

MEMORANDUM

TO: Town Council

cc: David F. Shafer
Clay Johnson

FROM: Eugene M. Feingold/Steven P. Kennedy

RE: **Redevelopment Commission v Indiana State Board of Accounts
Declaratory Judgment Action**

DATE: August 25, 2014

FACTUAL BACKGROUND

The Munster Park Department has included TIF funds in its maintenance budget in past years for Centennial Park and Community Park based on the fact that facilities were constructed in each of these parks utilizing TIF funds. The Town was of the belief that TIF funds can be used for the maintenance of a TIF financed project.

The State Board of Accounts has taken the position that the statutory provisions pertaining to the use of TIF funds did not allow for their use to maintain a TIF project after it has been completed. The Town received a memorandum opinion from its bond counsel, Buddy Downs, which in general suggested that redevelopment revenue can be used to maintain a redevelopment project.

Based on a perceived conflict between the position of the State Board of Accounts and the memorandum opinion of bond counsel, the Town Council instructed us to file an action for declaratory judgment to get an authoritative interpretation of the law. The case was filed in the Lake Superior Court, Room 4, sitting in Gary, Indiana. There was some delay in resolution of the case resulting from the death of the honorable Gerald Svetanoff, the Judge in Room 4.

Ultimately the matter was submitted on cross motions for summary judgment and was heard by Judge Thomas W. Webber, a retired Judge who was sitting temporarily in place of Judge Svetanoff. On August 1, 2014, Judge Webber issued his opinion. He held that the statutory provision cited by the State Board of Accounts do limit the use of TIF funds and do not permit the use of such funds for maintenance of parks despite the fact that the parks were constructed partly through the use of TIF funds.

COURSE OF ACTION AVAILABLE

A. Motion to Correct Error

By Indiana Trial Rules, the party which disagrees with the Court's judgment may within thirty days of the judgment file a motion to correct error. This motion suggests the Court erred and requests that it correct its decision. In this case, it is unlikely that the Court will favorably consider a motion to correct error since the argument for statutory interpretation was fully briefed by both sides and the Court made its determination. We believe this would not be a productive strategy.

B. Appeal

In a declaratory judgment action, as in other cases, the determination of a trial court is not binding precedent on similar situations. An authoritative determination of the law comes only in a review and decision by an appellate court. By Court rules, the Town of Munster has thirty days for the issuance of the Trial Court's opinion to file any appeal with the Indiana Court of Appeals. Based on the date of the Trial Court's opinion, a notice of appeal would have to be filed on or before September 2, 2014.

LIKELIHOOD OF SUCCESS

The Indiana Appellate Court reviews questions of law de novo, that is it considers the matter new without deference to the Trial Court's opinion. It is our opinion that there is no specific prohibition on the use of TIF funds to maintain TIF projects. The general authority of the Redevelopment Commission is broad. We have argued that the statutory provisions do authorize use of TIF funds if necessary to maintain a TIF project. Based on the overall purposes and broad powers of a Redevelopment Commission, we believe this argument is supportable as we believed it was supportable to the Trial Court.

As with any matter of legal interpretation, there is no guarantee as to how an appellate court would rule. The part of the impetus in the first place for filing a declaratory judgment action was that there was no definitive interpretation of the law. If the Council feels that the possible use of TIF funds for maintenance purposes is of importance to the Park Department's budgetary considerations, presenting the matter to the Court of Appeals for a further definitive determination would have some benefit.

EMF/SPK:mmm

8-6-14 cc: David F. Shafer
John P. Reed
Thomas F. DeGiulio
Clay Johnson

STATE OF INDIANA) IN THE LAKE SUPERIOR COURT
) SS: CIVIL DIVISION ROOM FOUR
COUNTY OF LAKE) SITTING IN GARY, INDIANA

REDEVELOPMENT COMMISS-) CAUSE NO. 45D04 -1310-PL-00092
ION of the TOWN OF)

MUNSTER, INDIANA)

Plaintiff)

Vs)

INDIANA STATE BOARD OF)

ACCOUNTS and BRUCE A.)

HARTMAN, STATE)

EXAMINER OF STATE BOARD)

OF ACCOUNTS)

Defendants)

FILED IN OPEN COURT

AUG 01 2014

Gerald N. Avetianoff
JUDGE
SUPERIOR COURT OF LAKE COUNTY

ORDER ON PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

Plaintiff, Redevelopment Commission of the Town of Munster, Indiana, hereinafter referred to as (Commission) appears by counsel, Attorneys Eugene M. Feingold and Steven P. Kennedy. Defendants, Indiana State Board of Accounts and Bruce A Hartman, State examiner of State Board of Accounts, hereinafter referred to as (Board), appear by counsel, Deputy Attorney General, William M. Horne. This cause is presently before this court on the motion for Summary Judgment filed by the Commission requesting the Court to interpret whether Indiana Code Section 36-7-14-28 (Section 28) allows or permits restricted **Tax Increment Financing** (TIF) funds to be used for the maintenance of two city parks.

The Court after reading the parties pleadings, including the Commission's complaint, the Board's answer to the complaint, the Commission's motion for Summary Judgment and the Board's response to the Summary Judgment motion wherein the Board

also requested Summary Judgment on its denial of the complaint. The Court also read the Commission's reply brief which the court also considered.

It is to be noted that in the Board's response to the Commission's motion for summary judgment on page two (2) foot-note one (1) that Bruce A. Hartman has retired from his position as State Examiner of State Board of Accounts and that Paul D. Joyce is the current State Examiner of State board of Accounts. The Board requests amendment of this case caption to reflect the change of State Examiner

Inasmuch as this matter concerned particular Indiana Legislative enactments, the court lastly read and considered the **"Duties of the Commissioners"** I.C. § 36-7-14-11, **"Powers of Commissioners"** I.C. § 36-7-14-12.2, **"Tax Levy for planning, property acquisition and expenses; deposit in capital and general fund"** I.C. § 36-7-14-28 and those referred to as the codified section 28, to wit: **Distribution and allocation of taxes** I.C. § 36-7-14-39, **"Designated taxpayer; modification of definition of property taxes; allocation provisions of declaratory resolution"** I.C. § 36-7-14-39.2 and **"Definitions"** I.C. § 36-7-14-39.3. It is noted that only one of the aforementioned Indiana Code provisions use the word "maintain" It is a stated purpose that within the powers of the commission that the commission can acquire real property and "Repair and maintain structures acquired for redevelopment purposes" I.C. § 36-7-14-22.2 (a)(7). No other language cited by the parties gives the impression or idea that the legislature intended to allow TIF funds to be used for the continued maintenance of properties acquired and improved through the use of TIF funds.

Additionally, from the evidence submitted the court finds that the intended use of TIF funds by the commission is to maintain property not owned by the Commission, but by the Town of Munster. Clearly this is not a matter that falls within I.C. § 36-7-14-22.5 where maintenance of real property owned by the commission can be maintained by commission with TIF funds.

Based on the foregoing, in this court's opinion, the intended use of TIF funds by the Commission is an improper use and allocation of TIF funds and therefore the motion of the Commission for Summary Judgment must be denied and Judgment must be entered for the Board.

IT IS THEREFORE ORDERED as follows, to wit:

1. Firstly, the court grants the request of the Board and orders amendment of the caption in this cause to reflect the change of the State Examiner of the State Board of Accounts from Bruce A. Hartman to Paul D. Joyce.
2. The Court Denies the motion of the Commission for Summary Judgment concluding that I.C. §36-7-14-28 does not permit the use of TIF funds for the maintenance of parks owned and operated by the Town of Munster.
3. That the Court Grants Summary Judgment for the Board in that it is correct in its determination that the use of TIF funds cannot be used for the maintenance of parks owned and operated by the Town of Munster.
4. Inasmuch as this is full and final determination by the Court regarding the declaratory action request of the Commission, either party may appeal this Court's decision by following the applicable rules of appellate practice. Further, the Court does certify this declaratory action issue for appeal.

So Ordered this 1st day of August, 2014.

Signed: _____



Senior Judge Thomas W. Webber, Sr.

Judge Pro Tempore, Lake Superior Court

Civil Division, Room Four

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