



# DEVELOPMENT IN A REVENUE ALLOCATION AREA

ISB Real Property Section

Presented by Meghan Sullivan Conrad

Elam & Burke, PA

October 7, 2020

# Urban Renewal Agencies are Entities of Statutory Creation

- Local Economic Development Act, Title 50, Chapter 29, Idaho Code
- Idaho Urban Renewal Law of 1965, Title 50, Chapter 20, Idaho Code
- Separate and distinct legal entity with independent authority—*Yick Kong v. BRA*, (entirely lay person board) *Hart v. Rexburg URA* (mix of lay persons and council members). These two Idaho Supreme Court decisions also authorize urban renewal agencies to incur long-term debt without the necessity of a public vote (2/3 majority) as required of other public entities; Article VIII, § 3 of the Idaho Constitution.
- Models throughout the state vary widely; though with HB606 (2016), models should become more uniform, mix of lay appointees and elected officials; but latter cannot constitute a majority.
- *Hoffman, et. al v. City of Boise*
- Agency is not a taxing entity; receives an allocation of tax revenue
- Agency has no role in the assessment process
- Taxpayer pays one tax bill (levy rate x taxable value)
- Base adjusts (e.g. from exempt to non-exempt)

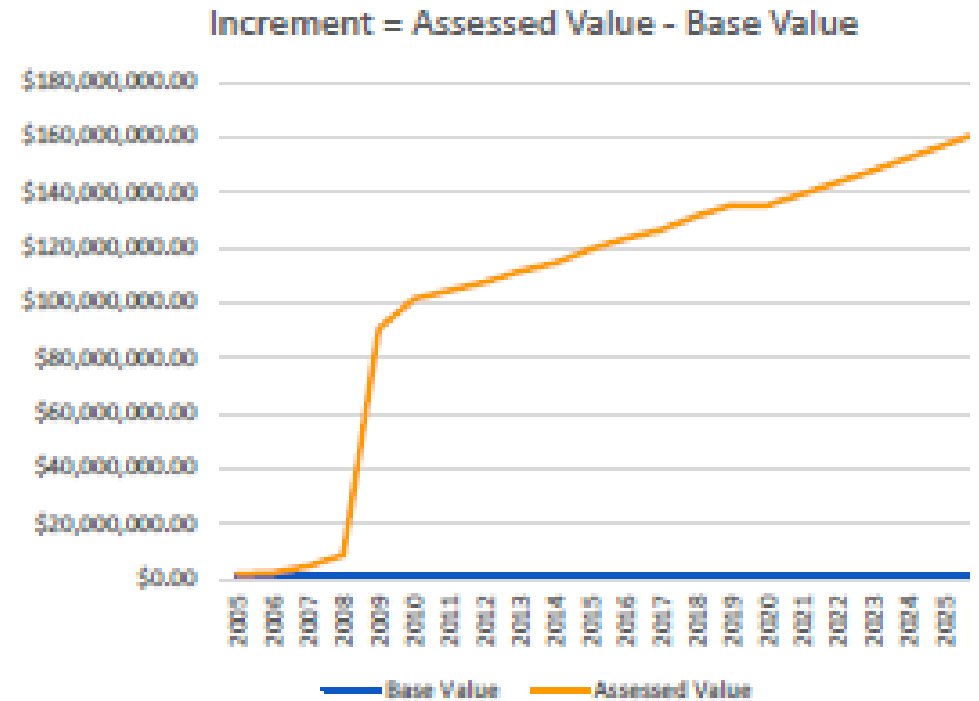
# Transparency and Accountability

- Public Record Law – Idaho Code §§ 74-101 to 74-126
- Open Meeting Law – Idaho Code §§ 74-201 to 74-208
  - Notice of Meetings – Agendas, Idaho Code § 74-204
  - Executive Sessions – When Authorized, Idaho Code § 74-206

# Urban Renewal is one of the only local economic development tools available in Idaho

- How Urban Renewal Agencies (URA) are funded
- Boundaries of revenue allocation area (RAA) are established.
- Value of each parcel of real property within RAA is set (Base Value).
- Property values in the RAA increase and generate additional property tax proceeds.
- Property taxes generated by incremental increase above the Base Value are allocated to the agency and are used to pay for public improvements and other revitalization activities in the district.

## Tax Increment Financing



# How it works...Additional Detail

- When a revenue allocation area is formed, property valuation is calculated on a parcel-by-parcel basis. This is the base assessment roll of the revenue allocation area.
- Base assessment roll for the geographic area under consideration (or collectively if more than one district) cannot exceed 10% of the current assessed value for the entire city.
- Due to redevelopment, it is anticipated the property values will rise. If property values increase above the base value, the added value is called the increment.

# How it works, Continued

- Budget for City, County, and other non-school taxing districts limited to previous year's budget plus 3% and credit for value of new construction. By virtue of amendments in 2007, value of new construction within a revenue allocation area is not included in that credit amount.
- County Assessor sets property values.
- County determines tax rate needed to produce budget submitted by City, County, and other taxing districts.
- Tax rates applied to full value of property outside revenue allocation areas; to the base value of property inside revenue allocation areas.
- Taxes from base value go to the taxing districts.
- Property tax revenue from the incremental value, if any, goes to the urban renewal agency for a limited period of time (20 year max, except for "grandfathered" projects primarily 24 years).

# How it works, Continued

- The increment or revenue allocation that goes to the urban renewal agency is used to pay for improvements within the urban renewal area.
- An urban renewal agency does not determine property valuation or tax rates.
- Funds received by an urban renewal agency for a given revenue allocation area must be spent in that revenue allocation area with limited exception.
- Funds are invested in activities that are intended to increase prosperity of the revenue allocation area.
- Result is an increase in property values which would not have otherwise occurred but for redevelopment.
- For project areas established after 2008 and voter approvals after 2008, the urban renewal agency will not receive taxes generated by voter approved levies, such as general obligation bonds, school district plant facility levies, and supplemental levies.
- Also, no school district emergency levy available to urban renewal agency.

# Project Funding - Generally

- Pay-as-you-go
- Developer reimbursement agreements
- Owner participation agreements
- Conventional bank loans
- Bonds
- Note: Often no tax increment available to fund projects on a pay-as-you-go method until at least two years after plan creation. Many projects require infrastructure immediately in order for a project to go – requiring financing of improvements. Advance funding from city, developers or others.



# Project Funding - Generally

- Agency decisions regarding project financing are: properly noticed on agendas, decisions are made in open, public meetings, and by agency resolution.
- Before financing occurs, there must be a showing the project is economically feasible and a determination that an agency is credit worthy.

# Development within a RAA

- Pre-formation of a RAA
  - Developer presents an economic development opportunity (primarily commercial/industrial developments)
  - Significant public infrastructure improvements present an impediment to development
  - But for revenue allocation financing project would not be financially feasible
  - Developer may enter into a MOU with the Agency to fund the creation of a RAA
  - Typically, Agency will not have available funds, or access to financing to fund necessary public infrastructure improvements
  - Developer may pay for eligible public infrastructure improvements reimbursed over time through a reimbursement agreement

# Authorized Activities under the Law and the Act

- Urban Renewal Project as defined by the Idaho Urban Renewal Law of 1965 (the "Law") and
- Project or Urban Renewal Project as defined by the Local Economic Development Act (the "Act")
- The definition of "urban renewal project" contained in the Law is nearly identical to the definition contained in the Act
- The definition of "project costs"



# The Act: Title 50, Chapter 29, Idaho Code

(13) "Project" or "urban renewal project" or "competitively disadvantaged border areas" may include undertakings and activities of a municipality in an urban renewal area for the elimination of deteriorated or deteriorating areas and for the prevention of the development or spread of slums and blight and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan. Such undertakings and activities may include:

*See also – I.C. 50-2018(10)*

- (a) Acquisition of deteriorated area...
- (b) Demolition and removal of buildings...
- (c) Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, open space, off-street parking facilities, public facilities, public recreation and entertainment facilities or buildings and other improvements necessary for carrying out, in the urban renewal area ... the urban renewal objectives of this act in accordance with the urban renewal plan ...
- (d) Disposition of property at its fair value for uses in accordance with the plan except for disposition of property to another public body...
- (a) Carrying out plans for...repair...
- (b) Acquisition of real property ... to be rehabilitated
- (c) Acquisition of other property ...to eliminate unsafe conditions, etc. ...
- (d) Lending or investing federal funds...
- (e) Construction of foundations...

# The Law: Title 50, Chapter 29, Idaho Code

14) "Project costs" includes, but is not limited to:

- (a) Capital costs, including the actual costs of the construction of public works or improvements, facilities, buildings, structures, and permanent fixtures; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures, and permanent fixtures; the acquisition of equipment; and the clearing and grading of land;
- (b) Financing costs, including interest during construction and capitalized debt service or repair and replacement or other appropriate reserves;
- (c) Real property assembly costs, meaning any deficit incurred from the sale or lease by a municipality of real or personal property within a revenue allocation district;
- (d) Professional service costs, including those costs incurred for architectural, planning, engineering, and legal advice and services;
- (e) Direct administrative costs, including reasonable charges for the time spent by city or county employees in connection with the implementation of a project plan;
- (f) Relocation costs;
- (g) Other costs incidental to any of the foregoing costs.

# How Are Urban Renewal Areas Formed?

- Idaho Urban Renewal Law first adopted in 1965 states there exists in municipalities deteriorating areas which justify the powers conferred by the Act and use of public funds for that purpose.
- City Council (or County Commission) must make preliminary finding there are one or more deteriorating areas within city or county (or competitively disadvantaged border community) in order to activate an urban renewal agency.
- Mayor and City Council (or County Commission) appoint urban renewal agency board members.

# Steps to Create a RAA

- Designate a study area for potential creation of an urban renewal district
- Determine whether conditions within the study area meet the criteria established in State Law (Idaho Code §§ 50-2903(8), 50-2018(8) and (9)) and make the requisite findings in an eligibility report
- Best Practice: Consider retaining independent, third party consultant to review area and prepare study report. Supports credibility of findings.

# Definition of Deteriorated Area – I.C. § 50-2903(8)-see also, I.C. §§ 50- 2018(8) and (9)

"Deteriorated area" means:

(a) Any area, including a slum area, in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare.

(b) Any area which by reason of the presence of a substantial number of deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, results in economic underdevelopment of the area, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use.

(c) Any area which is predominately open and which because of obsolete platting, diversity of ownership, deterioration of structures or improvements, or otherwise, results in economic underdevelopment of the area or substantially impairs or arrests the sound growth of a municipality. The provisions of section 50-2008(d), Idaho Code, shall apply to open areas.

(d) Any area which the local governing body certifies is in need of redevelopment or rehabilitation as a result of a flood, storm, earthquake, or other natural disaster or catastrophe respecting which the governor of the state has certified the need for disaster assistance under any federal law.

(e) Any area which by reason of its proximity to the border of an adjacent state is competitively disadvantaged in its ability to attract private investment, business or commercial development which would promote the purposes of this chapter.

(f) "Deteriorated area" does not mean not developed beyond agricultural, or any agricultural operation as defined in section 22-4502(1), Idaho Code, or any forest land as defined in section 63-1701(4), Idaho Code, unless the owner of the agricultural operation or the forest landowner of the forest land gives written consent to be included in the deteriorated area, except for an agricultural operation or forest land that has not been used for three (3) consecutive years.



# Steps, Continued

- Agency Board concurs with the conclusions of the eligibility report and forwards it to the City Council
- If the City Council adopts the findings in the eligibility report, then the City Council directs the preparation of an urban renewal plan for the area; plan must include certain information with specificity – see I.C. § 50-2905
- Agency prepares and approves the plan and forwards it to the City Council
- City Council receives the plan and refers it to the Planning and Zoning Commission for a determination that the plan is consistent with the City's Comprehensive Plan

# Steps, Continued

- City Council refers the plan to the affected taxing entities and provides at least 30-days' notice of the public hearing
- Planning and Zoning Commission determines that the plan is consistent with the City's Comprehensive Plan
- City Council holds public hearing; determines whether to adopt plan and form revenue allocation area
- City Council adopts the plan, including a revenue allocation financing provision, by ordinance
- Those cities/counties that did not already have an urban renewal agency established prior to July 1, 2011, must seek voter approval to establish the agency
- Generally, the plan approval process takes about 6 months for a clearly defined project

# Additional Considerations

- Must demonstrate that the proposed area and plan of work is financially feasible
  - Best Practice: Obtain an independent, third-party consultant to prepare the economic feasibility study. Supports credibility of the findings.
- Must determine that the combined base assessment value of all existing urban renewal districts and any proposed urban renewal districts does not exceed 10% of the total city assessed value (recommend use of “taxable value comparison”)
- Owners of “agricultural lands” and “forest lands” must provide written consent

# Urban Renewal Plan - Generally

- A revenue allocation area exists for 20 years (pre-2011 plans grandfathered for longer term of 24 years)
- The urban renewal plan provides the Agency with a process and a basic framework within which to consider and proceed with specific projects
- Due to the length of time a plan is in existence, the plan maintains some flexibility to allow the Agency to respond to changing market and economic conditions
- Amendments are limited by I.C. § 50-2033 and 50-2903A
  - Cannot amend plan to extend term beyond max term allowed by law
  - Can amend plan one time to add geographic area – limited to 10% of existing RAA
  - Permissible to amend plan to add new projects (plans adopted pre-2016)
  - Plans adopted post-2016 cannot be amended without resetting the base value to current value; limited exceptions

# Development of Developer-Owned Parcel within an Existing RAA

- Developer seeks to develop a parcel within the RAA
- Formal request to the Agency to reimburse certain eligible public infrastructure improvements
- But for revenue allocation financing project would not be financially feasible
- With revenue allocation financing Agency may seek certain enhanced design requirements
- Developer and Agency enter into a reimbursement agreement
- Developer may pay for eligible public infrastructure improvements reimbursed over time through a reimbursement agreement; often reimbursement generated from revenue allocation funds generated from the new development
- Note: Impact of Idaho Code § 63-602NN and other property tax exemptions on RAA and ability to reimburse; may need to choose

# Development of Agency-Owned Parcel within an Existing RAA

# Property Acquisition

- Agency has the authority to acquire property; however, the definition of “urban renewal plan” in the Law requires identification of property to be acquired by the Agency. See, I.C. § 50-2018(12)
- The Agency may acquire property by negotiation or condemnation. See, Idaho Code § 50-2010. The Agency has the authority to exercise the power of eminent domain subject to the limitations set forth in Title 7, Chapter 7, Idaho Code, specifically I.C. § 7-701A.

# Property Disposition

- Procedures for the disposition of property are set forth in Idaho Code § 50-2011. Property cannot be given to a private person/entity/non-profit without going through a competitive bidding process.
- Idaho Code § 50-2011(f): Property previously acquired or acquired by an agency for rehabilitation and resale shall be offered for disposition within three (3) years after completion of rehabilitation, or an annual report shall be published by the agency in a newspaper of general circulation...listing any rehabilitated property held by the agency in excess of such three (3) year period, stating the reasons such property remains unsold and indicating plans for its disposition.



# DDA

- Agency issues RFP
  - RFP can be specific or broad
  - Proposals are reviewed; Agency selects winning response
- Agency and Developer enter into an exclusive right to negotiate
  - Refinement of design; other project related information
  - Work towards agreement on the terms of a disposition and development agreement
- Agency and Developer enter into a Disposition and Development Agreement
  - Certain contingencies not typical in a standard PSA
  - Prior to disposition, Agency will confirm financing is in place
  - Closing will not occur until project is entitled/permitted; financing is in place; construction contract is ready to be signed;
    - Agency wants to make sure the project selected will be built prior to disposition
- Land write down/fair re-use appraisal

# Limitations On Urban Renewal Agencies

- The Idaho Supreme Court has held the purpose behind Art. VIII, § 4 of the Idaho Constitution is to prevent private enterprises from gaining any competitive advantage at the expense of the taxpayers.
- An urban renewal agency should be able to demonstrate that such improvements were primarily beneficial to the public.
- An urban renewal agency should strongly analyze funding real property improvements to privately owned property (which includes non-profit entities) and granting funds to private entities (again, including non-profit entities).
  - An urban renewal agency can fund real property improvements to real property owned by another public entity (either local, state, or federal) and may grant funds to another public entity.
- Urban renewal agencies may only expend public funds for the benefit of the public. The agency should be very cautious in considering funding improvements to private property. Funding could be ultimately deemed a loan or grant or gift of public funds to the private property owner and thus a violation of the Idaho Constitution. [Art. VIII, § 4, Art. XII, § 4, Idaho Constitution]

# Other Limitations?

- Article VIII, Section 4, Idaho Constitution. COUNTY, ETC., NOT TO LOAN OR GIVE ITS CREDIT.
- No county, city, town, township, board of education, or school district, or other subdivision, shall lend, or pledge the credit or faith thereof directly or indirectly, in any manner, to, or in aid of any individual, association or corporation, for any amount or for any purpose whatever, or become responsible for any debt, contract or liability of any individual, association or corporation in or out of this state.
- Article XII, Section 4, Idaho Constitution. MUNICIPAL CORPORATIONS NOT TO LOAN CREDIT.
- No county, town, city, or other municipal corporation, by vote of its citizens or otherwise, shall ever become a stockholder in any joint stock company, corporation or association whatever, or raise money for, or make donation or loan its credit to, or in aid of, any such company or association: provided, that cities and towns may contract indebtedness for school, water, sanitary and illuminating purposes: provided, that any city or town contracting such indebtedness shall own its just proportion of the property thus created and receive from any income arising therefrom, its proportion to the whole amount so invested.

# Limitations, Continued

- Article VIII, Section 4/Article XII, Section 4, Idaho Constitution provide good sideboards in analyzing projects

Best practice: urban renewal agencies should not grant tax money to private interests for development or to lend its credit to back loans to private interests.

- \*\*\*Never specifically interpreted by the Idaho Supreme Court

Idaho law does not distinguish non-profit from other private entities

# Examples

- Yes

- Public infrastructure improvements within the ROW
  - Sidewalks, curb, gutter, street lighting
  - Water/sewer improvements (main)
  - Streets (arterials/collectors)
  - Fiber and power

- Maybe

- Site preparation costs: rock removal, environmental remediation, demolition

- No

- Cannot buy real property and give it to a developer
- Cannot build a building for a private entity
- Avoid improvements that primarily benefit the developer
- Private parking

# Agency Development of Real Property - Procurement Rules and Procedures

- Title 67, Chapter 28, Idaho Code
  - Public Works Construction Bidding
    - SB1074 – increased threshold amounts for both formal and informal bidding processes
      - Best interests of Agency from \$0-\$25,000 to \$0-\$50,000
      - Informal bidding from \$25,000-\$100,000 to \$50,000-\$200,000
      - Formal bidding from over \$100,000 to over \$200,000
  - Public Procurement of Goods and Services Bidding
    - Best interests of Agency from \$0-\$25,000 to \$0-\$50,000
    - Informal bidding from \$25,000-\$50,000 to \$50,000-\$100,000
    - Formal bidding from over \$50,000 to over \$100,000
  - Exceptions

# Procurement Rules and Procedures, Con't

- Idaho Code § 67-2320
  - Professional Service Contracts with Design Professionals, Construction Managers, and Professional Land Surveyors
- Idaho Code § 54-4511
  - Construction manager/general contractor

# North Yellowstone Urban Renewal Area



## ISSUES IDENTIFIED OVER THE YEARS

BY THE IDAHO LEGISLATURE AND URBAN RENEWAL CRITICS



# Issues

- Definition of blight/  
deteriorating conditions
- The development of open  
land/Greenfield  
development
- Board composition/  
qualifications /conflict of  
interest/election
- Enforcement of the 10%  
rule/compliance/punishment  
if the limit is exceeded
- Perceived lack of  
accountability/transparency  
to the general public
- Long-term debt without  
vote
- “Distinguish TIF use for  
“blight” from economic  
development/mixed use  
projects
- Provide taxing entities with  
meaningful input/  
comment/consultation
- Rebates to taxing districts
- Property tax impact
- “Giveaways”
- Penalties for non-  
compliance
- Limitations on types of  
projects that can be funded

Pocatello Regional Airport – Road and Utility Upgrades



# URBAN RENEWAL PROJECTS VARY

DEPENDING ON THE NEEDS AND RESOURCES OF THE COMMUNITY

# Street Improvements

**Rexburg: Traffic Signal to Improve Safety**



**Sandpoint: Street Reconstruction**



**Eagle: Right-of-Way Improvements**



# Public Art

**Sandpoint: Bridge  
Street Fish Walk**



**Boise: Traffic  
Box Art**



**Lewiston: Street Scape/  
Public Art**



# Interpretive Signs and Public Pathways

**Meridian: Historical Walking Tour**



**Idaho Falls: Greenbelt Reconstruction**



**Coeur d'Alene: Prairie Trail**



# Public Infrastructure Improvements

Boise: Extension of Geothermal System



Garden City: City Well Rehab



Rexburg: Moving Power Transmission Lines

