Urban Renewal Applicability Bill Provides Certainty to Urban Renewal Community; Plus Two Other Urban Renewal Bills

On Friday, March 31, more than a year of ongoing discussions and negotiations among urban renewal stakeholders came to fruition with the introduction by Colorado State Sens. Rachel Zenziger (D – Arvada) and Beth Martinez Humenik (R – Thornton) of SB 17-279, "Concerning Clarification of the Applicability Provision of Recent Legislation to Promote an Equitable Financial Contribution Among Affected Public Bodies in Connection with Urban Redevelopment Projects Allocating Tax Revenues." The House sponsors are Colorado State Reps. Susan Beckman (R-Arapahoe) and Matt Gray (D-Broomfield).

While the name is quite a mouthful, the bill accomplishes three simple purposes:

- Clarifies when activities conducted pursuant to a pre-Jan. 1, 2016, urban renewal plan may require further action by the municipality and urban renewal authority to comply with HB 15-1348;
- Creates a process by which other taxing bodies can challenge a determination by a municipality regarding whether or not an amendment constitutes a substantial modification; and
- Creates a 45-day "shot clock" for any challenges to an urban renewal authority's activities.

A complete draft of the bill may be read **here**.

These measures will provide greater certainty and predictability for municipalities and urban renewal authorities in conducting their activities, and for developers and lenders in evaluating investment in urban renewal projects.

Clarification

Language in the 2015 amendments to the urban renewal statute created ambiguity for urban renewal authorities conducting activities pursuant to urban renewal plans that were approved before the effective date of the new legislation, Jan. 1, 2016. That ambiguous language created a scenario where activities in furtherance of an existing urban renewal plan could be interpreted as requiring an urban renewal authority to conduct additional activities to bring an old plan into compliance with the new legislation, by seeking the appointment of new members to the board, and negotiating with the other taxing bodies, such as the county, school district, and special districts, regarding whether or not incremental property tax revenues could be allocated to a particular urban renewal project or activity. Because many such activities were already in progress, this ambiguous language created uncertainty among lenders and developers about the security and availability of revenue streams already pledged to existing urban renewal projects, which in turn affected the ability of many urban renewal authorities and developers to continue, refinance, or modify undertakings already underway.

SB 17-279 specifies what types of changes to an urban renewal authority's undertakings and activities will require additional action to comply with HB 15-1348; all other activities do not require additional action.

Actions requiring compliance include modifications to an urban renewal plan which substantially change provisions of the urban renewal plan regarding:

- land area;
- land use;
- authorization to collect incremental tax revenue;
- the extent of the use of tax increment financing;
- the scope or nature of the urban renewal project;
- the scope or method of financing;
- design;
- building requirements;
- timing; or
- procedure; or
- where such modification will substantially clarify a plan that, when approved, was lacking in specificity as to the urban renewal project or financing.

Any such modification will be considered substantial, and will require that the municipality and urban renewal authority comply with the requirements of HB 15-1348 before proceeding to approve the modification, or undertake an urban renewal project.

However, where tax increment revenues were pledged prior to Jan. 1, 2016, then any pledge the authority makes to secure the payment of refunding bonds is not a substantial modification and does not require compliance.

Substantial Modification Determination

In order to further ensure that, once commenced, urban renewal activities will not be subject to challenge at a later date, the new law further provides that the urban renewal authority proposing a modification must send a detailed written description of the proposed modification to each of the other taxing bodies at least 30 days in advance of the hearing at which the proposed modification will be considered. Any of these taxing entities wishing to challenge whether the modification is substantial or not may file an action in district court.

45-Day Limit

Any action that seeks to challenge the activity of an urban renewal authority, such as issuance of bonds, incurrence of other financial obligations, or the pledge of revenue, must be filed within 45 days of the date on which the authority provided notice of its intent to undertake the activity. The authority must provide notice of any such action in both a newspaper, and by mailed notice to the other taxing bodies.

The addition of these provisions should go a long way toward eliminating concerns in the lending and development communities regarding the risk involved in making investments in projects being carried out under pre-Jan. 1, 2016, urban renewal plans. Once the time period for a challenge has passed, such activities may be carried out without the threat of litigation under HB 15-1348.

Other Legislation

In other urban renewal news, two other bills have introduced affecting urban renewal during this legislative session.

- HB 17-1016, which allows municipalities to **exclude oil and gas property interests** such as leaseholds and equipment from the base valuation when considering a new urban renewal plan area, was signed by Gov. John Hickenlooper on March 8, 2017. This legislation takes effect on Aug. 9, 2017. Because commodity prices for oil and gas resources can fluctuate wildly, as we have seen in recent years, some urban renewal authorities have experienced negative impacts when deflated prices result in total tax revenues dropping below the base revenue, or when base revenues are artificially inflated by high commodity prices. This bill allows the municipality to make a determination at the outset of a new urban renewal plan area whether to include or exclude such property interests.

HB 17-1065, which would have imposed significant and burdensome new requirements on urban renewal authorities under the heading of **transparency**, was postponed indefinitely by the House Business Affairs Committee on Feb. 21, 2017. This legislation would have required that urban renewal authorities perform an additional annual audit (although they are already required to do an annual audit under the Colorado Local Government Budget Act), and obtain certification from a certified public accountant that there were no expenditures of tax increment revenue funds that were not properly made for eligible public improvements or eligible costs. The bill also created new, much narrower, definitions of these terms. The bill was defeated by the committee for a variety of reasons, but it appears that some legislators have a continuing interest in requiring greater transparency for urban renewal authorities than that which is already required under the Colorado Open Records Act, the Colorado Sunshine Law, and the Colorado Local Government Budget Act for other local governments.

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