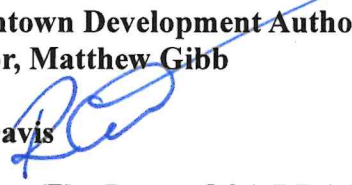


ROBERT CHARLES DAVIS

ATTORNEY CLIENT COMMUNICATION

TO: Lake Orion Downtown Development Authority
Executive Director, Matthew Gibb

FROM: Robert Charles Davis 

RE: Question Regarding The Power Of A DDA Board to Plan And Propose The
Construction And Renovation Of A Public Facility

DATE: April 14, 2026

I. PURPOSE

The purpose of this memorandum/legal opinion is to analyze the power of a DDA Board to Plan and Propose the Construction And Renovation of a Public Facility.

II. LEGAL ANALYSIS

A. The Power Of A DDA Board to Plan And Propose The Construction And Renovation of A Public Facility.

The DDA Act, at MCL 125.4207, states that the DDA 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.

“(1) The board may:

(a) Prepare an analysis of economic changes taking place in the downtown district.

(b) Study and analyze the impact of metropolitan growth upon the downtown district.

(c) **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.”** (MCL 125.4207) (Emphasis Added)

B. The DDA Act Defines A Public Facility To Include Any Improvement To A Street, Plaza, Park, Parking Facility, Recreational Facility And Utility Line And Pipe.

The DDA Act defines the term “public facility” to include any improvements to a street, plaza, or pedestrian mall including street furniture and beautification, park, parking facility, recreational facility, right-of-way, structure, waterway, bridge, lake, pond, canal, utility line or pipe, building, and access routes to any of these places, designed and dedicated to use by the public generally, or used by a public agency.

“(x) “Public facility” means a street, plaza, pedestrian mall, and any improvements to a street, plaza, or pedestrian mall including street furniture and beautification, park, parking facility, recreational facility, right-of-way, structure, waterway, bridge, lake, pond, canal, utility line or pipe, building, and access routes to any of these places, designed and dedicated to use by the public generally, or used by a public agency. Public facility includes an improvement to a facility used by the public or a public facility as those terms are defined in section 1 of 1966 PA 1, MCL 125.1351, which improvement is made to comply with the barrier free design requirements of the state construction code promulgated under the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531. Public facility also includes the acquisition, construction, improvement, and operation of a building owned or leased by the authority to be used as a retail business incubator.” (MCLS § 125.4201) (Emphasis Added)

There is no question that a DDA Board has the power to plan and propose the construction, renovation, repair, remodeling, rehabilitation, restoration, preservation, or reconstruction of public facilities which include but are not limited to any improvement to a street, plaza, park, parking facility, recreational facility, canal and “utility line or pipe”.

C. **The Development Plan.**

The DDA Act, at MCL 125.4217, states that, when a board decides to finance a project in the downtown district by the use of “revenue bonds” or “tax increment financing”, it shall prepare a development plan (“Development Plan”).

“(1) When a board decides to finance a project in the downtown district by the use of revenue bonds as authorized in section 213 or tax increment financing as authorized in sections 214, 215, and 216, it shall prepare a development plan.” (MCL 125.4217) (Emphasis Added)

The Development Plan shall contain many specifics including, but not limited to, the designation of the boundaries of the development area; the location of existing streets and public facilities; a description of existing improvements in the development area to be repaired and an estimate of the time required for completion; the location, extent, character, estimated time and estimated cost for the improvement, and a statement of the stages of construction planned. (See: MCL 125.4217) Thus, the Development Plan describes the categories, location, extent, character and estimated cost of the improvements.

MCL 125.4207 states that a DDA Board may implement a plan of development in the downtown district and make and enter into contracts necessary or incident to the exercise of its powers.

“(f) Implement any plan of development in the downtown district necessary to achieve the purposes of this part, in accordance with the powers of the authority as granted by this part.

“(g) Make and enter into contracts necessary or incidental to the exercise of its powers and the performance of its duties.” (MCL 125.4207) (Emphasis Added)

D. Cross Resolutions

In response to the Village's concerns about the DDA doing its part to fund infrastructure improvements in 2022, a joint committee of the DDA and the Village Council was established to study and implement a legal mechanism to get future tax captures under the TIF into a dedicated infrastructure fund. The process is defined in executed cross-resolutions ("Resolutions") presented to, reviewed by and approved by both the Village Council and the DDA Board. The process was followed-up by a written agreement executed by the Village and the DDA. The underlying consideration for the resolutions was the then existing TIF District and its new tax capture going forward. Any change to the TIF District impacts the consideration and potentially renders the Resolutions void.

The Resolutions cite to MCL 125.4207 and correctly state that the DDA has the statutory authority to plan and propose for the construction, renovation, repair, remodeling, rehabilitation, restoration, preservation or reconstruction of a "public facility". The Resolutions then correctly cite to the definition of public facilities as set forth at MCL 125.4201(x) and state that it is resolved by the DDA that the Village has the responsibility to construct, renovate, repair, remodel, rehabilitate, restore, preserve or reconstruct "public facilities," as defined by MCL 125.4201(x), within the DDA District, which are necessary and appropriate to the execution of the DDA Development Plan and aids in the economic growth of the DDA District and the Village as a whole.

The process is well defined. The Resolutions state that as part of the DDA Budget, the DDA shall transfer to a dedicated public facility infrastructure account, 75% of all future tax increment revenues captured from the DDA TIF from all new realized Captured Taxable Value commencing from the adoption date of the Resolution. The Village shall invoice the DDA to utilize the dedicated public facility infrastructure funds to construct, renovate, repair remodel any

and all public facilities within the defined boundaries of the DDA District. Here, the Resolutions appropriately tie together the statutory definition of a public facility and the construction/repair of public facilities which are within the DDA District, which are appropriate under the Development Plan.

III. CONCLUSIONS

1. The DDA has the power to plan and propose work on a public facility.
2. "Public Facility" by statute includes infrastructure.
3. In 2022, the Village and the DDA jointly addressed the infrastructure issue by a joint committee and controlling Resolutions that are embodied in a written and fully executed agreement.
4. The 2022 process remains in place and shall remain in place for the duration of the currently approved Plan and TIF ending December 2039, and potentially extended thereafter.
5. This process was established jointly by the Village and the DDA to specifically address infrastructure costs that are linked to a public facility project in the District and pursuant to the Plan.
6. The DDA currently has an approved TIF and a corresponding Plan. The Village Council was involved in reviewing and approving the TIF and the Plan. The current Plan is from 2020. In 2022 -- about 2 years later -- the Village and the DDA specifically addressed infrastructure costs by the Resolutions and the executed Agreement.



Robert Charles Davis