

Special Assessment Bonds: Cautionary Tales

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The Goal is to avoid this:



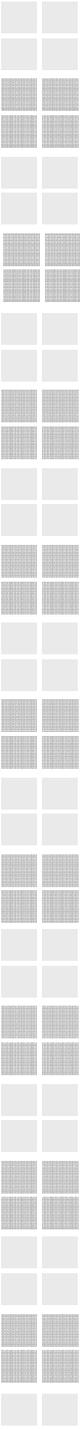
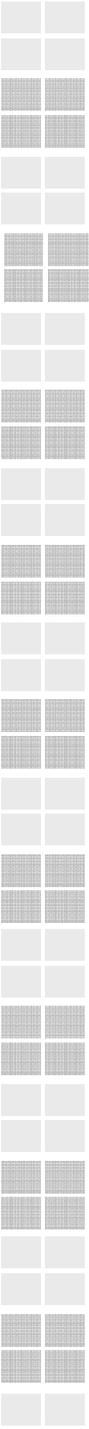


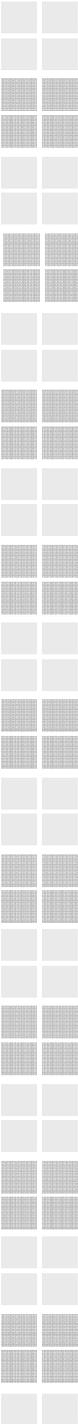
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What is a Special Assessment Area?



What is a Special Assessment Area?

- A Special Assessment Area is a financing vehicle used when a municipal improvement benefits a particular area to a greater extent than it benefits the municipality.
- Special Assessment Areas were known as SIDs (Special Improvement Districts) prior to 2007.
- Special Assessment Areas and Special Assessment Bonds are used by cities to finance improvements like curb, gutter, and sidewalk. They also can be used to fund infrastructure like roads, water, sewer, storm drain, and street lighting in new developments.

City-Initiated Projects



Developer-Initiated Projects



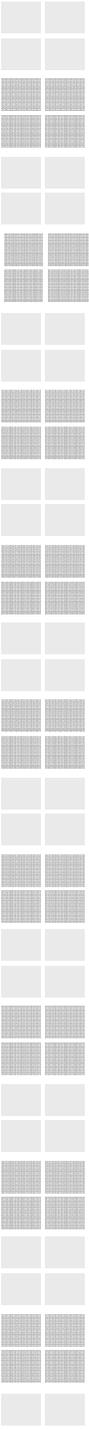
Tuhaye



South Jordan Riverpark Office Development



Red Ledges



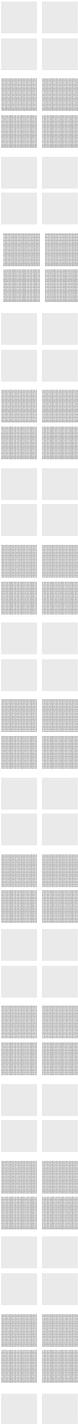
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What are the risks to a city in creating a Special
Assessment Area?



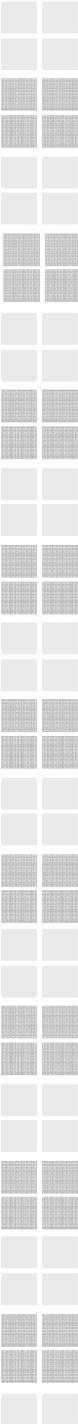
Mailing Notification

- The Responsibility- A “double mailer” detailing the intention to create the SAA, outlining the project and the estimated cost, the method of assessment, and the procedure for protesting the creation of the SAA must be sent to both:
 - ❑ Every physical address within the proposed SAA
 - ❑ Every taxpayer of record from the County’s taxpayer rolls.
- The Risk- Incomplete or improper notification can invalidate the process and require you to begin the entire creation sequence again. Property owners can also challenge an assessment after the improvements are in, causing the City to eat the cost. And you can really upset and alienate your residents.
- The Remedy- Certified mail! Be overly thorough if necessary to ensure legal compliance with Statute.



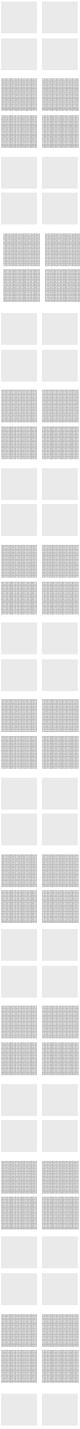
Cost Estimates

- The Responsibility-Provide property owners in the proposed SAA with an accurate estimate of the cost they will face if the SAA is created.
- The Risk-If final costs come in substantially higher, residents may be able to challenge the legality of the higher assessment and avoid payment. In such an instance, the City could be liable for cost overruns.
- The Remedy-Be conservative. It's ok to begin with a detailed engineer's estimate, but be careful to be very conservative with your estimates and include plenty of contingency. It's easy to tell people their assessment will be lower!



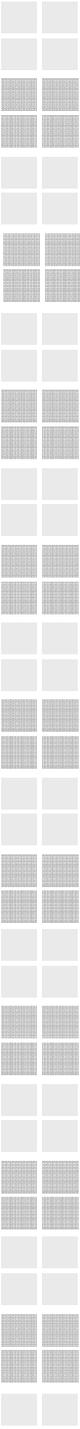
Final Project Design

- The Responsibility-Initial notification must include a detailed description of the project that the SAA is being created to fund.
- The Risk-If the project evolves or changes in any way from the initial notification, certain property owners may no longer benefit or would benefit to different degrees. Residents who no longer benefit cannot be forced to pay, potentially leaving cost overruns for the City to manage.
- The Remedy-Don't put the cart before the horse. Don't begin the process until all parties agree to the scope of the project and near-final design is in place. If the project changes substantially, be prepared to begin the process all over.



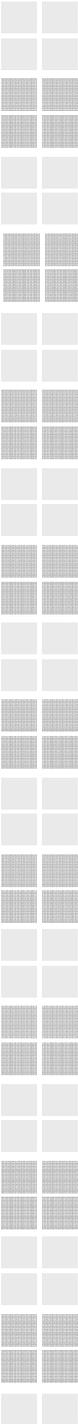
Identifying Properties

- The Responsibility-All benefitted properties must be included in an SAA. Property that will not be benefitted may not be included or assessed.
- The Risk-Property owners that are not benefitted cannot be required to pay an assessment (or even be included in the SAA). If estimates for individual assessments are based on the inclusion of “not benefitted” properties, the actual assessment figures will be understated.
- The Remedy-Work closely with your project engineers, legal counsel, and financial advisor to ensure that only benefitted properties are included. Properties may be added or deleted after the designation of an SAA, but the process is cumbersome and is better done right the first time.



Recordation

- The Responsibility-Once the SAA is created, the designation resolution must be recorded within fifteen days and a notice of proposed assessment must be on file with the county recorder.
- The Risk-If the recordation does not occur properly people who purchase property within the SAA may be completely unaware that a lien exists for the assessment.
- The Remedy-Proceed carefully-make sure this is done correctly. Don't take anything for granted.



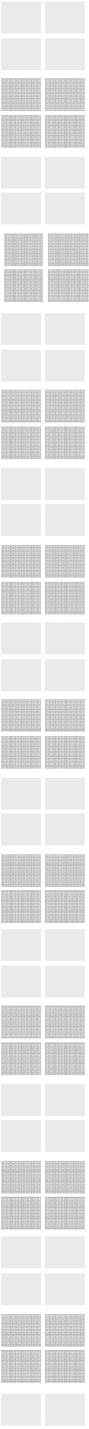
Method of Assessment

- The Responsibility-All assessments must be made in an “equal and uniform” manner according to the benefits received.
- The Risk-Property owners may disagree about what is “equal and uniform” and protest the creation of the SAA if they feel the method of assessment is unfair. There may be competing interests between residential and commercial property owners.
- The Remedy-Involve bond counsel, your city attorney and your financial advisor in the process to determine the most acceptable method of assessment, either by acreage, taxable value, lot, front-footage, ERUs, or some combination thereof.



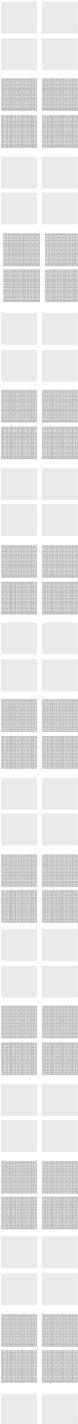
Prospect of Foreclosure

- The Responsibility-In the event of nonpayment, property owners can lose their property through foreclosure in 4-5 months. The City would be responsible for initiating that process, usually through an attorney acting as foreclosure trustee.
- The Risk-Evicting residents from homes can become a political hot potato. In some instances, municipalities have stepped in to make assessment payments on behalf of residents and then sought to recover payment on their own.
- The Remedy-Rarely will a governing body have the political will to throw someone out of their home. Be aware of this risk and decide in advance how this eventuality would be handled.



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What additional risks are involved in working
with a developer?

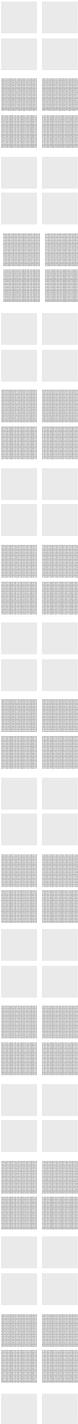


Who is Running the Show?

- The Responsibility-A special assessment area must be created and administered by the City. The city is responsible for levying and collecting annual assessments, paying debt service on bonds, maintain accounting records, foreclosing on properties in the event of non-payment, and submitting a minimum bid at any foreclosure sale.
- The Risk-Developers may assert control over the process, bring in their own team of professionals and insist the City use them, dictate terms, and otherwise exert political pressure on the City. This will be justified because “we’re the ones paying for it,” they say.
- The Remedy-Understand and clearly communicate to the developer that a special assessment area is the City’s creation and that the City will use it’s own professional staff, proceed at it’s own reasonable place, and at its own terms. Make sure developer’s understand that the City bears administrative and potentially legal risk for facilitating an SAA financing. The developer generally does not pay the assessment—they pursue an SAA precisely because they don’t want to pay for the costs of the proposed improvements, but wish to pass the costs on to their end purchaser.

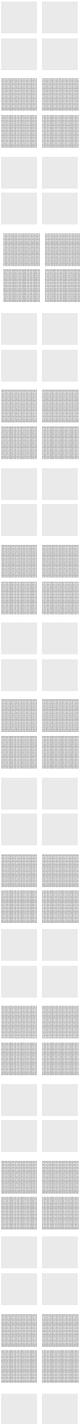
Appraisal

- The Responsibility-Financial institutions that look at purchasing special assessment bonds require a unique appraisal based on the “as is” value of the land at bulk sale with the value of the improvements to be financed added in. The appraisal value must be at least three times greater than the par amount of the bonds.
- The Risk-Developers may attempt to include the increased value to their land from the financed improvements in their appraisal in order to increase coverage or increase the size of the bond issue. If appraisal is done incorrectly the bonds will not be salable. If the coverage is too low the bonds may not be salable.
- The Remedy-Appraisals for SAA projects are best ordered by your financial advisor or another financial institution so that they can “travel” amongst potential bond purchasers. Ensure that the appraisal is conservative. The City should always sign a contract wherein the developer commits to paying for the appraisal.



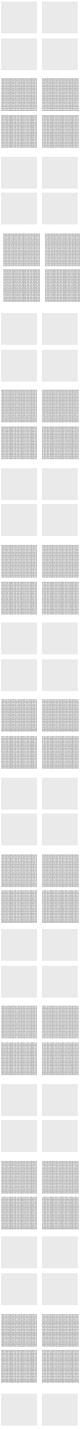
Project Viability

- The Responsibility-Cities should only facilitate Special Assessment Bond financing for projects that, first, they want in their City and second, that stand a strong probability of success.
- The Risk-Potential political fallout from supporting projects that either are not wanted in the community or that go into default, leaving vacant lots, empty land, or abandoned commercial development. Accusations of developer preference could also surface.
- The Remedy-Only assist projects that your residents want in the community. Look carefully at the developer's business plan, past track record, and financial position. What are their contingency plans in an economic slowdown? For certain mega-projects it may be worth hiring an outside financial consultant to review the expected project budget. New state legal requirements include: 3:1 coverage, a feasibility study, and an independent appraisal.



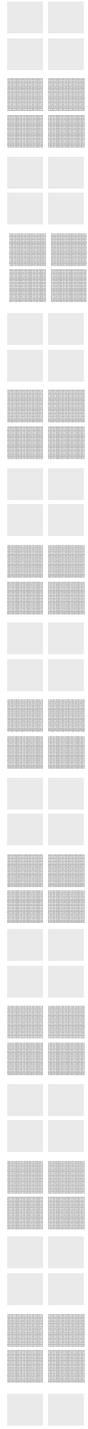
Political Fallout from Contested Assessment Areas

- The Responsibility-If owner of property representing less than a majority of the proposed assessments protest the designation of the SAA, the City may proceed with the creation and the assessment.
- The Risk-Even if SAA can legally move forward, there is political risk if a large number of protests have occurred. On particularly contentious projects, an area that can proceed but only by a slim margin will bring increased scrutiny and focus to procedural aspects of the creation and could incite litigation.
- The Remedy-Political leaders should be sensitive to any amount of protests. Understand why some property owners are protesting and seek to proactively mitigate their concerns where possible.



Conclusions

- Have your eyes wide open to the risks of special assessment financings.
- Work with competent, trained professionals like your financial advisor and bond counsel.
- Remember that a special assessment bond is done in your name and is ultimately your financing. Make sure you run the show.
- The devil is in the details– pay attention to the process and follow it to the letter.



QUESTIONS???