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How Cities Compete In Tough Economic Times

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Municipal economic development has changed dramatically over the last few years as the recession has affected the United States and the rest of the world's economies. As a result, little or no financing has been available for development or infrastructure projects, forcing local governments, developers and property owners to get creative and begin looking at new ways of doing business. Municipal officials are creating new economic development tools and strategies to implement these new ways of conducting business. Now, as we emerge from recession, a more lean and efficient municipal government is emerging that is still risk adverse but more willing to try new strategies necessary to stimulate economic growth through new capital investment and local employment growth.

There are two primary ways in which cities have begun to prepare for the "New Normal" in economic development. Cities are getting more creative in the ways they incentivize new economic development and they are revaluating their own way of doing business and marketing their assets. Traditionally, cities have used a number of incentives to lure new capital investment and the resulting tax base this development creates. Cash grants and tax abatements have long been favorite tools of economic developers. Cash is still king. The more cash you can give a company the more likely that company may land in your community. Cash helps the bottom line of every company, as a strong balance sheet makes investors and financial institutions supporting those companies feel much more secure and more likely to invest or back an investment. Unfortunately, most cities are cash strapped. Contracting tax bases, including property and sales tax collections have cities looking to use all available resources to meet basic city services and leave little for economic development.

Tax abatements and tax rebates are another favorite tool traditionally used by cities to attract new jobs and capital investment. Tax abatements and tax rebates can be politically tricky in the best of economic times. However, when tax base is contracting and citizens are being asked to give more to maintain the current level of services they can become politically untenable. Every company loves tax breaks, but these are a "back end" incentive. Most cities can offer some sort of tax abatement or rebate but often companies need more now, not five or ten years from now.

STREAMLINE YOUR CITY PROCESSES

Your economic development team and your city staff need to be on the "same page". A great incentive every city can employ is in making sure certain, or all, commercial projects are prioritized. To be competitive in the "New Normal" cities need to be able to push a good project from conceptual plan, to building permit, within 90 days or less. This may require tight scheduling or special meetings to accommodate the posting and notice requirement of your city.

As cities evolve and grow, they often develop their own unique way of handling the permitting process. Some municipalities require a conceptual plan to be filed prior to submission of any permit applications. Others require platting or zoning changes to occur prior to

submission of site development plans. Needless to say, many permitting issues require formal action by a Planning and/or Zoning Commission, Board of Adjustment, Architectural Review Board and, some to the City Council for necessary approvals.

The permitting and approval process can make life difficult for professional developers and discourage small businesses from growing in your community. There are a number of ways to alleviate these concerns. The simplest way to assist developers is to have a development flow chart available online. The flow chart should be easy to follow and explain the order of events, cost and time lines your community requires. For example:

Development Process Flow Chart

Zoning Process:

- Establishes land use based on Comprehensive Plan
- 90 day review
- $1000 for land greater than 5 acres, $500 for less than 5 acres
- Public hearings with City Council final approval

Subdivision Process:

1. Preliminary Plan:

- Establishes preliminary design of subdivision including lot layout, streets, utilities, drainage, phasing, etc.
- 21 day review cycle, 45-60 days depending on submittal
- $30/lot, minimum $1000
- Planning and Zoning Commission approval

2. Construction Plan:

- Engineered plans identifying the public utility extensions to the proposed site
- 30 day review cycles, 60 day review depending on submittal
- 4% cost of public improvements
- Administratively approved

3. Public Improvement Construction/Acceptance or Fiscal Security:

- Once construction plans are approved, developer constructs public infrastructure and receives acceptance by the City for the improvements
- Timing for construction depends on the developer
- Posting fiscal security in an amount equal to 110% of the cost of the public improvements allows an applicant to move forward with a final plat prior to constructing and having public improvements accepted

4. Final Plat/Replat/Minor Plat:

- Establishes right of way, lot layout, easements, etc.
- 30-60 days depending on submittal
- $15/lot, minimum $500
- Final Plat requires Planning and Zoning Commission approval
- Replat requires a public hearing and Planning and Zoning Commission approval (concurrent)
- Minor Plat (administratively approved) allowed if:
    - No more than 4 lots are proposed
    - All lots front onto a public street
    - Extension of utilities is not required
    - A TIA is not required

Site Development Process:

- Establishes proposed site layout, drainage, architectural elevations, landscaping, site lighting, etc.
- Requires a platted lot
- 21 day review cycle, ~60-90 days depending on submittal
- $.06/sq. ft. impervious cover
- Administratively approved

Building Permit Process:

- Vertical construction of development
- Requires a platted lot and site development permit
- 10 day review cycle
- Fee based on building type
- Administratively approved [1]

In order to compete, cities should administratively approve as many permits as allowed by law to ensure quick permit approvals. Nothing will harm your economic development reputation as much as a slow approval process. Time is money for all businesses. In addition, when possible, run processes simultaneously. For example zoning and platting can easily be run together. If a building permit requires a site development permit, review both simultaneously to eliminate unnecessary delays in the process.

INCENTIVES

The "New Normal" in economic development for municipalities has cities taking a more aggressive approach to incentives and using new tools to compete in an increasingly global marketplace. The most prevalent of these new tools are private public partnerships.

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[1] *City of Pflugerville Development Process Flow Chart*, http://www.pflugervilletx.gov/index.aspx?nid=869 (last visited 9-13-2012)

Unfortunately, not many tools provide the kind of upfront financing that most companies desire. The creation of Public Improvement Districts (PID's) has been a step in that direction.[2] PID's once created typically levy assessments within the district. Those assessments, paid in annual installments, become the collateral for the issuance of the PID's bonds. Those bonds can then be used to extend roads, water and sewer lines, extend electrical lines or redundant power to a development or even build parking lots. PID's can be especially useful to restart a stalled development. PID are also known as business improvement districts (BID's)[3] parking and business improvement area (PBIA)[4], business revitalization zone (BRZ)[5], community improvement district (CID)[6], special services district (SSD)[7], or special improvement district (SID)[8]. Regrettably not every city has the ability or political climate to create a PID.

DIRECT FOREIGN INVESTMENT

Any city can recruit new companies, investors and direct foreign investment to town by utilizing the Immigrant Investor Program, also known as "EB-5 Visa" created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors.[9] The United States Customs and Immigration Service (USCIS) administers the "EB-5 Visa" program. Through this program an immigrant investor, who puts $1,000,000 at risk in a new commercial enterprise in the United States and creates or preserves at least 10 full-time jobs for qualifying U.S. workers within two years, can receive an EB-5 Visa and Green Card for himself and his unmarried children under 21.[10] The foreign investor goes through a significant background check by the Department of Homeland Security. If the foreign national investor's petition is approved, the investor and their dependents will be granted conditional permanent residence valid for two years. Within the 90 day period before the conditional permanent residence expires, the investor must submit evidence documenting that the full required investment has been made and that 10 jobs have been maintained, or 10 jobs have been created or will be created within a reasonable time period. If the investor has met all the conditions then they will receive permanent resident status.[11]

Cities can create, or help identify, Regional Centers for the processing of EB-5 applications. Regional Centers can be private or public entities that assume the responsibility of creating the requisite jobs.[12] Regional Centers typically are approved to create specific types of

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[2] Public Improvement District Assessment Act, Tex. Loc. Gov. Code § 372 (1987)
[3] Self Help Business Improvement District Act, Code of Ala. § 11-54B-1 (1994)
[4] Parking and Business Improvement Area Law of 1965, Cal. Sts. & Hy. Code § 36000 (1965)
[5] Urban Revitalization Tax Incentive Program, La. R.S. 51:1801 (2005)
[6] Community Improvement Districts, Ga. Const. Art. IX, § VII, Para. III (1983)
[7] Special Service District Act, Utah Code Ann. § 17D-1-103 (1953)
[8] Special Improvement District, Mont. Code Anno., § 7-12-4102 (1947)
[9] The Immigration Act of 1990 (Pub.L. 101-649, 104 Stat. 4978, 1990)
[10] 8 USCS § 1153 (1996)
[11] 8 USCS § 1186b (1996)
[12] 8 USCS § 1153 (1996)

investment such as manufacturing, green energy or hospitality related industries. Regional Centers may charge an administration fee for managing the investor's investment. Regional Centers will actively recruit foreign investors for specific projects. Regional Centers can be created under the guidelines created by USCIS. Foreign nationals may invest in a pre-approved regional center. Investments within a regional center provide foreign nationals the added benefit of allowing them to count jobs created both directly and indirectly for purposes of meeting the 10 job creation requirement. Additionally, the foreign investor can be a passive investor in the project and live anywhere in the United States, not just the city where the investment is made.

Cities in rural areas or areas with high unemployment can take this process a step further and create a Targeted Employment Area (TEA).[13] A rural area is defined as any area outside a metropolitan statistical area or outside the boundary of any city or town having a population of 20,000 or more according to the decennial census. A high unemployment area is defined as an area that has unemployment levels that are in excess of 150% of the national average.[14] As of August 2012 the National Unemployment Rate was 8.1% according to the United States Department of Labor.[15] So in census tracts that show unemployment in excess of 12.5% a TEA can be created. The advantages of a TEA are tremendous. In a qualified TEA the EB-5 investor only needs to invest $500,000.[16] They will still need to create 10 jobs but the reduced investment amount allows the foreign investor to significantly reduce their risk. Typically, the Governor of a State has the authority to create a TEA but in some states, such as Texas, the Governor has delegated that authority to City and County leaders.

To date, this program has been has been underutilized. Approximately 10,000 EB-5 investor visas are available annually. In 2007, before the financial crises that affected the country, only about 800 applications had been filed. As local communities have been utilizing this tool the numbers have begun to grow substantially. In 2011 fiscal year, more than 3,800 EB-5 applications had been filed. Considering there are 10,000 such visas available this program has room to grow substantially.

Several large corporations have started to take notice of the Foreign Investor Visa. A recent New York Times article indicated that, "since 2008 Marriott hotels has endorsed 14 projects that use EB-5 financing, including the downtown Milwaukee Marriott, a Courtyard Marriott in Midtown Manhattan and a $168 million hotel near the Staples Center in Los Angeles." The article also indicated that Hilton Hotels has 10 projects underway utilizing EB-5 funding.[17]

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[13] 8 USCS § 1153(b)(5)(B) (1990)
[14] 8 USCS § 1153(b)(5)(C)(ii) (1992)
[15] *United States Department of Labor,* http://www.dol.gov (last visited 9-13-2012)
[16] *See id. at §1153*
[17] Janet Morrissey, Visas-for-Dollars Program a Boon to Hotel Developers, N.Y. Times, September 6, 2012

MARKET WHAT YOU'VE GOT

Most Cities have made substantial investments in infrastructure projects to serve their citizens and their businesses. It is easy to forget that basic services such as water, sewer, electricity and gas are the life blood of most manufacturing operations. If you are recruiting a company that needs a lot of water for manufacturing, chillers, or even landscaping, offer to sell that water at cost. A great way to lower the cost of water to a company is by constructing and utilizing reuse, or gray water. Your local sewer plant creates reuse water as a by-product of the treatment process and, typically, just releases the clean effluent downstream. By selling this reuse water (at a cost substantially lower than potable water) to large commercial users you can effectively make money as a city, reduce the use of potable water (especially useful in drought stricken areas)and help a company reduce cost achieve LEED certification, as this is an extremely efficient use of natural resources. Over a 10 year period incremental savings in the cost of water can add up to millions of dollars for large water users. If your community has access to ground water you can offer to drill a well and sell untreated ground water, too.

Cash strapped cities can fund infrastructure projects to help companies development their project. One nice outcome of the recent fiscal crises has been that bonding infrastructure projects has become less expensive. Cities with strong credit ratings can take advantageous of historically low interest rates to bond the extension of utility line, roads, drainage and even purchased land for industrial parks. As the economy comes back and depressed land prices begin to rise, cities can offer to sell acquired real estate assets to private developers at cost as a further incentive to create jobs and economic development.

The cost of power can also be a useful tool to attract large power users to your community. While some cities have their own power generation, to offer reduced rates to new companies as an economic incentive, not every city has this option. Cities in states with a deregulated energy market can find energy aggregators to assist companies in negotiating the lowest rates possible. Since the shale gas boom power cost in deregulated parts of the country have dropped dramatically. Often energy cost in these deregulated communities is much cheaper than municipally or state owned areas, due to the general fund transfers these organizations make to their communities.

Predictions of 100 years of shale gas supply have dropped natural gas prices to new lows. Large gas transmission line crisscross the country taking this cheap source of fuel to cities in every part of the country. A cottage industry has now sprung up whereby companies will drop a small (8 megawatt) package power plant adjacent to a gas transmission line and sell the cheap power directly to adjacent businesses without accessing the transmission or distribution lines of large utility companies. This practice results in tremendous cost reduction per kilowatt. Most states have limited regulations on distributed power, particularly, when the distributed energy is in front of the meter. These package power producers do not charge the user for construction

cost of the plant but do, generally, require 5-10 year power purchase agreements. These package plants can also offer a cheaper alternative to companies in need of redundant power.

As we become more dependent on technology so does industry. Most companies depend heavily on access to the internet, so fiber connections can make the difference in their site location search. Aggressive cities can fund fiber extensions to employment areas to help make certain sites more desirable. Cities that already have fiber networks can create fiber maps to hand to site selectors making their job easier and helping to move your city to the top of their list.

EXPAND BUSINESS RENTENTION AND EXPANSION PROGRAMS

The most politically acceptable way to create new jobs and capital investment in your community is to help those companies that are already there expand. It is vitally important that you don't lose your existing businesses to other cities, states or countries. The best way to keep and expand your local businesses is to meet with them regularly. Have quarterly lunch meetings (round tables) to discuss their questions and concerns and see if there is anything the city can do to help. Have city staff talk to these groups and make themselves available to answer any questions they may have.

GET CREATIVE

When capital is in short supply then new office, manufacturing, distribution and warehouse facilities can be difficult to build. Most cities have the power to execute lease agreements. Preleasing a substantial portion of new manufacturing or office building can rapidly get a new building up and running. The city can then sublet the building and even subsidize the rent as an incentive to bring in new jobs.

RISK AVERSE

Cities and city staff are, generally, very risk averse. After all, no one wants to be responsible for an expensive empty building or road to nowhere. None of us can predict the future. If a deal sours, it's the staff that gets fired and elected officials are blamed at the ballot box. As always, it's important to have strong contracts and performance metrics and reasonable clawback provisions. Certainly, in this new economy, as in the old, not every business will be successful so it is important to have the majority of your incentives performance based. The days of giving large cash grants are over, and creative lawyering and deal structuring are here to stay.