

NEXT CHALLENGE. NEXT LEVEL.

NEXSEN | PRUET

October 5, 2012

Fee-in-Lieu of Tax (“FILOT”) and
Multi-County Park (“MCP”) /
Special Source Revenue Credit (“SSRC”)
Arrangements
- Developer Issues

Tushar V. Chikhliker
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, SC 29201
803-253-8261
Tushar@nexsenpruet.com

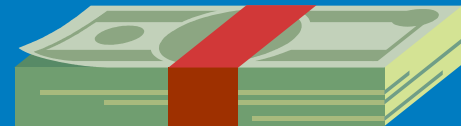
FILOTs and MCPs/SSRCs – Developer Issues

- I. Basic Property Taxes Calculation
- II. FILOTs – The Basics
- III. Developer FILOT Project Scenario
- IV. Developer FILOT Arrangements
- V. Key Issues in Developer FILOTs
- VI. MCP/SSRCs Coupled with FILOT or “Naked”

I. Basic Property Taxes Calculation

Equation to calculate property tax bill:

FMV * Assessment Ratio * Millage =



II. FILOTs – The Basics

- 3 FILOT Statutes/Acts – Most commonly used today – Title 12, Ch. 44 of S.C. Code (Simplified FILOT)
- Minimum Requirements:
 - Standard FILOT – S.C. Code § 12-44-30 (14)
 - \$2.5M (\$1M for certain counties or in Brownfields Voluntary Cleanup Scenarios)
 - Super Fee/Enhanced Investment FILOT – S.C. Code § 12-44-30 (7)
 - \$150 M and 125 new full-time jobs or \$400M

II. FILOTs – The Basics

- Investment Period – S.C. Code § 12-44-30(13)
 - Standard FILOT – 5th anniversary of end of property tax year in which FILOT property initially placed in service.
 - Super Fee/Enhanced Investment FILOT – 8th anniversary of end of property tax year in which FILOT property initially placed in service.
 - Extensions – up to 5 more years (but not to reach statutory minimums).
 - 15-year investment period available for very large investors in SC.
- FILOT Term
 - Up to 30-year rolling payment period for Standard FILOTs (40-year period for Enhanced Investment FILOTs) – S.C. Code § 12-44-30(21).
 - Possible extension of 10 years.
- FILOT arrangement affects all 3 variables in property tax formula – (1) FMV; (2) AR; and (3) Millage.

II. FILOTs – The Basics

Fair Market Value (FMV) – S.C. Code § 12-44-50(A)(1)(c): Real Property

- Outside of FILOT: Based on assessment by DOR or county assessor.
- Inside of FILOT: Traditionally, original cost over the life of the FILOT (recent legislation allows for value to be based on appraisal by SCDOR).

Machinery & Equipment (M&E)

- Generally, same outside and inside FILOT, but if in FILOT not entitled to extraordinary obsolescence.

II. FILOTs – The Basics

Assessment Ratio:

- Outside of FILOT
 - Manufacturing - 10.5% on both real and personal property (chiefly M&E).
 - Commercial – 10.5% on personal property and 6% on real property.
- Inside of FILOT
 - Down to 6% on both real and personal property.
 - 4% on Super Fees/Enhanced Investment FILOTs.

II. FILOTs – The Basics

Millage:

- Outside of FILOT
 - Millage is set annually. Can actually go down in reassessment years but tends to increase.
- Inside of FILOT
 - Millage is fixed for the life of the FILOT or subject to 5-year rate reset.

III. Developer FILOT Project Scenario

- Developer acquires large tracts of undeveloped land with intent to develop mixed use industrial park.
- Sale or lease of land and/or buildings to companies who will make additional investment.
- Common Methods
 - Developer invests in infrastructure and constructs spec buildings on individual parcels with intent to sell or lease.
 - Developer invests only in infrastructure on individual parcels with intent to sell or lease.

IV. Developer FILOT Arrangements

- Developer requests FILOT covering all of its land - prior to investment.
 - Upon selling or leasing such property, Developer intends that benefits of FILOT be extended to such company.
 - If property sold to company – benefits transferred only as to subject property, with Developer retaining benefits on remaining property.
 - Transfer of FILOT benefits and subject property allowed if pre-approved or subsequently ratified by county. S.C. Code §12-44-120(D).
 - If property leased to company – company designated as additional “sponsor” or “sponsor affiliate.”
 - Must be approved specifically by the county. S.C. Code §12-44-130(A).
 - Could affect flexibility of Developer.

IV. Developer FILOT Arrangements

Practical Considerations

- Multiple companies (in addition to Developer) could be benefitting under one FILOT arrangement.
 - Record keeping is important.
- Company can negotiate separate package in replacement of, or in addition to, incentives provided to Developer.

IV. Developer FILOT Arrangements

- **Benefits to Developer**
 - Millage rate and assessment ratio - like any other taxpayer.
 - Base county incentive package on property = assists in marketability of property for sale or lease (assuming incentives are transferable).
 - Potential of no additional governmental approvals necessary.
- **Benefits to County**
 - Allows for development of sites ready for investment by companies (e.g., shovel ready sites) at the expense of Developer, not the County.
 - Developer uses own marketing dollars to promote sites.
 - Helpful in attracting projects.

V. Key Issues in Developer FILOTs

“Commencement Date” – S.C. Code § 12-44-20(2)

- Last day of the property tax year during which economic development property is placed in service.
- Must not be later three years from end of the property tax year in which the FILOT agreement is entered. S.C. Code §12-44-30(2).
- Three years is not a long time for a Developer trying to sell or lease industrial park property.
 - In-service requirement poses another challenge.

V. Key Issues in Developer FILOTs

“Investment Period” – S.C. Code § 12-44-30(13)

- Ends 5 years (Standard FILOT) or 8 years (Super Fee/Enhanced Investment FILOT) from the Commencement Date with possibility of up to 5-year extension.
- 5-year investment period does not provide much time from a marketability perspective.
 - Example
 - Company A purchases property from Developer and places property in service in Year 1.
 - Developer sells other park property to Company B in Year 3.
 - Unless extension is granted, Company B has 2 years left on investment period.
- Other issues
 - Different property tax years among companies.
 - Extensions of Investment Period to some but not all companies.

V. Key Issues in Developer FILOTs

“Minimum Investment” - S.C. Code §12-44-30(14)

- General requirement of \$2.5M of investment in the “project” for Standard FILOTs.
- Sponsors/Sponsor Affiliates – each not required to hit \$2.5M if “project” investment aggregates to \$5M – for certain types of projects. S.C. Code § 12-44-30(19)
- Key Question – What is the “Project?” S.C. Code §12-44-30(16).
 - Is “Project” total development or each individual company’s investment?
- Investment maintenance also an issue.

Events of Default under FILOT Agreement

- Default by one company claiming under FILOT but not others.
- Drafting of original FILOT Agreement and assignment/assumption agreements can be crucial.

VI. MCP/SSRCs Coupled with a FILOT or “Naked”

Special Source Revenue Credits (SSRCs)

- Allows a county to equalize (or lower) its property tax rate with any other county or state.
- Real and personal property are eligible expenditures payable through SSRCs.
- Often coupled with a FILOT.
 - Typically, presented as a % of FILOT payment or a flat \$ amount and applied against FILOT payment due for a defined period of time.

Issues for Developer FILOTs with SSRCs

- If SSRC period is a hard number of years (as opposed to rolling), all companies may not benefit fully from credits.
 - Example
 - Company A purchases property from Developer and places property in service in Year 1.
 - SSRC granted under FILOT agreement is 25% of FILOT payments for 10 years.
 - Developer sells other property to Company B in Year 4.
 - Company B places property in service in Year 5.
 - Company B only has ten years of credit period remaining.

VI. MCP/SSRCs Coupled with a FILOT or “Naked”

“Naked” MCP/SSRCs

- FILOT agreement not a prerequisite for SSRCs.
 - “Naked” MCP coupled with SSRC – Can be a useful tool.
 - Projects that will not meet minimum investment requirement for FILOT.
 - Projects involving acquisition of property previously subject to property taxes.
 - Projects where assuming existing FILOT is not financially advantageous.

NEXT CHALLENGE. NEXT LEVEL.

NEXSEN | PRUET