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A REVIEW OF THE LAKE FOREST PLAZA TIF PROPOSAL

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BGR Project Staff

Janet R. Howard, *President*
Peter Reichard, *Projects Manager*
Stephen Stuart, *Principal Author*

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Bureau of Governmental Research
938 Lafayette St., Suite 200
New Orleans, Louisiana 70113

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INTRODUCTION

On September 17, 2009, the City Council will consider a request from the city administration and the owners of the former Lake Forest Plaza Shopping Center site for a tax increment financing (TIF) subsidy to spur its redevelopment. The property owners and local officials have billed the TIF-supported retail development as a high priority for New Orleans East's recovery, and community leaders have provided their support. The property owners contend that the site cannot be redeveloped without a TIF subsidy.

Some type of well conceived, properly targeted public assistance is likely to be needed to spur retail development at the Lake Forest Plaza site. However, the current TIF proposal is fraught with problems. Among them:

- The proposal would commit the city to provide tens of millions to assist a private entity that is in default on pre-Katrina debt to the city. It would not, however, make the city whole on the debt it is owed.
- It would use public money to pay pre-existing debts between private parties.
- Paying these debts and the up-front costs for new TIF debt would soak up much of the public investment, severely reducing the amount of public funds left for actual improvements at the site.
- The private owners of the site would be under no obligation to complete the projects as presented to the public.
- The so-called TIF would not be true incremental financing, since it would capture an existing city revenue stream, estimated at $1.4 million annually, in addition to incremental revenues.
- There are potential conflicts of interest in the governance of the TIF district.

Despite the claims about how the project would benefit the people of New Orleans East, this proposal is simply not designed with the public in mind. Rather, it is designed to benefit the current owners of the Lake Forest Plaza site.

In the pages that follow, this report will discuss the problems with the Lake Forest Plaza TIF proposal and consider a possible alternative approach.

WHAT IS THE GOAL OF TIF?

TIF is a financing mechanism that enables a local government to capture incremental tax revenues from new development in a designated area and reinvest them in that area to fund improvements. The local government freezes the tax base in the area, called a TIF district, at the pre-development level for a period of years. Taxing bodies continue to collect the taxes on the pre-development base, but new tax revenue above that baseline is dedicated to infrastructure and other improvements designed to spur private sector development.

In theory, the TIF district finances its own renewal and eventually generates greater tax revenue for the community as a whole. It should also be catalytic, in the sense that the initial investment attracts additional private investment, multiplying the benefits to the public. However, TIF is not intended to compensate for financial weaknesses in a developer or owner, or inadequacies in the financial structure of a transaction (e.g., inadequate equity investment). Nor is it intended to offset the lack of demand for a service or product.

THE TIF PROPOSAL

The ordinance before the City Council on Sept. 17 would authorize the city to execute a cooperative endeavor agreement with Lake Forest Plaza LLC, which owns most of the Lake Forest Plaza site, and the Lake Forest Plaza District, which serves as the TIF District (Draft Agreement).[1] The Draft Agreement would dedicate to the district 2% of the city's 2.5% General Fund sales tax collected from shoppers at stores within the district's boundaries, vaguely defined in state law as the area known as the Lake Forest Plaza Shopping Center.[2] Unlike a typical tax increment financing arrangement, in which only the new revenue or "tax increment" is captured, this proposal would capture existing taxes from a Lowe's store on site (approximately $1.4 milllion) – in effect, reducing current revenue to the city's General Fund. In this sense, it cannot be accurately called tax "increment" financing.

If the ordinance is approved, the parties would ask the state to match the city's contribution. According to the Draft Agreement, the city's contribution is conditioned upon the approval of the state match. State law would require a review of the request by the state departments of Economic Development and Revenue, and approvals from the Joint Legislative Committee on the Budget and the State Bond Commission.[3]

The Draft Agreement does not include a termination date for the TIF commitment. It describes the permitted uses in very broad, vague terms. Basically, it would allow the use of TIF proceeds for any aspect of the development, including planning, construction and operations, as well as financing and refinancing of debt. The owners of Lake Forest Plaza LLC have indicated that they would use the TIF revenue primarily to pay debt service on the bonds issued to finance the new development. Under the Draft Agreement, the district could also use TIF revenue to reimburse the owners for project costs prior to the issuance of the TIF.[4]

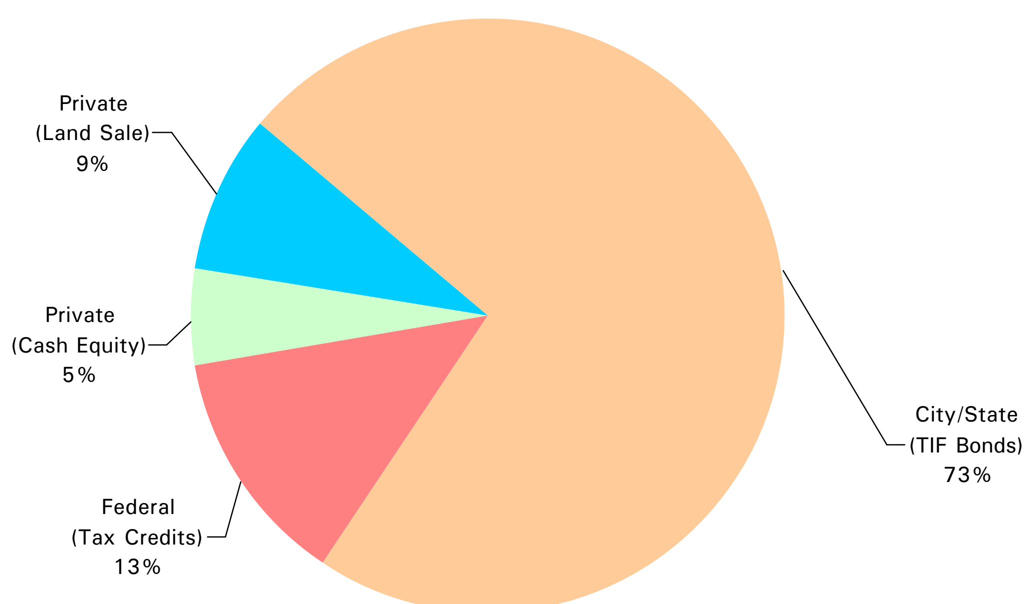
Currently, only one business – a Lowe's store – is in operation at the site. Lake Forest Plaza LLC has stated that it intends to build three phases of new development at the site. According to the company's projections presented at a joint City Council committee meeting on August 11, the initial phase would consist of a 150,000-square-foot Wal-Mart store and 100,000 square feet of other retail stores, plus food and beverage operations, a gas station and a police substation (Wal-Mart Phase). According to a September 12, 2009, news article in *The Times-Picayune*, a Wal-Mart representative has indicated that the retailer is not in negotiations relating to the site.

The next phase envisions a more ambitious "town center" development, featuring 500,000 square feet of retail stores, 50,000 square feet of food and beverage operations, a 50,000-square-foot renovation of the site's defunct movie theater and a 1,250-space parking garage (Town Center Phase). The Lake Forest Plaza District would issue TIF bonds for each phase.[5] The last phase imagines hotel construction on Read Boulevard; the site owners would not seek public funds for that portion.

In the Draft Agreement, Lake Forest Plaza LLC agrees in general terms to redevelop the former mall site. It commits to use its best efforts to achieve certain timeline goals, but only through the completion of the Wal-Mart Phase. The agreement contains no commitments with respect to the Town Center Phase. In fact, it makes no mention of it. Thus, while the owners have presented broad conceptual plans that include the Town Center Phase, they are under no obligation to produce it.

According to the owners' projections as of August 11, the Wal-Mart Phase would cost $57.8 million and rely primarily upon a $42.2 million TIF bond issue. The remaining sources of funds for the Wal-Mart Phase

Sources of Funds, Wal-Mart Phase



would come from cash equity ($3 million), proceeds from the sale of federal New Markets Tax Credits ($7.6 million) and proceeds from the sale of land to Wal-Mart for its store ($5 million). The graphic on page 2 shows the breakdown of the proposed public and private sources of funds for the Wal-Mart Phase.

Lake Forest Plaza LLC estimates that the Town Center Phase would cost $160 million to $188 million. It anticipates that most of the funding would come from a $75 million commercial mortgage loan for the Town Center Phase and a $78.4 million TIF bond issue, with the balance from equity. It has indicated that rental revenue from the Wal-Mart Phase and the Town Center Phase would support the commercial mortgage. There are no current budget numbers for the last phase involving hotel development.

The redevelopment of the Lake Forest Plaza site is a high priority in the city's recovery planning for New Orleans East.[6] Community leaders and public officials in New Orleans East often underscore the importance of pumping new life into this large – and largely dormant – former shopping mall site at the intersection of Interstate 10 and Read Boulevard. It is important, they say, because residents need new retail stores in the area, the site's redevelopment would help sustain the area's recovery, and the new stores would recapture sales tax revenues that currently leave the city as residents shop at suburban stores.[7]

The owners contend that the site cannot be redeveloped without a TIF subsidy. They say retailers are hesitant to invest even in their centrally-located site because of the uncertain business environment and the impacts of population loss in New Orleans East. Wal-Mart, for example, has not reopened its flood-damaged store across Interstate 10 from Lake Forest Plaza, even after spending approximately $10 million in December 2008 to terminate its lease and acquire the property, according to property records.

According to Lake Forest Plaza LLC, issuing TIF bonds to finance construction of a new store for Wal-Mart would enable them to lure the world's largest retailer back to New Orleans East by charging it below-market rent ($4 per square foot). Wal-Mart's shopping traffic would help support the other components of the redevelopment, most of which would be leased at market rents in the range of $15 to $18 per square foot.[8] The owners have produced a cost-benefit analysis asserting that the competitive impacts of the new retail stores and the displacement of city tax revenues that would otherwise be generated at stores outside the TIF district – two major drawbacks to subsidizing big-box retail with TIF – would be limited.

PROBLEMS WITH THE CURRENT TIF PROPOSAL

As we indicated at the outset of this report, a public subsidy is likely needed to spur redevelopment at the site. It may also be safe to assume that New Orleans East shoppers are sending so much sales tax revenue to other parishes that there would be little displacement of revenue.

That does not mean, however, that anything goes. Once the city decides that an investment is necessary, it must deal with the standard questions about the appropriate size and other terms of the subsidy, who it should benefit, and the purposes for which the city should invest. It is here that the current TIF proposal is seriously problematic.[9]

Leaving Delinquent Debts to the City Unpaid

The proposed TIF would not be the city's first investment in the former mall site. In January 2002, the city loaned $1.7 million to Lake Forest Plaza LLC to finance its acquisition of one of the four parcels of property comprising the former mall site from Sears, Roebuck & Co. (Sears Loan).[10] In May 2002, the city loaned $5 million to a separate entity, now called Grand of the East LLC, to partially finance its construction of a movie theater on land leased from Lake Forest Plaza LLC (Grand Loan). The city borrowed the funds to make the latter loan through the U.S. Department of Housing and Urban Development's Section 108 program (HUD Loan).

Both Lake Forest Plaza LLC and Grand of the East LLC defaulted on their loans prior to Hurricane Katrina. In December 2007, the city obtained a court judgment ordering both Lake Forest Plaza LLC and its former majority member, Gowri Kailas, to pay approximately

$1.6 million in principal and attorney's fees, plus $1.4 million in interest and penalties. On May 8, 2009, the city and other parties won a court judgment ordering Grand of the East to turn over insurance proceeds related to Hurricane Katrina damage to the movie theater; the city's share was approximately $2.3 million. Grand of the East still owes the city more than $4 million on the Grand Loan. While Lake Forest Plaza LLC is not liable for that debt, its current principal member, Ashton Ryan, Jr., is also a member of Grand of the East.[11]

On the same day that the city won the judgment against the Grand of the East, and with both the Sears Loan and the Grand Loan still in arrears, the mayor entered into an agreement on behalf of the city with Lake Forest Plaza LLC (Mayor's Agreement).[12] Among other things, the Mayor's Agreement pledged the city's cooperation in forming the TIF and committed to match the state's contribution.

Regarding the Sears Loan, the agreement required Lake Forest Plaza LLC to pay the $1.6 million in principal and attorney's fees into an escrow account, to be released to the city upon the formation of the TIF. The $1.4 million in interest and penalties became payable in the form of a promissory note, which the city has agreed to cancel in installments as Lake Forest Plaza LLC meets development benchmarks. According to Mr. Ryan, Lake Forest Plaza LLC will pay the $1.6 million in debt with private capital.

Thus, the city would receive only part of what it is owed on the Sears Loan, and receive that only upon agreeing to provide the redevelopment with a long-term dedication of sales tax revenue via the TIF. It would also still face the prospect of collecting on the loan to Grand of the East LLC – a principal of which is one of the Lake Forest owners – and paying off the corresponding loan to HUD. Meanwhile, Lake Forest Plaza LLC would eliminate the Sears Loan and the city's mortgage on that parcel.

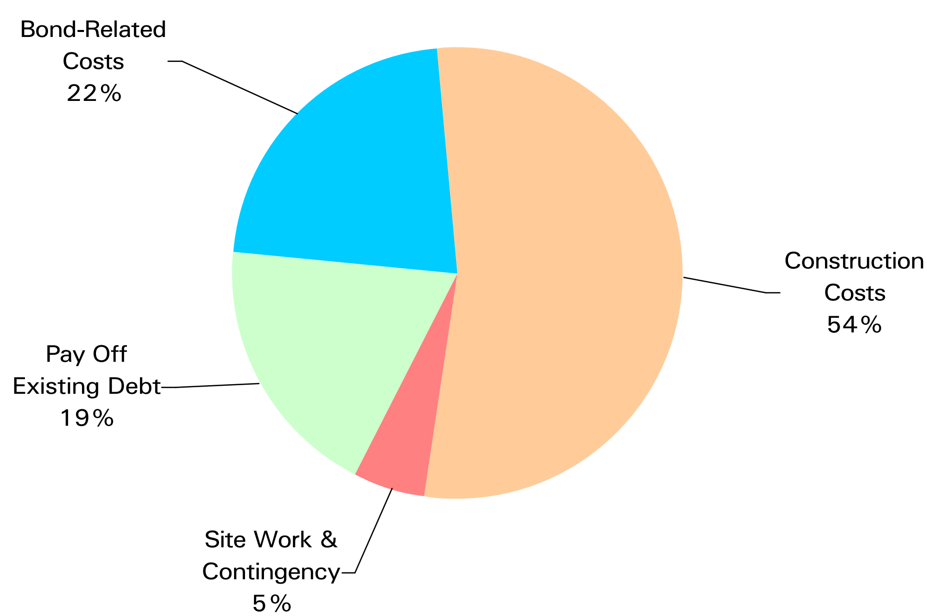
Paying Off Third-Party Debts

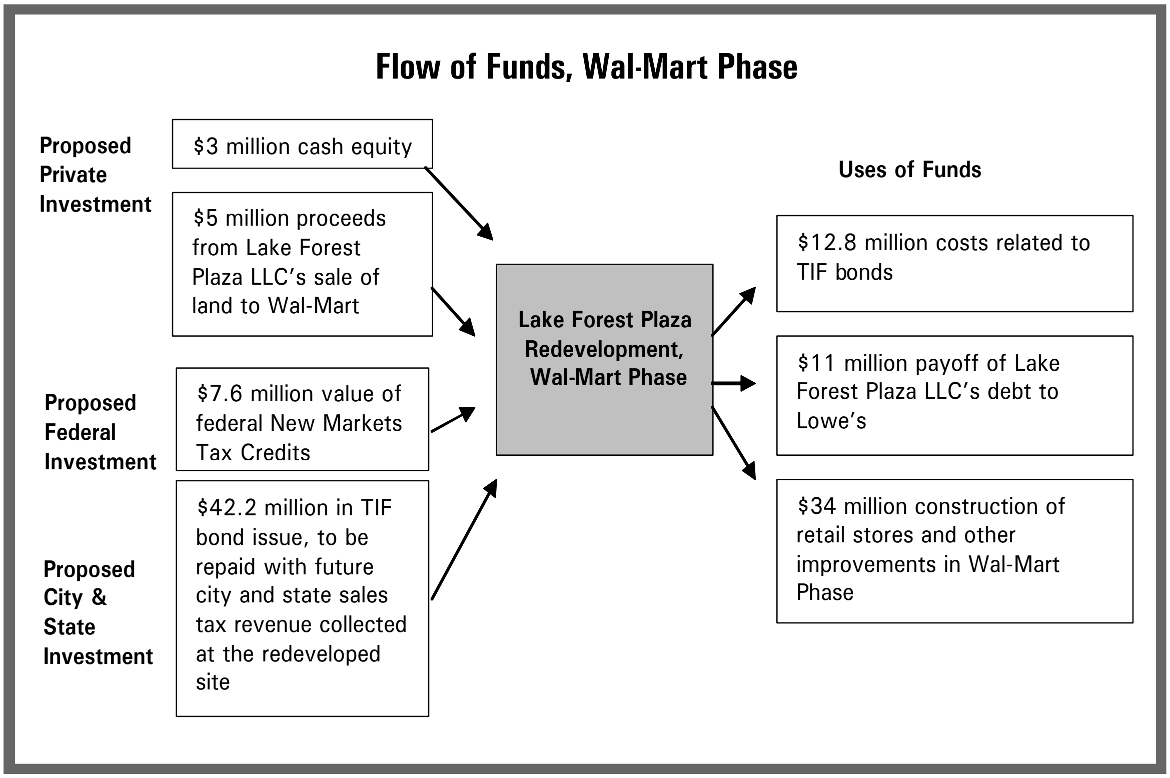
Approximately $12 million of TIF proceeds would be used to settle private debt. These debts include money allegedly owed by Grand of the East to Lake Forest Plaza LLC and money owed by Lake Forest Plaza LLC.

The Mayor's Agreement gives Lake Forest Plaza LLC the right to use $1 million of TIF funds in settlement of a $2 million debt allegedly owed by Grand of the East for unpaid rent and a construction loan.[13] The right is conditioned on the city's obtaining an unidentified form of "site control." Both the city and Mr. Ryan have indicated that they are considering earmarking the $1 million to repair and reopen the theater, but this remains under negotiation.[14] In any case, the Grand's debt to the city would remain unpaid.

Lake Forest Plaza LLC's pro formas contemplate using $11 million in TIF proceeds to pay off a pre-existing debt. That debt is owed by Lake Forest Plaza LLC to Lowe's Home Centers, Inc., which refinanced debt incurred by the LLC in the mall's pre-Katrina days and for which there was no foreseeable source of repayment. A part of the loan, along with insurance proceeds, was used to pay for the demolition of the flood-damaged mall. The proceeds from the subsequent sale of land to

Uses of Funds, Wal-Mart Phase





Lowe's for its store site were used to reduce the debt to its current $11 million balance. The Lowe's debt is secured by a first mortgage on the property owned by Lake Forest Plaza LLC, except for a parcel acquired using the Sears Loan, where it is the second lien.

The owners claim that the property cannot be redeveloped without paying off the mortgage. This may very well be a problem for the owners, but it is not a problem intrinsic to the site. Rather, it is question of the financial capacity of the LLC and its members. The property owner's inability to take a fundamental step to prepare its property for development is a personal predicament. In no way does it lead to the conclusion that the public should pay off Lake Forest Plaza LLC's debt and leave the property in its hands. There are multiple alternative solutions. Using TIF to clean up a private entity's balance sheet strays far from the basic goals of that economic development tool.

Foregoing Public Benefits to Pay for Private Problems

City and state sales tax revenues would be committed primarily to repay TIF bonds issued to build Lake Forest Plaza LLC's new improvements. This debt would be expensive to issue and service.

Of the $42.2 million in TIF bonds for the Wal-Mart Phase, $12.8 million would come off the top to pay for bond-related costs, consisting of a debt service reserve, capitalized interest, credit enhancement and bond issuance costs.[15] These costs – 30% of the issue – are much higher than those of sales TIF bond issues in Louisiana in 2007 and 2008.[16] In particular, the debt service reserve, capitalized interest and credit enhancement costs reflect more conservative underwriting standards required in today's financial markets.[17] Even so, the assumed interest rate is still 7% on the 25-year bonds.[18]

The bond-related costs and the $11 million payoff of the Lowe's debt would consume $23.8 million, or 41% of total funding for the Wal-Mart Phase. Thus, only $34 million of $57.8 million would be available for construction and other improvements in that phase. Only $18.4 million of the $42.2 million of TIF bond proceeds, or 44%, would be available for actual improvements at the site.

The amount available for improvements would be further reduced if any of the $18.4 million of bond proceeds were used to settle the $3 million judgment on the Sears Loan or the private debt between Lake Forest Plaza LLC and Grand of the East LLC. Assuming the funds would not be used for those purposes, the pie chart on page 4 shows the costs for the proposed Wal-Mart Phase.

Annual debt service would be $3.6 million per year for the TIF bonds for the Wal-Mart Phase. If paid over the stated 25-year maturity of the bonds at an assumed interest rate of 7%, the debt service would consume approximately $65 million in city and state TIF revenues, as measured in 2009 dollars.[19] The Draft Agreement does not provide for prepayment of the bonds using excess TIF revenue, which could substantially reduce interest costs and shorten the actual maturity.

In fact, the agreement does not provide any specifics on the use of excess TIF revenue, even though much is projected. Lake Forest Plaza LLC's August 11 projections estimate the existing Lowe's and the Wal-Mart Phase stores would generate $8.1 million of city and state TIF revenue. It assumes that the excess TIF revenue would go toward the Town Center Phase.

Many Promises, Few Guarantees

Certainly, some public support for the proposed redevelopment is based upon the attractive design and multitude of retail offerings envisioned for the Town Center Phase. Yet, the Draft Agreement contains no commitments with respect to the Town Center Phase. In fact, it makes no mention of it. Thus, while the owners have presented broad conceptual plans that include the Town Center Phase, they are under no obligation to produce it.

Further, securing tenants and financing for such a large retail shopping center is a difficult task in today's market, even for experienced developers. Many chain retailers have curtailed expansion plans, or closed existing stores, since the national economic recession. The impacts have filtered down to Louisiana. The Perkins Rowe mixed use, town-center type of development in Baton Rouge, which opened in 2007, has been sued by its lenders, who claim that debt payments are delinquent.[20] Also, two large shopping center developments in St. Tammany Parish have stalled, despite having tax-exempt bond financing, experienced developers and the benefit of special taxing districts.[21]

At the former Lake Forest Plaza site, a developer would face an added layer of uncertainty regarding post-Katrina population and demographic trends in New Orleans East. In the view of some local real estate experts, the Wal-Mart Phase is a safer bet than the Town Center Phase – a type of development that requires a large, particularly affluent population.

Real estate experts indicate that, once a Wal-Mart or a similar tenant commits to the Lake Forest Plaza site, the shopping traffic it generates would likely entice other retailers to locate there. However, they caution that the 100,000 square feet of other retail space planned for the Wal-Mart Phase could still be challenging to lease.

Whether a subsidy influences a retailer's decision to locate at a site depends on many factors. Ultimately, a retailer must believe it can generate the sales volume necessary to cover store inventory, personnel, insurance and other costs. A rent subsidy, as provided through a TIF-financed building, would generally be significant only at the margin.

So what would happen if the Town Center Phase cannot attract financing? Lake Forest Plaza LLC would remain debt-free and continue to receive rental revenue from the Wal-Mart Phase. It would also have the ability to sell its land, which will have increased in value thanks to the TIF investment, or pursue some other form of development on the site in future years. The taxpayer-supported repayment of the TIF debt would continue. Nothing in the current agreement with the city would prevent this outcome.

Potential Conflicts of Interest Regarding Lake Forest Plaza District

The state legislation enacting the Lake Forest Plaza District spells out the membership of its board of commissioners. The members include, among others, the state senator who represents the area including the district and the owner of the Lake Forest Plaza Shopping Center or his designated representative. The district's by-laws designate the state senator as the chairperson of the board.

When the district held its initial meeting in June 2009 and approved a cooperative endeavor agreement between the district and Lake Forest Plaza LLC, the district's board included both state Sen. Ann Duplessis and Ashton Ryan, Jr., a principal in Lake Forest Plaza LLC. Since then, Mr. Ryan has resigned and designated someone to serve as the owner's representative.

Sen. Duplessis faces a potential conflict of interest in her service on the board. She is also an executive at Liberty Bank, whose president and CEO, according to the most recent filing with the Secretary of State, is also a principal member of Grand of the East LLC.[22]

Mr. Ryan's service on the board presented a more direct potential conflict, given his role as the principal member of Lake Forest Plaza LLC. The State Board of Ethics issued an opinion in March 2008 that the owner of the Lake Forest Plaza Shopping Center could serve on the board, as long as he recused himself from participating in matters before the board in which he or his shopping center have a substantial economic interest.[23] However, since the express purpose of the Lake Forest Plaza District is to encourage cooperative economic development between the city, the state, the district and Lake Forest Plaza LLC,[24] it is hard to imagine what matters would not require recusal.

AN ALTERNATIVE APPROACH

If the city concludes that it is in the public's best interest to invest in the redevelopment of the Lake Forest Plaza site, it should do so in a sensible, business-like manner. In no case should the city provide additional funds to an entity that has forced it to go to court to get a judgment on defaulted debt. In no case should the city provide a debtor with funds in exchange for repayment of debt to the city. Nor should it pay off the property owner's mortgage, while allowing the property owner to retain its ownership interest.

If the city wants to develop the Lake Forest Plaza site, it can consider other approaches. For example, it might:

- Enforce the Sears judgment in order to satisfy the debt to the city and possibly obtain control of that parcel.
- Condition any public repayment of the Lowe's loan on a transfer of ownership of the Lake Forest Plaza site to the city.
- Issue a competitive request for proposals to qualified developers for the redevelopment of the site.

Under this scenario, the city would receive a real estate asset in exchange for its investment, unlike in the current proposal, in which the public financing pays off the Lowe's debt but Lake Forest Plaza LLC retains ownership of the site. Funding for the city's acquisition could come from federal recovery funds or financing supported by a new, city-initiated TIF based on sales tax revenue collected from shoppers at the Lowe's store. Under the current proposal, the city would give up the Lowe's revenue anyway, but receive no asset in return.

Once assembled, the property could be sold in whole or in part to developers responding to a request for proposals, tailored to provide the maximum benefit to New Orleans East. Granted, the selected developers could face the same market limitations and development prospects described above, and they may request a subsidy. But the public's investment in that case would be more focused on bringing new development to New Orleans East, rather than seeing public funds absorbed by repaying private debt. One downside is that the city would be responsible for maintaining the property until it is redeveloped.

CONCLUSION

While a strong case could be made that the public should assist redevelopment at the former Lake Forest Plaza Shopping Center site, the current TIF proposal is layered with problems. It would fail to make the city whole on its previous investments in the Lake Forest Plaza site while requiring a massive new public investment. The limited repayment that would flow to the city would be conditioned on the city making a long-term dedication of sales tax revenues to the site. In other words, to get a few pieces of silver, the city would deliver a pot of gold. And only part of the city's new investment would find its way into new improvements: significant amounts would be absorbed to satisfy private debts and pay the costs of the TIF bonds. Finally, there is no guarantee that the residents of New Orleans East would ever see the type of new development that has been touted for the site. Taken as a whole, the TIF proposal appears more focused on resolving Lake Forest Plaza LLC's current financial situation than achieving sensible public investment in the site's redevelopment.

The City Council should consider alternative approaches to assisting the redevelopment. The goal should be to maximize the public benefits of any public investment that is necessary at the site. If the goal is, indeed, to help revitalize New Orleans East, then citizens deserve no less.

END NOTES

1 Draft Cooperative Endeavor Agreement between the City of New Orleans, Lake Forest Plaza District and Lake Forest Plaza LLC, introduced with City Council Ord. Cal. No. 27,631, on August 20, 2009.

2 La. R.S. 33:9038.54(B).

3 La. R.S. 33:9038.34(A)(6).

4 Article IV of Draft Cooperative Endeavor Agreement, op. cit.

5 According to the August 11 projections, each bond issue would have an interest rate of 7% and a stated maturity of 25 years. The projections indicate that the debt service on the bonds for the Wal-Mart Phase would be paid with TIF revenue from the Lowe's store and the stores in the Wal-Mart phase. The projections further indicate that excess TIF revenue from those stores, plus new TIF revenue from the stores in the Town Center Phase, would be used to pay debt service on the TIF bonds for the Town Center Phase.

6 The Lake Forest Plaza Shopping Center site was named one of the city's two "rebuild" target recovery zones in 2007.

7 Based on comments made at various public meetings, June-August 2009.

8 According to the Lake Forest Plaza LLC's projections, there would be no rent charged on the police substation and the renovated movie theater in the Town Center Phase would pay below-market rent.

9 The discussion of problems with the current TIF proposal is based on BGR's review of materials submitted to the city, including the financial projections as of August 11, 2009, and property records; interviews with a principal member of Lake Forest Plaza LLC; news reports; and other interviews.

10 Lake Forest Plaza LLC acquired the other three parcels in 1999, 2006 and 2007.

11 Information current as of the latest annual report that Grand of the East LLC filed with the Louisiana Secretary of State (October 2008).

12 Agreement between Lake Forest Plaza LLC and the City of New Orleans, May 8, 2009.

13 The Mayor's Agreement describes the debt claimed by Lake Forest Plaza LLC and requires the entity to produce documentation "reasonably verifying" the debt.

14 In the Mayor's Agreement, the city also reserved its rights to pursue the payment of the Grand Loan.

15 The August 11 financial projections assume an interest rate of 7% and a stated maturity of 25 years on the TIF bonds for the Wal-Mart Phase.

16 For example, the debt service reserve, capitalized interest and costs of issuance associated with the $36.2 million sales TIF bond issue in 2007 for the Bass Pro Shops project in Denham Springs totaled $5.3 million, or 15% of the issue. According to the official statement for the bond issue, the bonds had a maturity of 30 years and a variable interest rate. The bond-related costs for two sales TIF bond issues in Monroe in 2007 and 2008 were 12% and 10%, respectively, according to those official statements.

17 Compared to the TIF bonds for the Bass Pro Shops project, the Wal-Mart Phase bonds would have a larger debt service reserve (one year of principal and interest payments), a longer capitalized interest period (18 months) and greater credit enhancement costs (5% of the bond issue). Bond issuance costs are roughly the same.

18 The interest rate on the TIF bonds for the Bass Pro Shops project is variable, while the rates achieved on the TIF bonds in Monroe were less than 5%. The required debt service coverage on the bonds for the Wal-Mart Phase would be 1.50 times annual TIF debt service.

19 As discounted for 3% annual inflation. The undiscounted total of the debt service over 25 years would be $90 million.

20 Griggs, Ted, "Lenders file suit to seize Perkins Rowe," *The Advocate (Baton Rouge)*, July 30, 2009.

21 Cohen, Ariella, "As the market forces developers to retrench, stalled projects in N.O. are slowing I-12's building boom," *CityBusiness North Shore Report*, September 1, 2009.

22 Information current as of the latest annual report that Grand of the East LLC filed with the Louisiana Secretary of State (October 2008).

23 Louisiana Board of Ethics, Ethics Advisory Opinion No. 2008-240, March 20, 2008.

24 Article III, Section 1 of the By-Laws of the Lake Forest Plaza District.

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