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Original Assessed Value

The \$1,595,540 original assessed value figure in my previous e-mails is from an electronic copy of the credit enhancement agreement in our firm's files. I did not receive a copy of the final signed version. It is possible that this figure was corrected prior to signing, or by a subsequent amendment.

In any event, the Assessor's certification of the taxable value in the district as of March 31, 2004 (= April 1, 2003 assessment) is legally controlling. If the Assessor's certificate says \$1,463,410, then that's the number.

"Non-captured" Increased Assessed Value

Because the TIF statute "looks back" to the prior tax year to determine the original assessed value, we had to address the fact that revaluation added new taxable value to the district assessment as of April 1, 2004 that was not attributable to Mr. Bintliff's project. Under the TIF statute, this new taxable value is part of the "increased assessed value" within the TIF district. However, we wanted any tax reimbursements to Mr. Bintliff under the credit enhancement agreement to be based solely on new taxable value created by his project, and not on new taxable value created by the town's revaluation.

To accomplish this, we excluded the first \$1,424,590 of the "increased assessed value" from the "captured assessed value" within the TIF district. Stated differently, taxes on the first \$1,424,590 of increased assessed value within the TIF district belong to the town's general fund, and not to the TIF development program. Therefore, taxes on the first \$1,424,590 of increased assessed value are not subject to a refund under the credit enhancement agreement. Instead, the Town keeps 100% of these taxes as Town general fund revenue.

All taxes on the original assessed value within the district also belong to the general fund.

Partial Tax Payments

Under section 3.1(e) of the credit enhancement agreement, if property taxes within the TIF district are not paid in full, the Town's general fund gets paid first out of any partial tax payment.

If there is a partial tax payment, it is applied as follows:

- (1) Payment of taxes on the original assessed value in full. This is simply the town's mil rate times the (corrected) \$1,463,410 OAV figure. These are general fund revenues. Then, if funds remain from the partial tax payment,
- (2) Payment of taxes on the first \$1,424,590 of increased assessed value in full. These also are general fund revenues. Then, if funds still remain from the partial tax payment,
- (3) Payment to the TIF Development Program Fund, to be allocated 55:45 between Mr. Bintliff and the Town per section 2.3 of the credit enhancement agreement. These are not general fund revenues.

If you add the (corrected) \$1,463,410 OAV figure to the \$1,424,590 "non-captured" portion of the increased assessed value, the Town's general fund should have received, annually, full tax payments on \$2,888,000 of taxable assessed value within the TIF district, *before* any tax payments were deposited to the Development Program Fund for allocation between the Town and Mr. Bintliff under the credit enhancement agreement. If in any tax year the total assessed value within the TIF district was \$2,888,000 or less, then no funds should have been deposited to the TIF Development Program Fund for that year, even if all taxes were paid in full.

Also, please keep in mind that nothing in the credit enhancement agreement prevents the Town from filing tax liens with respect to any property in the TIF district if the taxes assessed on that property have not been paid in full by the property tax due date.

#### "Under-taxation"

Concerning whether Edgecomb Development has been undertaxed, I don't have sufficient information, since I haven't seen the annual assessments or tax bills.

However, nothing in the TIF district designation or in the credit enhancement agreement *exempts* any property in the district from taxation, nor could it as a matter of law. For each tax year starting April 1, 2004, the (corrected) \$1,463,410 original assessed value *and* the first \$1,424,590 of increased assessed value within the district remain fully taxable, with taxes on those amounts belonging to the Town's general fund.

Any new taxable value in the district in excess of \$1,424,590 *also* remains fully taxable, with the taxes on any such excess used to fund the TIF development program, including a 55% reimbursement of those taxes to Mr. Bintliff.

Again, the 55% reimbursement to Mr. Bintliff under the credit enhancement agreement is based only on the property taxes paid on assessed value in the TIF district *in excess of* \$2,888,00.

#### Recovery of Erroneous Tax Reimbursement

If property in the TIF district was erroneously excluded from taxation, the Assessor can assess it for the tax years concerned by issuing a supplemental assessment.

However, if one or more properties in the TIF district were simply under-assessed, *i.e.*, were assessed for less than their full taxable value, the error must be corrected by the Assessor under 36 MRSA sec. 841(1) within one year of the tax commitment date. If not corrected within that time, the erroneous valuation becomes final with respect to the tax year concerned.

On the other hand, if the property was properly assessed at full value, but Mr. Bintliff received an excess refund under the credit enhancement agreement, the Town may recover the excess refund amount by an action in court. The common law claim that the Town would assert in any such court action is for "money had and received". This form of action is available to recover money erroneously paid, whether by a governmental entity or a private business or person.

Erik