

REPORT to the KITTERY TOWN COUNCIL

RESPONSIBLE INDIVIDUALS: Ordinance Review - Beers/Dennett

Date: Nov 18, 2010

Subject: Municipal Development & Tax Increment Financing (TIF)

Executive Summary:

This report presents to Council for consideration to designate three areas of Town as TIF Districts and adopt a development program of improvements and credit enhancement agreements to attract economic growth in order to support the economy; create local jobs; and, increase the tax base.

The Town of Kittery needs to create municipal development and tax increment financing districts in order to expand and diversify the Town's tax base and improve its economy. This Program needs to provide the infrastructure necessary for commercial development of lots in designated Districts and finance certain public improvements which will lead to additional commercial development, thereby achieving its objectives.

The areas are designated as District #1 (Mixed Use), District #2 (Route 1 Shopping Corridor) (includes a waterway nexus to Kittery Point Village); and, District #3 (Business Park). Total acreage for the three is 359.49, or approximately 3.03% of Kittery's 11,867 acres, less than the 5% allowable threshold. Total current valuation for the three is \$21,021,200, or 1.54% of the Base total valuation of \$1,368,185,340, less than the 5% allowable threshold.

Potential public facilities, improvements and programs included in the development program include:

- (a) Improvements to roads in the Districts to facilitate commercial development;
- (b) Improvements to roads outside of the Districts that are directly related to or made necessary by the establishment or operation of the Districts;
- (c) Trolleys, trolleys stops and related facilities and improvements;
- (d) Construction of new Town square or center;
- (e) Sewer and water system improvements including installation of lines and related facilities.
- (f) Economic Development Planning; and
- (g) Administrative expenses associated with this development effort.

The cost of the Capital Program and any continuing investment by the developers in any District approved by the Town Council will be financed by such developers through equity of the developers, various borrowings by the approved developers and the Tax Increment from the District being developed.

As part of the Development Program, the Town and each developer with a project approved by the Town Council may enter, if determined appropriate by the Town Council, a separate Credit Enhancement Agreement pursuant to which the Town will pay to the developer a portion of the Tax Increment relating solely to the lot owned by the developer to pay a portion of the costs of the Capital Program.

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Statement of Need:

Growth stagnation in Kittery with ever increasing costs to deliver municipal services and pay for education means that a static valuation can only result in ever higher tax rates. While the Town budget has held the line for several years, the schools have not supported fiscal conservation (e.g. no municipal employee raises vs 4.5% teacher wage increase) and voter-approved referenda costs must be added to tax appropriations.

Council and municipal departments have been engaged for the past two years in creating innovative solutions to hold the line on expenditures; generate more non-property tax revenue (applicant service accounts, service fees, solid waste pay-as you throw, grant applications); and move toward user consumption enterprise initiatives (recreation, transfer station, harbor operations) and away from broad-based equal-pain-no-matter-the-use property tax. Capital improvement programming has set conservative debt management policies and reserve funding practices in place to achieve cost stability for those needs to avoid spikes in annual tax rates.

Even with those solid bases, the municipal budget has reached critical mass for approved services and costs versus tax impact. In order to achieve a necessary degree of affordable sustainability it must be seen as necessary to attract business growth. Valuation added by business development requires far less municipal service cost than does residential with the bonus of new jobs and local expenditures.

A readily available opportunity, properly set up to offer real incentive to business, is the designation of municipal development Tax Increment Financing districts and adoption of a development program designed to realize positive economic growth; pay for improvements with “saved” tax revenues; and mitigate their use through reduced county overlay, and increased state revenue sharing and general purpose aid.

TIF is a tool that permits a municipality to participate in local project financing by using some or all of the new property taxes from a capital investment within a designated geographic district. The municipality has the option of using the “incremental” taxes to retire bonds it has issued for the project, compensate a developer or business for development project costs, or fund eligible municipal economic development activities.

Background:

- Identified for consideration Jan 2010 Council Goal Workshop
 - Concept presentation/discussion Feb 2010
 - Sept 2010 Report , First application draft - Workshop
- Credit Enhancement Agreements not; included; Pepperrell Cove connection left out

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Facts Bearing on the Equation:

- Title 30-A MRS, Chapter 206, Municipal development Districts (available, not encl)
- DECD TIF Manual, Feb 19, 2010 (available, not encl)
- DECD Rule 19-100, Chapter 1, Municipal Tax Increment Financing Rule (available, not encl)
- Municipal TIFs: Naples, Lincoln, Rockland, South Portland (available, not encl)

Current Situation:

- Completed applications for submission to DECD (encl 1, distributed for Workshop 11/15/10)
 - Includes District detail Appendices and, model Credit Enhancement Agreement
- Reviewed by Attorney Epstein, Town Attorney, Assessor, Planner, Manager
- Preliminary review by DECD complete; Recommendations incorporated
- Approval of Council Orders required to designate, accept findings, adopt financial plans, and authorize submission (encl 2)
- ORC reviewed proposed amendment to Town Code Title 3, to ordain District designations and adopt Development Program as required (encl 3)
- Submission documents and Title 3 proposal are in the proper form and format for adoption/ordination

Proposed Solution

- Approve Council Orders & Schedule Public Hearing for Town Code Title 3 amendment ordainment
- Ordain Title 3 amendment after Public Hearing to designate districts, adopt program, and related requirements
- Town Manager submit application to DECD for Commissioner approval
- Upon approval, implement and set up program administration
- Conduct marketing/awareness campaign

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

Enclosures

1. Three Application for Municipal Development and Tax Increment Financing
2. Council Orders, Municipal Development Districts
3. Proposed ordinance amendment to Town Code Title 3

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Enclosure 2, MUNICIPAL DEVELOPMENT DISTRICTS

TOWN OF KITTERY TOWN COUNCIL ORDERS NOVEMBER 22, 2010

Ordered that the Town 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 Districts and adopts the three Development Programs for the Districts, 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 Districts as a Municipal Development and Tax Increment Financing Districts and approval of the three Development Programs and financial plans pursuant to 30-A M.R.S. Chapter 206.

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

(a) adoption by the Town Council of an Ordinance (hereinafter the "Ordinance"), as introduced at this meeting, amending Title 3 of the Town of Kittery Town Code to designate the Districts and adopt the Development Programs, and

(b) the effective date of the Ordinance; and

(c) approval of the Districts and the Development Programs by the Maine Department of Economic and Community Development.

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Enclosure 3, 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 districts. 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 Districts and to adopt a Development Program for the designated Districts; 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 Districts; and

WHEREAS, there is a need to implement continued economic development initiatives in the designated areas of the Town through the establishment of these Districts 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 Districts 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 Districts and the adoption of the Development Program for the Districts.

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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 AS PRESENTED, HAVING BEEN ON FILE IN THE TOWN CLERK'S OFFICE; AFTER PUBLIC HEARING AT THIS REGULAR TOWN COUNCIL MEETING; AND, MADE A PART HEREOF. SAID AMENDMENT DESIGNATES THREE MUNICIPAL DEVELOPMENT DISTRICTS IN THE TOWN; MAKES THE FINDINGS SET FORTH IN THE DEVELOPMENT PROGRAM; AND, ADOPTS THE FINANCIAL PLAN INCLUDING THE PERCENTAGE OF INCREASED ASSESSED VALUE OF SAID DISTRICTS TO BE RETAINED AS CAPTURED ASSESSED VALUE IN ACCORDANCE WITH THE DEVELOPMENT PROGRAM.

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 DISTRICTS

3.4.1 District Designations and Adoption.

Three 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 Districts; such designations and adoptions to be pursuant to the following findings, terms, and provisions.

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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 Districts 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 Districts does not exceed two percent (2%) of the total acreage of the Town, and the total area of all three Districts within the Town does not exceed five percent (5%) of the total acreage of the Town; and

c. The original assessed value of all existing and proposed tax increment financing districts 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 Districts 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 three Districts and the proposed Development Program for the Districts 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 three Districts and the adoption of the Development Program for the Districts automatically becomes final and takes full force and effect upon receipt by the Town of approval of the designation of the Districts 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.

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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 three Districts 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).

A description of the terms and conditions of the agreements, contracts and obligations to be entered by the Town is set forth in the model Credit Enhancement Agreement that may entered into by the Town and one or more Developers which will be in the form approved by the Town Council as part of the application to the State, with such changes thereto as determined appropriate by the Town Council.

Credit Enhancement Agreements are to set forth the obligations of the Town to pay to the applicable Developer each year during the term of that Agreement the applicable Tax Increment (Developer's Share) as described in the model agreement.

The obligations of the Town to make such payments are 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.

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