Five Trends We Are Watching as the TMUD Moves Forward

Jul 20, 2021

Categories:

Tax Law Defined™ Blog

Authors:

Emma H. Mulvaney

Donald L. Warner III

In December 2020, Ohio Governor Mike DeWine signed Senate Bill 39, which created a new insurance premium tax credit available to certain "transformational mixed-use developments" (TMUD) in Ohio. On June 30, 2021, Governor DeWine signed the 2022-2023 Ohio budget bill into law, extending this program through June 30, 2025. To learn about the basics of this tax credit, including how projects qualify and how much is available, see our previous bulletin here.

The Ohio Development Services Agency (DSA) subsequently released proposed regulations providing clarity to the program, including eligibility and qualification as a TMUD, the application, and certification process, and required reporting. Those regulations have been finalized and will be effective July 5, 2021. With the key components of the TMUD program in place, these are five trends that we are watching for as TMUD projects move forward:

Twinning the TMUD

The final TMUD regulations provide that payments in lieu of taxes and community development charges can count towards a Project's "increase in tax collections."[1] Confirmation that can combine the program with these incentives is good news for projects that are currently seeking incentives or have previously been awarded incentives.

Encouraging Placemaking and Pedestrian Oriented Design

The TMUD Act expressly includes enhanced scoring opportunities for projects incorporating new public amenities or connecting existing public amenities such as trail networks.[2] Around Ohio, trail-oriented development is becoming increasingly popular and incentivizing this development form through the TMUD is likely to increase these efforts. Scoring criteria will be developed and used by the DSA to rank and recommend projects for certification to the Ohio Tax Credit Authority.[3]

What’s Old is New

As many of Ohio’s malls adjust to the changing landscape of retail, we see increasing activity involving the adaptive reuse of these properties. We expect that the TMUD will be a viable option for property owners seeking to convert their traditional single-story single-use commercial property into an active mixed-use project with a critical mass of residents to patronize retail and restaurant uses.

Such Great Heights

For cities characterized as “major city projects,” one of the qualifying criteria is for a building to be constructed at 15 stories or higher.[4] While a handful of projects in Ohio’s major cities have reached these heights, we are interested to see whether the TMUD promotes taller buildings or if projects opt to qualify under the 350K floor area provision or $4 million payroll provision.

Local Government Support

With clear guidance regarding the types of projects that will qualify for the TMUD, local governments will have the opportunity to target other incentive programs to help leverage TMUD. As noted above, this could include TIF incentives, special assessments, or even revolving loan programs.

The next steps for implementing this program include the release of the program application, which will include instructions, minimum requirements, application deadline, and other criteria, on a soon-to-be-created webpage on the DSA’s website.

For more information, please contact Donnie Warner, Emma Mulvaney, or any attorney with Frost Brown Todd’s Public Finance or Tax practice groups.

---

[1] 122.29-1-05.
[2] Ohio Revised Code 122.09(C)(6)
[3] 122.29-1-03.
[4] Ohio Revised Code 122.09(A)(3)(c)

FBT Gibbons