PUBLIC-PRIVATE PARTNERSHIPS:

TEAMWORK DIVIDES THE TASKS AND MULTIPLIES THE SUCCESSES

by Charles Renner

Addressing aging public infrastructure, encouraging private development, and responding to the needs created by population growth are priorities for many communities across Missouri. In each case, the challenges of tackling these objectives are too burdensome for any one funding source to undertake. And, in the current economic environment, community needs are growing as the resources to address them become more difficult to find. However, Missouri's municipalities can clear this hurdle by participating in public-private partnership developments. The formation of integrated public-private partnerships can become the catalyst for achieving multiple objectives that leverage the contributions of each partner in a way that magnifies the results and sheds some of the limits imposed by constrained resources.

Additionally, as the private sector looks for ways to reverse the impact of the most significant economic downturn since the Great Depression, the development community may find itself considering opportunities that cannot be seized through conventional debt and equity financing. Private developers are seeking new ways to leverage the costs and risks of raising real property to its highest and best use, but finding options is difficult. The lending community also seeks to find ways to change the title of distressed property from "bank owned" to "development under way."

In short, municipalities, developers and lenders all face different specific hurdles and, left to their own means, these hurdles can be too burdensome to clear. However, despite the challenges, municipalities and the private sector are concluding that the alternatives to taking action would be detrimental to long-term outcomes. It is in this circumstance that public-private partnerships, coupled with a productive combination of Missouri's economic development tools, can serve as the preferred mechanism to get things done.

Generally, a public-private partnership can comprise a real estate development-related undertaking that includes a contractual arrangement between a governmental entity (federal, state or local) and a private sector developer that leverages their joint resources in order to accomplish an identified public benefit. On a small scale, public-private partnerships have been present in the economic development world for quite some time. Whether it is the formation of a transportation development district to increase signalization near a new retail project, or the implementation of a detailed maintenance agreement for a suburban residential development in order to enhance publicly-owned amenities, the inclusion of a public-private partnership tends to magnify positive results. When the objectives become larger, leveraging a public-private partnership becomes all the more significant.

One recent demonstration of the benefits of a public-private partnership occurred in Grain Valley, Missouri. Located just off of Interstate 70, approximately 25 miles east of Kansas City, Grain Valley is a city with rapid population growth and an anticipated demand for improved public infrastructure. The 2010 census figures revealed Grain Valley to have just under 13,000 residents, which is 149 percent of the 2000 census population. While modest in number, that rate of growth indicates the growing pressure on, among other things, the transportation infrastructure servicing the community. During the same time period that Grain Valley's population was growing, the state of Missouri concluded that the Interstate 70 Interchange into Grain Valley, the City's main access route, was in need of a significant upgrade. This conclusion led to an initial agreement between Missouri and Grain Valley, whereby the state would participate in the funding and construction of the interchange upgrade and related road improvements, as long as the City participated as well. The total cost of this project was estimated to be about $18.2 million, with the state contributing a little under $10.7 million towards that cost. Grain Valley was left to fund the remaining $7.5 million within a defined period of time. With a tax base of less than 13,000 persons, $7.5 million represents 61 percent of the City's annual budget. In other words, a significant opportunity also had brought with it a significant challenge.

At the same time, the City connected with a developer with an interest in undertaking a retail project on one of the four corners of land along the interchange. The possibilities generated by a new commercial development, including a top-tier movie theater and 60,000 square feet of new retail space, in this small community were apparent and exciting. What was less apparent, however, was how to bridge a nearly $9 million project cost gap in order to see this proposed development take place. Taken as individual challenges, it is possible to imagine a scenario where the developer would seek approval of economic development tool financing from the City, while the City was separately seeking to extract $7.5 million from its own budget for the interchange project.

Recognizing these separate problems and a joint opportunity, Grain Valley's leadership initiated a detailed public-private partnership with a developer that used several economic development tools and leveraged joint resources to significantly reduce the gaps facing both projects. This particular partnership included the use of a community improvement district (CID); a neighborhood improvement district (NID); an area-wide tax increment financing plan (TIF); and more traditional resources from both the City and the developer. The results provided the City with an anticipated revenue stream for $6.1 million of its $7.5 million obligation, including a significant upfront amount paid by the developer through special assessments on his property. And, the developer, whose project costs were increased by this program, saw the financing/equity gap closed by the use of economic development incentives approved by the City.

On the development side, the first economic development tool engaged was tax increment financing. The TIF plan that captured 50 percent of all new sales tax revenue generated by the development, Economic Activity Taxes (EATS), along with incremental property tax revenue, came close to filling the private finance/equity gap necessary to support the commercial development, but didn't quite make ends meet. The sales tax revenue that the development project would generate for the City was seen as a partial funding source for the interchange cost. However, in order to further shrink the City's funding gap, a more sophisticated public-private partnership structure was designed.

The developer agreed to the issuance of bonds through the use of an NID. The NID funded some public improvement costs on the development site. More significantly, the NID also funded $1.5 million of the City's obligations under the interchange project contribution requirements. Bonds issued under Missouri's NID statute are paid for by an annual special assessment levied against real property identified in a petition forming the NID. In this case, the only property subject to the NID special assessment was the developer's property. In other words, the developer agreed to make annual payments to be converted into funds for the City's portion of the interchange project.

Next, the developer and the City agreed to form a CID over the development site and included authorization for a site-specific sales tax in the petition to form the CID. This served two added purposes. First, half of the new CID sales tax revenue was used by the CID to fund public improvements within the development area. Second, the remaining half of the CID sales tax revenue was captured as EATS under the TIF plan. The use of a CID sales tax within a TIF plan increases the available TIF revenue and reduces the burden on other local sales taxes affected by that same TIF plan (city and county sales taxes, for example). A CID also distributes representation between the City and the developer that further cements the public-private partnership nature of these combined undertakings.

Finally, while the TIF plan on the development site brought with it a significant contribution toward both the developer's costs and the City's road program, a comparatively modest gap for the City still remained (The Development Site is area 2 Figure 1). A total $1.4 million of the original $7.5 million had not yet been addressed (see summary on Figure 2). The commercial project and interchange program would likely combine to stimulate further development within the other three corners of the area (see depiction below). Accordingly, the City expanded the TIF area to include all four corners of land surrounding the interchange location with the expectation that, as those remaining areas develop, they would have done so partly due to the current public-private partnership and the City would then be able to receive further economic participation from future development connected to the current work.

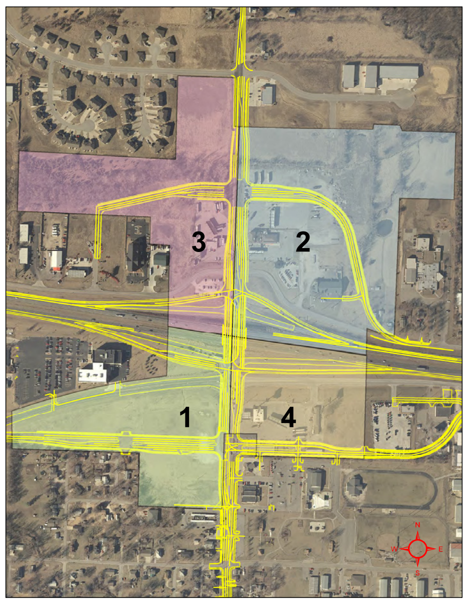

Figure 1

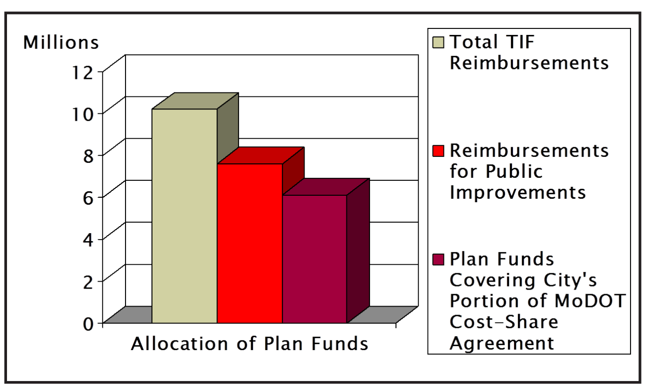

Figure 2

These efforts in Grain Valley, and in numerous other municipalities elsewhere throughout Missouri, demonstrate the creativity and resource leveraging that is possible with the formation of public-private partnerships. Missouri provides a number of economic development tools that, when used proactively, can serve to facilitate development and assist municipalities as they work to answer the demands of demographic changes and aging public infrastructure. The collaboration of attorneys, versed in the use of these tools, along with financial and development professionals, can assist in creating opportunities to resolve today's growth challenges. As many communities further their plans on how best to emerge from the economic conditions of the last several years, the municipalities that make the most of opportunities with private developers and economic development experts will likely be the jurisdictions that attract more private development. And, with the innovation derived from public-private partnerships, leveraged resources can demonstrate the versatility of the current menu of economic development tools found within Missouri.❑

Charles Renner is a partner in Husch Blackwell's Real Estate Department. He represents developers, business clients and numerous commercial and retail proprietors in the use of public financing tools.