

# RE:VIEW

LARKIN  
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Attorneys at Law \*

FROM THE PRESIDENT'S DESK

## Larkin, Hoffman, Daly & Lindgren Serves Clients Through Integrated Practice Areas

TIM STOLTMAN



Twenty-five years ago, Larkin, Hoffman, organized its land use and real estate practice as the first integrated real estate law department in the region. Each of the 22 attorneys and paralegal staff working in the real estate practice concentrate on a particular area of practice that includes real estate transactions, land use and environmental approvals, government relations, real estate litigation, eminent domain and zoning appeals.

Larkin Hoffman offers the depth of experience of a larger firm in a setting that is accessible and friendly. Within the practice group, attorneys, paralegal staff and nonlegal staff frequently consult one another in providing service to our clients. This ensures that the right questions are asked and addressed, and that the right member of the team is working on the project.

Here's an example of how the integrated model works for our clients: A multi-phase development project requires refinancing of existing buildings, rezoning for new buildings, legislation related to new public improvements, a property tax appeal to lower real estate taxes, and litigation services to remedy past deficiencies in building management. We provide one team to meet all these needs. It's efficient and effective.

Because of the success of this model, other areas of the firm have been organized to combine the experience of litigators, nonlitigators, transactional lawyers, and nonlegal professionals. In addition to the land use and real estate practice, these groups include intellectual property, franchise law, telecommunications and employment law.

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## How Businesses Can Maximize Redevelopment Opportunities

BILL GRIFFITH



Most business people assume that it's easier to develop in a cornfield on the edge of town than it is in a "brownfield" in the center of town. In many cases, that is true. However, given the focus of local government on turning around underutilized or polluted sites, business people and corporate property managers should look to redevelopment as an alternative. The best redevelopment sites are parcels that have good visibility, access and proximity to population density.

### WHERE TO START

To begin your search, talk to local officials in charge of redevelopment. The head of the local economic development agency (EDA) or housing and redevelopment authority (HRA) in a target community may be most useful. Often, EDA and HRA staff will provide technical expertise or public financing to help move sites with significant development constraints.

Local real estate brokers, real estate advisors or real estate attorneys can be other sources for identifying good redevelopment sites.

### CONSIDER THE ADVANTAGES AND DISADVANTAGES OF REDEVELOPMENT

It is typical for business people to shy away from the risks associated with development or redevelopment projects. This is not without justification. Often the best sites in the urban area will require removal of constraints, such as blighted buildings, pollution or access problems. Most redevelopment projects take more than a year to bring to ground-breaking.

On the other hand, working with local officials on a redevelopment project may actually open the door to expedited governmental approvals, public financing, land assembly and a host of other tools to attract redevelopment. Another opportunity that a redevelopment site provides is good proximity to existing support services, workforce, public services and infrastructure.

### GETTING THROUGH THE DEVELOPMENT REVIEW PROCESS

In most cases, business people favor sites that are already zoned and subdivided for their corporate or business use. Consider "rezoning" and "planned unit development" as a way of obtaining an advantage over competitors in terms of location.

Rezoning typically involves a discretionary decision by local officials to change the classification of land from one zone to another. In other cases, rezoning may take the form of a text amendment to clarify that a certain commercial, retail or service use is allowed in a zoning district.

The planned unit development (PUD) concept is like rezoning

because it involves a discretionary decision of the local government. It is designed to provide flexibility for large-scale projects. For instance, if a commercial corner has been slow to redevelop, the city may consider a PUD designation to reduce parking requirements and increase development density to encourage developers to acquire the site. By doing this, the site turns over to a higher and better use and increases local tax base. Usually the trade off for higher development is more landscaping, more amenities, and the like.

### START WITH GOOD "LAND USE" RECONNAISSANCE

Always review the city record. Ask for copies of the comprehensive plan, land use map, zoning ordinance, environmental controls, as well as the prior history of the site and even the prior history of nearby sites.

Take a planning approach to land development. You want to "know as much as the other guy." Review the sources of authority for development. These include the comprehensive plan, zoning map, zoning controls, subdivision regulations, environmental quality regulations, storm water regulations, wetland regulations, and parking requirements.

Meet early with planning, engineering and building staff. Keep notes of meetings, document resolution of key development issues. Revise development plans without giving away the deal. For instance, if planning staff wants increased landscaping and reduced signage, and signage is critical to success, increase landscaping.

### ASSEMBLE THE RIGHT TEAM

Putting together a qualified team is essential to any development or redevelopment project. This team will usually include an architect, engineer, landscape planner, and development attorney. More involved projects may require the expertise of a traffic engineer, wetland engineer, fiscal consultant, and frequently, a graphic artist to prepare drawings and renderings of the project.

Business people who understand redevelopment opportunities and the rigors of land development practice can add value to existing real estate assets and locate new sites for business expansion. The key to success in this arena is patience, the right team of experts and the good judgment to know when to go the distance for a prized site. ■

BILL GRIFFITH is a shareholder with Larkin, Hoffman, Daly & Lindgren, Ltd. He practices in the areas of real estate, land use, environmental review, municipal law, and administrative law. He is development counsel on Phase II of Mall of America. Bill can be reached at 952-896-3290 or wgriffith@lhdl.com.

# Converting A Pay-As-You-Go Tax Increment Note Into Cash

BY SEAN D. KELLY

The Twin Cities area has seen a dramatic increase in redevelopment activity over the last few years due in part to the aging of inner ring suburbs, a scarce housing supply, and political pressures to limit the effects of urban sprawl. Redevelopment projects, by their nature, usually require some form of public assistance in order to be economically feasible. One of the most common sources for such public assistance is tax increment financing.

Tax increment financing is a statutory mechanism by which the increase in property taxes generated by a redevelopment project (i.e. the "tax increment") is captured by the local governing authority and used to defray certain "qualified costs" associated with the project. The most popular vehicle by which local authorities provide such tax increment assistance is the "pay-as-you-go" tax increment revenue note (the "PAYG Note").

## PAYG NOTES GENERALLY

Under a PAYG Note, a private developer incurs qualified costs associated with the redevelopment project and is reimbursed over time with tax increment generated by the project as such tax increment is received by the local authority. The PAYG Note is issued in a principal amount equal to the qualified costs to be reimbursed by the local authority and generally accrues interest at a taxable fixed rate derived from market conditions at the time of issuance.

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PAYG Notes are preferred by local authorities for two primary reasons. First, the risk that the project will not generate sufficient tax increment to fully amortize the debt is borne by the developer. Second, the transaction cost is nominal as compared to a formal bond issue to pay the qualified costs. The disadvantage to the developer, however, is that the tax increment assistance is usually received over a period of 20 years or longer instead of at the commencement of the project when such capital is often needed.

## MARKETING THE INCOME STREAM

The income stream that funds a PAYG Note derives from the most senior lien available in real estate – property taxes. As such, the investment risk associated with a PAYG Note is relatively low, making it an attractive investment option for certain institutional investors. In fact, local securities dealers such as Miller Johnson Steichen Kinnard, Inc. have established investment programs devoted solely to the marketing of PAYG Notes. Through such programs, a developer can convert a long-term payment obligation from the local authority into immediate cash to fund project costs. Most local authorities will not object to the sale of the PAYG Note, since the investment programs are generally structured such that the sale does not impose any additional risk or expense upon the issuer.

## GENERAL PROGRAM REQUIREMENTS

The sale of a PAYG Note is a relatively simple and inexpensive transaction. Acting as the "placement agent," a securities dealer will market the PAYG Note to a pool of potential investors. Typically, PAYG Notes lend themselves to a private placement among one or more financial institutions or accredited investors. The securities dealer will be responsible for preparing a private placement memorandum and such further documentation as is necessary to comply with state and federal securities regulations.

As further security for investors, most programs require that the developer enter into an agreement with the local authority establishing a minimum assessed value for the redevelopment property that is sufficient, under current tax rates, to generate tax increment revenues necessary to meet scheduled payments under the PAYG Note. The "assessment agreement" is recorded against the redevelopment property for the term of the PAYG Note.

The PAYG Note is usually sold to one or more investors for its "face value" or principal amount. The sale proceeds payable to the developer are generally discounted between two and five percent for fees and expenses charged by the placement agent. In addition, the local authority usually requires that any expenses it incurs in facilitating the sale of the PAYG Note be paid from the sale proceeds. In most cases a developer can expect to receive up to 95% of the face value of the note as net proceeds from the sale. ■



SEAN KELLY is a member of the Land Use and Real Estate Development Department at Larkin, Hoffman, Daly & Lindgren. His practice is focused in the areas of tax increment financing, public finance, and real estate development. Sean may be reached at 952-896-1532 or [skelly@lhdl.com](mailto:skelly@lhdl.com).

# Re: Search

WEB SITES YOU CAN USE

Web sites relating to articles in this edition of *Re:View*

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## [www.nahro.org](http://www.nahro.org)

**National Association of Housing and Redevelopment Officials.**

NAHRO is the leading housing and community development advocate for affordable housing. The site contains legislative news, information on NAHRO programs and links to other useful sites, such as HUD.

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## [www.uli.com](http://www.uli.com)

**Urban Land Institute.**

Contains information about everything from finance, retail and office development to smart growth and urban revitalizations.

The site's bookstore offers books and white papers on every development topic imaginable.

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## [www.lhdl.com](http://www.lhdl.com)

**Larkin, Hoffman, Daly & Lindgren, Ltd.**

We update the site regularly with the latest legal news affecting our clients.

Visitors can access important articles and newsletters online and find out what's happening at the firm.

## From the President's Desk Continued from Cover

Fast moving changes in the legal practice demand that we continually improve and realign our practices to better serve our clients. We remain committed to providing the highest quality legal service in the most cost effective manner.

We hope you enjoy this issue of *Re:View* ■

Tim Stoltman was recently elected President of Larkin, Hoffman, Daly & Lindgren, Ltd. He concentrates his practice in real estate transactions, such as leasing, commercial real estate acquisitions and sales, mortgage financing and general real estate matters. You may reach Tim at 952-896-3267 or [tstoltman@lhdl.com](mailto:tstoltman@lhdl.com).

# LARKIN HOFFMAN BRIEFS

Larkin, Hoffman attorneys **Gary A. Van Cleve** and **Mark D. Christopherson** represented American Tower, L.P. in a victory over the City of Grant. The City denied American Tower's application for a permit to build a telecommunications tower after the 60-day deadline mandated by state statute to approve or deny requests relating to zoning expired. The Minnesota Court of Appeals held that the City did not legally extend the 60-day deadline. As a result, American Tower's application for the tower was deemed approved by operation of law. This decision makes illegal any routine practice by a city in which a land use application form contains an extension of the 60-day deadline. Anyone submitting a written request to a city relating to zoning should be aware that state law requires the city to grant or deny the request within 60 days, or give proper notice to the applicant that it is extending the time to decide for up to an additional 60 days. If the city fails to act within the time deadline, state law directs that the request must be approved.

**Bill Griffith** currently represents Mall of America as development counsel in the milestone expansion of the international destination. The expansion will more than double the mall's current space, making it the largest mall in the world. The addition, as proposed, will include two more anchor stores, hundreds of boutiques, hotel rooms, condos, an office development and a 5,000-seat performing arts center. Mr. Griffith is a shareholder in the firm's Land Use and Real Estate Development Practice.

**Robert L. Hoffman** presented on "Public/Private Partnerships" at the Urban Land Institute's Annual Spring Meeting. This year's meeting was held in Minneapolis on May 10-11, 2001. Mr. Hoffman is the co-founder of Larkin, Hoffman and is a member of the Land Use and Real Estate Development Department.

Larkin, Hoffman continues to hold "Comprehensive Plan Update" seminars. The most recent, held in November 2000, was a look at the Comprehensive Plans for Bloomington, Eden Prairie and Chanhassen. Still scheduled for 2001 are seminars reviewing the Comprehensive Plans for Minneapolis, Scott County and Washington County. For more information regarding these seminars please contact **Becky Bickett** at 952-896-3322 or [bbickett@lhdl.com](mailto:bbickett@lhdl.com).

Larkin, Hoffman is pleased to announce that **John F. Klos** has been named a shareholder of the firm, and **Christopher J. Deike**, **Jeremy Stier**, **Dionne M. Benson** and **Paul H. McDowall** have joined the firm as associates. Mr. Klos is a member of the Firm's Intellectual Property Department. Mr. Deike joins Larkin Hoffman's Real Estate Litigation Department. Mr. Stier is the newest member of Larkin, Hoffman's Corporate and Business Law Department. Ms. Benson will practice in the firm's Business Litigation Department. Mr. McDowall joins the Firm's Intellectual Property Department.

# PROFILE



LINDA H. FISHER

## “Senior Practitioner in Land Use and Environmental Law”

Linda H. Fisher is a shareholder and Board member of Larkin, Hoffman, Daly & Lindgren, Ltd. She practices law in the areas of zoning and land use approvals; real estate development; and federal, state, and local environmental permitting, with a special emphasis on wetlands, environmental assessments, and environmental impact statements.

Linda received her J.D. in 1975 from Albany Law School of Union University and New York University; and received her B.A., cum laude with highest honors, from Smith College (Phi Beta Kappa) in 1972. She frequently speaks on land use and environmental law and real estate development, and is the author of "Minnesota Water Management Law and Section 404 Permits: A Practitioner's Perspective," 7 Hamline L. Rev. 249 (1984) and "The Land Use Approval Log -- Creating A Record to Take to Court," Minnesota Real Estate Journal.

Linda is active in the legal and real estate communities, and participates in the American Bar Association (Urban & Local Government Law, Real Property, Probate & Trust Law, and Natural Resources, Energy & Environmental Law Sections); Minnesota State Bar Association; Hennepin County Bar Association (past Chair, Environmental Law Committee); and the American Planning Association. She is also a member of the National Association of Industrial and Office Properties and the Minnesota Shopping Center Association.

Linda spends her free time with her family at their home in Minnetonka. She is a lifelong Vikings fan, sharing season tickets with her brother, and is a keen observer of state and national politics. ■

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