FARGO TAX EXEMPT REVIEW COMMITTEE
Tuesday, May 22, 2018 – 1:00 p.m.
City Commission Room
AGENDA

1. Approve Tax Exempt Review Committee meeting minutes of 3/27/2018 meeting
    a) March 27, 2018 minutes

2. Discussion on Recommended Revisions to TIF policy (Jim Gilmour)
    a) Draft copy included.

3. Discussion on review of apartment incentive policy.
    a) Recommendations by Jim Gilmour.
    b) Downtown Housing Incentive Area Map.

ITEM 1a.

TAX EXEMPT REVIEW COMMITTEE
Fargo, North Dakota

Regular Meeting **Tuesday, March 27, 2018**

The March meeting of the Tax Exempt Review Committee of the City of Fargo, North Dakota, was held in the City Commission Room at City Hall at 1:00 p.m., Tuesday, March 27, 2018.
The committee members present or absent are:
Present: Dave Piepkorn, Mayor Tim Mahoney, Bruce Grubb, Chuck Hoge, Jim Buus, Jessica Ebeling, Kent Costin, Jim Gilmour, Ben Hushka, Erik Johnson, Robert Wilson, Mark Vaux
Absent: Mark Lemer, Jackie Gapp
Others Present: Chad Peterson representing Cass County Commission

Commissioner Piepkorn called the meeting to order at 1:00 p.m.

A motion was made by Bruce Grubb, seconded by Jim Buus, to approve the minutes from the February meeting held on February 27, 2018. Motion carried.

Conference Call with PFM on Due Diligence Financial Analysis For Large Project Incentives

Kent Costin introduced Matt Schnakenberg and Charles Upcraft from PFM who joined the meeting by conference call. Mr. Costin referred to two reports included in the agenda packet for previous projects that were analyzed by PFM. They are the Union Storage and Woodrow Wilson projects.

Matt Schnakenberg introduced himself. He has been with PFM since 2005. Matt said that they do a lot of economic development and TIF work across the country. Mr. Schnakenberg outlined their process. He said they receive and read through the proposal and then contact the developer to ask questions about their assumptions and expectations for financing terms and returns. Matt said he then develops his own cash flow model using the developers assumptions as well as some of his own if he feels there are market assumptions that are more appropriate. He said he does comparisons with and without assistance. Matt said the two major things he looks at are debt service coverage and internal rate of return. Typically , he looks out 10-15 years. Mr. Schnakenberg said they also look at rents, expenses, vacancy, financing, etc. for the local market area under analysis. He will run a sensitivity analyses. He said they look at a 10%-15% return being appropriate with assistance. Matt said that they also look at how much costs would have to be reduced or how much higher rents would have to be to get that rate of return. They also look at a combination of reduced costs and higher rents to reach the expected IRR. He said at the end they give a summary conclusion of whether the project could happen, but-for the incentive.

In answer to a question from Kent Costin, Matt said that when they analyze the market conditions, they look at the Fargo market for Fargo projects.

Commissioner Piepkorn asked how they evaluate whether the developer is paying an appropriate amount to acquire the property. Jim Gilmour stated that one of the policies (to receive the incentive for the land write-down portion) is that they not allow the developer more than 150% of the assessment value.

Kent Costin stated that if the Commission desires to incorporate low income housing in the target for incentives, that will drive the amount of the incentive requests up because they will be below market rents.

Jessica Ebeling asked Mr. Schnakenberg if there is anything we can do different in the process that he has seen others across the country do that we could take advantage of. Matt responded that some have done a "look- back" test. He said that a few years down the road, you can look at how they are actually performing as opposed to the projections up front in the proforma. He stated that you can analyze the performance and returns to evaluate if the incentive is still necessary. Mr. Hushka asked if any he has seen that have done the "look-back" test, have done a claw back of the incentive. Matt stated that he has not seen a claw back because every one they looked at still needed then incentive. Mr. Costin said that if we were to have the "look-back" on projects there would be additional costs. He said that the average "but-for" analysis runs between $2,000-$3,000. He said that we do have an application fee of $5,000. He said there are times where they ask the developer for additional data that requires another run at the analysis. Mr. Costin said that, with the "look-back" analysis, you are looking at more of an auditing function than a proforma review. So, he anticipates the cost could be higher.

Presentation by Jim Gilmour of Proposed Changes To TIF Policy

Jim Gilmour distributed copies of the current Tax Increment Financing (TIF) policy and a draft policy with suggested changes. Mr. Gilmour stated that many of the changes in the draft were at the suggestion of PFM.

Mr. Gilmour stated that he clarified, in Policies #1 & #2 the definitions of what is blighted and what is underdeveloped.

Bruce Grubb asked how, driving around town, does one know if a property is blighted. Mr. Gilmour said that state law has a very broad definition.

Kent Costin asked about the TIF exemption referred to in Policy #3. Mr. Gilmour & Mr. Hushka explained that is an exemption, similar to a PILOT, where the developer is reimbursed for the eligible TIF costs through lower taxes afforded by the exemption.

Commissioner Piepkorn stated that we should review these policy changes today and bring it back at a future meeting to act on and then forward to the City Commission. Mr. Gilmour said that he still needs to finish the evaluation portion and will have that for the next meeting.

Mr. Gilmour stated that Policy #3 defines that 15 years is the maximum term of the TIF note, however, Policy #4 allows extension to up to 25 years if the project is used by the City for infrastructure, public parking, or community development.

Mr. Gilmour said that there were minor edits to Policy #5 dealing with relocation. Policy #6 had a requirement that land acquisition can't be more than 50%. He said that he took that out because, if it meets the "but-for" test, that shouldn't be an issue.

Mr. Gilmour said that the change to Policy #8 reduces the maximum amount of TIF assistance from 15% to 10%. He stated Policy #9 more addresses the private/public partnerships and there were minor edits to Policies #10 & #11.

Mr. Gilmour said that in policies #12 & #13, PFM recommended setting the application fees by schedule based on the size of the project and not really needing to have the application form in the policy documents. Policy #14 had minor edits and Policy #15 sets the interest rates by schedule.

Gilmour said that Policy #16 is new and requires the developer to be in good standing, meaning current on taxes and utility fees and having no history of code violations. Jim Buus suggested that the entity should also be in good standing with the Secretary of State.

Mr. Gilmour stated that Kent Costin had a suggestion to have a look-back after so many years in the policy. Mr. Costin said that we should also require cooperation by the developer in the look-back audits or, without cooperation, there should be consequences.

Mr. Gilmour outlined how the application and review process would work. He said the steps would be:

1. Submittal of application request by letter
2. City Commission would direct staff to proceed with development plan, etc.
3. Application would be submitted with appropriate fees and financial review would be done
4. Finance Department & Finance Committee review financial review and recommend a specific level of assistance
5. Review by the Tax Exempt Review Committee (coordinate with Renaissance Zone Authority if also a Renaissance Zone exemption is included)

County Commissioner and Renaissance Zone Authority member Chad Peterson said that he would prefer a joint meeting with the Tax Exempt Review and Renaissance Zone Authority.

Mr. Gilmour gave the basic process for when the City initiates a project, like parking ramps or along the riverfront. The Roberts Commons parking ramp would be an example. Those would be initiated by a City Commissioner, Planning Commission, City Administrator, or Planning Department. That process would include:

1. City staff would prepare the plan
2. Public notifications would go out
3. Public hearings held
4. City approval

Mr. Gilmour said the remaining thing he has left to work on is the evaluation criteria. He said that he sees it as being in three different categories; housing, industrial/commercial, and downtown mixed use. He feels that rather than using a point system, there should be a system where they would need to meet a certain number of stated goals.

Kent Costin said that they did reach out to several national firms for a review of our policies for input.

Continued Discussion on the Review of the Apartment Incentive Policy

As far as apartment incentive policies, Mr. Gilmour said that he has had some thoughts on this. He said that right now there are two basic policies for apartments; low income housing and downtown.

Some possible changes Mr. Gilmour thought we could consider is to go to a standard of 5 years for downtown projects, rather than 10 years. He said if some were willing to go through the financial "but-for" review, we could go beyond the five years to up to 15 years. Depending on the review, some might need more years than others so they could be on a case by case basis depending on need determined by the financial review.

Regarding the low income projects, there are the 4% and 9% low income housing credits. We have seen some of the 9% credit projects but, no one seems to do the 4% because it is hard to make the project feasible. He said developer asked if the City would consider freezing the taxes for 15 years so they can get the 4% credits to make the project potentially feasible. Mr. Gilmour said that he thought that is something we could discuss. Mr. Gilmour said that he will prepare something for the next meeting.

Commissioner Piepkorn said that we need to consider something to get these low income projects developed. He said that we can continue that discussion at the next meeting.

The meeting adjourned at 1:40p.m., Tuesday, March 27, 2018.

1. Policy Purpose

The purpose of this policy is to establish the City of Fargo's (City) position relating to the use of Tax Increment Financing (TIF) for private development above and beyond the requirements and limitations set forth by State Law. This policy shall be used as a guide in the processing and review of applications requesting tax increment assistance. The fundamental purpose of TIF in Fargo is to encourage desirable development or redevelopment that would not otherwise occur but for the assistance provided through TIF.

The City of Fargo is granted the power to utilize TIF by the Tax Increment Financing Act. It is the intent of the City to provide the minimum amount of TIF at the shortest term required for the project to proceed. The City reserves the right to approve or reject projects on a case-by-case basis, taking into consideration established policies, project criteria, and demand on city services in relation to the potential benefits from the project. Meeting policy criteria does not guarantee the award of TIF to the project. Approval or denial of one project is not intended to set precedent for approval or denial of another project.

2. Objectives of Tax Increment Financing

As a matter of adopted policy, the City will consider using TIF to assist development projects to achieve one or more of the "City Objectives" listed in the evaluation criteria section of this policy.

3. Designated Redevelopment Areas

In order to maximize the ability of the City to meet its redevelopment goals, the City may designate redevelopment areas. In order to designate a redevelopment area, a plan for the redevelopment area will:

- Document existing conditions;
- Describe the plan for the future, and;
- Outline activities needed to implement the plan

Designation of the Redevelopment may occur in two ways.

- The designation may be at the request of a property owner and/or developer that has a proposed redevelopment plan.
- The designation may be initiated by the City Commission for an area where the City would like to see development, and then work with property owners within the TIF district to implement projects consistent with the development plan.

4. City of Fargo Policies for the Use of TIF

These policies are to provide guidance to developers who are considering making a request for TIF funding, and to guide City Commission decisions in the development of renewal plans and development agreements. When renewal plans are initiated by the City, not all of these policies are applicable to those plans.

Policy #1

When undertaking a redevelopment project on a defined parcel(s) of land, slum or blighted conditions on a portion of the property or properties should exist. A City Commission declaration of underdeveloped property for the purposes of using TIF assistance will outline activities needed to implement the redevelopment.

Policy #2

When undertaking a redevelopment or development project on an underdeveloped parcel(s) of land, a TIF exemption or TIF revenue note will be the preferred method of providing assistance directly to a developer. Exceptions to this rule will be considered by the City Commission and be based on reasons that can be documented by the developer and confirmed after review by the City's bond consultant.

Policy #3

When undertaking a redevelopment or development project using a TIF exemption or TIF revenue note, the length of the term of this note is limited to 15 years.

Policy #4

The length of a TIF may extend beyond 15 years when used for city infrastructure, public parking, or community development efforts, such as, affordable housing, replacement housing, public space, and public art.

Policy #5

To the extent required by state, federal, or local law or regulations, a relocation plan should be provided in the development or renewal plan. When undertaking a redevelopment project on underdeveloped parcel(s) of land, relocation payments to tenants of businesses or residential uses must be made. These relocation payments must follow state and federal guidelines, as applicable, for assistance.

Policy #6

Land acquisition or land write-down costs must meet the requirements outlined as follows:

- The eligible costs recouped to the developer shall be evaluated in a case-by-case basis, but the maximum should be the lesser of:
  - The total acquisition cost for the property, provided the acquisition cost is no more than 150% of the assessor's market value for the property.
  - The difference between what was paid by the developer for the property less the assessor's market value for the land (as opposed to land and buildings).

Policy #7

With respect to non-blighted, or non-slum development or redevelopment, eligible costs, as stated in state law, are limited to the following:

A. The cost of acquiring, or the market value, of all or part of the industrial or commercial property;
B. Costs of demolition, removal, or alteration of buildings and improvements on the industrial or commercial property, including the cost of clearing and grading land;
C. Costs of installation, construction, or reconstruction of streets, utilities, parks, and other public works or improvements necessary for carrying out the development or renewal plan; and
D. All interest and redemption premiums paid on bonds, notes, or other obligations issued by the municipality to provide funds for the payment of eligible public costs of development.

Policy #8

TIF assistance to the developer should be limited to a percentage of up to 10% of hard capital costs of development including the costs of acquisition. In other words, The TIF assistance will equal or be less than 10% of hard construction costs including the land acquisition costs, hard capital costs excluding the costs of professional fees, developer fees, furniture and fixtures, interest, profit, and other soft costs. In addition, the developer must provide at least 10% of total capital costs as developer's equity in the project.

The limit of 10% may be exceeded if the project will include a community development purpose, for example, accepting lower rates of return to provide affordable housing, or other public benefits. Examples:

- Direct investment in public or free publicly accessible private spaces.
- Direct and ongoing investment in public art.
- Development of affordable housing.
- City equity treated equally to other investor equity with City returns to be used by City for community development purpose, which should be used in the nearby neighborhoods

Policy #9

If funds are used for a City lead project, a public-private partnership, or for public benefit, the total TIF costs may exceed the limits stated in policy #8, including but not limited to the following:

- If funds are going to pay for public parking, public infrastructure, or other public investments such as rehabilitation or provision of affordable housing in the nearby neighborhoods or areas, or other public improvement not directly related to the project.

- Affordability provided permanently, ideally in conjunction with the use of 4% or 9% Low Income Housing Tax Credits

Policy #10 - ROI Analysis, Reasonable Assistance Requirement

When undertaking any TIF project that provides assistance to a developer, the due diligence procedures in determining the feasibility and level of public assistance must be reviewed by the City's financial consultant in conjunction with the City's staff. The financial consultant must use accepted public financing procedures in determining project feasibility and levels of public assistance. Particularly when public assistance includes substantial reimbursement to the developer costs of acquisition or land write-down amounts, review of the level of public assistance may include an estimate of the return on investment anticipated by the project and analysis as to whether the expected return on investment, including the public assistance, is within reason.

Policy #11 - Projection of Future Increments

For purposes of projecting future increments to be generated, an assumed maximum increase in valuation will be limited to two percent (2%) per annum. The exact assumptions made for projections is subject to approval by the City on a case-by-case basis.

Policy #12

When undertaking any TIF project within the City of Fargo, a non-refundable administrative fee set by schedule, must be paid by the developer after final approval of the City Commission and prior to or at the closing of the transaction. These fees are to reimburse the City for costs expended by staff and consultants to determine the feasibility, level of public assistance, and the preliminary costs of project development by the City. Other City costs such as engineering, bond carrying costs, and annual administration will be in addition to the administrative fee if warranted. To the extent that TIF assistance exceeds $2 million the administrative fee on said excess may be negotiated to a sum of less than 5%. A non-refundable deposit, set by schedule, shall be paid to the City along with an initial application for a TIF project. The City may require additional sums to be deposited from time to time, to defray such costs initially borne by the City. Such sums may be recouped by the developer as eligible costs as may be agreed between the City and the developer and as allowed by the urban renewal law (N.D.C.C. Chapter 40-58). The non-refundable deposit and any other additional sums paid to the City will be offset against and credited towards the administrative fee.

Policy #13

Applications for TIF assistance are to be submitted to the Department of Planning and Development. The application must include a description of the project and an estimate of the level of assistance needed to proceed with the project. A checklist and application will be available from the Department of Planning and Development.

Policy #14

The redevelopment should be compatible with long-term City redevelopment plans, and create a high quality redevelopment that will have a positive impact on the tax base and the surrounding area. The developer's agreement should include design standards to ensure that the development will be compatible with the long-term plans for the area.

Policy #15

The maximum interest rates allowed to be recouped as eligible costs will be set by schedule. The City Finance Director in consultation with the City's financial consultant will recommend the actual rate.

Policy #16 – Good standing

Applicants for TIF assistance must be in good standing with the City. Good standing means current in property taxes, utility fees, and no history of code violations

Application & Review Process for Developer Request for TIF Assistance

1. Applicant submits letter requesting TIF support for a project. The letter shall describe the project and shall be submitted to the City Commission for preliminary review and direction authorizing staff to move forward with the application process. City Commission approval is required to proceed to application review and plan development.
2. Applicant submits the completed application along with all application fees.
3. City Staff reviews the application and completes the Application Review Worksheet. The application and supporting documentation will be submitted to the City's financial consultant for due diligence consideration. Allow at least three (3) weeks for due diligence review and consideration [upon submittal of a complete and approved application].
    a. As part of the application review, City staff are authorized to inquire as to the character, reputation, fitness of the applicant to engage in the project and to bear the responsibilities entailed therein, and any other pertinent information. Such inquiries may include background checks on the applicant and principles of the applicant as the case may be.
    b. With respect to certain proprietary, commercial, and financial information that is submitted as part of the application, and review process, said information may be exempt from the North Dakota Open Records Law, Chapter 44-04, N.D.C.C., and to the extent that N.D.C.C. 44-04-18.4 allows, it is the City's intention to maintain confidentiality of such information when requested by the applicant.

    c. In advance of submission to the City of such confidential records or information, the City and Applicant will make appropriate arrangements for the handling of such information and records to protect the confidentiality thereof.
4. The results of the financial review will be reviewed by the Finance Department and the Finance Committee. The Finance Committee may recommend a specific level of assistance based on the review of the financial advisor.
5. Results of the reviews are submitted to the Renaissance Zone and/or the Tax Exempt Review Committee, for recommendation.
6. The renewal plan or development plan along with all necessary notices, resolutions, and certificates are prepared by City staff and/or consultants.
7. Notices mailed and published as required.
8. Public hearing(s) on the proposed project are held.
9. The City Commission grants final approval or denial of the plans and development agreements.

Application & Review Process for City Initiated Renewal Plans and TIF Districts

1. Renewal Plans and TIF Districts may be proposed by any City Commissioner, the Planning Commission, the City Administration, or the Planning Department. The proposal shall include a boundary, a description of existing conditions, and general plan for development.
2. City Staff prepares a plan for future development.
3. The renewal plan or development plan along with all necessary notices, resolutions, and certificates are prepared by City staff and/or consultants.
4. Notices mailed and published as required.
5. Public hearing(s) on the proposed project are held.
6. The City Commission grants final approval or denial of the plans and tax increment financing district.

5. Evaluation Criteria for Assistance to Developers

(To be completed)

ITEM 3a.

Apartment Incentives In Downtown & For Lower Income Units (Jim Gilmour 4/30/2018)

New Apartment Buildings within the Downtown Housing Incentive Area
PILOT Years % of Building Exempt Equivalent

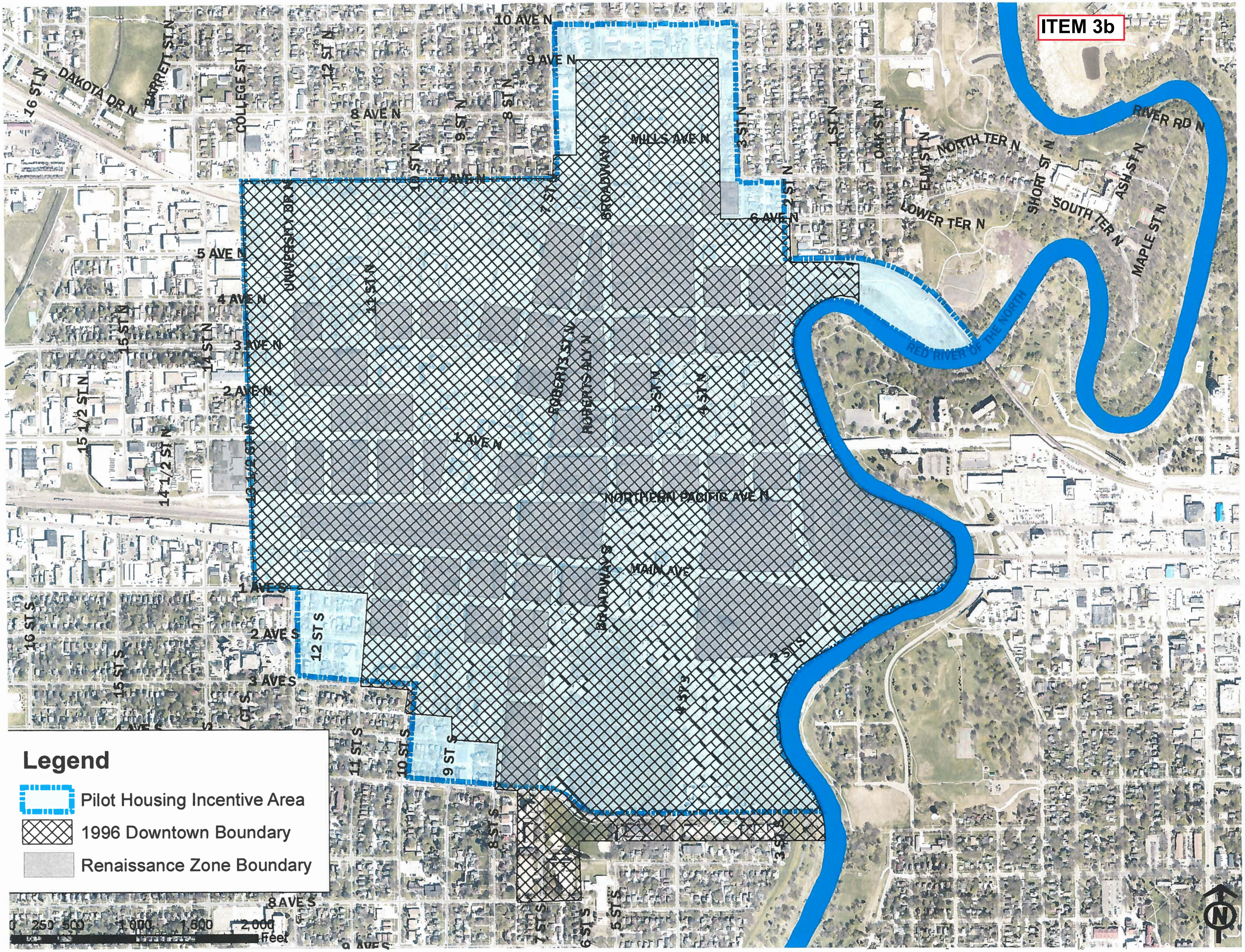
- Years 1 through 5 - 100% exempt on the increased value of the improvements.
- Market Rate Apartments: Years 6 through 15 – The percentage exempt will be based on a financial review and "but for" test. The amount exempt will be no more than 90% of the improved value.
- Lower Income Apartments: Years 6 through 15 – The percentage of the exemption may be up to 100% of the value of the buildings based on a financial review and "but for" test.

Apartment Buildings for Lower Income Households outside the Downtown
PILOT Years % of Building Exempt Equivalent

- Lower Income Apartments: Years 1 through 15 – The percentage of the exemption may be up to 100% of the value of the buildings based on a financial review and "but for" test.

Incentives for lower income apartments may be for new buildings and substantial rehabilitation necessary to maintain existing lower income apartments units.

Lower income apartments are those where the developer is required to rent to lower income households at below market rents as required by the Department of Housing and Urban Development, the Low Income Housing Tax Credit Program, or the ND Housing Finance Agency.


ITEM 3b
Legend
Pilot Housing Incentive Area
1996 Downtown Boundary
Renaissance Zone Boundary
0 250 500 1,000 1,500 2,000
Feet
10 AVE N
9 AVE N
8 AVE N
7 AVE N
6 AVE N
5 AVE N
4 AVE N
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2 AVE N
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NORTHERN PACIFIC AVE N
MAIN AVE
1 AVE S
2 AVE S
3 AVE S
8 AVE S
DAKOTA DR N
BARRETT ST N
COLLEGE ST N
UNIVERSITY DR N
12 ST N
10 ST N
9 ST N
8 ST N
7 ST N
ROBERTS ST N
ROBERTS ALY N
BROADWAY N
MILLS AVE N
3 ST N
4 ST N
1 ST N
OAK ST N
ELM ST N
NORTH TER N
LOWER TER N
SOUTH TER N
SHORT ST N
ASH ST N
MAPLE ST N
RIVER RD N
RED RIVER OF THE NORTH
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