

REPORT to the KITTERY TOWN COUNCIL

RESPONSIBLE INDIVIDUALS: Ordinance Review - Beers/Dennett

Date: Dec 08, 2010

Subject: Municipal Development & Tax Increment Financing (TIF) Update 1

Background:

- Various documents and workshop details going back to February
- Hearing - District document set, Oct 28th, not included
- 1st Report November 18, 2010, not included
- Council Workshop, Dec 06, 2010

Current Situation:

- ORC re-reviewed proposed amendment to Town Code Title 3, to ordain District designations and adopt Development Program as required (encl 1)
 - Public hearing agenda item
- Nov 22nd Orders motion language (encl 2) – Agenda/Unfinished Business – Is now superfluous and should be postponed indefinitely
- TIF District documents updated (version 8) to include the State DECD recommendations
 - Errata listing (encl 3)
- Submission documents and Title 3 proposal are in the proper form and format for adoption/ordainment (New Business item)

Recommendation: Public hearing; discussion for adoption and ordainment as presented

Enclosures

1. Proposed ordinance amendment to Town Code Title 3
2. Nov 22nd “Orders” language
3. DECD change recommendation list

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Enclosure 1, Proposed ordinance amendment to Town Code Title 3

AN ORDINANCE to amend Title 3 of the Town of Kittery Town Code, as more particularly set forth herein.

WHEREAS, the Kittery Town Council is enacting this amendment to the Town Code, in exercise of powers and functions which the Legislature has conferred upon it, which are not denied either expressly or by clear implication, and in exercise of powers and functions granted to the municipality by the Constitution of Maine, general law, or charter.

The Council is authorized to enact this Ordinance, as specified in Section 2.07 (3) of the Town Charter; Title 30-A MRS §3001, pursuant to its powers that authorize the Town, under certain circumstances, to provide for public health, welfare and safety; and, Title 30-A MRS Chapter 206, §5221 and §5242, pursuant to legislative authority to establish municipal development and tax increment financing District(s). The Council does not intend for this Ordinance to conflict with any existing state or federal laws.

WHEREAS, the Town is authorized to designate specified areas within the Town as Municipal Development and Tax Increment Financing District(s) and to adopt a Development Program for the designated District(s); and

WHEREAS, there is a need for economic development in the Town, in the surrounding region, and in the State of Maine; and

WHEREAS, there is a need to improve and broaden the tax base of the Town; improve the general economy of the Town and the surrounding region; and

WHEREAS, implementation of the Development Program will help to improve and broaden the tax base in the Town and improve the economy of the Town and the region by attracting business development to the District(s); and

WHEREAS, there is a need to implement continued economic development initiatives in the designated areas of the Town through the establishment of these District(s) in accordance with the provision of Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended; and

WHEREAS, the Town desires to designate the District(s) and to adopt the Development Program; and

WHEREAS, it is expected that approval will be obtained from the State of Maine Department of Economic and Community Development, approving the designation of the District(s) and the adoption of the Development Program for the District(s).

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NOW THEREFORE, IN ACCORDANCE WITH TITLE 30-A MRS §3001, AND TOWN CHARTER SECTION 2.14, THE TOWN OF KITTELY HEREBY ORDAINS AN AMENDMENT TO TOWN CODE TITLE 3 ADDING CHAPTER 3.4 MUNICIPAL DEVELOPMENT AND TAX INCREMENT FINANCING DISTRICT(S), AS PRESENTED,

Approved as to form: {NAME}, Town Attorney

INTRODUCED and read in a public session of the Town Council on the ___ day of _____, 2____, by: _____ {NAME} Motion Councilor as seconded by _____ {NAME} Councilor and passed by a vote of TBD.

THIS ORDINANCE IS DULY AND PROPERLY ORDAINED by the Town Council of Kittery, Maine on the ___ day of _____, 2____, {NAME}, Chairperson

Attest: {NAME}, Town Clerk

ORDINANCE:

Title 3 REVENUE and FINANCE

Chapter 3.4 MUNICIPAL DEVELOPMENT and TAX INCREMENT FINANCING DISTRICT(S)

3.4.1 District Designations and Adoption.

Municipal Development and Tax Increment Financing Districts are hereby designated to be known as District #1 (Mixed Use); District #2 (Route 1 Shopping Corridor); and, District #3 (Business Park) and herewith is adopted the Development Program for such District(s); such designations and adoptions to be pursuant to the following findings, terms, and provisions.

3.4.2 Findings and Determinations.

The Town Council hereby finds and determines that:

a. At least twenty-five percent (25%), by area, of the real property within the District(s) as herein designated, meets at least one of the following statutory criteria (1) must be a blighted area; (2) must be in need of rehabilitation, redevelopment or conservation work; or (3) must be suitable for commercial uses; and

b. The total area of the individual District(s) does not exceed two percent (2%) of the total acreage of the Town, and the total area of all three District(s) within the Town does not exceed five percent (5%) of the total acreage of the Town; and

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c. The original assessed value of all existing and proposed tax increment financing District(s) does not exceed five percent (5%) of the total value of equalized taxable property within the Town as of March 31, 2010; and,

d. The designation of the District(s) and pursuit of the Development Program will make a contribution to the economic growth and well-being of the Town and the surrounding region, and will contribute to the betterment of the health, welfare, and safety of the inhabitants of the Town, including a broadened and improved tax base and economic stimulus, and therefore constitutes a good and valid public purpose.

3.4.3 Retention of Captured Assessed Value.

Pursuant to the provisions of Title 30-A MRS §5227, the percentage of increased assessed value to be retained as captured assessed value in accordance with the Development Program is hereby established as set forth in the Development Program.

3.4.5 Submission Authority.

The Town Manager is hereby authorized, empowered and directed to submit the proposed designation of the District(s) and the proposed Development Program for the District(s) to the State of Maine Department of Economic and Community Development for review and approval pursuant to the requirements of Title 30-A MRS §5226.

3.4.6 Full Force and Effect.

The foregoing designation of the District(s) and the adoption of the Development Program for the District(s) automatically becomes final and takes full force and effect upon receipt by the Town of approval of the designation of the District(s) and adoption of the Development Program by the State of Maine Department of Economic and Community Development, without requirement of further action by the Town, the Town Council, or any other party.

3.4.7 Development Program Revisions.

The Town Manager is hereby authorized and empowered, as may be necessary from time to time, to make such revisions to the Development Program for the District(s) as the Town Council deems reasonably necessary or convenient in order to facilitate the process for review and approval of the District by the State of Maine Department of Economic and Community Development, or for any other reason, so long as such revisions are not inconsistent with these resolutions or the basic structure and intent of the Development Program.

3.4.8 Credit Enhancement Agreements (CEA).

Credit Enhancement Agreement(s) that may be entered into by the Town and one or more Developers, description of the terms and conditions of any such agreement(s), contract(s) and obligation(s) to be entered into by the Town is set forth in the Maine DECD model agreement as part of the application to the State. Any such agreement is to be in the form approved by the Town Council, with any changes thereto, as determined appropriate by the Town Council after Public Hearing.

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Any Credit Enhancement Agreement is to set forth the obligations of the Town to return to the applicable Developer each year during the term of any such Agreement the applicable Tax Increment (Developer's Share) as described in the model agreement.

Any obligation of the Town to make such payments are to be a limited obligation payable solely from that portion of the Tax Increment constituting the Tax Increment (Developer's Share) actually paid by the applicable Developer as property tax, and do not constitute a general debt or obligation on the part of the Town or a general obligation or charge against or pledge of the faith and credit or taxing power of the Town.

3.4.9 No Use without Development.

With establishment of the District(s) and implementation of the Development Program, no tax revenues generated for the Development Program may be used for municipal improvements, or other reason, until and unless private development within the District(s) is approved, warranting the need for such improvements.

INDEX UPDATE

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Enclosure 2, Nov 22nd, “Orders” motion.

Recommend indefinite postponement

Move that the Town of Kittery hereby:

(a) designates the Municipal Development District #1 (Mixed Use), the Municipal Development District #2 (Route 1 Shopping Corridor), and Municipal Development District #3 (Business Park), as Municipal Development and Tax Increment Financing District(s) and adopts the three Development Programs for the District(s), such designations and adoption to be on the terms and provisions and conditions of this Order and the Development Programs as presented at this Town Council Meeting, and as has been on file in the Town Clerk’s Office, copies of which are incorporated herein by reference;

(b) makes the findings set forth in the Development Programs;

(c) adopts the financial plans including the percentage of increased assessed value of said District to be retained as captured assessed value in accordance with the Development Programs; and

(d) authorizes the Town Manager to submit to the State of Maine Commissioner of Economic and Community Development for approval such applications and further documentation as may be necessary or appropriate for final approval and establishment of the three Municipal Development District(s) as a Municipal Development and Tax Increment Financing District(s) and approval of the three Development Programs and financial plans pursuant to 30-A M.R.S. Chapter 206.

The designation of the District(s) and approval of the Development Programs shall be subject to and become final upon satisfaction of all of the following conditions:

(a) the effective date of the Ordinance; and

(b) approval of the District(s) and the Development Programs by the Maine Department of Economic and Community Development.

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ENCLOSURE 3, DISTRICT DOCUMENT ERRATA

List of Changes to the Town of Kittery TIF Development Programs

Changes set forth in December 13, 2010 v8 documents

(changing the October 28, 2010 v7 documents)

A. Responses to DECD Comments:

1. **Section 6.8.2.** Date changed to March 31, 2010 to be consistent with Appendix A-2 and other provisions of the Development Programs.
2. **Section 6.9.** Added the following to Section 6.9: The maximum term of any Credit Enhancement Agreement shall be 30 years, and the maximum percentage of the Tax Increment Revenues (Developer's Share) shall be 75%. The Council may establish lower limitations as to the term of any Credit Enhancement Agreement and the maximum percentage of Tax Increment Revenues (Developer Share) and may cap the amount of Tax Increment Revenues payable to any Developer. The Council shall determine in its discretion whether it is necessary or appropriate to enter any Credit Enhancement Agreement. No Developer is entitled to any Credit Enhancement Agreement.
3. **Section 7.3.** Inserted November 22, 2010 dates of Public Hearings and December 13, 2010 anticipated date of final action.
4. **Section 5.3 of District 3:** Eliminated the reference to the Town of Eliot.
5. **Section 5.3 Table 1 (Town Square Center reference):** Made the following changes to District(s) 1 and 3: Eliminated the references to the Town Square Center.
6. **Section 5.3 Table 1 (roads, sewer and water systems outside of the District):** Added the following explanation: In District(s) 1 and 2, those improvements would be along Route 1. In District 3, those improvements would be connections to existing infrastructure.

B. Miscellaneous Other Changes

1. The last clause of the last sentence of Section 5.7 was revised to provide: "and the parcels included in the District are listed in the Certificate of the Assessor attached hereto as Appendix A-2."
2. The date on the draft letter from the Town Manager to DECD was changed from October 28, 2010 to December 14, 2010.
3. The date and version on the cover page were changed to December 13, 2010 and v8.
4. The date on the Assessor's Certificate (Appendix A-2) was changed to December 2010.