HENRY MCMASTER
ATTORNEY GENERAL

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Dear Ms. Heizer:

We understand from your letter that you desire an attorney general's opinion on behalf of the Administrator of Beaufort County (the "County") and the Manager of the Town of Hilton Head Island (the "Town") concerning "the appropriateness of the methodology utilized in the County to calculate the incremental increase in tax revenue ('TIF Revenue') generated within a tax increment financing district established by the Town ('TIF District')." According to your request, the TIF District was created in 1999 via Town ordinance. In 2006, the County and the Town came to an agreement on the methodology by which to calculate the TIF Revenue (the "Rules"). You state as follows with regard to the Rules:

> These agreed-upon procedures, identified by the Town and the County as "Rules for Distributing TIF Money Parcel by Parcel Analysis" (the "Rules") provide that the calculation of an increase or decrease of assessed value within the TIF District will be performed on a parcel-by-parcel basis and that in the event of a decrease in the assessed value of a parcel under certain circumstances, the TIF Revenue associated with the parcel would be deemed zero. The Rules also provide that "Because of split where base value of parent parcel was not distributed to base value of children parcels - deduct appropriate money from TIF."

You indicate that recently several questions arose as the County and the Town are trying to resolve questions regarding the calculation of TIF Revenue and make adjustments to historical calculations. Accordingly, you ask for our opinion on the following questions:

> 1. Do the Rules used by agreement in the TIF District for calculating TIF Revenue conform to the relevant provisions of the Act?

2. What are the respective roles of the County Auditor, Treasurer, Assessor and Administrator and his staff in making the annual TIF Revenue calculations?

3. What recourse does the Town have if it disagrees with the TIF Revenue calculations?

4. Must all taxing districts agree to the Rules in order for them to be binding?

Law/Analysis

As you mentioned in your letter, chapter 6 of title 31, the Tax Increment Financing Law (the "TIF Law") governs the creation of tax increment financing districts. S.C. Code Ann. §§ 31-6-10 et seq. (2007). According to this legislation, pursuant to article X, section 14 of the South Carolina Constitution, the Legislature created this body of law to provide a mechanism by which municipalities could finance the cost of certain redevelopment projects in blighted and conservation areas with indebtedness. S.C. Code Ann. § 31-6-20. The TIF Law provides that such debt is serviced by the "added increments of tax revenue to result from the project." Id. § 31-6-20(A)(1).

Initially, the municipality must adopt an ordinance approving a redevelopment plan. S.C. Code Ann. § 31-6-70 (2007). Then, according to section 31-6-100 of the South Carolina Code (2007), the auditor of the county in which the municipality is located is required to certify the following:

> (1) the most recently ascertained equalized assessed value of all taxable real property within the redevelopment project area, as of the date of adoption of the ordinance adopted pursuant to § 31-6-80, which value is the "initial equalized assessed value" of the property; and
>
> (2) the total equalized assessed value of all taxable real property within the redevelopment project area and certifying the amount as the "total initial equalized assessed value" of the taxable real property within the redevelopment project area.

In addition, this provision requires the auditor or "any other official required by law to ascertain the amount of the equalized assessed valued of all taxable property within the district" to "ascertain the amount of value of taxable property in a project redevelopment area by including in the amount the certified total initial equalized assessed value of all taxable property in the area in lieu of the equalized assessed value of all taxable property in the area." S.C. Code Ann. § 31-6-70.

Once the total equalized assessed value of all taxable real property within the redevelopment area exceeds the certified total initial equalized assessed value, the revenue from property taxes levied on such property is divided as follows:

> (a) that portion of taxes levied upon each taxable lot, block, tract, or parcel of real property which is attributable to the total initial equalized assessed value of all taxable real property in the redevelopment project area must be allocated to and when collected must be paid by the county treasurer to the respective affected taxing districts in the manner required by law in the absence of the adoption of the redevelopment plan; and
>
> (b) that portion, if any, of taxes which is attributable to the increase in the current total equalized assessed valuation of all taxable real property in the redevelopment project area over and above the total initial equalized assessed value of taxable real property in the redevelopment project area must be allocated to and when collected must be paid to the municipality which shall deposit the taxes into a special fund called the special tax allocation fund of the municipality for the purpose of paying redevelopment project costs and obligations incurred in the payment of the costs and obligations. The municipality may pledge in the ordinance the funds in and to be deposited in the special tax allocation fund for the payment of the costs and obligations.

S.C. Code Ann. § 31-6-70(2).

By your letter, you informed us that the Town and the County entered into an agreement to establish rules for calculating the increase or decrease in the assessed value of property located in the TIF District. According to the Rules, which you provided with your request, the Town and the County agreed the TIF Revenue would be calculated on a parcel by parcel basis. Moreover, the Rules provide that if the current equalized assessed value of a parcel is less than its initial equalized assessed value because the parcel became tax exempt, received a homestead exemption, or changed from six-percent to four-percent property, then the value of zero shall be used rather than a negative figure. However, if the current equalized assessed value of a parcel is less than its initial equalized assessed value "[b]ecause of a split where based value of parent parcel was not distributed to based value of children parcels," the Rules call for a deduction of the appropriate amount of the TIF. Accordingly, you first question whether or not the Rules conform to the TIF Law.

To make this determination, we look to TIF Law. In looking at the TIF Law, we keep in mind the rules of statutory interpretation. As our Supreme Court expressed in Pee Dee Regional Transportation v. S.C. Second Injury Fund, 375 S.C. 60, 62, 650 S.E.2d 464, 465 (2007):

> The cardinal rule in interpreting [legislation] is to ascertain and effectuate the intent of the Legislature. Where the language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the Court has no right to impose another meaning.

Moreover, "When construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect." Duvall v. South Carolina Budget and Control Bd., 377 S.C. 36, 659 S.E.2d 125, 127 (2008).

TIF Law does not explicitly speak to how a decrease in a property's value subsequent to the establishment of its initial equalized assessed value impacts the determination of revenue generated from the TIF and ultimately, the amount distributed to the municipality. Thus, we must interpret the provisions of the TIF Law to ascertain the impact of a decrease in particular property's value below that of its initial equalized assessed value on revenue generated by the TIF.

Section 31-6-70(2) of the South Carolina Code, as quoted above, provides instruction as to the allocation tax revenue generated from TIF property. The first portion of this statute deals with the tax revenue allocated to the affected taxing districts and states: "that portion of taxes levied upon each taxable lot, block, tract, or parcel of real property which is attributable to the total initial equalized assessed value of taxable real property in the redevelopment project area" must be allocated to the affected taxing district as if no redevelopment plan exists. S.C. Code Ann. 31-6-70(2)(a). Thus, this provision calls for each parcel to be valued independently and requires that the relevant taxing districts receive tax revenue based on the initial equalized assessed value of each individual parcel in the redevelopment area. Accordingly, if the value of a piece of property decreases to an amount below the initial equalized assessed value, from this provision, we do not believe such a decrease impacts the tax revenue received by the relevant taxing authorities due to the decrease.

The second portion of section 31-6-70(2) describes the tax allocation to be received by the municipality to fund the redevelopment projects. This subsection states: "that portion, if any, of taxes which is attributable to the increase in the current total equalized assessed value of the taxable real property in the redevelopment project area and above the total initial equalized assessed value of taxable real property in the redevelopment project area" is allocated to the municipality. S.C. Code Ann. § 31-6-70(2)(b)(emphasis added). Rather than determining the increase on a parcel by parcel basis, this provision calculates the amount of tax revenues allocable to the municipality based on the aggregate total of the current values of taxable real property less the total initial equalized assessed value of taxable real property. Without any guidance in the TIF Law to the contrary, because the amount received by the municipality is based on the total current values less the total initial values, we presume that any decreases in individual property values are reflected in the total current value. Therefore, we believe adjusting property values in a way that eliminates a negative

increment is contrary to section 31-6-70(2). As such, we do not believe the Rules set forth in the agreement between the TIF District, the Town, and the County are in accordance with the TIF Law.

Next, you inquire as to the roles of the County Auditor, Treasurer, Assessor, and Administrator in making annual TIF Revenue calculations. Beginning with the County Auditor, section 31-6-100 of the TIF Law provides that the County Auditor must, upon adoption of the redevelopment plan by ordinance, determine and certify the initial equalized assessed value of all property located within the redevelopment area and the total initial equalized assessed value of all taxable real property within the redevelopment area. Furthermore, this provision calls for the County Auditor or "any other official required by law to ascertain the amount of the equalized assessed value of all taxable property within the district for the purpose of computing the rate percent of tax to be expended upon taxable property within such district" to value the taxable property within the redevelopment area every year. S.C. Code Ann. § 31-6-100(B). However, the general statutes governing county auditors do not place valuation responsibilities on the county auditor, but require them to "adopt valuations of the assessor and [the South Carolina Department of Revenue]." S.C. Code Ann. § 12-39-350 (2000). As such, we understand that county assessors generally value property located within the redevelopment area of a TIF district and the county auditor adopts this value. Nonetheless, it appears that the County Auditor, pursuant to the TIF Law, is responsible for certifying the valuation of each parcel located within the redevelopment area as well as the total valuation of all property located within the redevelopment area.

In addition to the County Auditor's responsibilities pursuant to section 31-6-100 of the South Carolina Code, we also recognize the auditor's general duties with regard to the assessing property tax levies pursuant to chapter 39 of title 12 of the South Carolina Code. According to these general provisions, the County Auditor is charged with receiving returns and making determinations as to "the sums to be levied upon each tract and lot of real property . . . ." S.C. Code Ann. § 12-39-180. Thus, according to these provisions, we presume the County Auditor is responsible for determining the taxes due on each tract and lot of real property located within the redevelopment area, just as he or she does with any other piece of property located within the County. Accordingly, we do not believe the County Auditor's role changes with regard to his or her duties pursuant to chapter 39 of title 12 other than the additional duties imposed by 31-6-100 of the South Carolina Code.

Section 31-6-70(2) places responsibility with the County Treasurer for paying the affected taxing districts their share of taxes levied based on the initial equalized assessed value of each parcel of property located in the redevelopment area. Furthermore, while not specifically stated, we presume the County Treasurer is also responsible for paying the municipality its portion of the TIF Revenue. In addition, section 31-6-70 states that upon completion of the redevelopment project and the retirement of any obligations issued in connection with such projects, the County Treasurer must, upon receiving payment from the municipal treasurer, pay any surplus funds to the other taxing districts in the redevelopment area. However, we note no direct involvement by the County Treasurer in the calculation of TIF Revenues.

The TIF Law makes no mention of the County Assessor or his or her participation in TIF Revenue calculations. However, according to section 12-37-90 of the South Carolina Code (2000), assessors must "be the sole person responsible for the valuation of real property, except that required by law to be appraised and assessed by the department, and the values set by the assessor may be altered only by the assessor or by legally constituted appellate boards, the department, or the courts . . . ." Moreover, as we previously mentioned, section 12-39-350 requires the County Auditor to adopt the valuations of the Assessor. Although the TIF Law does not mention the role of the Assessor in regard to the assessment of property located within the redevelopment area, it is our opinion that the Assessor is charged with determining the value of property located within the redevelopment area. Section 31-6-100 appears to recognize the Assessor's role in this regard as it notes that the yearly valuations of the property located in the redevelopment area may be performed by "any other official required by law to ascertain the amount of the equalized assessed value of all taxable property within the district . . . ." As the Assessor is the official required by law to ascertain the equalized assessed value, we believe her or she is responsible for the yearly valuation of property within the redevelopment area.

In addition, you ask us to comment on the role of the County Administrator in making the annual TIF Revenue calculations. Pursuant to section 4-9-30 of the South Carolina Code (Supp. 2007), the Legislature gives counties, through their governing bodies, the authority to assess and levy property taxes on property located within the County. In the case of a council-administrator form of county government, the Administrator is given certain specified powers and duties. S.C. Code Ann. § 4-9-630 (1986). However, we do not find any specific authority given to the Administrator with regard to the levy of taxes on the County's behalf. Nor do we find any reference in the TIF Law as to the role of the County Administrator in the determination of TIF Revenues.

Next, you inquire as to what recourse the Town may have if it disagrees with the TIF Revenue calculations. According to our analysis above, we believe the determination of the amount of tax revenues a municipality receives is governed by section 31-6-70 of the South Carolina Code. If the Town believes the TIF Law is not being followed with regard to the manner in which tax revenues are divided among it and the other taxing districts, the Town may initiate a suit seeking to have these provisions followed.

Lastly, you ask us to determine whether all taxing districts must agree to the Rules in order for them to be binding. According to section 31-6-80 of the South Carolina Code (2007), prior to the municipality's adoption of a redevelopment plan, it must notify the affected taxing districts. Furthermore, these taxing districts must consent to the redevelopment plan. S.C. Code Ann. § 31-6-80. However, we note no provision within the TIF Law allowing the municipality creating the TIF district to enter into an agreement with the affected taxing districts on the method in which the revenue generated by the TIF will be calculated. Furthermore as it is our position that the calculation for determination of tax revenue received by a municipality is governed by section 31-6-70, we do not believe an agreement is necessary and if made, cannot run afoul of section 31-6-70.

Conclusion

TIF Law does not unequivocally address how decreases in property values should be handled when the current equalized assessed value of a parcel located within the district is less than its initial equalized assessed value. However, in accordance with the provisions pertaining to the distribution of revenue generated by the TIF pursuant to section 31-6-70, we are of the opinion that decreases in property values are reflected in the total equalized assessed value when calculating the portion of revenue received by the municipality. Furthermore, we believe the roles of the County Auditor, Treasurer, Assessor, and Administrator are as laid out above. If the Town disagrees with the TIF Revenue calculation, the Town may bring legal action in order to determine compliance with the provisions of the TIF Law. Finally, with regard to the Town and the County's agreement pertaining to the distribution of TIF Revenue, we do not find any provision in the TIF Law contemplating such an agreement. While municipalities and counties may enter into agreements for certain purposes, we do not believe such agreements can be contrary to State law. As section 31-6-70 provides the method by which TIF Revenues shall be distributed, we believe this provision must be followed.

Very truly yours,

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