

NAIOP

COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION

NAIOP OF OHIO

2015

Government Affairs

Legislative Agenda

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Proposal to Allow Property Owners to Opt Out of TIF Incentive Districts

Issue:

Under H.B. 12, property owners in certain circumstances would be provided with an opportunity to opt out of tax-increment financing (“TIF”) incentive districts. H.B. 12 would allow property owners to opt out of TIF incentive districts if their parcels are not wholly within an overlay area of not more than 300 acres that is a square, or that is a rectangle having two longer sides that are not more than twice the length of the shorter sides, that the legislative authority delineates on a map of a proposed TIF incentive district. H.B. 12 does not impact “project/parcel” TIFs, which are the primary types of TIF used for non-residential projects, “urban redevelopment” TIFs or other types of TIFs.

Position:

NAIOP Ohio believes it is not appropriate for the Ohio General Assembly to restrict the use of TIF by allowing property owners to opt out of TIFs. Tax-increment financing is one of the most important tools that local governments have for financing public infrastructure improvements, and local governments should be provided with the authority to work with property owners, developers and others to finance infrastructure improvements in the most efficient manner possible. Property owners already have sufficient protections under current TIF law. For example, for TIF incentive districts for which the political subdivision intends to file TIF exemption applications on behalf of property owners, property owners must receive written notice thirty days before a public hearing, which must itself be thirty days before the local legislation is approved. Moreover, in cases in which political subdivisions file TIF exemption applications, the TIF exemption is subordinate to any other exemption that may apply to the property, such as exemptions for charities, educational institutions and religious institutions. Finally, property owners pay the same amount when their parcels are subject to TIF as they would pay in property taxes if their parcels are not subject to TIF.

Brownfield and Urban Redevelopment Tax Clarification Legislation

Issue:

There is a lack of clarity in two key tax incentive laws pertaining to brownfield and urban redevelopment. First, the law that provides property tax exemptions for increased value after securing a covenant not to sue (“CNS”) from the Ohio EPA does not specify the base value from which the increase should be measured. Accordingly, the Ohio Department of Taxation has been interpreting it very narrowly, ordering county auditors to treat the value in the year before the covenant not to sue is issued as the base value, even if the remediation originated years before. Second, Ohio’s community reinvestment area (“CRA”) legislation specifies that the exemption for remodeling (aka rehabilitation) pertains to “the amount by which the remodeling increased the exempt value of the structure.” Some county auditors are applying this language very narrowly -- taking a position that significant increases in value after remodeling should not be exempted because the increases, in the auditor’s opinion, were not attributable to the remodeling.

Position:

NAIOP Ohio drafted statutory language to clarify these exemptions and to give property owners recourse to ensure that values are allocated appropriately among taxable portions of value and exempt portions of value. The legislation will specify that the base value for purposes of the CNS exemption is the value in the year in which remedial activities began. The legislation also will specify that the CRA exemption for remodeling or rehabilitation is the increase in value subsequent to the remodeling or rehabilitation. Finally, the legislation will make it clear that local boards of revision have jurisdiction to

determine how value should be allocated between taxable portions of value and exempt portions of value.

House Bill 64 - Operating Budget

Issue:

Gov. John Kasich's \$72.3 billion executive budget proposal, HB 64, was introduced in the House in early February. The governor proposed a tax reform plan comprised of \$5.7 billion in personal income tax cuts offset by \$5.2 billion in new taxes or tax increases, resulting in a net \$523 million tax cut. The Governor's vision of shifting Ohio from an income tax state to a consumption tax state has been a major theme in past budget plans. The proposed expansion of the sales tax to include a larger scope of service has been troublesome to NAIOP Ohio, particularly in 2013 when the sales tax was suggested to be applicable to commercial rents. This year, terms such as "management consulting" are especially concerning to NAIOP Ohio, as this could result in an imposition of tax for most services provided to and from businesses.

Position:

NAIOP Ohio supports the budget tax proposal as passed by the House on April 22, 2015. This current version creates a study committee to review the impact of tax reform on the state's economy. NAIOP Ohio believes a thorough review of tax reform will be useful to the state and industry, particularly following an ErnstYoung study that found the original proposal would not markedly improve Ohio's economy due to damaging tax shifting and tax increases on businesses and individuals.

The Ohio Senate is now reviewing both budget proposals and is expected to release their version in early to mid-June. Both Chambers will then go to Conference Committee where an agreed compromise must pass by June 30, 2015. NAIOP Ohio continues to monitor the legislative process and advocate for a budget that is friendly to businesses and the development industry.

Ohio Historic Preservation Tax Credit Program

Issue:

The Ohio Historic Preservation Tax Credit Program provides tax credits for the rehabilitation of Ohio's historic buildings. This program provides a 25% tax credit to owners for the rehabilitation expense of historically designated buildings. This credit can also be combined with a 20% federal historic tax credit to provide additional leverage for rehabilitating historic buildings.

In addition to being treasured pieces of our heritage, these buildings are economic development engines for communities and main streets throughout our great state. The rehabilitation of these buildings creates jobs, leverages private investment, strengthens our historic assets, and attracts emerging businesses.

Since its inception, 193 projects approved for the Ohio Historic Preservation Tax Credit have generated a projected \$2.5 billion in private investment and created more than 29,000 jobs. The demonstrated return on investment of this program is \$6.72 for every \$1.00 of State credit.

In 2014, \$79 million of tax credits were awarded out of a requested \$260.9 million which highlights the need for continuation and enhancement of the program.

Position:

NAIOP Ohio supports the continuation and enhancement of the Ohio Historic Preservation Tax Credit Program. This program will benefit Ohio by:

Keeping Ohio Competitive: Ohio is one of 35 states to offer a state historic tax credit. This coupled with the fact that Ohio has 3,800 properties listed on the National Register of Historic Places, which is the 3rd most nationally, indicates the need for this credit to allow Ohio to remain competitive.

Job Creation: This program has shown to create jobs and will continue to do so if it continues to receive support.

Private Investment: Federal and State historic credits attract investment from taxpayers that are able to utilize the credits. In today's world in which credit availability is scarce, programs such as this provide leverage needed to allow real estate development to continue.

Return on investment: As reported in the economic impact study prepared by Cleveland State University's Maxine Goodman Levin College of Urban Affairs, the transformation of debilitated and often vacant properties into economic development assets is projected to provide the state nearly \$10 billion in economic impact over the 2007 – 2025 time period and create over 6,900 jobs. The report specifically provided that:

- For every \$1 of OHPTC Program investment, the 111 redevelopment projects will generate \$40.58 in total construction and operating impact to the Ohio economy.

- For every \$1 in OHPTC investment in the redevelopment of the 111 historic buildings will leverage \$8.24 in construction spending from 2007–2013. In addition, nearly 83 construction jobs were created per \$1 million awarded in Ohio Historic Preservation Tax Credits.

- For every \$1 in OHPTC investment in the redevelopment of the 111 historic buildings will leverage \$32.33 in operating benefits from 2010–2025. In addition, over 298.8 jobs in operations were created per \$1 million awarded in Ohio Historic Preservation Tax Credits.

Expansion and Enhancement of the Ohio New Markets Tax Credit Program

Issue:

The New Markets Tax Credit Program (NMTC Program) was established by Congress in 2000 to spur new or increased investments into operating businesses and real estate projects located in low-income communities. The NMTC Program attracts investment capital to low-income communities by permitting individual and corporate investors to receive a tax credit against their income tax in exchange for making equity investments. The federal program is one of the Department of Treasury's most successful programs in terms of economic impact and community revitalization.

The Ohio NMTC program was created in 2009. This program predominately mirrors the federal program. Ohio's NMTC program is capped at total allocations of \$10 million in tax credits per year with a \$1 million cap per project. The Ohio NMTC can be twinned with the Federal NMTC to provide even more injection of private capital into low-income communities.

Position:

NAIOP Ohio supports expansion and enhancement of the Ohio New Markets Tax Credit Program. The current limits of \$10 million on tax credits and \$1 million per project prevent this program from being more successful.

Increasing the funding for this program will allow it to be a driver of economic development rather than just an add-on to current projects. This program will benefit Ohio by:

Keeping Ohio Competitive: Ohio is one of 14 states to offer a state new markets tax credit. The ability to twin the Ohio NMTC with the Federal credit provides Ohio with a competitive advantage to attract investors to inject capital into our state.

Job Creation: This program has shown to create jobs and will continue to do so if expanded.

Private Investment: Federal and State NMTC attract investments from taxpayers that are able to utilize the credits. In today's world in which credit availability is scarce, programs such as this provide leverage needed to allow real estate development to continue.

Return on Investment: According to the U.S. Joint Committee on Taxation, the NMTC costs the federal treasury 26 cents in lost revenue for every NMTC dollar invested in a low income community. Between 2003 and 2010, the cost to the federal government to generate more than \$20 billion in NMTC investments was \$5.2 billion. During that same period, the jobs and businesses financed with NMTC capital generated \$5.3 billion in federal tax revenue. The same types of benefits can be seen in Ohio where, between 2003 and 2010 more than 29,000 jobs were created and \$141 million in tax revenue was generated as a result of the NMTC program.

Enhancement to the program: NAIOP Ohio supports the following changes to the Ohio New Markets Tax Credit Program:

S.B. 41: To modify the qualifications for the New Markets Tax Credit to conform to the federal program and to modify the schedule for receiving the credit. The Ohio New Markets Tax Credit program restricts use of the credit to primarily owner occupied buildings. This restriction has limited the use of the credits. The changes that are proposed to the tax credit schedule would make Ohio's program more comparable to the federal program and also more competitive with other state New Markets Tax Credit programs.

Ohio 401 Water Quality Certification

Issue:

When it is necessary to fill in or otherwise impact streams or wetlands in connection with a project, permits are often required from the United States Army Corps of Engineers ("Corps") and the Ohio Environmental Protection Agency ("Ohio EPA"). Projects with significant impacts often require both a Clean Water Act Section 404 Permit from the Corps and a Section 401 Water Quality Certification from the Ohio EPA. Projects with minimal impacts to streams and/or wetlands are, however, often eligible for coverage under a general permit known as a Nationwide Permit.

Typically, Nationwide Permits are reissued by the Corps every five years. When that occurs, the Ohio EPA issues a corresponding Section 401 Water Quality Certification for the Nationwide Permit program.

The Nationwide Permits were last reissued by the Corps in March of 2012. The Ohio EPA issued a corresponding Section 401 Water Quality Certification at that time as well. When the Ohio EPA issued its last Section 401 Water Quality Certification for the Nationwide Permit program, however, it contained certain terms and conditions that were more stringent than the Nationwide Permits that were issued by the Corps. As a result, it has become evident that there are certain types of projects that are eligible for Nationwide Permit coverage at the Corps level but are ineligible for Nationwide Permit coverage at the Ohio level. In such situations, permit applicants have been able to obtain Nationwide Permit coverage from the Corps, but have had to obtain "individual" Section 401 Water Quality Certification for their projects from the Ohio EPA. This has caused a great deal of delay with respect to the permitting of certain types of projects in Ohio.

Therefore, while the Nationwide Permits are not scheduled for reissuance until 2017, the Ohio EPA has recently proposed to modify its Ohio Section 401 Water Quality Certification for the Nationwide Permit program in order to remove some of the inconsistencies that currently exist between the Nationwide Permits at the Corps and Ohio EPA levels. In connection with that effort, the Ohio EPA has held two stakeholder forms in order to obtain input regarding the modification of the Ohio Section 401 Water Quality Certification for the Nationwide Permit program.

Position:

While the Ohio EPA's goal of streamlining the Nationwide Permit process is certainly a good one, the agency's current proposal represents a significant shift in the manner in which the Nationwide Permit program would be implemented in Ohio. Specifically, under the Ohio EPA's current proposal, the State of Ohio would be divided into three different coverage eligibility areas based on the quality of the streams within the watersheds in the coverage areas: an area that would be **automatically eligible** for Nationwide Permit coverage (comprising approximately 63% of the State of Ohio); an area that would be **ineligible** for Nationwide Permit coverage (comprising approximately 18% of the State of Ohio); and an area that would be **possibility eligible** for Nationwide Permit coverage (comprising approximately 19% of the State of Ohio).

Unfortunately, the net result of the Ohio EPA's current proposal makes almost 40% of the State of Ohio either **ineligible** for **possibly ineligible** for coverage under the Nationwide Permit program. This reflects a dramatic shift in the manner in which the Nationwide Permit program is currently implemented in Ohio. Moreover, such an approach could have a significant negative impact on the ability to permit projects of various types in the future, whether the projects are residential, commercial, industrial or of some other nature.

For the foregoing reasons, in March of this year, various trade associations, including NAIOP, signed onto a letter to the Ohio EPA in order to express their comments and concerns with respect to the agency's current proposal to modify the Ohio Section 401 Water Quality Certification for the Nationwide Permit program. After outlining various technical concerns associated with the Ohio EPA's current proposal, the March letter indicated that the trade associations simply cannot support the agency's proposal as currently drafted.

Notwithstanding the foregoing, the trade associations remain committed to working with the Ohio EPA in order to develop appropriate and necessary modifications to the Ohio Section 401 Water Quality Certification for the Nationwide Permit program. Until such time as all parties have reached agreement as to appropriate and necessary modifications, however, NAIOP would respectfully urge Ohio's legislators to oppose the Ohio EPA's proposal to modify the Section 401 Water Quality Certification for the Nationwide Permit program as it is currently drafted.

Listing of the Northern Long Eared Bat as Threatened

Issue:

The Northern Long Eared Bat (NLEB) was listed as a federally threatened species on April 1, 2015. The NLEB is known to exist in relative abundance in every county in Ohio. This listing represents the most abundant and widespread distribution of any listing for any other species to date and will affect 39 states throughout the NLEB range. The listing decision was made based upon recent large scale winter mortalities suffered by the species due to White Nose Syndrome, a fungal disease. For comparison, the Indiana Bat is currently listed as endangered and has been for years. The cause of the decline of that species is habitat loss, primarily trees; therefore, tree clearing for land development is restricted in various ways to prevent further loss of the species in areas where the Indiana bat is known to exist. Unlike the NLEB, the Indiana Bat does not exist in large numbers. This rarity makes it relatively easy to manage avoidance of tree clearing at specific times of the year. The United States Fish and Wildlife Service (USFWS) has placed nearly identical restrictions on tree clearing for the NLEB as well, even though the cause of the NLEB decline is not tree clearing, but a disease. Since the NLEB is abundant in all counties in Ohio, these tree clearing restrictions will virtually eliminate land construction from April 1

to September 31 (most of the Ohio construction season) on development sites with more than 1 acre of trees, as per the currently propose USFWS restrictions.

Position:

It is NAIOP's position that the threat to the NLEB is a disease, not tree clearing. The current proposed restrictions place an undue burden on Real Estate Development and will prevent construction activities on most sites with trees from April 1 to September 31, a time when most construction activity historically take place in Ohio. Furthermore, the restrictions disregard science and do very little to protect the species. The USFWS should eliminate forested clearing restrictions associated with the NLEB in exchange for a conservation and research program for White Nose Syndrome which could be funded by reasonable fees paid by developers who propose to clear forested habitat associated with development projects. This not only allows development to continue, but funds research and treatment of the disease. The current proposal eliminates this potential funding mechanism, does not address the disease, and restricts activities that the USFWS acknowledges are not the cause of the listing.