Legislative Alert

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SWEEPING CHANGES PROPOSED TO GPLET TAX INCENTIVE LEGISLATION - HB 2213

The legislature is considering significant revision to the operation of the Government Property Lease Excise Tax (GPLET) program, which is an economic development tool that provides tax incentives, often for infill development, by replacing property taxes temporarily with an excise tax. The proposed changes will have sweeping and far reaching effects, both on the future use of the GPLET and on existing deals. The purpose of this memo is to highlight a few of the concerns of this legislation as currently proposed.

I. Deletion of Some Aspects of Grandfathering

Every time the legislature has tinkered with the GPLET in the past, all existing deals have been fully grandfathered. Doing so has generally been regarded as a relatively sacred issue of protecting property backed investment expectations. This time, the legislation proposes to change the language in A.R.S. §42-6203(A), which protects development agreements prior to June 1, 2010. Currently, for deals where a development agreement was entered into before the 2010 date, a ten year window existed from the date of the development agreement within which to enter into a GPLET lease. The proposed legislation would cut all of that off retroactive to January 1st of this year. This means that for multiphase projects or for projects with development agreements prior to June 1, 2010, but on which the building has not been fully constructed and therefore the GPLET not finalized, the value of the GPLET lease would be cut in half.

II. Calculation of Taxes Due

The proposed legislation would shift the burden of calculating the GPLET tax due from the private property owner onto the government entity that has granted the special tax abatement. This seems to be relatively uncontroversial since typically it is a government that calculates taxes. In the past, it has probably not been done because some of the information is not easily available to the government lessor, and the calculation depends on multiple variables.

III. Elimination of Tax Abatement Relating to Elementary and Secondary Schools

A.R.S. §42-6209(E) would limit the GPLET abatement period for any development agreements after the beginning of this year to abating only those taxes which are go to counties, cities, towns, and community college districts. The portion of property taxes which go directly to elementary and secondary school districts could no longer be abated. This is in response to the prime criticism of the GPLET program being that it decreases revenues to elementary and secondary schools. Giving the funding problems of K-12 education in Arizona, this criticism has significant traction.

IV. Redefinition of Slum and Blight

Perhaps the most sweeping change appears in A.R.S. §42-6209(F). This redefines slum and blight area (for purposes of the GPLET only) differently than the statutory definitions of slum and blight used in Arizona law and from the definitions which appear in federal law. A little background is in order. The "slum" definition which comes initially from federal redevelopment law focuses on dilapidated, deteriorated, and otherwise unsafe buildings or improvements. The "blight" definition, on the other hand, focuses on things like inadequate infrastructure, unusual lotting patterns resulting in properties being too small for their intended uses, access problems, the need for right of way abandonments, and so on. "Slum" focuses on buildings, "blight" focuses on land.

The proposed change in this legislation appears to eliminate "blight" issues from GPLET justification. Most Arizona redevelopment areas have underutilized properties often stemming from blight conditions but not as often from slum conditions. By eliminating the blight definition, the usefulness of a slum and blight definition is dramatically reduced. A further problem here is that the slum and blight tests have to be revisited for GPLET use every five years. There are areas in Arizona where buildings have been cleared in anticipation of redevelopment but actual redevelopment may not take place for more than five years. That would mean that when government has undertaken to clear an area in anticipation of redevelopment, then the ability to use GPLET redevelopment tools would be eliminated if the redevelopment did not take place within five years.

V. Conclusion

One change, which the legislation does not appear to make and which we had expected to be part of a revision to GPLET laws, is in the use of GPLET outside of the eight year abatement period. This has been perceived as one of the most significant uses since it can take place outside the Central Business District and slum and blight areas and was largely an unintended

use of GPLET. We were surprised that this was not included in the draft as we have reviewed it.

The proposals do not appear to have been thought through. The change to development agreements prior to 2010 is both unnecessary and may well hurt several older developments. The elimination of school districts reduces the value of the incentive by approximately 73%.

The most problematic change is likely to come from redefining the long established slum and blight definitions solely for GPLET purposes. This may virtually eliminate future use of this redevelopment tool.

The proposed GPLET legislation made its way out of committee last week and is quickly moving forward. Gammage & Burnham is closely tracking the legislation. If you need advice regarding the impacts of the proposed changes to an existing GPLET deal, or a future deal, please contact us for more information.