

WeMAR Comments Regarding EDRA – December 14, 2017

1 - Although the EDRA does not appear to allow the reimbursement zone to be used for re-zoning purposes, WeMAR is concerned the EDRA could be used as a means to alternative re-zoning of land, circumventing the Land Development Ordinances of the City/Municipality.

In order to eliminate this potential misuse of the Zone Plan, we recommend the EDRA bill be revised to explicitly state re-zoning within the Zone Plan does not take effect unless and until the municipality follows procedures and requirements established under state and local law for zoning amendments. We also suggest the term “zone” be replaced with the term “area” to further clarify the limited nature (Zone Plan becomes Zone Area).

2 - Section 9-500.11.C.3.d: “The Committee, when reviewing a proposed zone plan, must consider whether ANY reimbursable improvements identified in the plan: (i) will encourage commerce, industry, or manufacturing to bring or keep their operations in the state or municipality; (ii) will result in increased employment in the state; OR (iii) WILL RESULT IN THE PRESERVATION and enhancement OF THE TAX BASE of the state.” (Our emphasis)

WeMAR has some concerns with this paragraph. First, it appears to allow the Committee to approve a Zone Plan that identifies multiple reimbursement improvements even if only one of them would further one or more of the public interests.

Second, it appears the reimbursement improvement would only have to further one of the listed interests, not all of them. From our reading, it appears a Committee could approve a Zone Plan if a single reimbursable improvement would preserve the tax base, even if it did not encourage commerce, industry, manufacturing or increase employment.

Third, the “increased employment” provision does not contain a minimum requirement for job growth. WeMAR is concerned a high-cost infrastructure project, creating only a few jobs, would meet the standard.

Fourth, the provision appears to allow approval of a Zone Plan that preserves, but does not enhance, the state’s tax base. It does not require finding the reimbursable improvements increase property tax revenue within the reimbursement zone. Since the success of the Zone Plan depends on enhanced property values to generate revenue, we believe the EDRA bill should require finding the Zone Plan will result in an enhancement of the tax base in the reimbursement zone prior to Committee approval and referral to the Authority.

WeMAR requests Section 9-500.11.C3.d address these concerns more specifically so the purpose and success of the Zone Plan is better achieved.

3 - Section 9-500.11.C.5.b: “The Authority MUST SPEND or remit the excess increments to the applicable member within 3 years after the plan end date. For purposes of this provision, ‘excess increments’ means any unspent funds remaining when the Zone Plan terminates.”

WeMAR is concerned this section does not specify how funds must be spent by the Authority. We suggest funds must be spent “only for the purposes authorized in this section.” This wording reinforces the wording found in Section 9-500.11.C.5.a.

4 – Section 9-500.1.1.C.5.g.iii: “Reimbursement will be paid by the Authority **IN THE ORDER IN WHICH FINAL REIMBURSEMENTS ARE APPROVED, SUBJECT TO FUND AVAILABILITY.**”
(our emphasis)

WeMAR assumes the disclaimer that reimbursement will be paid subject to fund availability is intended to eliminate the risk to taxpayers and the City must pay for reimbursable improvements should the EDRA fail to generate adequate funds for reimbursement. However, it also has the disadvantage of eliminating a developer’s certainty of reimbursement. The result is increased risk to developers and their lenders who front the costs of improvements. The question of a developer’s ability to get outside financing to cover a large infrastructure project without the guarantee of reimbursement is a concern.

Even if a developer was able to front the funds for improvement, we question the willingness to do so under these circumstances. This could diminish the effectiveness of the EDRA. The lack of reimbursement guarantee may serve to encourage large developers to use the EDRA for improvements specifically and directly benefitting themselves. Which raises the question, “why establish the EDRA in the first place?” If a developer is willing and able to pay for the improvements that directly benefit them, then there may be no reason for the municipality to offer the reimbursement.

WeMAR is concerned reimbursements paid in the order in which final reimbursements are approved creates a first-in-time priority to reimbursements based on approval, rather than the date of application for reimbursement. Should there be multiple requests for reimbursement, but insufficient funds for full reimbursement this could create the potential of unfair decision making by the Authority. We see the potential for the Authority to receive two reimbursement requests, but only have funds enough for one. This provision would allow the Authority to choose at its discretion which one to approve first, depriving the other request of all or a portion of the reimbursable amount. It also opens the door for the Authority to not take action on a reimbursement request for an extended period of time in order to wait for completion and reimbursement request for a completed project in order to await completion of a more favored project that is then approved before the earlier submission. We suggest the EDRA bill be reworded so that reimbursement funds are paid in order of received requests rather than approved requests.