEMENTS AND 381 AGREEMENTS	County agrees to pay a MUD for certain facilities, which payment stream the MUD can bond against County agrees to pay developer annual payments under a 381 agreement for those items the MUD cannot finance

Resources

1. Texas Statutes and Constitution – Texas Legislature Online - <http://www.capitol.state.tx.us/>
2. Economic Development Handbook – Office of the Attorney General - <http://www.oag.state.tx.us/> (purchase or download)
3. Attorney General Opinions - <http://www.oag.state.tx.us/> Select Opinions, then select Search Opinions
4. Texas Administrative Code – for rules promulgated by various agencies - [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.viewtac](http://info.sos.state.tx.us/pls/pub/readtac$ext.viewtac)
5. TCEQ Water District Data Base – for information on all water districts in the state - <http://www3.tceq.state.tx.us/iwud/>
6. Texas Comptroller’s Office -- <http://www.window.state.tx.us/>
7. Texas Secretary of State’s Office -- <http://www.sos.state.tx.us/>