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Thinking outside the box to build a square

Innovative financing fuels Quincy Center redevelopment

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CITIES AND TOWNS across the Commonwealth are being hit harder than ever as revenue and state aid decrease. Many municipalities have put on hold development projects that could revitalize public spaces critical to long-term growth and sustainable development. Consequently, municipalities need to start thinking more creatively and boldly about how to work with developers in public/private partnerships to develop projects that will generate revenue, create jobs and breathe new life into regions across the state. In this process, however, municipalities must be careful to negotiate protections to avoid negative financial impacts or the blight of stalled projects, such as the Filene's site in downtown Boston.

The ambitious, large-scale redevelopment of Quincy Center that is now getting underway provides municipalities with a good example of moving a project forward by combining a mixture of innovative thinking, prudent protections, and community benefits for the city. For years, city leaders had been working to redevelop Quincy Center and to create a mixture of retail, office, hospitality and residential spaces. Street-Works Development LLC, a New York-based developer, approached Quincy with a novel way to finance a massive $1.3 billion project, one that had never been tried in Massachusetts. Our charge as the legal team for Mayor Thomas Koch was to provide in any agreement an unprecedented level of taxpayer protection and to ensure that revenues to the city always outpace the city’s costs. All or some components of the city’s approach might provide a helpful model to other municipalities.

In a nutshell, Street-Works, as the redeveloper, will purchase two city properties (a parking lot and a parking garage) and combine them with other privately acquired land. Street-Works will then acquire the necessary permits and use private financing to make significant infrastructure improvements, such as new roads, sidewalks, landscaping and garages needed for the overall project.

The overall Quincy Center project, to be constructed in phases over time, is slated to include 3.5 million square feet of new space consisting of 1,200 rental and condominium units; 625,000 square feet of retail; two hotels and entertainment; 1.5 million square feet of space for office, health care, and education uses; and parking for over 5,500 cars.

After the infrastructure improvements and the private development components are constructed, and after other important negotiated preconditions are met, the city of Quincy will issue municipal bonds to reimburse Street-Works for its costs in constructing the infrastructure improvements. The debt service on these bonds will be paid principally from Chapter 121A payments to be made to the city by Street-Works after the project has started to generate revenue from sales and rent, plus revenues from the new city-owned parking garages.

What makes this approach unique is that, instead of a city first taking land, building the necessary infrastructure, and then trying to find interested developers, Quincy is leveraging its power to issue bonds in order to assure the developer that, as long as it meets certain requirements, its investment in initially privately constructing the future public infrastructure will be covered.

The use of the 121A payments is another unique factor in this project. Chapter 121A was adopted by the Legislature in the 1960s to encourage development in urban areas. If a proposed redevelopment project satisfied certain urban renewal criteria, the owners would not have to pay standard real estate taxes based on the city's assessment of the building. Instead, the owner would pay a lower excise tax to the state based upon a statutory formula, plus certain so-called Section 6A payments usually negotiated with the local municipality. The Prudential Center and the TD Bank Garden in Boston are examples of 121A-inspired projects.

What's different about the Quincy Center project is that Street-Works has agreed to make 121A payments to Quincy that will be *more* rather than *less* than the amount of assessed real estate taxes when its project is completed. This approach may sound counter-intuitive, but this higher payment ensures that Quincy will have a robust source of revenue to finance the debt service. To keep this funding stream as strong as possible, the city placed in the agreement a provision that, after a period of time, the city could elect to switch back to assessed real estate taxes if such taxes would be higher than the 121A payments. In return, Street-Works (and its construction lender) will have the security of knowing that Quincy will use its bonding power to reimburse them for the infrastructure improvements they made to facilitate the private project.

To make sure that Quincy is protected in this venture, the city's counsel worked with the entire city team to create a set of protections and benefits that were written into the land disposition agreement. Other cities may wish to consider at least some of these requirements or principles when negotiating their own public-private partnership arrangements.

Among the principles and requirements are:

- The city's general fund is never used, and the redeveloper's money is always in the deal ahead of the city's money.
- The city can review the redeveloper's plans, apply design standards, and review the redeveloper's bidding process.
- There is a bond cap established for each phase, after which the redeveloper pays for all cost overruns, and there are strict limitations on the types of costs that the redeveloper can include in its reimbursement budget.
- Pre-conditions are established to assure timely commencement and completion of construction. If the redeveloper fails to meet certain permit milestone dates, the project is not commenced in a timely manner, is suspended, or is not completed by certain dates, title can revert to the city and escalating financial penalties are imposed.
- The redeveloper must show sufficient equity and debt financing before the city is obligated to close the deal.
- The redeveloper must work with the city to secure necessary federal and state funding; the city has termination rights if this funding does not come through by certain dates.

In addition to protecting the city on the "down side," the city's team negotiated a number of important community benefits in the land disposition agreement, including:

- The establishment at closing of a community benefits cash account to be used for other public purposes in the city.
- Affordable housing linkage payments for every residential housing unit within the project.
- Agreements to use a high percentage of union labor, with preferences for hiring local residents for construction and permanent jobs, as well as purchasing local goods and services.
- The redeveloper must acquire all private lands needed for the project with no use of the city's eminent domain powers.

The land disposition agreement signed between the city of Quincy and Street-Works is among the most complicated documents with which I have been involved during more than 30 years of real estate practice. But challenging economic times require creative solutions. The key to success for municipalities that see Quincy as a possible model is to be willing to work with developers to explore new approaches to redevelopment, while always minimizing the financial and other risks.

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