

The Public Improvement District
An Equitable Alternative for Development Financing

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Introduction

Traditionally, local governments have relied upon property tax and sales tax revenues to either pay for or provide the security for municipal bond proposals for public improvements. Faced with decreasing revenue sources and declining property values coupled with aging residential neighborhoods and public infrastructure needs, cities must consider all available funding sources for public improvement construction and maintenance. One available source of funding is to assess a fee on property owners within a specified boundary by the establishment of a Public Improvement District (PID). The funds generated from the assessments provide for the construction and maintenance of public improvements within the PID boundaries.

Residential neighborhoods present a unique challenge to local governments. While in many cases they provide a substantial portion of the ad valorem tax base, they are an aging product that may or may not have been developed with the tools necessary to ensure their sustainability. While many master planned developments are designed with unique features and an amenities maintenance financing mechanism, such as required Homeowner's Association (HOA) participation, many neighborhoods may not have such a funding source in place. Master planned neighborhoods with HOAs may be able to compel their residents to contribute to a private fund, managed by an HOA Board, for the use of maintaining improvements within the subdivision. On the other hand, neighborhoods without HOAs must rely upon individual property owners to maintain any improvements located on their property. This may require an inequitable contribution from property owners within a non-HOA neighborhood for maintaining improvements, such as perimeter fencing around a neighborhood. This inequity may lead to apathy and a decline in the aesthetics of the neighborhood. The decline will, in turn, affect property values and the ability of a city to maintain a valuable housing stock and a stable residential property tax base. Thus, cities may consider using financing tools such as PIDs to help ensure the maintenance of improvements.

The purpose of this paper is to discuss the establishment, management and applicability of PIDs for communities with new residential developments, aging residential neighborhoods, and for encouraging economic development in general.

PID Enabling Legislation

The *Texas Local Government Code* (TLGC) authorizes the creation of a public development financing tool commonly referred to as Public Improvement Districts. Established as the Public Improvement District Assessment Act in 1986, PIDs provide local governments with a mechanism for creating a district that is established with the intent of assessing property owners a fee to fund specific improvements within that area. Chapter 372, the enabling legislation, specifically states the types of public improvements that may be funded with the establishment of a PID. The funds from this district may be used for improvements ranging from maintaining aesthetic projects, such as art acquisition, signage and lighting improvements, to water, sanitary sewer and drainage improvements. *See Attachment 1 for a full description of permitted public improvements.*

By defining the boundaries for PID implementation, only the tax payers within the district are responsible for paying for the improvements that specifically benefit them. This is preferable to a direct subsidy from the general fund or issuance of bonds that would compel taxpayers in other parts of the city to shoulder part of the financial burden for improvements that offer them no direct benefit.

Creation of a PID

Chapter 372 of the TLGC provides the process for establishing a PID. The process can generally be separated into eight steps that must occur for approval and establishment of a PID. The following is a summary of these steps.

Step One — Petition

A petition must be drafted either by the municipality or by the property owners who wish to be included in the PID. The petition must include: 1) the area of PID boundaries; 2) a general description and cost of the proposed improvements; 3) the proposed method

of assessment of the levy and proposed distribution of funding between the tax payers within the district and the municipality; 4) whether the PID will be managed by the city, a private sector management firm, or a collaboration between the two; 5) acknowledgement that the property owners signing the petition concur with the proposed improvements; and, 6) that an advisory board may be established to develop and recommend an improvement plan to the municipality.

The petition must be signed by owners of more than 50% of the taxable real property value that is subject to assessment in accordance with the proposed district boundaries. The petition must also include the signatures of either more than 50% of the number of taxable property owners within the proposed district boundaries, who will be liable for the assessment or owners of more than 50% of the surface area of the area to be assessed the levy. Presuming these criteria are achieved, the petition may be submitted to the city for consideration.

Step Two - Feasibility Report

When the city receives a petition that meets the above stated criteria, it may appoint an advisory board to develop an improvement plan for the district. This plan may be prepared by the city or a third party consultant. The city will then prepare a feasibility report to analyze the plan and the proposed improvements within the assessment area. The feasibility analysis may include a preliminary estimate of the cost of the improvements and a recommendation on whether the scope of improvements should be amended.

Step Three – Public Hearing

Once the feasibility study has been determined acceptable, a public hearing must be conducted by the city council. Prior to the meeting, the city is responsible for providing notification of the public hearing by mailing notices to the owners of property within the proposed PID and by publishing a legal notice in the local newspaper. Upon conducting the public hearing, the city council must approve a resolution that includes a

description of proposed improvements with estimated costs of the improvements, and the proposed method of assessment; the proposed apportionment of cost between the PID and the city; and the boundaries of the assessment area. The city council must also approve by resolution the advisability of the proposed improvements.

Step Four – Resolution to Create PID

Authorization of the establishment of the PID must occur within six months of the public hearing to consider the PID petition as described in Step Three. The city council must pass a resolution authorizing the PID and publish such in the local newspaper.

Step Five – Construction of Improvements

Twenty days after the establishment of the PID, construction of improvements may begin. However, construction may not occur if within that 20-day period the city receives a protest petition signed by property owners of at least two-thirds of the taxable surface area of the PID or by two-thirds of all land owners within the PID. In response to the protest petition, the city council may choose to assess the levy on only part, or none, of the original assessment area.

Step Six – Service and Assessment Plans

The advisory board is required to provide city council with a five year service plan that addresses the projected costs of the improvements and the annual debt service. The city council may assign preparation of the service plan to city staff in lieu of an advisory board. The plan must be reviewed and updated annually in order to determine the annual budget for the PID. As a component of the service plan, the city must prepare an assessment plan that is based upon the benefit that will accrue to the properties due to the improvement. The cost of the improvement may be assessed in any manner that results in equal shares of the cost being borne by properties within the PID. The assessment may include the formula for the apportionment of cost between the municipality and the area to be assessed, and the amount of assessment may be adjusted annually upon review of the service plan.

Step Seven –Assessment Roll

The city is required to prepare an assessment roll that states the assessment against each property within the PID. The assessment roll is predicated upon the methodology chosen in the development of the assessment plan. The city council is required to consider the assessment roll at a public hearing and must publish notice of the public hearing in the newspaper at least ten days prior to the meeting as well as mail notices to the liable property owners within the assessment area.

Step Eight – Levy of Assessment

After the public hearing has been conducted, city council may pass an ordinance levying the assessment on the PID properties. The ordinance must include the method of payment. The city may establish installment payments, the interest rate and the duration, so long as the method meets the annual projected costs of the improvement.

A PID may be dissolved after public notice and a public hearing is held. The notice and public hearing requirements are the same as those required to create a PID. A petition requesting dissolution must contain the signatures of at least the same number of property owners require to create the PID. If the district is dissolved, the PID stays in effect until it has paid off any indebtedness that remains for the improvements.

PIDs and Residential Maintenance

The City of Fort Worth has a number of PIDs that fund improvements for both residential and commercial developments. In 2008, property owners within existing residential PIDs (originally established in 1998) and adjoining neighborhoods not located within PIDs petitioned the city to combine the two existing PIDs and the stand alone neighborhoods to create PID 6. PID 6 includes nine residential neighborhoods, representing 4,545 property owners and 1,114 acres. The PID improvements include landscaping maintenance, street tree and plant replacement, irrigation, water, electricity,

fence maintenance, ground and holiday lighting, park improvements, trash pickup in parks, and off-duty police patrols. (<http://www.pid6.org/>)

Property owners within the PID pay an annual assessment that is collected by the Tarrant County Tax Office. The City of Fort Worth contracts management of the PID to a third party management company that is responsible for submitting the annual budget and service plan, and is responsible for addressing concerns raised by members of the district. The PID 6 Advisory Board, comprised of representatives of the various neighborhood associations, work with the PID management consultant to address concerns of district members. Within the City of Fort Worth, residential PIDs are overseen by the Housing and Economic Development Department, which credits the success of PID 6 due to the aesthetic controls and property values the PID is able to help sustain. (<http://www.pid6.org/>)

The City of Grand Prairie states on its website that the establishment of PIDs “allows for a higher degree of maintenance within the PID area which presumably enhances the property values” (<http://www.gptx.org/index.aspx?page=507>). The city has gone as far as to state within its *Public Improvement District Policy* a requirement that all new residential development establish either a PID or a Homeowners Association (*Public Improvement District Policy* 4). The policy states that in order to petition for a PID in an existing neighborhood, there must be a minimum of 175 parcels, though the city will consider smaller neighborhoods based on each specific development (*Public Improvement District Policy* 2). The city requires the developer of a new residential development to provide a conceptual plan of proposed PID improvements to the city prior to construction as well as a date and process for when the PID assessment will be transferred to the residents of the development and advisory body (*Public Improvement District Policy* 5). The city requires that the developer schedule a meeting with residents within the PID to discuss the transfer of control prior to it occurring (*Public Improvement District Policy* 8). The policy states that at least one homeowners meeting must be held each year, to be convened as a public meeting, to discuss the service plan, annual budget, and nomination of advisory board members. Additional meetings may be held at the

discretion of the advisory board. The city also requires that each PID adopt bylaws that are reviewed by the city attorney's office and approved by the city council. This policy is transparent, engages the property owners, and openly shows a municipal commitment to the PID process.

The City of Sealy, Texas, has established a *Public Improvement Districts Policy* document to serve as a guideline for PID consideration. The city requires a 50 acre minimum development plan, or for smaller residential developments, a minimum average value of homes built in the district of \$225,000 (adjusted annually using the CPI). The policy requires a maximum annual assessment equivalent of a \$0.60 per \$100 tax rate on the assessed value of their property, and a maximum term of a PID assessment not to exceed 25 years. The policy document also states that the City of Sealy will contract with an outside consultant to administer the PID (*Public Improvement Districts Policy 1*). According to Kim Meloneck, Executive Director of the Sealy Economic Development Corporation, the city has yet to have a residential developer create PID within these requirements (Kim Meloneck, telephone interview).

An example of a specific residential PID improvement, rather than a broad policy analysis, the City of Rowlett considered a PID petition for a 6-foot high screening wall along an alley and roadway. The estimated cost of the fence was \$149,592 with the proposed apportionment of the cost being 80% by the municipality and 20% by the improvement district (city council staff report 20 April 2010). The city identified two sources of funding for the project, finance from city funds or finance by debt. By financing the project with city funds, the city could use existing monies from a cash surplus fund and charge a market interest rate for tax exempt debt. The city could separately bill each homeowner annually or have Dallas County collect it thru the tax roll. By financing with debt, the city would use bond monies for the improvements. Due to the relatively low amount of debt apportioned to the PID, the city ultimately chose to pay for the debt with existing funds.

PIDs and HOAs

While PIDs and HOAs have different structures, they may coexist within a development. This may be beneficial as PIDs do not enforce property covenants, conditions and restrictions that may be in place with some properties, which HOAs are designed to effectively regulate. PIDs are quasi-governmental agencies and HOAs are strictly private as governed by subdivision by-laws; this regulatory distinction allows for certain dual advantages relative to administrative oversight, enforcement, and assessment collection. For example, PID assessments may be collected via the County Tax Assessor's office or collected and escrowed as part of an owner's mortgage payment rather than having to make separate payments to a Homeowner's Association. This ensures that while an HOA may become defunct, the property owners are required and will have a mechanism to compensate the debt burden of the PID. Another advantage is that PID improvements must be public, while HOAs have more latitude on how they spend their collected private funds. This collaboration allows for a broad array of both private and public improvements within a neighborhood.

PIDs and Economic Development

Throughout Texas, PIDs are not solely used for residential development purposes. The City of Dallas has created The Lake Highlands Public Improvement District (LH PID). The primary goal of the LH PID is to provide additional security services and to aesthetically improve the streetscapes of more than 500 acres along the Skillman corridor. The City of Dallas believes this will facilitate economic growth within the LH PID. Examples of services funded by the PID include: security patrols, litter and graffiti management, pedestrian lighting, signage, landscape enhancements in public rights-of-way, promotional communications and public park amenities. Interestingly, the LH PID states that no more than 30% of a PID's land area can be comprised of single-family detached residential uses. Within the LH PID, there are only two residential homes. (<http://www.lhpid.org/>)

The LH PID is be managed by a private non-profit association, the Lake Highlands Improvement District Corporation. The management company is responsible

for oversight of the service plan and for submitting an annual budget and assessment rate to the Dallas City council. The LH PID expires in 2014. Established in 2008, and operating since 2009, property valuations have decreased, but that is likely an effect of the overall economy and not a reflection on the PID improvements. (<http://www.lhpil.org/>)

In 1993, the City of Austin approved a petition submitted by private sector property owners for the creation of a PID for its commercial downtown area. The PID was authorized for a five year period and intended to promote growth and revitalization of the downtown. The service plan included improvements such as “goodwill ambassadors” (similar to a neighborhood watch program), graffiti and litter removal, promotional literature, streetscape improvements, and concerts and public space programming. The PID was managed by the Downtown Austin Alliance, which was responsible for submittal of the Service Plan and Budget to the Austin city council. The PID augmented the services provided by the city and was deemed successful enough to receive a five year extension at the end of its original termination date. (<http://www.ci.austin.tx.us/downtown/0198/piddaa0198.htm>)

The City of Rockwall and the City of Killeen both included PID information for economic development initiatives within their urban planning master documents. Rockwall identifies PIDs as a viable funding mechanism in their *City of Rockwall Downtown Plan Blue Print for a Downtown Village* master plan. The plan states that PIDs could aid in the construction of parking structures to service the commercial development (*City of Rockwall Downtown Plan 25*). The City of Killeen, adopted the *Killeen Downtown Plan, A Supplement to the Comprehensive Plan*, that identified the potential of PIDs to be used for improvements within a primarily commercial district. The plan states that an advantage of a PID over a merchants association is the PIDs sustainable funding structure and the establishment of an advisory board. While general maintenance and security are specifically cited as improvements, the plan points out that funds could be used for a shuttle service between the existing military complex and the downtown area to promote commercial growth (*Killeen Downtown Plan 42*).

PIDs may not always be the appropriate funding mechanism for public improvements. In the City of McAllen’s master plan, *Heart of the City: Implementation Recommendations, Action Plan Management Recommendations*, several funding sources are mentioned, however PIDS are not recommended. The document states, “McAllen has previously created a Public Improvement District for the Downtown area, and while that district has successfully funded some downtown streetscape improvements, it has not been universally accepted among property owners in the downtown area, and is currently not likely to be accepted as an alternative in the future” (*Heart of the City* 78).

Similarly, the City of Irving has looked toward PIDs to alleviate the debt burden accumulated by the Dallas County Utility and Reclamation District (DCURD), which was created to build parts of Las Colinas. While the DCURD tax rate has increased over the years, the benefit of a PID would provide a fixed tax rate (assessment). However, current DCURD members may not want to enter into a PID until there are more members to share the debt burden (Aasen, forum.dallasmopolis).

Conclusions

While PIDs may not be applicable for every residential or commercial development, they do provide a level equity among property owners within the areas that benefit from the improvement(s). A benefit for a city is that the assessment does not require the sale of bonds for which the entire city is liable or subsidies from the general fund that would benefit a particular area. Though there a number of other public improvement financing options for developers that can help create and foster quality developments including, Tax Increment Financing Districts (Reinvestment Zones), Neighborhood Empowerment Zones, and other Chapter 380 Agreements, these are primarily incentive programs that are not based on long term funding or actively managed by the affected property owners. The strength of a PID is its ability to be utilized for both small and large residential and commercial developments. It provides a continuous funding source for a particular area with tangible public improvements that can be enjoyed by the property owners paying the assessment, which also benefit the city

as a whole. Equally important, PID funds may only be used for the improvements as specified in the service plan and may be managed by an advisory board of local representatives within the district.

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<http://www.rockwall.com/Planning/documents/DowntownPlan.pdf>

Attachment 1: Description of Permitted Public Improvements

Chapter 372 of the Texas Local Government Code provides that a public improvement project may include the following:

1. Landscaping;
2. Erection of fountains, distinctive lighting, and signs;
3. Acquiring, constructing, improving, widening, narrowing, closing, or rerouting of sidewalks or of streets, any other roadways, or their rights-of-way;
4. Construction or improvement of pedestrian malls;
5. Acquisition and installation of pieces of art;
6. Acquisition, construction, or improvement of libraries;
7. Acquisition, construction, or improvement of off-street parking facilities;
8. Acquisition, construction, improvement, or rerouting of mass transportation facilities;
9. Acquisition, construction, or improvement of water, wastewater, or drainage facilities or improvements;
10. The establishment or improvement of parks;
11. Projects similar to those listed in Subdivisions;
12. Acquisition, by purchase or otherwise, of real property in connection with an authorized improvement;
13. Special supplemental services for improvement and promotion of the district, including services relating to advertising, promotion, health and sanitation, water and wastewater, public safety, security, business recruitment, development, recreation, and cultural enhancement;
14. Payment of expenses incurred in the establishment, administration, and operation of the district, and;
15. Development, rehabilitation, or expansion of public housing.

Improvements, as listed above, may be combined and considered simultaneously, for the purposes of the petition and financing.