SPECIAL DISTRICTS IN ANNEXATION

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TML- Municipal Annexation 2016
May 12, 2016
Special Districts, Development Agreements, and SPA’s

Why annex? Chance Sparks
Basics of the Process- Scott Houston
Non-Annexation- Julie Fort
Provision of Services- Charles Zech
Special Districts, Development Agreements, and SPA’s

Where do you live?
- City limit
- Post Office
- Trash Service
- Utility Service
- Police and Fire Protection
- Driver’s License
- Taxes- AV and sales
Special Districts, Development Agreements, and SPA’s

Why would anyone want to be annexed?

Quid pro quo-

City gets: taxes, fees, territory

Owner gets: City services (?)- utilities, public safety, parks, infrastructure
Public Infrastructure

Who should pay for it?

Owner
Developer
Purchasers

How?

Taxes
Fees
Assessments
Special District?

When?
Special Districts

Municipal Utility District
Fresh Water Supply District
Water Control and Improvement District
Fresh Water Supply District converted to WCID
Public Improvement District
Municipal Management District
Special Law District
Strategic Partnership Agreement
Districts- Pros and Cons

Pros- New source of funds
         Non-recourse debt
         Infrastructure improvements
         New development
         Population- 5,000

Cons- Density
       Lose control
       Costly
       Additional costs/fees in perpetuity
       Residents
Materials

Pre-Annexation Development Agreement
Strategic Partnership Agreement
Amended and Restated Development Agreement
Fort Worth Policy on Special Districts
Comparative Analyses of Districts

Thank you Melissa Lindelow, Misty Ventura, and Ike Shupe

HB1949
<table>
<thead>
<tr>
<th>Available Revenue Sources for Economic Development</th>
<th>New or Existing Revenue</th>
<th>Timing of Revenue</th>
<th>Political Subdivision?</th>
</tr>
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<tbody>
<tr>
<td>Ad Valorem Property Tax</td>
<td>Sales and Use Tax</td>
<td>Special Assessments</td>
<td>New Revenue</td>
</tr>
<tr>
<td>Municipal Utility Districts</td>
<td>√</td>
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<tr>
<td>Art XVI, 59; WC Chp 54</td>
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<tr>
<td>Fresh Water Supply Districts</td>
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<tr>
<td>Art XVI, 59; WC Chp 53</td>
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<tr>
<td>Water Control and Improvement Districts</td>
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<td>√</td>
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<tr>
<td>Art XVI, 59; Art III, 52; WC Chp 51</td>
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<tr>
<td>Municipal Management Districts</td>
<td>√</td>
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<td>√</td>
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<tr>
<td>Art XVI, 59; Art III, 52; LGC Chp 375</td>
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</tbody>
</table>
| LEGISLATIVE DISTRICTS | √ | | √ | | | Yes, subject to open meetings and open records; TCEQ bond approval. (
generally city-controlled if MMDs, including the board, a finance plan,
and bonds). |
| Public Improvement Districts | | | | | | |
| LGC Chp 372 | | | | | | No; an area designated and controlled
by the governing body of a city or county. |
| Economic Development Corporations (4A & 4B) | | | | | | No; non-profit corporations that act
on behalf of and with the approval of
the governing body of a city. |
| LGC Chps 504, 505 | | | | | | |
| Tax Increment Financing | | | | | | No; a "zone" designated and
controlled by the governing body of a city. |
| TC Chp 311 | | | | | | |
| Tax Abatements | | | | | | No; a "zone" designated and
controlled by the governing body of a city. |
| TC Chp 312 | | | | | | |
| 380/381 Economic Development Agreements | √ Annual Appropriation | | √ Multi-Year | | | No; agreements entered into between
a developer and a city or county,
including performance standards and a "clawback." |
<p>| Art III, 52-a; LGC Chp 380; LGC Chp 381 | | | | | | |</p>
<table>
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<tr>
<th>Petition</th>
<th>Required Consents</th>
<th>Created By</th>
<th>Standard for Creation</th>
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<tbody>
<tr>
<td>Municipal Utility District (MUD)</td>
<td>Yes, TCEQ</td>
<td>City</td>
<td>TCEQ</td>
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<tr>
<td>Art XVI, 59; WC Chp 54</td>
<td>In-City</td>
<td>City consent or deemed consent LGC 42.042 WC 54.016</td>
<td>The district is feasible, practicable and necessary and will benefit the land. 54.021</td>
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<tr>
<td></td>
<td>ETJ</td>
<td>County (including ETJ)</td>
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<tr>
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<td>County</td>
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<tr>
<td>Fresh Water Supply District (FWSD)</td>
<td>Yes, County</td>
<td>City</td>
<td>County Commissioners</td>
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<tr>
<td>Art XVI, 59; WC Chp 53</td>
<td>In-City</td>
<td>City consent or deemed consent LGC 42.042</td>
<td>The petition is sufficient, including the necessity and feasibility of the district. 53.079; 53.014</td>
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<tr>
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<tr>
<td>Water Control and Improvement District (WCID)</td>
<td>Yes, County or TECQ</td>
<td>City</td>
<td>County Commissioners if water only one county; TCEQ if water two or more counties; TCEQ if sewer/drainage</td>
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<tr>
<td>Art XVI, 59; Art III, 52; WC Chp 51</td>
<td>In-City</td>
<td>City consent or deemed consent LGC 42.042</td>
<td>The petition shall be granted if (1) the district is feasible and practicable, (2) the land and residents will be benefited, (3) there is a public necessity or need, and (4) the creation will further the public welfare. 51.021</td>
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<tr>
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<td>ETJ</td>
<td>County if water one county; N/A if TCEQ created.</td>
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<tr>
<td></td>
<td>County</td>
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<tr>
<td>Municipal Management District (MMD)</td>
<td>Yes, TCEQ</td>
<td>City</td>
<td>TCEQ (according to the Senate IGR 2010 Interim Report, only one MMD has been administratively created)</td>
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<tr>
<td>Art XVI, 59; Art III, 52; LGC Chp 375</td>
<td>In-City</td>
<td>City consent or deemed consent LGC 42.042</td>
<td>The district is feasible and necessary and would benefit the public, taking into consideration (1) the availability of comparable services from other systems (including special districts, municipalities, and regional authorities) and (2) the reasonableness of the proposed public purpose projects and services. 375.025</td>
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<tr>
<td></td>
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<td>WC 54.0161 30 TAC Chp 55 Rule 55.203</td>
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<tr>
<td>LEGISLATIVE DISTRICT</td>
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<td>CITY</td>
<td>SPECIAL ACT OF LEGISLATURE</td>
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<tr>
<td></td>
<td>CITY</td>
<td>CITY AND COUNTY (and CITY?)</td>
<td>SPONSORED BY HOUSE/SENATE REPS; SUPPORT FROM THE CITY, COUNTY, AND ISD.</td>
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<td>ISD?</td>
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<tr>
<td>Public Improvement District (PID)</td>
<td>Yes, City</td>
<td>City</td>
<td>City Council Commissioners</td>
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<tr>
<td>LGC Chp 372</td>
<td>In-City</td>
<td>City</td>
<td>The proposed public improvement projects are advisable. 372.006; 372.010</td>
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<tr>
<td></td>
<td>ETJ</td>
<td>City Home Rule</td>
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<td>Municipal Utility District</td>
<td>Water</td>
<td>Sewer</td>
<td>Drainage</td>
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<table>
<thead>
<tr>
<th>Fresh Water Supply District</th>
<th>Water</th>
<th>Sewer</th>
<th>Drainage</th>
<th>Roads</th>
<th>Police</th>
<th>Fire</th>
<th>Recreational Facilities</th>
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<th>Eminent Domain</th>
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<tr>
<td>Art XVI, 59; WC Chps 49 &amp; 54</td>
<td>YES</td>
<td>YES</td>
<td>NO</td>
<td>YES, if in or adjacent to a county with a population of at least 1.3 million (including a city of 1 million) and with an election approving road powers under TC Chap 257. 53.029</td>
<td>YES</td>
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<td>YES</td>
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<td>YES</td>
<td>YES TCEQ approval</td>
<td>YES TCEQ approval</td>
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<tr>
<th>Fresh Water Supply District converted to a Water Control and Improvement District</th>
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<tr>
<td>YES</td>
<td>YES TCEQ approval</td>
<td>YES TCEQ approval</td>
<td>YES, if pre-conversion FWSD had road district powers. 51.044</td>
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<td>YES Same as a MUD</td>
<td>YES Same as a MUD</td>
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<td>YES</td>
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<th>Public Improvement District</th>
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<tr>
<td>LGC Chp 372</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES, including streets, sidewalks, roadways, off-street parking, and mass trans facilities;</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>NO</td>
</tr>
</tbody>
</table>
Argyle, Texas

• 1,500 acres undeveloped in Town Limits
• No sewer service
• 1,000 acres undeveloped in ETJ
• No sewer service
• Rural country feel
• Petition for Freshwater Supply District
Argyle Development Agreement

ETJ-
Road and Sewer improvements
Oversizing
Temporary tank, pump, and transport
Sewer capacity guarantee
Monetary contributions
Letter of credit
Argyle Development Agreement

Development regulations
Concept Plan
Inspections
Plan review fees
Pre-development fees
Oversizing reimbursement
What if your client doesn’t want a District?

Petition 42.043 Local Government Code
42.042 Local Government Code
Sewer, Roads, or Drainage
90 Days- no agreement, Petition for services
120 Days- Contract for service or consent
Pre-Annexation Development Agreement

ETJ- 212.172 Local Government Code

Zoning
Term
Annexation

Fees?

Boyle & Lowry, L.L.P.
Strategic Partnership Agreement

Chapter 49 Water Code District in your ETJ
43.0751- If on the plan, must negotiate SPA
Public Hearing requirement (2)
43.0572- Arbitration
43.07515- No fireworks
Strategic Partnership Agreement

Limited purpose annexation (sales and use tax)
Sales Tax sharing (quid pro quo)
Limitation on sales tax use
Full annexation only on agreed upon date
Public Improvement District

A PID is a contiguous area designated by a city or county upon petition of the majority of the landowners (by assessed value and number or area) within which projects or services will be undertaken and paid for solely from special assessments levied based on the special benefit conferred by the projects or services. The designation of a PID and levy of assessments are discretionary, legislative functions.
Purpose

Public Improvement Districts ("PIDs") provide a development tool that allocates costs according to the benefits received. A PID can provide a means to fund supplemental services and improvements to meet community needs which could not otherwise be constructed or provided and be paid by those who most benefit from them.
Authority

The statute authorizing the creation of PIDs is found in Chapter 372 of the Local Government Code. The public improvements district may be formed to accomplish any of the following improvements:

1. Water, wastewater, health, and sanitation, or drainage improvements (including acquisition, construction, or improvements of water, wastewater or drainage improvements);
2. Street and sidewalk improvements (acquiring, constructing, improving, widening, narrowing, closing or rerouting sidewalks, streets or any other roadways or their rights-of-way);
3. Mass transit improvements (acquisition, construction, improvement or rerouting of mass transportation facilities);
4. Parking improvements (acquisition, construction or improvement of off-street parking facilities);
5. Library improvements (acquisition, construction or improvement of libraries);
6. Park, recreation and cultural improvements (the established or improvement of parks);
7. Landscaping and other aesthetic improvements (erection of fountains, distinctive lighting and signs);
8. Art installation (acquisition and installation of pieces of art);
9. Creation of pedestrian malls (construction or improvement of pedestrian malls);
10. Similar improvements (projects similar to those listed above);
11. Supplemental safety services for the improvement of the district, including public safety and security services; or
12. Supplemental business-related services for the improvement of the district, including advertising and business recruitment and development.
When to Consider a PID

• Extend public infrastructure without burdening rate payers and tax payers.
• Forward the Town’s Comprehensive Plan, Thoroughfare Plan and Parks Plan.
• Achieve amenities that “but for” the PID would not be possible.
• Establish high development standards that “but for” the PID may not be financially achievable.
• Grow the Town’s tax base consistent with adopted plans without obligating Town revenues (TIF, 380 Agreements, etc,).
Financing Improvements

A Municipality may create a PID in which the City issues “up-front” non-recourse debt to pay for eligible public improvements. (Highlands will fall in this category)

Or..

A Municipality may create a PID in which the assessments are assigned to reimburse the developer for eligible public improvements as the assessments are collected.
Financial Implications

- PID debt is non-recourse to the Town. The bonds are backed only by the assessments on property within the Highlands PID.
- All Town costs incurred as a result of creating the Highlands PID #1 (staff, legal, consultants, engineers, etc.) are being paid by the developer via a cash escrow deposit with the Town and are ultimately reimbursable from bond proceeds when the bonds sell.
- The issuance of PID debt by the Town does not reduce the City’s bonding capacity.
- The Town keeps all of its advalorem and sales tax revenues.
- Ongoing administrative requirements are contracted to a third party, answering to the Town, which is paid for by PID assessments.
- The Town will employ the services of Bond Counsel, Financial Advisor, Town Attorney, Town PID Consultant, Professional Appraisal Firm and PID Administrator. All costs are reimbursed from PID bond proceeds or developer agreement.

Boyle & Lowry, LLP.
Property Owner Impact

- All property owners within the PID boundaries will pay an annual assessment.
- The assessment can never change once adopted by Council without consent of homeowners.
- Assessments may be prepaid.
- Undeveloped land is assessed and paid by developer (owner).
- Town is legally obligated to foreclose on unpaid assessments, so reserve funds are established for that purpose.
- Assessment will be the same for every lot as established in the Service and Assessment Plan.
- The total tax burden of all entities, including the PID assessment should not exceed approximately $3.00 (In Argyle, that means approximately $.66 will be available)
- The Highlands PID #1 assessment will expire in 30 years following payment of the debt and the assessment will end.
- Property owners are assessed only for costs which confer a special benefit to the property.
PID Bond Collateral

• City, County and ISD Tax Liens remain in first payment priority position.
• PID debt is secured by a Special Assessment Lien on the land inside the PID boundary.
• Project appraised value (land “as is” plus value of improvements to be constructed with bond funds) is primary factor in determining bond capacity (typical bond size is approximately 1/3 of appraised value).
Fort Worth Policy

Quality Development
Reasonable Land Use Regulations
Infrastructure
  Cost-effective
  City standards
  Future growth
Future Annexation
Fort Worth Policy

Conditions on:
- Bonded indebtedness
- Term
- Rate
- Call provisions
- City consent to District
Developing a Special Taxing District Philosophy

Points to consider:
Rather than limiting the question to:
“What is in this for the developer?”
Ask the question:
How can we:
1. “achieve the highest possible quality standards for development – Code and beyond”;
2. “protect the highest quality of life standards for our citizens”
3. “provide the means for the development to be financially successful and competitive in light of our very high quality demands and significant infrastructure needs?”
Developing District Criteria

Recommended District Consideration Criteria:

1) Does it provide higher quality and amenities than the development code requires?
2) Does it accommodate needed infrastructure that serves the entire community, not just the subdivision?
3) Does it keep the subdivision competitive with the marketplace so it doesn’t lay dormant?
4) Can we do all this without increasing property taxes?
Final Thoughts & Conclusion

Educate and inform
Discretion is best exercised with the best information
Pre-development Services Agreement- If it’s really such a good thing, have them pay for it all
Economic Analysis- What’s the real bottom line?
Control as much as you can
Be strategic
Don’t forget HB 1949- roadways
Thank you

Scott Houston, TML
Melissa Lindelow and Misty Ventura Shupe, Ventura, & Lindelow