

## **NEW MICHIGAN LAW SIGNIFICANTLY EXPANDS ECONOMIC INCENTIVES AVAILABLE FOR HOUSING DEVELOPMENT AND INCREASES AVAILABILITY OF TRANSFORMATIONAL BROWNFIELD PROJECTS**

*by John A. Weiss and Jessica L. Wood*

On July 18, 2023, Governor Whitmer signed into law Public Act 90 of 2023, an amendment to the Brownfield Redevelopment Financing Act (Act 381), taking immediate effect, that adds new economic incentives for housing-focused real estate development and significantly expands the state's transformational brownfield program.

### **Housing Development as "Eligible Activity"**

In communities with a demonstrated housing need, it is now permissible for a brownfield redevelopment authority to use tax increment financing to reimburse developers with captured tax revenues for "housing development activities" and supporting infrastructure and site preparation. This is a broad expansion of eligible activities, which had previously been limited to more traditional brownfield activities such as baseline environmental assessments, due care and environmental response activities, demolition, lead/asbestos/mold abatement, and certain site preparation and infrastructure improvements.

"Eligible property" will now include "housing property," which is defined as "property on which at least one unit of residential housing is proposed to be constructed, rehabilitated, or otherwise designed to be used as a dwelling" and includes mixed-use developments. "Housing development activities" means one or more of the following activities:

- Reimbursement provided to owners of rental housing for qualified rehabilitation.
- Costs for public infrastructure and necessary safety improvements.
- Costs of demolition and renovation of existing buildings and site preparation, to the extent necessary to accommodate an income-qualified purchaser or renter household.
- Temporary household relocation costs for an income-qualified household for a period not to exceed one year.
- Acquisition cost for blighted or obsolete rental units, to the extent the acquisition would promote rehabilitation or

adaptive reuse of the blighted or obsolete rental unit to accommodate an income-qualified household.

- Reimbursement provided to a developer to fill a financing gap associated with the development of housing units priced for income-qualified households and to assist with costs related to infrastructure improvements and site preparation that are not a response activity and that are necessary for new housing development.

"Qualified rehabilitation" means rehabilitation of existing structures designed to be used as a dwelling necessary to make a housing unit suitable for sale or rent to an income-qualified household. The definition also includes bringing the structure into conformance with minimum local building code standards or improving the livability of units. "Income-qualified household" means a person, a family, or unrelated persons living together, whose annual household income is not more than 120% of the area median income determined by the U.S. Department of Housing and Urban Development.

### **Increased Reimbursements for Developers and Funding for Authorities**

Other notable changes include:

- Permitting local taxes to pay for the authority's costs of implementing, monitoring, and maintaining compliance with the income and price monitoring responsibilities associated with housing development activities.
- Raising the caps on the amount of tax increment revenues attributable to local taxes that authority may use for administrative and operating expenses in a fiscal year.
- Designating "previously developed property" owned by the state or a municipality as "blighted."
- Allowing the use of local taxes, not exceeding \$50,000 (increased from \$30,000), to pay for the developer's reasonable brownfield plan or work plan implementation costs.
- Authorizing the use of school operating taxes, not exceeding \$250,000, to fund asbestos, mold, lead, and building hazardous materials abatement and demolition before a work plan or combined brownfield plan is approved.
- Approving sharing agreements between a brownfield redevelopment authority and other tax increment

finance authorities to allow the brownfield redevelopment authority to capture and utilize taxes to pay for eligible activities.

- Including payments in lieu of taxes (i.e., service charges) paid under section 15a(3) of the State Housing Development Authority Act of 1966 for low-income housing projects as available tax increment revenues.

## **Role of Michigan State Housing Development Authority (MSHDA)**

The use of incremental revenue from taxes levied for school operating purposes (including the state education tax) for reimbursing housing development activities for housing property that will be sold or rented at a below-market rate must be approved by MSHDA. Act 381 requires a development agreement or reimbursement agreement between the municipality or authority and the owner or developer of the eligible property that stipulates price and income monitoring. The statutory requirements for the application to MSHDA are similar to the existing application for Michigan Strategic Fund approval of a work plan, but also include a summary of proposed income and price monitoring responsibilities and related expenses. MSHDA may consider, in addition to existing criteria, (1) whether the proposed housing development activities align with the statewide housing plan, (2) the capacity of the entity or agency to monitor price and income, (3) whether the project will support housing at prices that align with the local workforce, (4) whether the property will be deed restricted to regulate short-term rentals or otherwise ensure long-term local housing needs, and (5) any other criteria it considers appropriate.

MSHDA approval is not required if the housing property for which housing development activities are identified under the plan will be sold or rented at a market rate and will not be subsidized.

## **Expansion of Transformational Brownfield Program**

The amendment also expands Michigan's transformational brownfield program (TBP). TBPs are brownfield plans for mixed-use development projects that have a transformational impact on local economic development and community revitalization. TBPs allow certain additional tax increment revenues to finance a broader array of eligible activities than traditional brownfield plans. Under the amendment, post-construction sales and use tax will now be an available source of tax increment revenues. The Legislature has also increased the annual cap for post-construction captured tax increment revenues to \$80.0 million

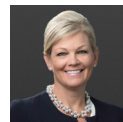
(from \$40.0 million) and the lifetime program cap to \$1.6 billion (from \$800.0 million). Finally, the amendment includes provisions to ensure an equitable geographic and population-based distribution of approved plans.

## **Next Steps**

These changes to Michigan's brownfield program present an unprecedented opportunity for communities across the state to use brownfield redevelopment authorities to expand opportunities for developing affordable housing and make viable development projects that will transform local communities.

Dickinson Wright PLLC can assist clients in navigating Michigan's economic development programs. For further information, please get in touch with John Weiss at [jweiss@dickinson-wright.com](mailto:jweiss@dickinson-wright.com).

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