



Government's Role in Retail Development Incentives and P³s

presented to

Rocky Mountain Land Use Institute

presented by

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Agenda

- Introduction
- Public Financing Overview
- Colorado Financing Incentives
 - Legal framework
 - Major projects
- Arizona Financing Incentives
 - Legal framework
 - Major projects
- Discussion of Issues
 - Panel debate
 - General questions



Speakers

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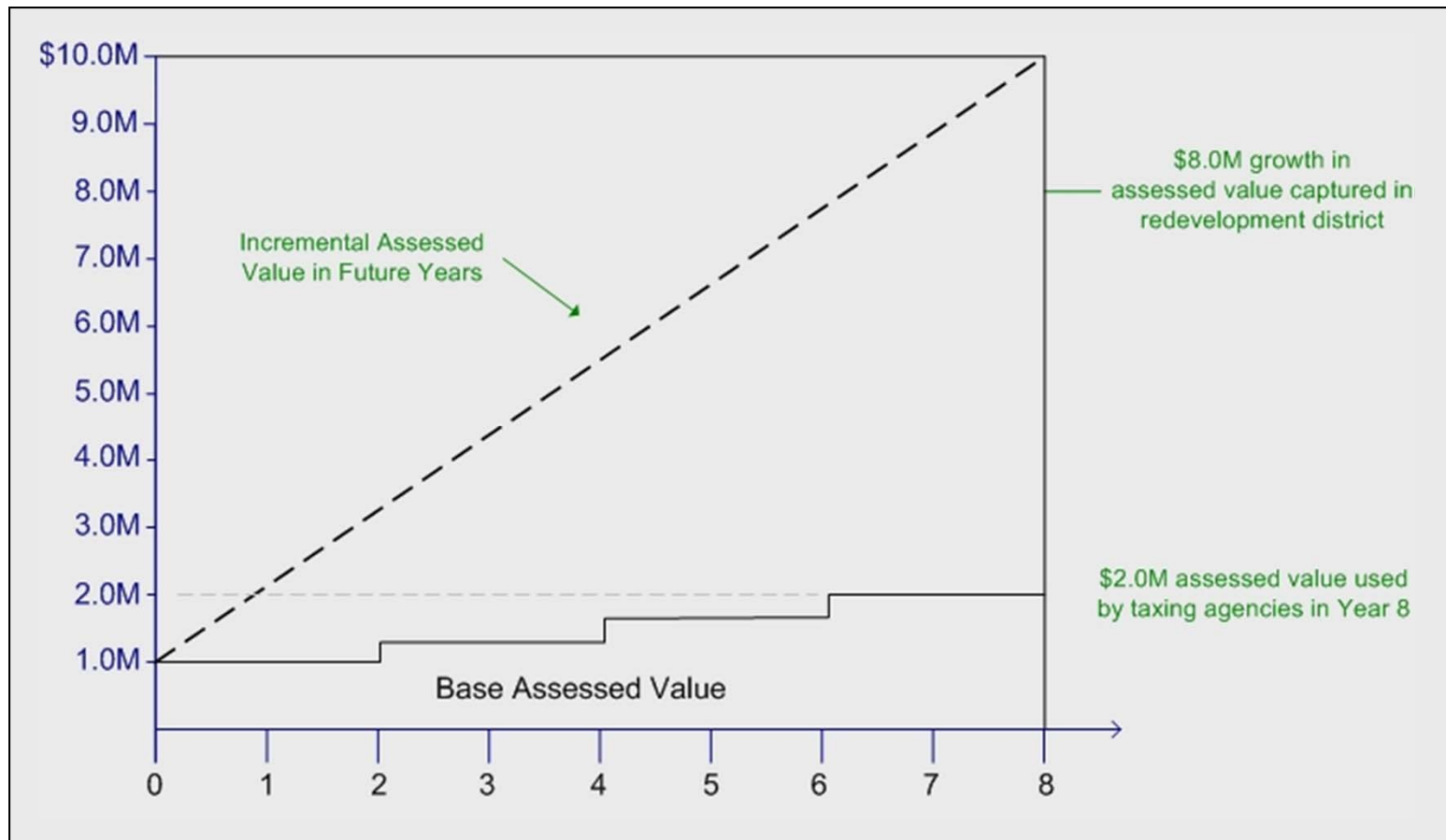
Retail Incentives Overview

- Many large scale retail developments have some public sector assistance and/or financial support
 - Most mall redevelopments
 - Many large format stores
 - Some large greenfield sites
 - Meet identified ED or other public policy objectives
- Public financing mechanisms
 - » Tax increment financing (URA, DDA)
 - » Land secured financing (Metro and Special Districts)
 - » Sales tax sharing (ESTIPs)
 - » Other fees and charges (PIF, Sales Fees)

Tax Increment Financing

- Urban Renewal Authorities
 - Incremental property taxes from all entities
 - City can apply its local sales and/or lodging taxes
 - Date of adoption of plan establishes the Tax Base
 - TIF Bonds issued by the Authority for up to 25 years
 - Often used for project specific financing
- Downtown Development Authorities
 - Incremental property taxes from all entities
 - Local sales tax option
 - Property and sales TIF for up to 30 years (plus “rolling” 20 years -- HB 08-170)
 - Most often used for CBD area improvements

Tax Increment Financing



Title 32 Metropolitan District

- Quasi-municipal independent special district
 - Finance infrastructure improvements
 - Generally formed by developer to issue up front revenue bonds to be repaid by future property owners
- Financing
 - Mill levy property taxes on all development within district
 - Can be for up to 50 years
- Limitations
 - 50 mill limit established by State
 - Needs to address two or more types of improvements

Other Special Districts

- Improvement Districts (Taxing)
 - City - General Improvement District (CR 31-25-601)
 - County – Public Improvement District (CR 30-20-501)
- Assessment Districts
 - City – Special Improvement District (CR 31-25-501)
 - County – Local Improvement District (CR 30-2—601)

Public Improvement Fee (PIF)

- Private development improvement fee
- Powers
 - Imposed by developer on retail/services tenants
 - Established by development covenant or lease agreement
- Financing
 - Similar but in addition to sales tax rate
 - City can reduce its sales tax rate to lower total impact on buyers (“PIF plus waiver”)
 - Can be used to back city- or metro district- issued revenue bonds
- Limitations
 - Part of the cost of sales and services so subject to sales tax
 - Sensitivity to competition

PIF Rates and Total Tax + PIF Burden

Project	PIF	Total Tax + PIF Burden
Belmar	2.5%	8.1%
Colorado Mills	1.4	7.0%
Creekside Shopping Center	1.5%	8.1%
Pueblo Crossing Retail Center	.5% capped at \$1.5M	7.9%
Promenade Shops at Centerra	1.25% Also a Retail Sales Fee of 1%	7.7%
The Broadmoor	2.25%	11.65%
Glenwood Meadows	1.5%	9.7%
Prairie Center	1%	8.3%

Sales Tax Sharing

- Enhanced Sales Tax Incentive Program (ESTIP)
 - Adopted code for many home rule cities
- Project specific sales tax shareback agreements
 - Negotiated as part of development agreement
- Powers
 - Based on municipal home rule powers
 - Primarily to attract or retain regional retail projects
 - Can support other economic development goals
 - Similar to sales tax increment financing (TIF)
 - Not limited to urban renewal or downtown settings

ESTIPs and Sharebacks

- Financing
 - City agrees to share a portion of future sales tax revenues with developer to pay for eligible public improvements
 - Usually annual payment reimbursements
 - Can be used for debt service on revenue bonds issued by a metro district
- Limitations
 - Basis for determining eligible funds = political will
 - Most cities limit shareback to 50% of net new sales
 - Specify maximum amount and payback period
 - Issue of cannibalization

Financing - Solutions

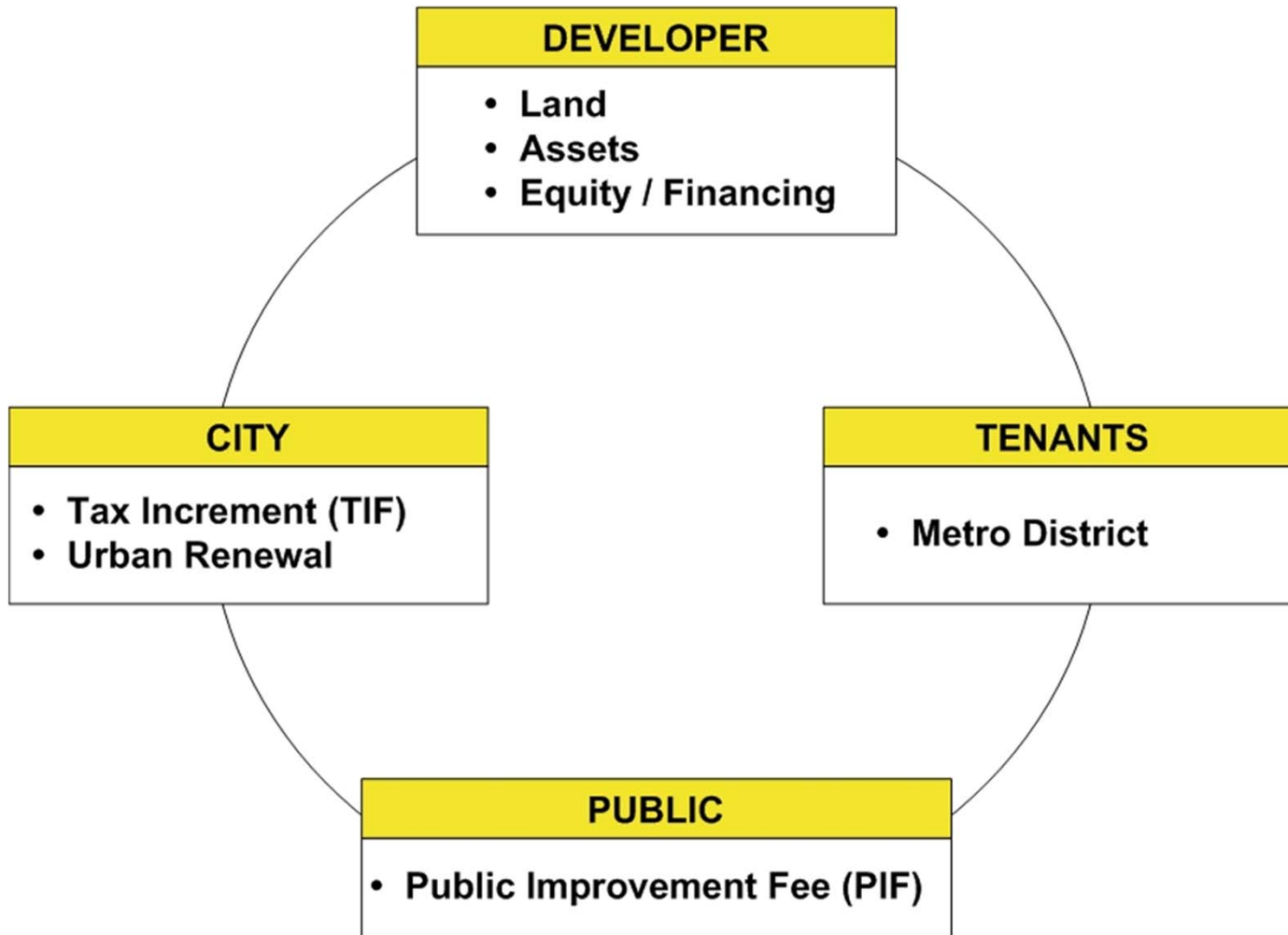
- “Capital Stack” financing – multiple sources
 - Debt
 - Equity
 - Public/private partnerships
 - Phased financing/construction
 - Fee waivers/offsets
 - Incentives
 - » Major retail anchors
 - » Green building
 - » Transit oriented development



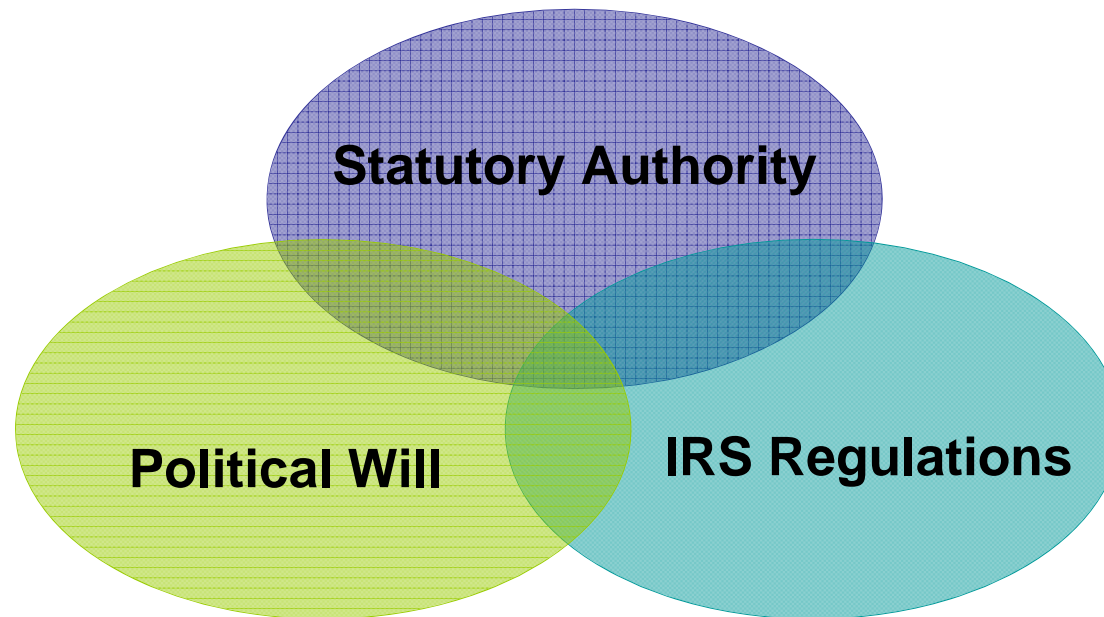
Example Public Cost Categories

- Land
 - Land purchase
 - Demolition and remediation
 - Assembly and relocation costs
- Structured parking
 - Open to the public
 - Does not include residential
- Infrastructure
 - Roads and ROW
 - Utilities and drainage
 - Parks, plazas and open space
 - Pedestrian bridge

P-3 Share the Pain Model



Political, Legal, and Regulatory Relationships



Carolynne White

**Colorado Legal Framework
Major Project Examples**

Legal Framework – Colorado

- Municipal Authority
 - Statutory
 - » Cities generally have only those powers expressly granted to them or necessarily implied, *City of Golden v. Ford*, 141 Colo. 472, 348 P.2d 951 (1960).
 - Home Rule
 - » Article XX, Colorado Constitution
 - » Authority to adopt a charter by popular vote, right of self-determination
 - » Can trump state statute on matters of “local control”
 - » Zoning/land use/development generally = “local control”
 - » Right to collect own sales tax (v. state-collected, locally shared for statutory)

Legal Framework – Colorado

- County Authority – Colorado Constitution, Article XIV; Title 30, Colorado Revised Statutes
 - Statutory
 - » Counties have only those powers specifically conferred by the state General Assembly, although courts have held that they have such implied powers as may be necessary to carry out their specified powers
 - Home Rule
 - » Some degree of self-determination - may provide certain discretionary programs and services
 - » Right to collect own sales tax (v. state-collected, locally shared for statutory)
 - » But generally, not as independent as a home rule municipality
 - » Only two home rule counties (Pitkin and Weld), plus two unified City and County governments (Denver and Broomfield)

Legal Framework – Colorado

- Colorado Constitution Anti-Donation Clause, art. XI, Sec. 2
 - Neither the state, nor any county, city, town, township, or school district shall make any donation or grant to, or in aid of, or become a subscriber to, or shareholder in any corporation or company . . .
- Intended to prohibit then-common practice of issuing municipal bonds to support construction of railroads, thought to be an “evil practice”

Legal Framework – Colorado

- Colorado Constitution – Private Appropriation Clause – art. V., Sec. 34
 - No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association

Legal Framework – Colorado

- Other relevant Colorado Constitutional Provisions
 - art. I, Sec. 11
 - » No irrevocable grant of special privileges, franchises or immunities
 - art. XI, Art. 3
 - » State shall not contract debt; certain exceptions apply

Legal Framework – Colorado

- “Public purpose” exception has evolved
 - Lord v. City & County of Denver, 58 Colo. 1, 143 P. 284 (1914)
 - » no public purpose exception
 - Milheim v. Moffat Tunnel Improvement District, 211 P. 649 (Colo. 1922), aff’d 262 U.S. 710 (1923).
 - » not a gift if government owns the asset
 - McNichols v. City and County of Denver, 131 Colo. 246, 280 P.2d 1096 (1955)
 - » payments to private companies okay if expenditures further a “valid public purpose”

Legal Framework – Colorado

- United Airlines
 - 1991, proposed legislation granting tax incentive package of approximately \$200 million to United Airlines
 - Legislation created “Colorado Business Incentive Fund”
 - In re House Bill 91S-1005, 814 P.2d 875 (Colo. 1991)
 - » Supreme Court Advisory Opinion validating legislation
 - Attorney General Opinion No. 91-04-AG
 - » generally constitutional, but with deficiencies related to debt

Legal Framework – Colorado

- Urban Renewal - Legislative Challenges and Restrictions
 - Other taxing entities – diversion of revenue, “but for” analysis
 - » County impact report

Legal Framework – Colorado

- Environmental Concerns
 - » “Greenfield” limitations
 - » HB 10-1107
- State budgetary shortfalls; school district “backfill”

Major Projects with TIF and Other Incentives

- Streets at Southglenn, Centennial
- Downtown Denver Pavilions
- Lowenstein/Tattered Cover Redevelopment, Denver
- Belmar, Lakewood
- Centerra, Loveland
- Buckingham Redevelopment, Aurora
- Arista TOD Development, Broomfield
- RiverPoint, Sheridan
- Ridgeway, Lone Tree



Project Example – Centerra, Loveland, CO

- Greenfield Site
- 3,200 ac. master planned community
- 1,500 acres of commercial property in URA (2004)
- Promenade shops - 60 specialty shops and restaurant
- PIF + RSF + waiver (1% + 1.25% - 1.25%)



Project Example – Streets at Southglenn

- Redevelopment of former Southglenn Mall property in Centennial, CO
- Development program:
 - 77 acres
 - \$310 million redevelopment costs
 - 1.0 million sf retail, Macy's and Whole Foods
 - 140,000 sf office; 202 apartments
 - 18,000 sf library
- Public investment - \$85 million
 - TIF - 76% of sales tax
 - PIF - 1%
 - Metro District - 30 mills



Project Example – District at Southmoor

- TOD Redevelopment
- Former Howard Johnson's motel at major interchange
- Pedestrian underpassage to new light rail station constructed nearby
- Demolished old structures and designed multifamily rental with ground floor retail, wrapped around structured parking
- 276 units on 7 ac. – 40 units/ac.
- Parking “credits” for nearby transit and onsite and nearby retail negotiated with city; credits may not apply if converted to condos



Conclusions

- Policy Issues & Lessons Learned
 - Increased/more sophisticated public demand for infrastructure and services
 - How should these be financed?
 - When is it appropriate for public officials to stimulate economic development by providing incentives?
 - How should public officials measure whether incentives created desired effect?
 - » “But for” test
 - » Non-monetary benefits – catalyst projects, regional infrastructure, job creation, Brownfield remediation

Discussion

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