Public Act 381 Updates For Housing Development

September 25, 2023

PM ENVIRONMENTAL

Mayor and Council –

FYI, here are some changes to the Brownfield Act. The ramifications and implications could be significant as they (the changes) have expanded the eligible activities (e.g., new multi-family developments). From our early interpretations, a developer could seek reimbursement work for infrastructure work. All this to be said, we are working with our partners at the State and County and will bring a policy document for your consideration.

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Introduction

- On July 18, 2023, legislation was signed to amend 1996 Public Act 381, the Brownfield Redevelopment Financing Act
- Gives MSHDA new review, oversight, and funding roles for Tax Increment Financing for housing development projects.
  - Project must serve 120% or less Area Median Income Households

MSHDA established acronym: Housing Tax Increment Financing (HTIF)

MSHDA

Eligible Property

"Housing Property" now qualifies as "eligible property" under Act 381

"Housing property" means 1 or more of the following:

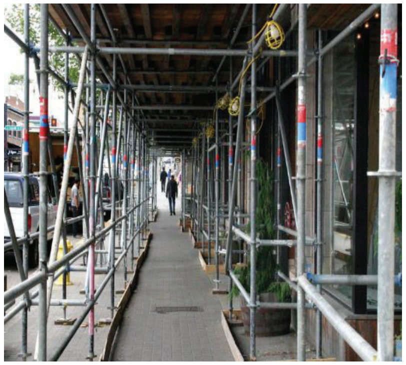
(i) A property in which 1 or more units of residential housing are proposed to be constructed, rehabilitated, or otherwise designed to be used as a dwelling.

(ii) One or more units of residential housing proposed to be constructed or rehabilitated and located in a mixed-use project.

Eligible Activities

Eligible Activities for "housing property" must be in a community that has identified a specific housing need, and includes absorption or job growth data in its brownfield plan:

- "Housing development activities"
- Infrastructure improvements that support housing development activities
- Site preparation and improvements that support housing development activities and are not environmental response activities.



"Housing Development Activities"

- Reimbursement provided to owners of rental units for **qualified rehabilitation**.
- Costs of public infrastructure and necessary safety improvements.
- Costs of demolition and renovation of existing buildings and of site preparation, to the extent necessary to accommodate an **income qualified purchaser or renter household**.
- Temporary relocation costs for an **income qualified household** for up to one year.
- Acquisition costs for blighted or obsolete **rental units**, to the extent that the acquisition would promote the rehabilitation or adaptive reuse of the unit to accommodate an **income qualified household**.
- Reimbursement provided to a developer to fill a financing gap associated with the development of units priced for **income qualified households**.
- Reimbursement provided to a developer to assist with costs related to infrastructure improvements and site preparation that are necessary for housing development for **income qualified households** on eligible property but do not qualify as response activities.

Additional Definitions

New or updated definitions within Section 2 of Act 381; applicable to HTIF:

"Income qualified household" means a person, a family, or unrelated persons living together, whose annual household income is not more than 120% of the area median income.

"Area median income" means the median income for the area as determined under section 8 of the United States housing act of 1937, 42 USC 1437f, adjusted for family size.

"Household income" means all income received by all individuals who are not less than 24 years of age when the household income is determined and who reside in a household.

"Income qualified purchaser household" means a purchaser who is, or who is a member of, an income qualified household.

"Income qualified renting household" means a renter who is, or who is a member of, an income qualified household.

"Michigan state housing development authority" means the Michigan state housing development authority created in section 21 of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1421.

Additional Definitions Cont..

New or updated definitions within Section 2 of Act 381 and applicable to HTIF:

"Qualified rehabilitation" means rehabilitation of existing structures that is necessary to make a housing unit suitable for sale to an income qualified purchaser household or rent to an income qualified renting household. Qualified rehabilitation also includes proposed rehabilitation that will bring the structure into conformance with minimum local building code standards for occupancy or improve the livability of the units while meeting minimum local building code standards. As used in this subsection, "existing structures" includes any structure designed to be used as a dwelling.

"Tax increment revenues" means the amount of ad valorem property taxes and specific taxes attributable to the application of the levy of all taxing jurisdictions on the captured taxable value of each parcel of eligible property subject to a brownfield plan and personal property located on that property, regardless of whether those taxes began to be levied after the brownfield plan was adopted. Tax increment revenues also include the amount of any payment in lieu of taxes under section 15a(3) of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1415a, paid on an eligible property subject to a brownfield plan, less the amount of property taxes levied on the eligible property subject to the brownfield plan for the year the eligible property became subject to the brownfield plan.

MSHDA Drafted Reasonableness Calculation

MSHDA is required under the statute to determine if requested activities are reasonable

- MSHDA developed a Potential Rent Loss (PRL), Potential Development Loss (PDL) and Total Housing Subsidy (THS) Calculations for a basis of reasonableness (note – still in draft form)
- Goal of the calculation is to determine the difference between the market rate and affordable rents or sale pricing
    - For rent product Utilizes the HUD Fair Market Rent (FMR) published by County and HUD established affordable rental rates by unit type to establish a "Control Rent" i.e. market rate
        - "Control Rent" – Project Rent (120% AMI rates or less) = Potential Rent Loss (PRL)
    - For sale product determines affordable mortgage based on Area Median Income (AMI)
        - The monthly mortgage payment should not be more than 30% of the 120% AMI
        - Development Cost Per SQFT – Affordable Mortgage Amount = Potential Development Loss (PDL)
    - THS = sum of all PRL and PDL by unit type
- The full outline of calculations can be found on MSHDA's website.
- AMI and FMR Rates should be taken from HUD

HTIF Procedures

- **LUGs** must hold a public hearing before approving a brownfield plan and notify MSHDA at least 10 days before the hearing
    - 30 days notice for combined plans
- Reimbursement agreement must include a summary of the BRA's proposed income and price monitoring responsibilities and related expense
    - Cost to implement is an eligible expense – increased from $30,000 to $50,000
    - MSHDA expectations on this need to be verified

- **Work Plan Submittal: MSHDA** has 60 days to review and make recommendation (approval, conditional approval, denial)
- **BRA Reporting to MSHDA** will have to include
    - The number of housing units produced.
    - The number of income qualified purchaser households served.
    - The number of income qualified renting households served.
    - For the initial reporting period only, the prices at which the units were sold or rented.
- **State Brownfield Fund** will apply under housing development plans

Additional Considerations

- Interest – MSHDA intends to allow interest based on higher interest rates than what is typically accepted by MEDC/MSF/EGLE – particularly within circumstances where they are bonding or loaning on the TIF
- While MSF can approve plans administratively that capture up to $1M in TIF; plans that include housing development activities are excluded from this
- MSHDA has set aside $20 million as a starting point to loan or bond on HTIF projects; using tax increment revenues for repayment

MSHDA's Status

MSHDA is currently developing guidance, which is expected to be public by the end of this month.

Questions and/or comments for MSHDA can be directed to MSHDA-TIF@michigan.gov.

MSHDA Housing TIF Training:

- **For Consultants -** Monday, October 2, 2023, from 1:00pm – 2:00pm
- **For Developers -** Friday, October 6, 2023, from 10:00am – 12:00pm
- **For Municipalities/Brownfield Redevelopment Authorities -** Monday, October 9, 2023, from 1:00pm – 2:00pm

Updates from MSHDA will be posted on their website:

https://www.michigan.gov/mshda/developers/tax-increment-financing-tif

Additional Noteworthy Amendments

Up to $250,000 in revenue captured from school operating taxes could be used for asbestos, mold, lead, and building hazardous materials abatement and demolition BEFORE a work plan or is approved, if costs were incurred by a person other than the BRA.

An increase in the annual BRA capture allowed for administrative costs, based on number of plans.

The incremental payment in lieu of taxes on properties (i.e., above base taxes) are now eligible for TIF Capture

"**Blighted**" property now includes "previously developed property" owned by the state or a municipality (Township, Village, City, County)

- ***Previously developed property:*** property that was a part of an existing developed residential, commercial, or industrial zone that contained a structure serviced by utilities, or property formerly used as a dump, landfill, or other area filled with nonnative material.

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