

August 6, 2024

Village of Lake Orion DDA Director
118 N. Broadway Street
Lake Orion, Michigan 48362

DRAFT

**Re: Opinion of Legal Counsel on DDA
Budget Process and Role of the Director,
The Board and the Village Council**

Dear DDA Director:

I. THE STATUTORY BUDGET PROCESS FOR THE DDA

This memorandum focuses on the statutory steps set forth at MCL 125.4228 (**Exhibit 1**) for the DDA budget process. The DDA budget process is set forth and controlled by state statute. The steps are clear and defined.

A. Step 1 -- The DDA Director Prepares A Budget.

The first step is for the DDA Director to prepare and submit for the approval (not adoption) of the DDA Board a budget ("Budget") for the operation of the DDA for the ensuing fiscal year. This language is clear and concise.

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| <p>"(1) <u>The director of the authority shall prepare and submit for the approval of the board a budget for the operation of the authority for the ensuing fiscal year.</u>" (Exhibit 1 -- MCL 125.4228) (Emphasis Added)</p> |
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As guidance to the DDA Director, MCL 125.4228 states that the Budget shall be prepared in the manner and contain the information required of municipal departments. No other statutory guidance is provided. This language is clear and concise.

“The budget shall be prepared in the manner and contain the information required of municipal departments.” (Exhibit 1 -- MCL 125.4228) (Emphasis Added)

B. Step 2 -- The Budget is Submitted To The Village Council.

Prior to the DDA Board “Adopting” the Budget, the second step is for the Budget to be approved by the Village Council. MCL 125.4228 states that, “before the budget may be adopted by the board, it shall be approved by the governing body of the municipality.” This language is clear and concise.

“Before the budget may be adopted by the board, it shall be approved by the governing body of the municipality.” (Exhibit 1 -- MCL 125.4228) (Emphasis Added)

C. Step 3 -- The Budget is Submitted To The Village Council.

The third step provides the role and what actions the Village Council (governing body) may take when it receives the proposed Budget from the DDA Board. The statutorily permitted actions of the Village Council are limited and defined.

Under the statute, the Village Council may assess a reasonable pro rata share of the funds for the cost of handling and auditing the funds against the funds of the authority. MCL 125.4228 is clear and concise. The statute does not state, permit or authorize any actions by the Village Council beyond a reasonable assessment for the purpose stated.

“(2) The governing body of the municipality may assess a reasonable pro rata share of the funds for the cost of handling and auditing the funds against the funds of the authority, other than those committed,” (Exhibit 1 -- MCL 125.4228) (Emphasis Added)

D. Step 4 -- The Assessment Is Assigned As A Budget Line Item For Payment Annually.

MCL 125.4228 further states that the assessed cost for the handling and auditing of the funds shall be paid annually by the DDA Board pursuant to an appropriate item in the Budget.

“...cost shall be paid annually by the board pursuant to an appropriate item in its budget.” (Exhibit 1 -- MCL 125.4228) (Emphasis Added)

E. Step 5 -- The Budget Is Adopted By The DDA Board.

After the DDA Budget is approved by the governing body, it is then adopted by the DDA Board in the manner as approved by the Village Council.

II. CONCLUSIONS

The DDA Budget process is governed and controlled by state law. The role of the DDA Director is defined. The role of the DDA Board is defined. The role of the governing body (Village Council) is defined. It is my opinion that these roles are not expanded, modified or adjusted under any other state law.

The governing body (Village Council) may (not mandatory) review the DDA submitted budget and assess a cost amount for the “handling and auditing” of the funds of the DDA that are not already committed. This language is binding and controlling. The cost must then be paid by the DDA to the Village “pursuant to an appropriate item in the its budget”. Thus, the DDA Budget, if an authorized assessment is imposed by the Village Council, should contain a line item entitled “Village Assessment under MCL 125.4228(2)”. This would be consistent with the controlling law.

Any imposed assessment issued by the Village Council under a “may” standard must be “reasonable” and be for the cost of “handling and auditing” the funds against the funds of the DDA. This language is controlling and specific with respect to the sole assessment allowed to be imposed by the Village Council against the budget of the DDA.

It is my opinion the only reasonable assessment allowed by law is for the costs incurred by the governing body for the handling and the auditing of the DDA funds. All other expenses the DDA incurs for services provided by the governing body should be invoiced by the governing

body to the DDA if and when such expenses are incurred. Those expenses should not be “projected” and included as line items in the DDA Budget.

For purposes of reviewing these statutory provisions, the Michigan Rules of Statutory Construction are attached at **Exhibit 2**. The process may be summarized as follows:

- 1. Director prepares DDA Budget.**
- 2. DDA approves (not adopts) the Budget for submittal to the Governing Body (Village Council).**
- 3. Village Council reviews the DDA Budget and may impose a reasonable assessment for the defined purpose of handling and auditing the funds against the funds of the authority.**
- 4. Village Council approves the DDA Budget.**
- 5. DDA Board adopts the approved Budget.**

Robert Charles Davis
Village of Lake Orion
DDA Attorney

EXHIBIT # 1

RECODIFIED TAX INCREMENT FINANCING ACT (EXCERPT)
Act 57 of 2018

125.4228 Budget; cost of handling and auditing funds.

Sec. 228. (1) The director of the authority shall prepare and submit for the approval of the board a budget for the operation of the authority for the ensuing fiscal year. The budget shall be prepared in the manner and contain the information required of municipal departments. Before the budget may be adopted by the board, it shall be approved by the governing body of the municipality. Funds of the municipality shall not be included in the budget of the authority except those funds authorized in this part or by the governing body of the municipality.

(2) The governing body of the municipality may assess a reasonable pro rata share of the funds for the cost of handling and auditing the funds against the funds of the authority, other than those committed, which cost shall be paid annually by the board pursuant to an appropriate item in its budget.

History: 2018, Act 57, Eff. Jan. 1, 2019.

EXHIBIT # 2

Statutory Construction Rules

The rules of statutory construction are central to the matter.

Rule 1 -- A court's obligation is to discern and give effect to the Legislature's intent as expressed in the words of the statute. (**Pohutski v. City of Allen Park**, 465 Mich. 675, 683, 641 N.W.2d 219, 226, (2002).)

Rule 2 -- The words of a statute are given their plain and ordinary meaning. (**Pohutski v. City of Allen Park**, 465 Mich. 675, 683, 641 N.W.2d 219, 226, (2002).)

Rule 3 -- Where the language of a statute is unambiguous courts presume that the Legislature intended the meaning clearly expressed. (**Pohutski v. City of Allen Park**, 465 Mich. 675, 683, 641 N.W.2d 219, 226, (2002).)

Rule 4 -- Where the language of a statute is unambiguous the statute must be enforced as written. (**Pohutski v. City of Allen Park**, 465 Mich. 675, 683, 641 N.W.2d 219, 226, (2002).)

Rule 5 -- Courts may not speculate about an unstated purpose where the unambiguous text plainly reflects the intent of the Legislature. (**Pohutski v. City of Allen Park**, 465 Mich. 675, 683, 641 N.W.2d 219, 226, (2002).)

Rule 6 -- When parsing a statute, Courts presume every word is used for a purpose. (**Pohutski v. City of Allen Park**, 465 Mich. 675, 683, 641 N.W.2d 219, 226, (2002).)

Rule 7 -- The Court may not assume that the Legislature inadvertently made use of one word or phrase instead of another. (**Pohutski v. City of Allen Park**, 465 Mich. 675, 683, 641 N.W.2d 219, 226, (2002).)

Rule 8 -- Courts must take care to avoid a construction that renders any part of the statute surplusage or nugatory. (**Pohutski** v. **City of Allen Park**, 465 Mich. 675, 683, 641 N.W.2d 219, 226, (2002).)

Rule 9 -- As a general rule of statutory construction, the word "shall" is used to designate a mandatory provision. (**Howard** v. **Bouman**, 251 Mich. App. 136, 145; 650 N.W.2d 114, 118, (2002).)

Rule 10 -- When examining legislation, courts give the ordinary and accepted meaning to the mandatory word "shall" and the permissive word "may.". (**In re 53 HORSES**, Unpublished Opinion Per Curiam of the Court of Appeals, decided [October 21, 2006] (Docket No. 258470).)