International Municipal Lawyers Association
2017 Annual Conference
Niagara Falls, Ontario, Canada

October 17, 2017

CC4- Rural Communities/ Small Cities Presentation: Economic Development Strategies & Managing Outside Counsel

Smart Considerations for Economic Development Incentives Applications

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Smart Considerations for Economic Development Incentives Applications



LAUBER MUNICIPAL LAW, LLC



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Presented October 17, 2017 by Joe Lauber

IMLA Annual Conference
Niagara Falls, Ontario, Canada

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Overview of Topics











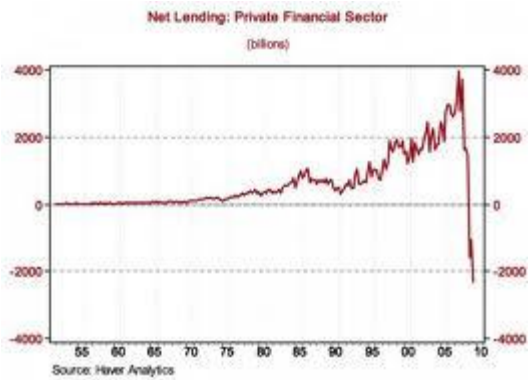
- Post recession market conditions
- Moberly, Missouri, Mamtek project
- Common Types of Risk
- Resources to Assist Risk Analysis
- Risk Management Measures
  - Asking the smart questions
  - Implementation

Post-Recession Market Conditions



- Lending vacuum
- Developers increasingly looking to cities for financing through incentive requests
  - Neighborhood Improvement Districts for necessary public infrastructure
  - Annual appropriation requests





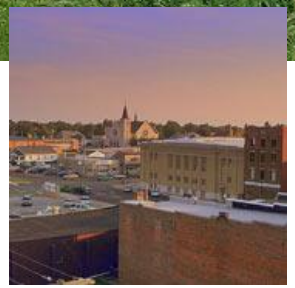


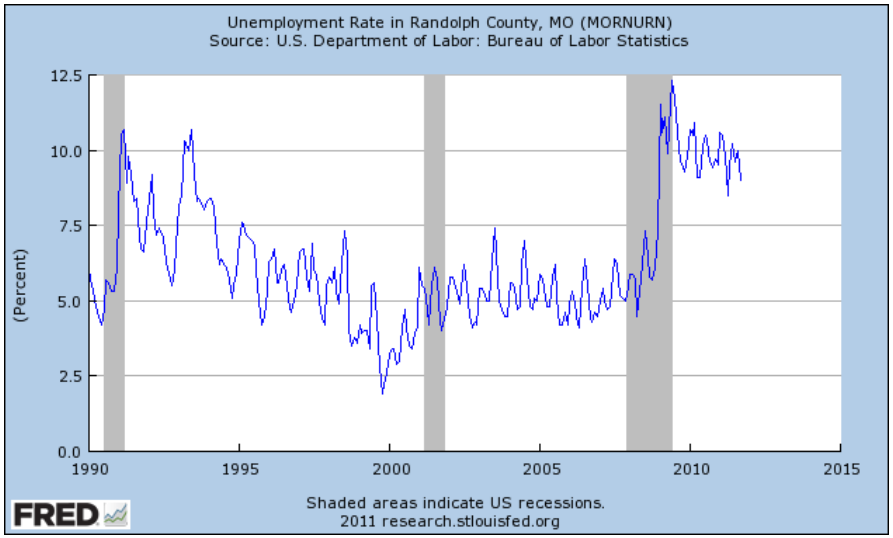
Moberly, Missouri- Mamtek Project











Moberly

- Located in north central Missouri
- Population 13,741
- Unemployment
  - Spiked in June 2009 at 12.3%
  - 2010 ranged from 9.1% to 10.7%, average of 9.95%
  - State unemployment was 9.1% to 9.5% in 2010
- Already invested in water and wastewater treatment infrastructure in industrial park

Moberly, Missouri- Mamtek Project

- **Mamtek**
  - Proposals sent to 12 communities in March 2010
  - American-Chinese Company
  - Seeking location for artificial sweetener manufacturing plant
    - $46 million investment in community
    - Promise of over 600 new jobs
      - Includes 116 new permanent factory jobs with average pay of $35,000 per year
  - Claimed presold contracts and delivery deadlines
  - April 27, 2010, Mamtek meets with Moberly
  - Moberly in competition with Marshall, Mexico, and Sedalia
  - Former Governor Bob Holden
    - Chairman of the Midwest US- China Association
    - Promotes opportunities between MidWest and China
  - Governor Jay Nixon
    - Emphasizing opportunities for trade partnerships with China
  - Department of Economic Development
    - Tax credits for job creation and large business attraction

Mamtek U. S.











Moberly, Missouri- Mamtek Project







Moberly's Deal

- Compressed timeframe
  - July 9, 2010 deal is announced
    - 73 days from first meeting to signing the deal to bring the plant to Moberly
  - July 14, 2010 City Council votes to unanimously approve bond issuance

- Incentive Package
  - $39M IDA Bonds
  - $8M private investors
  - $7.6M Missouri Quality Jobs Program Tax Credit
  - $6.8M Missouri BUILD tax credits
  - $2M CDBG industrial infrastructure funds
  - $800K for job training
  - $368K for employment

- Three Series of "Project Sugar" Bonds
  - Issued by Moberly's Industrial Development Authority
  - $27.5M of tax-exempt recovery zone facility bonds
  - $8.4M of taxable capital project bonds
  - $3M of tax-exempt capital project bonds
  - Secured by revenue expected under financing agreement between IDA and City
  - Backed by City's annual appropriation pledge
  - At issuance bonds rated A- by Standard & Poor's
  - City's issuer credit rating was A

Moberly, Missouri- Mamtek Project

The Implosion

- August 1, 2011, Mamtek fails to make $3.2M payment to City for debt service
- August 15, Moberly, which had not appropriated funds for the City's current budget, refused to make the payment to the UMB Bank (Trustee for bonds)
- September 1 UMB Bank (bond trustee) withdraws from reserve funds to make quarterly debt service payment
- September 8 SEC notifies Moberly IDA that it will be receiving subpoena
  - Missouri AG Chris Koster and Randolph County Prosecutor investigating for criminal violations
- S&P downgrades bonds rating to CC, placed on Credit Watch with negative implications
- S&P downgrades City's issuer rating to B with a stable outlook
- September 24 City and former CEO of Mamtek sign deal for Cole's new company, American Sucralose Manufacturing, Inc., to repay $3.2 to reserve funds
  - First payment of $250,000 due on October 5, but only $45,000 paid by that deadline
  - $3.2M payment to City doesn't occur and City officially breaks ties on October 27
- November 1 City and City's IDA issue joint notice to UMB Bank that its City Council voted not to make an appropriation to replenish debt service reserves



Common Types of Risk













- Market
  - Ability of the developer to execute its business plan despite competition or changes in general market conditions
- Legislative
  - Legislative changes impacting the project and the financing tools used
- Event
  - Material damages resulting from catastrophic events that may be either uninsurable or not economically insurable
  - Losses resulting from interruption of business
- Construction
  - Ability of the developer to construct the project for the estimated cost within the anticipated schedule

Resources

Expertise Needed	Member(s)
Local conditions/preferences	• Local government staff • Representatives of the governing body
Economic development & land use law	• Staff attorney • Consulting attorney
Finance - city/county specific and financing tools to be used	• Local government finance staff • Financial advisor
Other subject matter experts	• State DED representative • Market feasibility consultant • Engineer • Architect

Risk Management Measures







Model Economic Development Proposal Evaluation Process

Conformance of Development Concept	Strength of Development Team	Strength of Opportunity	Economic Impact	Public Subsidy Necessity	Entitlement Creation and Development Agreements
• Conformance to master plan • Consistency with community vision and goals • Integration with existing conditions & infrastructure • Development timeline • Conformance with policies	• Financial capacity • Management capabilities • Prior experience • References • Conflicts of interest / disclosures • Litigation • Bankruptcies / judgments	• Market feasibility • Private financing commitment • Plan for site control • Legal authority for public participation • Public revenue / expenditure cash flow • Public risks	• Cost-benefit or public benefits analysis ("bang for the buck") • Payback period • Public rate of return	• Sensitized developer internal rate of return (IRR) analysis • Comparison of developer IRR to market range • Public subsidy needed? • Public subsidy level appropriate?	• Tax increment financing, community improvement district, transportation development district, tax abatement, etc. • Development Agreement
"Is this something our community really wants?"	*"Who are these guys?"*	*"Is this project feasible?"*	*"Will our community benefit from this project?"*	*"Is a subsidy even needed for this project?"*	*"Will the developer do what he says?"*
Analytic Lead: Public Entity Staff	Analytic Lead: Springsted	Analytic Leads: Springsted / Market Feasibility Consultant	Analytic Lead: Springsted	Analytic Lead: Springsted	Analytic Leads: Springsted / Legal Counsel

Risk Management Measures

Market, Legislative, & Event Risk Management Tools

- City selects underwriter
- Capitalize interest for initial period
- Debt service reserve (bond funded)
- Debt service coverage requirement (low)
- Supplementary debt service reserve ("Super-TIF" funded)
- Supplementary debt service reserve (coverage funded)
- Supplementary debt service reserve (developer funded)*

Low

Developer requirements & Risk Management

Medium

Construction Risk Management Tools

- Require proof of private financing prior to bond issuance



Risk Management Measures

Market, Legislative, & Event Risk Management Tools

- Debt service coverage Requirement (moderate)
- Back-up CID or TDD sales tax*
- Back-up CID Special Assessment*
- Bonds issued when certain % of tenanting achieved (multiple series)
- Bond proceeds placed in escrow and released based on businesses open or committed to open
- Bond sized on commitment to open based on 3rd party revenue forecast (multiple series)

Medium-low

Developer requirements & Risk Management

Medium-high

Construction Risk Management Tools

- Require guaranteed maximum price construction contracts prior to bond issuance



Risk Management Measures

Market, Legislative, & Event Risk Management Tools

- Debt service coverage requirement (high)
- Developer letter of credit*
- Developer buys subordinate debt series not backed by city annual appropriation
- Developer carry-back note for portion of debt
- Developer PAYGO for portion of debt
- Bonds issued only after project or portion of project is constructed and operating

Medium

Developer requirements & Risk Management

High

Construction Risk Management Tools

- City holds land until ready to develop



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About the Firm

I established Lauber Municipal Law, LLC, for the purpose of serving local governmental entities of all types and sizes. I have dedicated my entire career to the representation of municipal clients— I have excelled in my practice as a public law attorney starting with "big firm" experience in the public law practice group at one of Kansas City's largest law firms, then a practice focused exclusively on Missouri economic development law at the region's busiest bond firm, before returning to a general municipal practice at a boutique municipal law firm in the Kansas City metro area. I can serve your community as its general counsel (City Attorney) or as special counsel for technical issues like economic development incentive approvals, annexation, elections, impeachments, and appellate work.

My goal through Lauber Municipal Law, LLC, is to meld my previous experience together to provide a high-quality, "big firm" work product, while providing the flexibility, personal responsiveness, and cost effectiveness of a small firm. I completely understand public entities' needs to obtain the most effective representation possible while considering the fact that these services are compensated from a budget made up of public funds. As the motto for Lauber Municipal Law, LLC, states: I am proud to serve those who serve others. My sincere desire is to make that job easier and less stressful for the elected officials and administrative staffs of these entities.

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