



MEMORANDUM

TO: Lake Orion DDA Board

FROM: Matthew Gibb, Executive Director

DATE: November 18, 2025

RE: Discretion under Michigan DDA/TIF Law to Use Tax Increment Revenues for Public Infrastructure Not Itemized by Name in the TIF/Development Plan

I. Issues Presented

1. **Whether a Downtown Development Authority (DDA) in Michigan may use tax increment revenues (TIF) to finance public infrastructure improvements such as water and sewer lines within the district when those projects are not expressly listed by name in the DDA's development and tax increment financing (TIF) plan.**
 2. **Whether and to what extent the DDA board has discretion to interpret the scope of already-approved plan categories (e.g., "public facilities," "utilities," "public improvements") in deciding which specific projects to undertake without formally amending the plan.**
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II. Brief Answer

Under Part 2 of Michigan's **Recodified Tax Increment Financing Act, 2018 PA 57**, a DDA clearly has authority to plan, construct, and finance "**public facilities**" within the downtown district, and the statutory definition of "public facility" **expressly includes utility lines or pipes**, which covers water and sewer infrastructure.

The statute also provides that the DDA board may undertake such public facilities as are, "**in the opinion of the board,**" necessary or appropriate to carry out the development plan and aid in the economic growth of the downtown district. This "in the opinion of the board" standard is an explicit grant of board-level judgment and discretion, so long as expenditures remain "**pursuant to**" the approved tax increment financing plan.

Neither Act 57 nor Michigan case law expressly requires that every individual road, sidewalk, water main, or sewer lateral be itemized by name in the TIF plan. What the statute requires is that:

- the **development plan** describe the **categories, location, extent, character and estimated cost of the improvements**, and
- the **TIF plan** describe the capture mechanism, duration, and overall development program to be financed.

So long as a proposed water/sewer or other infrastructure project:

- lies within the DDA district;
- fits within the plan’s categories of “public facilities,” “utilities,” “public improvements,” or similar;
- is consistent with the purposes and cost estimates of the plan; and
- does not materially alter the amount/duration of tax capture in a way that would require an amendment,

The board has a strong argument that it may approve and fund the project under its existing statutory authority and plan, **without** first amending the plan to name the specific project.

III. Statutory Framework

A. DDA Purpose and Legislative Findings

Part 2 of Act 57 (MCL 125.4201 et seq.) recodifies and updates the former Downtown Development Authority Act. The Act’s legislative findings state that tax increment financing is intended to promote economic growth by dedicating a portion of the increased tax base to **“facilities, structures, or improvements within development areas”** so as to halt deterioration of property values and encourage redevelopment. In other words, the Legislature explicitly framed TIF as a tool to finance **public and private improvements inside the development area**, not just narrowly-defined or pre-named projects.

B. Definition of “Public Facility”

For DDAs, **“public facility”** is broadly defined in MCL 125.4201. The definition (as summarized in recent compilations and DDA handbooks) includes:

- Streets, plazas, pedestrian malls, and improvements to them (lighting, beautification, etc.);
- Parks, parking and recreational facilities, rights-of-way, bridges, waterways, etc.;
- **“Utility line or pipe”** and associated buildings and access routes; and
- Improvements to facilities used by the public or public agencies.

Thus, **water mains, sanitary sewer lines, storm sewer, and related utility infrastructure fall squarely within “public facilities”** that a DDA may plan, construct, and finance under Act 57.

C. Express Board Powers – “In the Opinion of the Board”

MCL 125.4207 (Sec. 207) sets out the powers of the DDA board. Among other things, the board may:

- **“Plan and propose the construction, renovation, repair, remodeling, rehabilitation, restoration, preservation, or reconstruction of a public facility, an existing building,**

or a multiple-family dwelling unit which may be necessary or appropriate to the execution of a plan which, *in the opinion of the board*, aids in the economic growth of the downtown district.”

- “Plan, propose, and implement an improvement to a public facility, existing building, or multiple-family dwelling unit” in the downtown district.

The italicized “*in the opinion of the board*” language is critical. It signals that the Legislature intended to vest the board with **discretionary judgment** about which public facilities are “necessary or appropriate” to execute the plan and promote economic growth, rather than limiting the board to a strictly enumerated checklist.

D. Development Plan Contents (MCL 125.4217)

When a DDA finances a project using bonds or TIF, it must prepare a **development plan** containing, among other items:

- **Designation of boundaries** of the development area;
- The **location and extent of existing streets and other public facilities**;
- A description of **existing improvements to be demolished, repaired, or altered**;
- The **location, extent, character, and estimated cost of the improvements** contemplated, and the estimated time for completion;
- A description of any desired **changes in streets, street levels, intersections, or utilities**; and
- “**Other material that the authority, local public agency, or governing body considers pertinent.**”

Note that the statute focuses on **categories and characteristics** of improvements (“location, extent, character, and estimated cost”), not on naming each individual utility segment or pipe.

E. TIF Plan & Use of TIF Revenues (MCL 125.4215 & 125.4219)

The **tax increment financing plan** is primarily a **financial** document: it must describe the development area, the tax increment procedure, the estimated capture, and the duration of the program.

MCL 125.4215(2) then provides:

- The authority “**shall expend the tax increment revenues received for the development program only pursuant to the tax increment financing plan.**”

This ties expenditures to the **development program** described in the plan but does **not** say that expenditures are limited only to projects individually named in the plan, so long as they are “**pursuant to**” and consistent with that program.

IV. Legal Authority & Interpretive Support for Board Discretion

A. Statutory Discretion – “In the Opinion of the Board”

As noted above, Section 207 authorizes the board to plan and propose public facilities needed for a plan that **“in the opinion of the board”** aids economic growth. [Walker, MI+1](#)

This is unusually explicit discretion language. Courts and agencies typically treat such phrases as **delegating judgment to the local body**, subject to reasonableness and consistency with the statute. It is strong textual support for the proposition that:

- It is **the board’s role** to determine which specific public facilities are “necessary or appropriate” to execute the plan;
- That judgment is based on the board’s view of what aids economic growth; and
- So long as the chosen projects fit within the plan’s categories and purposes, the board is not required to amend the plan for every specific, implementing project.

B. Broad “Public Improvements” Purpose – MEDC and State Guidance

The Michigan Economic Development Corporation’s DDA fact sheet (updated and re-issued post-Act 57) expressly states that a DDA’s TIF mechanism **“can be used to fund public improvements in the downtown district.”** [MEDC+1](#)

Other local and state educational materials repeat this formulation: TIF revenues can be used to fund **public improvements** (including infrastructure) within the district, with no suggestion that each such infrastructure component must be separately named in the TIF plan. [Revize+1](#)

While these materials are not binding law, they show the **prevailing interpretation** among state economic-development agencies and local governments: DDA TIF is a tool for public improvements broadly, so long as they are located in the district and tied to the adopted plan.

C. Judicial Descriptions of TIF Purpose

In discussing Michigan tax increment financing, courts have characterized TIF as a **financing program that dedicates growth in the tax base to “facilities, structures, or improvements within a development area” to facilitate economic growth and development.** Again, this general description underscores that the focus is on **improvements within the area consistent with the plan**, not narrow project-name lists.

V. Application to Water, Sewer, and Other Public Infrastructure

A. Water and Sewer Are Statutory “Public Facilities”

Because “public facility” includes an “**utility line or pipe**” and improvements to facilities used by the public, water and sewer mains in the downtown district are **textbook examples of eligible public facilities** under Act 57.

Thus, if the development plan references construction or improvement of **public facilities, utilities, or infrastructure** in the district, water/sewer work is within that statutory and plan category—even if the plan does not say “install 8-inch water main along X Street.”

B. “Pursuant to the TIF Plan” Does Not Require Naming Every Facility

The statutory requirement that TIF revenues be spent “**only pursuant to the tax increment financing plan**” means that expenditures must be consistent with:

- the development program described in the plan;
- the geographic boundaries and scope of the development area;
- the financial assumptions and capture duration; and
- the public purpose findings made when the plan was adopted.

But nothing in the text of MCL 125.4215 or 125.4217 states that:

“The authority may only fund projects that are *explicitly named by title* in the plan.”

Instead, the statute requires description of the “**location, extent, character, and estimated cost**” of contemplated improvements and allows the inclusion of “**other material ... considered pertinent.**” That structure is consistent with common municipal practice:

- The plan describes categories and examples (e.g., “streetscape improvements,” “public facilities and utilities,” “undergrounding of utilities,” “parking and access improvements”).
- The board later selects specific sites and projects to implement those categories (e.g., “replace water and sewer lines in Block A of the district in conjunction with streetscape work”).

C. When an Amendment *Is* More Likely Needed

Act 57 does require that **amendments** to a development or TIF plan be approved by the governing body with notice and hearing.

Practically, an amendment is more clearly required when:

- The DDA proposes **new types of projects** not reasonably implied by the existing plan categories;

- The DDA seeks to materially **extend the duration** or **change the boundaries** of the development area; or
- The DDA wants to significantly **increase or reallocate the capture** beyond what the plan contemplated.

By contrast, using TIF revenues to replace undersized water and sewer mains, or to add new utility lines within the district:

- is within the statutory definition of “public facility”;
- usually falls under plan language about public infrastructure or utilities; and
- often fits within the existing cost and phasing estimates, especially if the plan anticipated “ongoing” or “phased” public facilities work.

In those circumstances, the board can reasonably argue it is **implementing**, not **amending**, the plan.

VI. Conclusions and Practical Guidance

1. Statutory Authority Exists

- Michigan law **expressly authorizes** DDAs to construct and improve “public facilities,” including **utility lines and pipes**, within the downtown district.
- The board may undertake such facilities as it deems, **“in the opinion of the board,”** necessary or appropriate to execute the development plan and promote economic growth.

2. TIF Use Is Tied to the Development Program, Not a Project Name List

- TIF revenues must be spent **pursuant to** the TIF plan, but the statute does not require naming every individual project; it requires describing categories and characteristics of improvements and the overall financing program.

3. Water and Sewer in the District are Eligible Public Improvements

- Because utility lines/pipes are expressly included in the definition of public facility, water/sewer work within the DDA boundaries is generally an eligible TIF use if the plan contemplates public facilities/infrastructure work.

4. Board Discretion Is Built into the Statute

- The “in the opinion of the board” language is a statutory acknowledgment that **the board**, not other taxing jurisdictions, interprets which specific public facilities are necessary or appropriate within the boundaries of the adopted plan.