Questions to, and Answers from, Developer

Q. Loveland and Durango have both included the entire town limits within their URA boundary and then have identified different “project areas.” Each project area then has its own conditions study and development plan. I’m wondering if this approach could be a useful tool for Pagosa. Would it be possible to allocate a portion of TIF revenues from one project area to another project area as long as it is documented and can be argued that the off-site location is helpful to the primary site? For example, instead of negotiating for workforce housing to be included heavily in the proposed Hot Springs project area, could TIF revenues be allocated into a different pot labeled “Workforce Housing.” Then if another project area is identified - Mountain Crossings, for example - could those TIF revenues be used? The argument could be for employee housing. So part A - Should Pagosa Springs consider encompassing all of city limits in the URA?

There are actually two different components to making a URA project possible. First, the Urban Renewal Authority. This is the governing body which in Pagosa would be made-up of Councilmembers, and representatives of the county and other taxing bodies (school, fire, etc.). To avoid confusion that exists with the term URA, I'm going to call this the "Authority". Second, there are specific project areas within the Town limits which are Urban Renewal Areas (also a “URA” which is where confusion can be created), also known as Urban Renewal Plans. I'll refer to these as “UR-Plans”. I’ve confirmed with legal counsel that the Authority has the ability to operate anywhere in the Town limits, so by its nature the Authority's area of operation IS in fact the entire Town limits.

A UR-Plan on the other hand requires that a specific, and tightly defined, boundary be set to delineate specific projects from one another. This delineation is needed for a few reasons 1) each UR-Plan starts on the date it's approved, and runs for 25 years, 2) because the new tax revenue (TIF) created by the project in the UR-Plan area must be applied only within the boundaries of that UR-Plan, and 3) to prevent the Authority from controlling all the new tax that’s created in the entire Town. The requirement that each UR-Plan area be as tightly defined around a specific project as possible, is a requirement of state law, but it’s also to the practical benefit of the Authority and the community.

Because the 25 year time frame starts ticking immediately upon approval of a UR-Plan, so projects that don’t happen for 5 or 10 years will have a substantially smaller impact on the tax revenues the Authority receives. Also, the Authority can better capture the positive impact of a specific project by having many UR-Plans within the town, each being weighed and measured on its own merits and value. I’d also imagine that the other taxing entities besides the Town would have an issue with all new tax revenue in the whole town being controlled by the Authority, which would be the case if the UR-Plan Boundary was the same as the Town limits. Recent legal guidance and best practices have established this.

Q. Part B - can TIF revenues be used for off-site, but relatable, projects?

In short, no. Funds created by the development project, within the UR-Plan boundaries have to be used within those boundaries. It’s my understanding this was very intentionally set up to prevent the misuse of funds and ensure that each project can be judged on its own merits and benefits to the community.

Q. It's my understanding that the proposed public infrastructure will include a plaza, streets, and sidewalks. At what point is this infrastructure turned over to the Town to maintain?

Once a public road is built and the right-of-way and easements are set, the roads become public. Maintenance of those roads would turn over to the Town at that time, unless otherwise agreed to by the parties (Town & Developer)

Q. With the plaza, is Town responsible for programming?

Most of these details will worked out once the development is further down the planning process, but no. It is our intent that we'll be responsible for programming of the plaza, subject to an agreement that ensures we do it well.

Q. Live music, rental for events, etc... If the Hot Springs Events staff wanted to host an event, then all the same rules and regulations would have to be followed as though the event were happening in Town Park, correct?

Similar to the last response, this will be agreed to by the Authority and us in future agreements.

Q. Are there public restrooms?

This will be addressed during the Planning & Zoning process and will require their approval, but I have no doubt there will be restrooms, both per code requirements and practicality.

Q. As with other Town owned parks and spaces, the Town would be responsible for upkeep and replacing broken items - fire pits, benches, trees, lights. Is town responsible for initially putting these items in? Or is the developer taking on design?

Developer will design and build these spaces, subject to planning and building department approval of course.

Q. What happens if some of these things fail within the first few years?

Typically there are pretty hefty contractor warranties and requirements for the construction of public infrastructure (which is another reason they're so expensive) and these would also go before the building department for approval.

Q. Can TIF revenues be dedicated to maintenance of the public plaza?

There are several solutions for the maintenance of the public spaces that will be addressed in the agreements between the Town and developer as part of the approval of the UR Plan.

Q. Can TIF revenues be dedicated to street maintenance?

Same as last answer.

Q. As per ordinance, snow removal from sidewalks would fall on the neighboring property owner. Is there a plan for developer to take care of snow removal?

Though we don't have that level of planning at this stage, the development will be subject to all the usual Town ordinances, so we'd be required manage snow removal per ordinance.

Q. If any additional equipment is needed to accommodate special street materials - cobblestone - can TIF revenues be used?

Yes. So long as the infrastructure is for public benefit within the UR-Plan area, TIF funds can used.

Q. Does the developer get reimbursed on infrastructure that fits code and not beyond?

Reimbursement is for the public infrastructure approved by the Planning and Building departments.

Q. For example, code requires 5ft sidewalks. If the developer puts in 8ft or 10ft sidewalks, does reimbursement cover just what it would have cost to do 5ft?

Roger that, but also remember that the approval of the URA is just the first step to a long relationship between the Town and the developer. We still have to go through all the usual approval processes before we can build anything. Frankly that's what makes these projects risky and scary for developers – if in 5 years the council changes (and is adverse to the project) any one of the required approvals could freeze our project and sink it - and we're left holding the bag, not the Town. I know some people think this looks like a great deal to developers, but we're really at your mercy and taking all the risk.

Q. What happens if the TIF over-performs?

Then the reimbursement would happen faster and all the Taxing Bodies make more money, faster than planned.

Q. It was my understanding it was an either/or scenario - if 25 years comes first or if the developer meets reimbursement numbers, then that's it. I guess having a cap would be something to include in negotiations as I've learned the TIF revenues can continue to go to the developer even after the amount for reimbursement has been reached.

I suggested a cap at the work session and completely agree that's the way to ensure accountability. Money can't go to the developer for profit by law, but YES it would be capped at cost of the infrastructure (including interest costs), then once paid for the funds flow to the Taxing Bodies

Q. I thought either you or Rory had told me at one point that reimbursement does not include interest or account for inflation.

That's not correct. Perhaps you're thinking about the statement that the $35 million in infrastructure costs doesn't include interest or inflation? TIF funds can and do go to pay the true cost of the infrastructure, and if bonds/loans are used to pay for infrastructure, than the interest is also paid using TIF, just like if the Town issued bonds to build a road the interest would also be included in the cost of those bonds.

Q. Help me understand that $79 million in total TIF revenues.

I think the last answer may have clarified it, but here's another way to look at it: If you got a loan on your house for $350,000 at 6% interest for 30 years, when you pay the loan off at the end of 30 years you will have paid $762,000 to the bank, principal plus interest. It's the same with bonds or loans for the infrastructure costs. But as described earlier, the funds can only go toward those direct eligible costs, so the moment their paid back all money then flows to the Taxing Bodies – and a cap on those costs in the agreement will further ensure this. It's also important to note: we don't know whether we'll use direct cash investment, loans, bonds or some combination of those things to pay for the infrastructure because 1) it will happen over time, and 2) we can't know what the financial markets are going to be like in 5-10 years. The fundamental thing that we have to know to move forward is that the TIF funds we create will be pledged to repay the eligible costs that we invest in upfront, and only those costs – no profit to us, nothing else. That's what the URA accomplishes for us.

Q. Is that what you're seeking for reimbursement? That's working off the assumptions of ~$35 million in bonds, with X% interest rate over 25 years, right?

You got it! Also keep in mind that if some infrastructure isn't built for 5-10 years then the cost of that infrastructure will likely be higher (inflation) so the $35M goes up. BUT, that's why I believe that if we can set the appropriate restriction for everyone to be comfortable that the funds can't be misused, then we'll all be happy.

Q. As an equity partner it'd be nice to see those assumptions.

I'll be sending that infrastructure cost information with Mike Davis' detail to the town soon.

Q. I did hear a story of a developer essentially taking out a loan that wasn't really necessary, paying it back but somehow charging himself - and then the URA - 20% interest. Now that doesn't really make sense to me, but it was scary and that poor URA was totally taken advantage of.

There are crooks out there. I believe with this council and this community the scrutiny will be very high, and need for transparency will be huge. As I said earlier, this is just the beginning of long process and partnership...damn, this is really going to be a big pain in the ass. Remind me again, why am I doing this? In all seriousness, I hope you're seeing why it's so important to me that the Town and community are really behind this project. As I've shared I need to believe that the public side of this Public-Private Partnership wants to make this happen, because there will surely be challenges and obstacles, because this is the real world, and we have to work together to solve them as they arise. If that strong support isn't there, I don't even want to start down the path. We're about to get married, so we both better be sure we want to spend the next 25 years together!

Q. To summarize, when does public infrastructure get handed over to the Town and how does the Town pay to maintain?

Handed over upon completion, with agreements in place. Also, the Town can use a little of its $10 million in new revenue to help pay for the nominal maintenance costs.

Q. What would the cap be and what are your assumptions - pro forma financial statement I think is the technical term.

My assumptions and pro forma on the infrastructure costs are pretty straight forward – infrastructure generates no revenue for a developer, so all costs of building that public infrastructure on this project are a loss to us. Because of the construction costs in Pagosa (20-25% higher than other regional markets) combined with the lease rates and sales prices of property in town (which are not 20- 25% higher than the same regional markets) we can't successfully build a single building until the infrastructure is in place. Once the infrastructure is in place then at least we're at ground zero and having a fighting chance to build something without losing our shirts. I truly don't mean to be cavalier, those are just the realities. We have to spend more than other markets to build spaces that lease/sell for less than those other markets. That's not a formula for great profitability.