Urban Renewal Bill Introduced

Rep. Brian DelGrosso (R-Loveland) and Sen. Lois Tochtrop (D-Thornton) introduced HB 14-1375, dubbed in early drafts the "Urban Redevelopment Fairness Act," on Friday, April 11, 2014, with only four weeks left in the legislative session. Specifically, HB 14-1375 amends the Colorado Urban Renewal Law (C.R.S. §31-25-101 *et seq.*) and as introduced, the bill contains three substantive provisions that will have significant, perhaps even prohibitive, impact on numerous urban renewal projects throughout the state. Here are the three main provisions you need to watch:

- A "seat at the table" provision for counties;
- A "return surplus funds" provision for all taxing bodies; and
- A "skin in the game" requirement that cities must pledge 100 percent of all sales tax revenues in order to authorize the use of 100 percent of all property tax revenues within an urban renewal plan.

Each of these provisions creates a different set of logistical and practical problems, not only for existing urban renewal areas, plans and projects but for municipalities considering the adoption of such plans and developers considering undertaking urban redevelopment projects. The ambiguities and uncertainties created by the legislation will likely make it difficult to obtain bond opinions for public-private partnerships formed using tax increment financing under the Colorado Urban Renewal Law.

The bill applies to "urban renewal projects" (not plans), modified or approved after the effective date (August 6, 2014). This effective date provision creates some confusion in and of itself, because, under the statute, municipalities adopt urban renewal "plans," which may be modified, and may undertake urban renewal "projects," of which there may be more than one in a single urban renewal plan, and which generally are not modified, once commenced.

As we have noted in **prior client alerts**, urban renewal is a tool that allows development to "pay its own way" by capturing the incremental property and sales tax generated by new development, and also allows an urban renewal authority, metro district, or property owner/developer to borrow against this revenue stream up front in order to facilitate the project. In an urban renewal project, the urban renewal authority forecasts the new, incremental taxes that may be generated by a project after redevelopment. The difference between current revenue (or base) and projected revenue (tax increment) then can be used to finance bonds or reimburse developers for their expenses (tax increment financing). Urban renewal thus adds an additional revenue stream to the capital stack for a project that involves the rehabilitation or redevelopment of property that meets the statutory criteria for blight. Additionally, the base is adjusted upwards every other year in the biennial reassessment, thus allocating additional revenue to all of the taxing entities that impose property taxes within an urban renewal project area. Urban renewal therefore creates a "win-win" for all involved: the urban renewal authority achieves its goal of remediating a blighted area; the developer obtains the additional revenue needed to close the gap in its pro forma; the surrounding property owners get increased property values resulting from the

new investment; and the other taxing bodies receive increased property taxes both during and after the 25-year period during which incremental tax revenues may be used.

Enacted in 1958, the Colorado Urban Renewal Law was originally designed principally as a tool for municipalities to receive and distribute federal funds for slum clearance and housing construction. Over the last 25 years, however, the federal government has played a decreasing role in funding of such activities, and the tool has evolved as one of self-help for municipalities.

Many of the concerns articulated by opponents of urban renewal have been addressed through amendments over the last 15 years. For example, since 2010, urban renewal plans that include agricultural land may only be implemented when certain criteria (such as consent of all the taxing entities, or environmental contamination) are met. This amendment to the bill addressed the concern over the use of urban renewal to support so-called “greenfield” projects. Since 2004, municipalities considering urban renewal plans that authorize the use of county property tax increment must prepare reports analyzing the potential impact of tax increment financing and the proposed development on the ability of counties to provide services within the urban renewal area, and to make findings regarding what mechanism the municipality has adopted to address any deficiencies.

The underlying philosophy of the Colorado Urban Renewal Law is that, without intervention by the municipality, properties that are blighted will most likely continue to decline, resulting not only in decreases in the property tax revenues for both the municipality and all of the taxing entities, but also in an increase in the need for public services to be provided by all such taxing entities. The statute itself notes that slum and blighted areas constitute a “public menace” and “an economic and social liability,” and finds that acquisition, clearance and disposition of properties within such areas should be achieved through appropriate public action.

Recent natural disasters in Colorado such as the flooding in the fall of 2013 have also highlighted the flexibility of the statute in providing municipalities with tools to address the resulting damages. The story of Estes Park’s use of urban renewal to create both financing and a framework for recovery and rehabilitation following the Big Thompson flood has become urban renewal lore in Colorado. Many Colorado cities are now following in the footsteps of Estes Park and evaluating how this tool can assist them in recovering from the 2013 floods.

Attracting and facilitating action to address blighted conditions is a critical issue for municipalities. No two projects are alike, and each has its own unique challenges. Blighted properties do not attract investment on an equal playing field with properties that are not blighted. A financial structure that works in one municipality or for one project may not work for another. For properties located in blighted and challenged urban renewal areas, multiple sources of both public and private revenues must be included in a capital stack in order to enable a project to move forward.

Please contact **Carolynne White** (**cwhite@bhfs.com**), 303-223-1197) to get an expanded analysis of this legislation in relation to a specific project or matter, or if you'd like assistance with preparing testimony or contacting legislators.

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