

CORRIDOR IMPROVEMENT AUTHORITIES: ANOTHER VALUABLE TOOL IN THE KIT FOR STIMULATING ECONOMIC REVIVAL IN MICHIGAN COMMUNITIES, BUT HOW DO WE ESTABLISH IT AND WHAT CONTROLS DO WE HAVE OVER IT ONCE IT'S IN PLACE?

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On December 19, 2005, the Corridor Improvement Authority Act¹ became effective. This Act provides for the establishment of a new type of authority in Michigan municipalities called a "Corridor Improvement Authority" (CIA). The stated purposes of this law include, among others, the correction and prevention of deterioration in business districts, the promotion of economic growth in the districts established under the act, the encouragement of historic preservation, and the authorization of the creation and implementation of development areas and development plans.²

In order for an area of a community to qualify for the establishment of a CIA, it must satisfy all of the following statutory criteria: (a) it must be adjacent to a road classified as an arterial or collector according to the federal highway administration manual "Highway Functional Classification - Concepts, Criteria and Procedures"; (b) it must contain at least 10 contiguous parcels or at least five contiguous acres; (c) more than 1/2 of the existing ground floor square footage in the development area must be classified as commercial real property under Section 34c of the General Property Tax Act³; (d) residential use, commercial use, or industrial use must have been allowed under the zoning ordinance or conducted in the entire development area for the immediately preceding 30 years; (e) the development area must be presently served by municipal water and sewer; and (f) the development area must be zoned to allow for mixed use that includes high-density residential use.⁴ Additionally, the municipality must agree to expedite the local permitting and inspection process in the development area, and to modify its master plan to provide for walkable non-motorized interconnections, including sidewalks and streetscapes throughout the development area.⁵

Although the CIA is one of the newer economic development/redevelopment tools in Michigan, it is fairly similar in form to downtown development authorities (DDAs), which have existed for several decades. Unlike DDA's, however, CIAs do not have the authority to levy millages and are instead financed primarily through tax increment financing. Also, as revealed by the above qualifying criteria, CIAs focus more on improving outlying areas along significant mixed use corridors within communities, as opposed to downtown areas.⁶

I. The Creation of a CIA and Tax Increment Financing for Projects.

The CIA Act is quite complex and organized in such a way as to make it somewhat difficult to decipher. The following is an attempt to provide a simplified summary of the basic step-by-step process that municipalities must follow under the act to first establish a corridor improvement authority and its boundaries (Part A, below), and then adopt a development plan and (if desired) implement tax increment financing in the designated area (Part B, below). Note that there are other funding mechanisms and financing tools under the act that are not addressed below and would require other/additional procedural steps. Also, keep in mind that this is a very

basic summary of the steps, and the act itself should be consulted for specific details concerning each step.

Part A: Establishing the Authority

1. Adopt a Resolution Declaring Intent: The municipality's legislative body⁷ must adopt a resolution declaring its intent to establish the CIA, describing the proposed CIA development area boundaries, making statutory findings regarding the eligibility of the proposed area for designation as a CIA development area, and setting a public hearing.⁸ It is also advisable for the governing body to make a general finding, as part of this resolution, that it is necessary and in the best interests of the public to redevelop its commercial corridors and to promote economic growth.

2. Publish, Post, and Mail Notices of Public Hearing: The act requires that extensive public notice of the hearing be provided as follows: (A) not less than 20 or more than 40 days before the public hearing, notice must be **published twice** in a newspaper of general circulation in the municipality; (2) not less than 20 days before the public hearing, notice must be **mailed** to the property taxpayers of record in the proposed development area, and to the governing body of each taxing jurisdiction levying taxes that would be subject to capture if the authority is established and a tax increment financing plan is approved, and to the state tax commission; and (3) not less than 20 days before the public hearing, notice must be **posted** in at least 20 conspicuous and public places in the proposed development area.⁹ The notice must state the date, time, and place of the hearing and describe the boundaries of the proposed development area.¹⁰

3. Hold Public Hearing: The municipality's legislative body holds a public hearing regarding the establishment of the authority and the boundaries of the proposed development area.¹¹

4. Adopt Ordinance: Not less than 60 days after the public hearing, the municipality's legislative body adopts an ordinance establishing the authority and designating the boundaries of the proposed development area.¹²

5. File and Publish Ordinance: Promptly after adoption, the ordinance must be filed with the Secretary of State and published in a newspaper of general circulation.¹³

6. Appoint Members to the Authority Board: The CIA is under the supervision and control of a board consisting of the chief executive officer of the municipality, or his or her assignee, and not less than five or more than nine members.¹⁴ The number of members is determined by the governing body of the municipality,¹⁵ presumably by way of the ordinance establishing the authority. The chief executive officer of the municipality appoints the CIA members for staggered terms of four years (after the initial staggering), subject to approval of the municipality's legislative body.¹⁶

At this point in the process, the CIA has been established and can meet and conduct business, such as establishing a TIF and Development Plan, as discussed below.

Part B: Establishing a TIF and Development Plan

1. Make Determination of Necessity and Prepare TIF Plan: The CIA board must make a determination that a tax increment financing plan (TIF Plan) is necessary for the achievement of the purposes of the act, and thereafter prepare and submit a plan for the development area in accordance with the act to the legislative body of the municipality.¹⁷ Among other things required by the act, the TIF Plan *must* include the Development Plan described in Step 2, below.¹⁸

2. Prepare a Development Plan: If the CIA desires to finance a project in the development area using TIF funds, or revenue bonds, it must create a Development Plan, including a description of existing geographic features, development area improvements and objectives, disposition of municipal property, description of zoning and infrastructure changes, cost estimates, the ability of the authority to finance, effects on existing residents, and other details required by the statute.¹⁹

3. Publish, Post, and Mail Notices of Public Hearing: Here again the act requires that extensive public notice of the hearing be provided. Not less than 20 days before the public hearing, notice must be: (a) **published twice** in a newspaper of general circulation in the municipality; (b) **mailed** to all property taxpayers of record in the development area and the governing body of each taxing jurisdiction levying taxes that would be subject to capture if the tax increment financing plan is approved; and (c) **posted** in at least 20 conspicuous and public places in the proposed development area.²⁰ The notice must contain the following information: (a) a description of the proposed development area in relation to highways, streets, streams, or otherwise; (b) a statement that maps, plats, and a description of the Development Plan, including the method of relocating families and individuals who may be displaced from the area, are available for public inspection at a place designated in the notice; (c) a statement that all aspects of the Development Plan will be open for discussion at the public hearing; and (d) other information that the governing body considers appropriate.²¹

4. Meet With Taxing Jurisdictions: *Before the public hearing* described in Step 3, above, the taxing jurisdictions levying taxes subject to capture under the proposed TIF Plan must be provided a “reasonable opportunity” to meet with the governing body of the municipality.²² The CIA must fully inform the taxing jurisdictions of the fiscal and economic implications of establishing Development and TIF Plans for the proposed development area. The taxing jurisdictions may present their recommendations at the public hearing on the TIF Plan. The CIA may enter into agreements with the taxing jurisdictions and the governing body of the municipality in which the development area is located to share a portion of the captured assessed value of the development area. These discussions with the taxing jurisdictions are critical to achieving the objectives of the TIF Plan, and should be attempted as early in the process as possible, especially with the larger taxing jurisdictions such as county government.

5. Hold Public Hearing: The municipality’s legislative body holds a public hearing regarding the TIF Plan and Development Plan in accordance with the act. Interestingly, the act specifically states that the hearing must provide “the *fullest opportunity* for expression of

opinion, for argument on the merits, and for consideration of documentary evidence pertinent to the development plan.”²³ If the Development Plan is part of the TIF Plan, only one hearing and approval procedure is required for the two plans together.²⁴

6. Opt-Out Period: Not more than 60 days after the public hearing, the governing body of any of the taxing jurisdictions subject to capture under the proposed TIF Plan may exempt its taxes from capture by adopting a resolution to that effect and filing a copy with the clerk of the municipality.²⁵ Any such resolution remains effective until a resolution rescinding it is filed with the clerk.²⁶ Based on recent amendments to the act discussed later in this article, this opt-out provision does not apply to “qualified development areas.”

7. Adopt Ordinance: The legislative body of the municipality determines whether the Development Plan and TIF Plan constitute a public purpose, and if so, it adopts an ordinance approving, rejecting, or approving with modifications the Plans, based on considerations set forth in the act.²⁷ It should be noted that there is no requirement under the act to wait the 60 day period in Step 6, above, before proceeding with adopting the ordinance, but it may be advisable to do so.

II. Twenty-Five Limitations On and Controls Over a CIA.

Because CIAs are a fairly new economic development tool in Michigan, it is not uncommon for the governing body -- and the citizens -- of a municipality to have questions and concerns about the extent of the powers that such an authority may possess and, sometimes more importantly, the checks and controls that exist over an authority once it has been created. These questions and concerns often arise during the open meetings and multiple public hearings that are required in connection with CIAs. As such, municipal attorneys and administrators might want to become familiar with the statutory limits and controls that relate to CIAs

While a CIA is a distinct governmental body that has a certain level of autonomy, its powers are limited to the items listed in the act and its autonomy is limited by a significant number of controls that the municipality’s governing body has, or can establish, over the authority. The following is a list and brief description of such statutory limitations and controls:

1. The municipality’s governing body establishes the number of members on the authority board, between five and nine members, plus the municipality’s chief executive officer.²⁸
2. The chief executive officer of the municipality appoints the authority board members, subject to the approval of such appointments by the governing body of the municipality.²⁹
3. The municipality’s chief executive officer is automatically a member of the authority board. As such, a member of the governing body has a permanent voice and vote on the authority board.³⁰ This enables the municipality’s objectives, policies, and desires to be communicated directly to the authority board.

4. The authority board is required to comply, in all respects, with the Open Meetings Act and Freedom of Information Act.³¹ These are factors that further enable the governing body, and public at large, to observe and maintain awareness of the authority's activities.
5. The authority board is required to adopt rules governing its procedures and the holding of regular meetings. The legislative body's approval of these rules is required.³²
6. The municipality's governing body has the power to remove any of the members of the CIA board. Any such removal must be "for cause," and only after giving the member notice and an opportunity to be heard.³³ The term "for cause" is not defined in Act 280, but at a minimum would presumably include such things as malfeasance, misfeasance, abuse of office, failure to perform duties of the appointed office, violations of law or policy, and other similar such acts.
7. All expense items of the CIA must be publicized monthly, and the financial records of the authority are required to "always be open to the public."³⁴ Again, this enables the municipality's governing body, and the public, to maintain awareness of the authority's financial activities on a regular basis.
8. Approval of the municipality's governing body is required for the authority board's employment and compensation of any director. Furthermore, any such CIA director must post a bond with the municipality's clerk in a sum determined in the municipality's ordinance establishing the authority.³⁵
9. A CIA director, if hired, is required to provide a regular report covering the activities and financial conditions of the authority to *both* the authority board and the municipality's governing body.³⁶
10. As mentioned previously, CIAs do not have the authority to levy millages. It most likely comes as no surprise that at least in this writer's experience the question of whether the authority can raise taxes is probably the most often asked question at the public hearings that are required under the act, followed closely by the question of whether the authority is going to condemn houses and businesses to make way for the re-development plan, which is addressed in item 11, below.
11. The act specifically provides the governing body of the municipality with the authority to condemn property for purposes of transferring such condemned property to the authority for use in an approved development, but no such specific power is granted to the authority on its own under the act.³⁷ This also is a popular topic during public hearings that municipal leaders should be prepared to address.
12. CIAs generally cannot capture state education taxes or local and intermediate school district taxes, with the sole exception being qualified development areas in certain cities having a population of more than 700,000 upon approval of the

Michigan Economic Growth Authority (discussed in more detail later in this article).³⁸ The capturing and redirection of school taxes is also a major source of the public concern at the public hearings, and as such this limitation is significant in responding to those concerns.

13. Approval of the municipality's governing body is required in order for the authority to levy a special assessment.³⁹
14. Approval of the municipality's governing body is required in order for the authority to issue its negotiable revenue bonds.⁴⁰
15. Approval of the municipality's governing body is required in order for the CIA to use its revenue bonds to finance all or part of the costs of acquiring or constructing property in connection with the implementation of a development plan and in connection with a refund of bonds or notes. The municipality is not liable on bonds or notes issued by the authority, and the bonds and notes are not a debt of the municipality.⁴¹
16. Approval of the municipality's governing body is required for both the Development Plan and TIF Plan, and any amendments or modifications thereto. Also, in its expenditure of tax increment revenues, the authority cannot deviate from, add to, change or disregard any part of such approved plans.⁴²
17. The municipality's governing body has the power to abolish the TIF Plan under certain circumstances.⁴³
18. The CIA board is required to submit an annual report to the governing body and the State Tax Commission on the status of the tax increment financing account. That annual report must include a significant amount of detail, which is described in the act, and the municipality can add to the detail required if deemed necessary.⁴⁴
19. The act states that the full faith and credit of the municipality shall *not* be pledged to secure any tax increment bonds issued by the authority.⁴⁵
20. If the CIA decides to finance a project in the development area using revenue bonds or tax increment financing, it is required to prepare a Development Plan.⁴⁶ That Development Plan is required to contain a significant amount of information, and is subject to approval of the municipality's governing body, and such approval is discretionary.⁴⁷ Additionally, that plan must include a statement that amendments to either the Development Plan or the TIF Plan must be submitted by the authority to the governing body for approval or rejection.⁴⁸ Furthermore, in its discretion, the municipality's governing body may require other material to be included in the Development Plan, which it considers to be pertinent.⁴⁹

21. The director, if any, of the CIA is required to submit a budget. After being reviewed by the CIA board, the budget is required to be submitted to and approved by the governing body of the municipality *prior to* the CIA board adopting it.⁵⁰
22. The governing body of the municipality may assess a reasonable pro rata share of the funds for the cost of handling and auditing the CIA's funds. The assessed amount is to be budgeted and paid annually by the authority to the municipality.⁵¹
23. The governing body of the municipality has the power to dissolve, by ordinance, the CIA once it has completed the purposes for which it was established.⁵²
24. The governing body of the municipality has the authority to establish and modify the boundaries of the development area within which the CIA is permitted to exercise its powers.⁵³
25. The Act specifically provides that the CIA "is a public body corporate which may sue and be sued in any court of this state." Accordingly, if the authority fails to comply with any provision of the Act, applicable municipal ordinances, or the plans that have been approved by the governing body of the municipality, it is subject to court enforcement proceedings.⁵⁴

In sum, while the Authority is an autonomous public body, it is subject to a multitude of checks, controls, and limitations that exist within the act and can be incorporated into the ordinances and plans approved by the governing body of the municipality.

III. Recent Amendments to the CIA Act: Qualified Development Areas.

The CIA Act was amended this year by 2007 PA 44, which became effective on July 17, 2007. The amendments provide for the establishment of special areas within a CIA, called "qualified development areas."⁵⁵

A *qualified development area* is a development area that meets all of the following criteria: (a) located in a city having a population of 700,000 or more; (b) contains 30 or more acres; (c) was owned by the state on 12/31/03 and was conveyed to a private owner before 6/30/04; (d) zoned for mixed use including commercial; (e) located in a "distressed area"; (f) located adjacent to a road classified as an arterial or collector road; (g) residential, commercial, or industrial use must have been allowed under the zoning ordinance or conducted in the development area for the immediately preceding 30 years; and (h) served by municipal water and sewer.⁵⁶

With respect to criteria (e), above, a *distressed area* is defined as a local governmental unit: (a) showing a negative population change from 1970 to the date of the most recent census; (b) showing an overall increase in the state equalized value of real and personal property of less than the statewide average increase since 1972; (c) has a poverty rate greater than the statewide average; and (d) has had unemployment rate higher than the statewide average. Given these

definitional limitations, the amendments to the act would appear to apply solely to a particular area in the City of Detroit.

The amendments provide enhanced powers to a CIA board in a qualified development area in terms of performing the site improvements for a development of privately owned land for public and/or private use.⁵⁷ The CIA Board is also specifically authorized to enter into public-private agreements, with respect to a qualified development area, for the financing of such development, including lease purchase agreements, land contracts, sale leaseback agreements, installment sales agreements, and loan agreements.⁵⁸

Most significantly, the amendments to the act eliminate the ability of taxing jurisdictions to opt out of the TIF capture in qualified development areas, and allow the Michigan Economic Growth Authority (MEGA) to approve a CIA's capture of state education taxes and local and intermediate school district taxes as part of a TIF Plan for a qualified development area.⁵⁹ MEGA can only approve the capture of such school taxes if it determines that it is necessary to reduce unemployment, promote economic growth, and increase capital investment in the qualified development area.⁶⁰

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¹ 2005 PA 280, being MCL §125.2871 *et seq.*

² *Id.*

³ 1893 PA 206, as amended, being MCL §211.1 *et seq.*

⁴ MCL §125.2875(a)-(f)

⁵ MCL §125.2875(g)

⁶ This does not mean that downtown areas would not qualify for the establishment of a CIA, although the typical characteristics and needs of downtown areas seemingly render them more prone to utilize the DDA mechanism.

⁷ The terms "legislative body" and "governing body" are used interchangeably in this article, and both terms refer to city councils and commissions, village councils, and township boards of trustees.

⁸ The requirement for this resolution are found in Sec. 6 of the Act, being MCL §125.2876.

⁹ MCL §125.2876(2)

¹⁰ *Id.*

¹¹ MCL §125.2876(2). This section of the Act indicates that a citizen, taxpayer, or property owner of the municipality or an official from a taxing jurisdiction with millage that would be subject to capture has the right to be heard in regard to the establishment of the authority and the boundaries of the proposed development area.

¹² MCL §125.2876(3).

¹³ *Id.*

¹⁴ MCL §125.2878(1)

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ MCL §125.2888(1)

¹⁸ MCL §125.2888(1) and MCL §125.2891

¹⁹ *Id.*

²⁰ MCL 125.2892(1)

²¹ MCL §125.2892(2)

²² MCL §125.2888(3)

²³ MCL §125.2892(3)
²⁴ MCL §125.2888(2)
²⁵ MCL §125.2888(5)
²⁶ *Id.*
²⁷ MCL § 125.2893.
²⁸ MCL §125.2878(1)
²⁹ *Id.*
³⁰ *Id.*
³¹ MCL §125.2878(3) and (6)
³² MCL §125.2878(3)
³³ MCL §125.2878(4)
³⁴ MCL §125.2878(5)
³⁵ MCL §125.2879(1)
³⁶ *Id.*
³⁷ MCL §125.2883
³⁸ MCL §125.2873(g), MCL §125.2888(5), and MCL §125.2899
³⁹ MCL §125.2885(1)
⁴⁰ MCL §125.2886
⁴¹ MCL §125.2887(6)
⁴² MCL §125.2888 and MCL §125.2889(2)
⁴³ MCL §125.2889(2)
⁴⁴ MCL §125.2889(3)
⁴⁵ MCL §125.2890(2)
⁴⁶ MCL §125.2891(1)
⁴⁷ MCL §125.2892 and MCL §125.2893
⁴⁸ MCL §125.2891(2)(p)
⁴⁹ MCL §125.2891(2)(r)
⁵⁰ MCL §125.2895(1)
⁵¹ MCL §125.2895(2)
⁵² MCL §125.2897
⁵³ MCL §125.2876(2) and (4)
⁵⁴ MCL §125.2874(2)
⁵⁵ MCL §125.2873(d)
⁵⁶ MCL §125.2873(h)
⁵⁷ MCL §125.2881(2)
⁵⁸ *Id.*
⁵⁹ MCL §125.2873(g), MCL §125.2888(5), and MCL §125.2899
⁶⁰ MCL §125.2899