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2016 Changes to the Colorado Urban Renewal Law

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During the 2015 legislative session, Colorado enacted the most significant changes to its urban renewal laws in years. In urban renewal projects, municipalities can use public funds to support the redevelopment of “blighted” areas. These projects typically result in increased retail sales activities and property values on the project site, thereby increasing sales tax and property tax revenue over the previously existing baseline. In a tax increment financing, or TIF, structure, municipalities pledge the incremental amount of municipal sales tax and property tax revenue generated by the urban renewal project to fund some of the project costs. This results in what some counties, school districts and other property taxing authorities view to be an improper siphoning off of a portion of the property tax revenue to which they would otherwise have been entitled.

House Bill 15-1348 was the result of a sustained effort by counties and other local authorities with the power to impose property taxes to obtain some control over municipalities’ use of urban renewal. That effort had failed during the 2014 legislative session when Governor Hickenlooper vetoed a similar, but more stringent bill. House Bill 15-1348 became law, however, and it went into effect on January 1, 2016. The changes are significant, so much so that some believe HB 15-1348 will effectively end the use of urban renewal in Colorado. That said, it remains to be seen how the changes will play out in practice.

Municipalities are primarily responsible for creating urban renewal authorities and approving urban renewal plans. An urban renewal plan can allow the incremental amount of property and municipal sales taxes resulting from the urban renewal project to be retained for a period of up to 25 years. Typically, these funds are pledged to pay bonds issued to generate funds to cover project costs. Property and sales taxes in the amounts collected in the year before the urban renewal plan continue to be paid over to the various applicable taxing authorities as they had before. That includes the county, and districts such as school districts and metropolitan districts. However, tax revenues over the base amount are paid into a special fund of the urban renewal authority to pay debt associated with the urban renewal project. Excess municipal sales tax collections not otherwise allocated would be paid to the municipality. When the indebtedness is paid off, all tax revenue starts going to the applicable taxing authorities.

In an effort to give counties and other local taxing authorities a say in how the incremental amount of property tax is used in urban renewal plans, HB 15-1348 made changes to both the composition of urban renewal authorities and to the process for approving urban renewal plans. Under the law as it existed prior to HB 15-1348, municipal governing bodies appointed the members of the urban renewal authority, and often times, a city or town council would act as the urban renewal authority, itself. Now, urban renewal authorities must be comprised of thirteen commissioners. Ten commissioners are to be appointed by the mayor of the applicable municipality, one commissioner is appointed by the board of county commissioners for the county in which the urban renewal area is located, one must be a board member of a special district, selected by agreement of the special districts levying a mill levy within the boundaries of the urban renewal area, and one must be an elected member of a board of education of a school district levying a mill levy within the boundaries of the urban renewal area. Where multiple counties or multiple districts are implicated, they must agree on the commissioner to be appointed to fill the relevant seat. If the governing body of the municipality designates itself as the urban renewal authority, additional commission seats must be added for the counties, special districts and school districts as described above. If that results in an even number of commissioners, the mayor appoints another commissioner to result in an odd number.

These changes are intended to ensure that urban renewal authorities include at least some representation of the other public bodies that levy property taxes within the urban renewal area. However, given that municipally-appointed commissioners will still constitute a majority, these changes may not have a determinative impact in practice.

Changes to the process for approving urban renewal plans likely will have a significant impact, however. Previously, all property taxes applicable to a property in an urban renewal area over the base amount would be included in the tax increment pledged to pay the costs of the project. Now, it is possible that an urban renewal plan require that some of the property tax increment revenue be paid over to the other taxing entities. To do so, HB 15-1348 injects counties, special districts and school districts into the urban renewal plan approval process in a new way, and gives them new leverage for determining how the property tax increment attributable to their property tax mill levies will be applied.

Prior to approval of any urban renewal plan that will allocate property tax revenues of any public body other than the municipality, the governing body of the municipality must now negotiate with the affected counties, special districts and school districts, to attempt to reach agreements concerning how much of the various property taxes will be allocated to the urban renewal project. If the municipality and the other taxing authorities cannot reach agreement within 120 days, the parties must submit to mediation on the issue of the appropriate allocation of urban renewal project costs among the municipality and all other taxing entities whose taxes will be allocated. The statute is silent as to how the mediator is to be selected.

In mediation, the mediator must determine within 90 days “the appropriate allocation,” considering: (1) the nature of the project; (2) the nature and relative size of the revenue and other benefits that are expected to accrue to the municipality and other taxing entities as a result of the project; (3) any legal limitations on the use of revenues belonging to the municipality or any taxing entity; and (4) any capital or operating costs that are expected to result from the project. The municipality can then proceed with an urban renewal plan that allocates the property tax increment in accordance with the mediator’s findings, or can attempt to negotiate an alternative agreement with the other taxing authorities. Otherwise, the municipality cannot approve an urban renewal plan that allocates property tax revenues of other taxing authorities.

This provides significant, though not unlimited leverage, to counties, special districts and school districts. They previously had no legal say in the matter of allocation of the incremental property tax revenues, and now they do. However, given that the municipality can proceed with an urban renewal plan that conforms to the mediator’s decision, their leverage is not absolute. The mediator could conclude that an allocation not favored by these taxing entities is the “appropriate allocation.”

If counties and other local taxing authorities are resistant to allowing municipalities to allocate their portion of the property tax increment, and mediators are solicitous about their concerns, there may not be sufficient revenue available to make some urban renewal projects viable. However, at this point, it is unclear how HB 15-1348 will work in practice. Will municipalities be deterred from pursuing urban renewal projects under the new structure? Will counties, school districts and special districts be hostile to urban renewal projects and demand to receive significant portions of the tax increment? Will municipalities resort to mediation? Will there be conflicts over the selection of mediators? What kinds of decisions will mediators render? We will not know the answers to these questions, and thus the full impacts of HB 15-1348, for some time. The possibility of additional legislative changes to the urban renewal law during this year’s legislative session only adds to that uncertainty.

Otten Johnson’s attorneys have substantial experience with helping clients navigate business issues like those highlighted in this alert. For more information, or for help evaluating your current situation, contact any of the attorneys in the Land Use practice group.

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