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South Carolina Association of County Attorneys

FOIA Update, Legislation and Cases &  
What You Need to Know About  
Tax Increment Financing (TIFs)

August 3, 2015

# FOIA Legislative Update |



## Recent Amendment to the Freedom of Information Act

### Act 70: Changes to Agenda Requirements

- Requires an agenda for regularly scheduled and special-called meetings
- Agenda must be posted along with notice of the meeting
- No items may be added to the agenda within 24 hours of the meeting
- Changes to the agenda within a meeting must be approved by a 2/3 vote of members present
- If the item to be added is a final reading or there will not be an opportunity for public comment the change must be approved by a 2/3 vote and it must be an “emergency or an exigent circumstance”
- “Exigency” – An urgent need or circumstance

# FOIA Legislative Update |



## **Proposed Amendments to the Freedom of Information Act**

H.3191: Makes broad changes to FOIA including:

- Creates office of FOIA review in the Administrative Law Court
- FOIA disputes are ruled upon by a “hearing officer”
- Rulings by hearing officers will create good faith “safe harbors” for local governments
- Makes clear that there is no duty to convert records to electronic format
- Requires an approved fee schedule and caps hourly rate at the lowest rate of any employee qualified to perform the work
- Cuts response time to 10 days (20 days for records over 2 years old)
- Requires that requests be fulfilled in 30-35 days (depending upon age of docs)
- Does away with criminal penalties for FOIA violations



## Specific Purpose of Executive Sessions| Statute *Freedom of Information Act, Section 30-4-70(b)*

Before going into executive session . . . the presiding officer shall announce the specific purpose of the executive session. As used in this subsection, "specific purpose" means a description of the matter to be discussed as identified in items (1) through (5) of subsection (a) of this section. However, when the executive session is held pursuant to Sections 30-4-70(a)(1) or 30-4-70(a)(5), the identity of the individual or entity being discussed is not required to be disclosed to satisfy the requirement that the specific purpose of the executive session be stated.



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## Specific Purpose of Executive Sessions| Cases *Quality Towing* (2001)

### **Facts:**

- Agenda: “Towing—Contractual Recommendation”
- Announcement: “This matter will be discussed in executive session”



### **Holding:**

- “FOIA is not satisfied merely because citizens have some idea of what a public body might discuss in private. As evidenced by the minutes, the presiding officer did not announce the specific purpose of the executive session.”

*Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 547 S.E.2d 862 (2001).



## Specific Purpose of Executive Sessions| Cases *Brock* (2014)

### **A Tale of Three Executive Sessions:**

#### *November 13*

- Agenda: “Legal and Contractual Matters pertaining to properties near Shem Creek.”
- Announcement: “Staff would like to ask Council to go into executive session to discuss legal and contractual matters pertaining to properties near Shem Creek...” 

#### *November 16*

- Agenda: “Legal Advice pertaining to OK Tire property litigation”
- Announcement: “A motion was needed to adjourn into executive session regarding legal advice pertaining to the OK Tire property litigation . . .” 

#### *December 5*

- Agenda: “Receive legal advice pertaining to the OK Tire Store Litigation”
- Announcement: “The settlement of legal issues and purchase of property known as the OK Tire Store and other properties” and “legal advice on OK Tire property litigation.” 

*Brock v. Town of Mount Pleasant*, 411 S.C 106, 767 S.E.2d 203 (Ct. App. 2014).

## Specific Purpose of Executive Sessions| Cases *Donohue* (2015)



### **Facts:**

Agenda/Announcement: “Upon the request of the City Administrator and in accordance with Section 30-4-70 (a) (2) . . . City Council unanimously voted to go into executive session for the purpose of discussion of negotiations incident to 1 proposed contractual” ✗

### **Holding:**

- Reiterates the holding from *Quality Towing*
- “The circuit court erred in finding that respondents satisfied the FOIA's specific purpose requirement when they announced the specific purpose of the executive session in these types of general terms.”

*Donohue v. City of North Augusta*, No. 27530, 2015 WL 3757108 (S.C. Jun. 17, 2015).

## Specific Purpose of Executive Sessions|

*What should you announce... Who knows?*

**(a)(1)** Personnel matters related to an employee

- *Announce the department that the person is in (if possible)*

**(a)(2)** Contractual negotiations, sale or purchase of property, the receipt of legal advice for matters covered by attorney-client privilege

- *Announce the entity or specific property (if possible)*
- *For active legal matters, announce the name of the case*
- *For pending legal matters or general legal advice, be as specific as possible*

**(a)(3)** Development of security personnel or devices

- ?

**(a)(4)** Investigative proceedings regarding allegations of criminal misconduct

- ?

**(a)(5)** Economic development matters

- *Use the project name*

***Other Suggestions?***



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What You Need to Know About  
Tax Increment Financing (TIFs)

August 3, 2015

# Introduction



You receive notice from a municipality that it is considering a development plan that includes Tax Increment Financing . . .

- What should you do?
- What are your considerations?
- What options do you have?

## What is a TIF? | Introduction



- Tax increment financing is allowed by the South Carolina Constitution (1977 Amendments). Article X, Section 14 authorizes a city to borrow money for redevelopment within its incorporated boundaries, with debt service to be provided from the incremental property tax revenues resulting from the value added by the redevelopment project.
- Law for cities is codified at Chapter 6 of Title 31, Code of Laws of South Carolina (originally enacted in 1984, and amended many, many times).
- TIF Law upheld in *Wolper v. City Council of City of Charleston* (1985).
- Power to Counties in 1999 (late to game)(not addressed here).

## Statutory Process | TIF Process



- Starting point is the adoption of a Redevelopment Plan (defining a Redevelopment Project Area). The Redevelopment Project Area must contain blighted areas, conservation areas or more recently agricultural areas (sprawl areas).
- Differences between blighted areas and conservation areas; and improved areas and vacant areas.
- Factors for improved structures: age, dilapidation, deterioration, illegal use of structures, code violations, vacancies, lack of planning, lack of adequate infrastructure, etc....
- Factors for vacant areas (if not blighted or conservation) include: poor platting, tax delinquencies, deterioration of neighboring structures, etc....

## Statutory Process | TIF Goes Active



- The TIF Law does not authorize any revenues from the TIF to be used for the Redevelopment Projects until the issuance of TIF Bonds, secured by and payable from tax increments.
- Once the assessed value in the Redevelopment Area exceeds the initial assessed value at the time the Redevelopment Area is created and TIF Bonds are issued, a special tax allocation fund is created and the funds therein are used to pay project costs (including the payment of the debt obligations).
- Initial issue of TIF Bonds must be issued within 10 years of the adoption of the Redevelopment Plan and other affected taxing districts must consent to inclusion within the District in order for their increment to be pulled off.
- Other revenues may be made available to retire the obligations.
- Debt is not chargeable against debt limit.

## Statutory Process | Necessary Actions



- Section 31-6-80 requires the municipality to give forty-five days public notice to all taxing districts (i.e. County, Special Purpose Districts, etc.) if there is taxable property included in redevelopment project area.
- Notice must direct taxing district to give comments to the municipality concerning the subject matter of the hearing prior to date of the public hearing.
- If taxing district does not file an objection to the redevelopment plan at or prior to date of public hearing, **the taxing district is deemed to consent.**
- City can then make changes to respond to taxing district's objections.

## Your Response | What are your choices?



- Consent without comment (no action required)
- Consent in part (can object to obligations above a certain amount)
- Object to the project entirely (object to any obligations)
- As of 2012, enter into an intergovernmental agreement (IGA)

## Your Response | What are your considerations?



- Is City Providing the service?
- If not, will the TIF cause a marginal increase in required services to the area?
  - Will it be a resource hog?
  - How long will the services need to be provided for?
  - What are your individual concerns?

## TIF Problems | Common Complaints



- Redevelopment will overburden services
- Subsidy for business that is not needed
- Its not fair to the taxpayers
- Inefficient use of money
- It's unnecessary – businesses will invest if there's an opportunity

## Your Response | Intergovernmental Agreements



- Defined by S.C. Code Ann. § 31-6-85
- Enacted in 2012, effective June 20, 2012
- Can consent to participate in a redevelopment project on partial or modified basis
- Agreement is effective upon ratification by County and Municipality

## Your Response | Intergovernmental Agreements



- What is the term?
- What is the split of revenue?
- When will the IGA be effective?
  - At signature?
  - When bonds are issued?
  - When identified infrastructure goes on tax bill?
  - Will there be triggering events?
- Will you limit your participation?
- Can the TIF be amended?

# North Augusta Case | Challenge to Amendments



## **Facts:**

- City expanded original TIF district to extend term and amount of bonds authorized. City makes new substantive findings and follows procedural requirements of the TIF Act. Enters IGAs with county and school district. Citizen challenges propriety of findings.

## **Holding:**

- SC Supreme Court says § 31-6-80(F)(2) requires the municipality to comply with only the procedural requirements of § 31-6-80(B)–(D), not the substantive findings such as additional findings of blight and declining property values.

## **End Result:**

- Plan amendments stand. Project may proceed.

*Donohue v. City of North Augusta*, 2015 WL 3757108 (S.C. Jun. 17, 2015).

# Clemson Case | Challenge to Plan Expenditures



## **Facts:**

- City adopts redevelopment plan in 1988. Total TIF Bonds authorized were \$8m and forecast costs of projects was \$9.4m. City issues \$8m of bonds with cost to retire bonds as \$11m. As of 2014, TIF revenues totaled \$15.3m. City never distributed surplus and instead continued to fund projects.
- County and school district file suit against city alleging expenditure of TIF funds outside the scope of the redevelopment plan and failed to return surplus funds to county and school district.

## **Holding:**

- Trial court order finds for county and school district - while TIF was established correctly, the city had exceeded the scope of the redevelopment plan in terms of projects and amounts and owed surplus to county and school district.



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**Questions?**

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