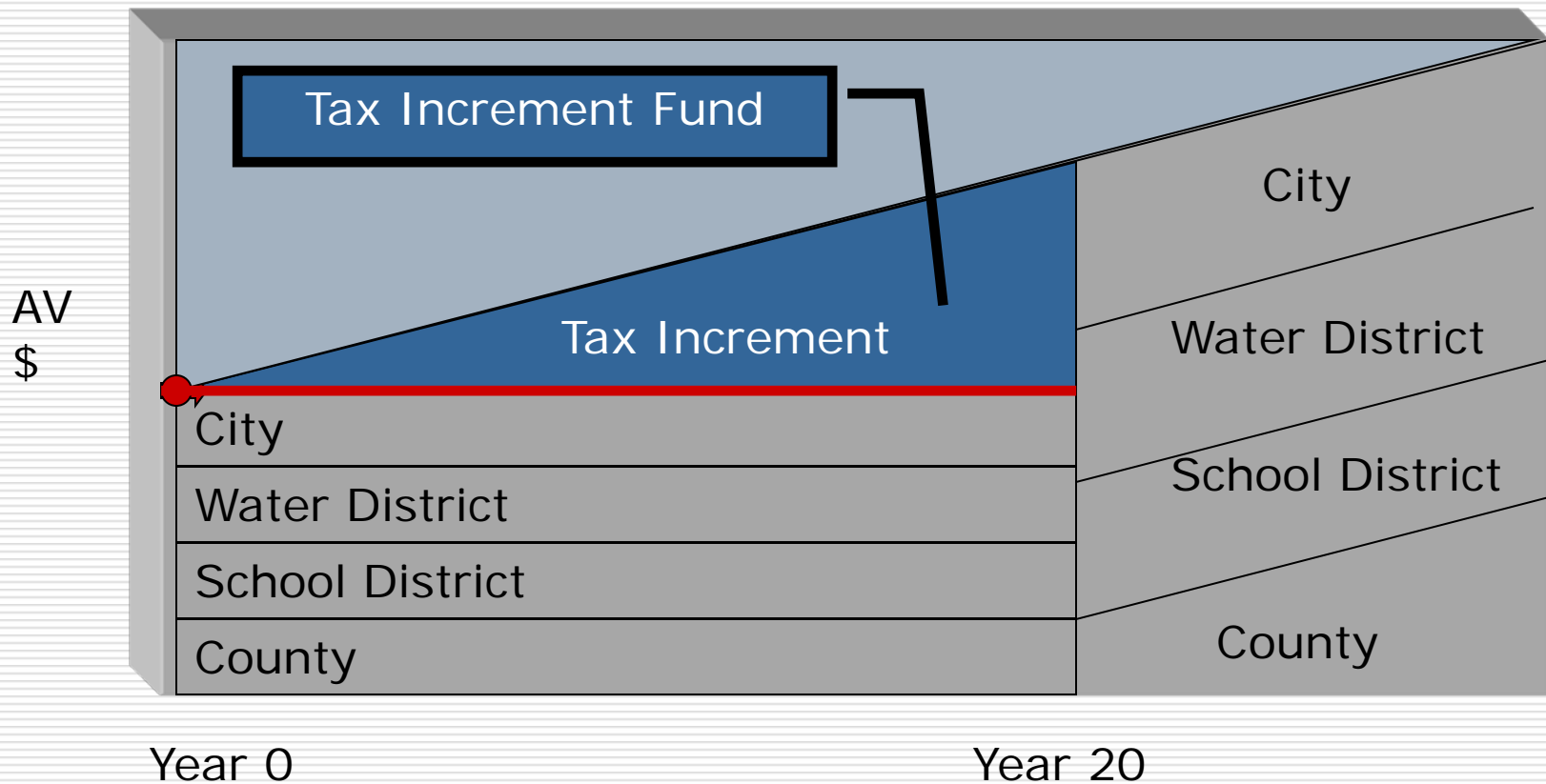


TAX INCREMENT DISTRICTS

Todd Meierhenry

**Meierhenry
Sargent** LLP
ATTORNEYS AT LAW

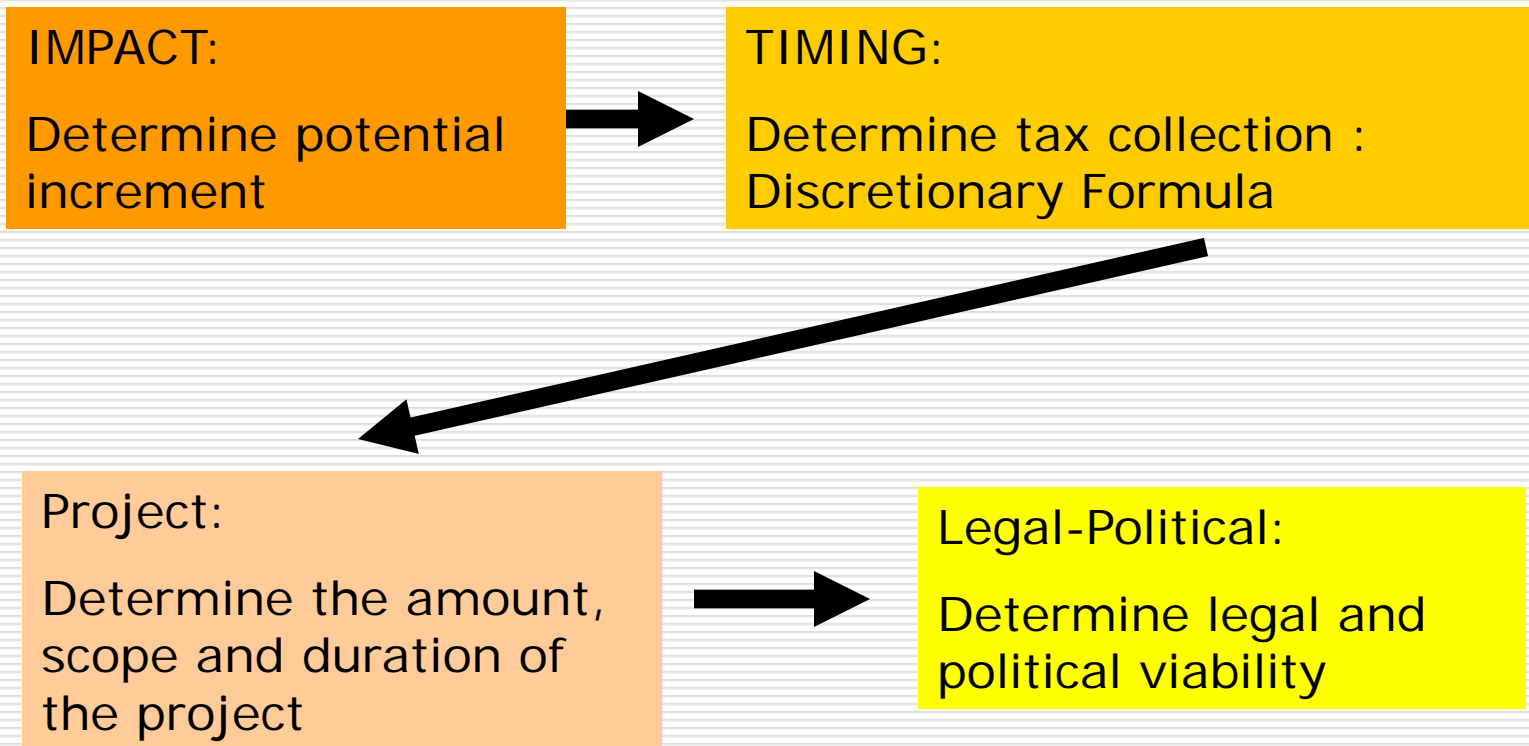
Allocation of Assessed Valuation



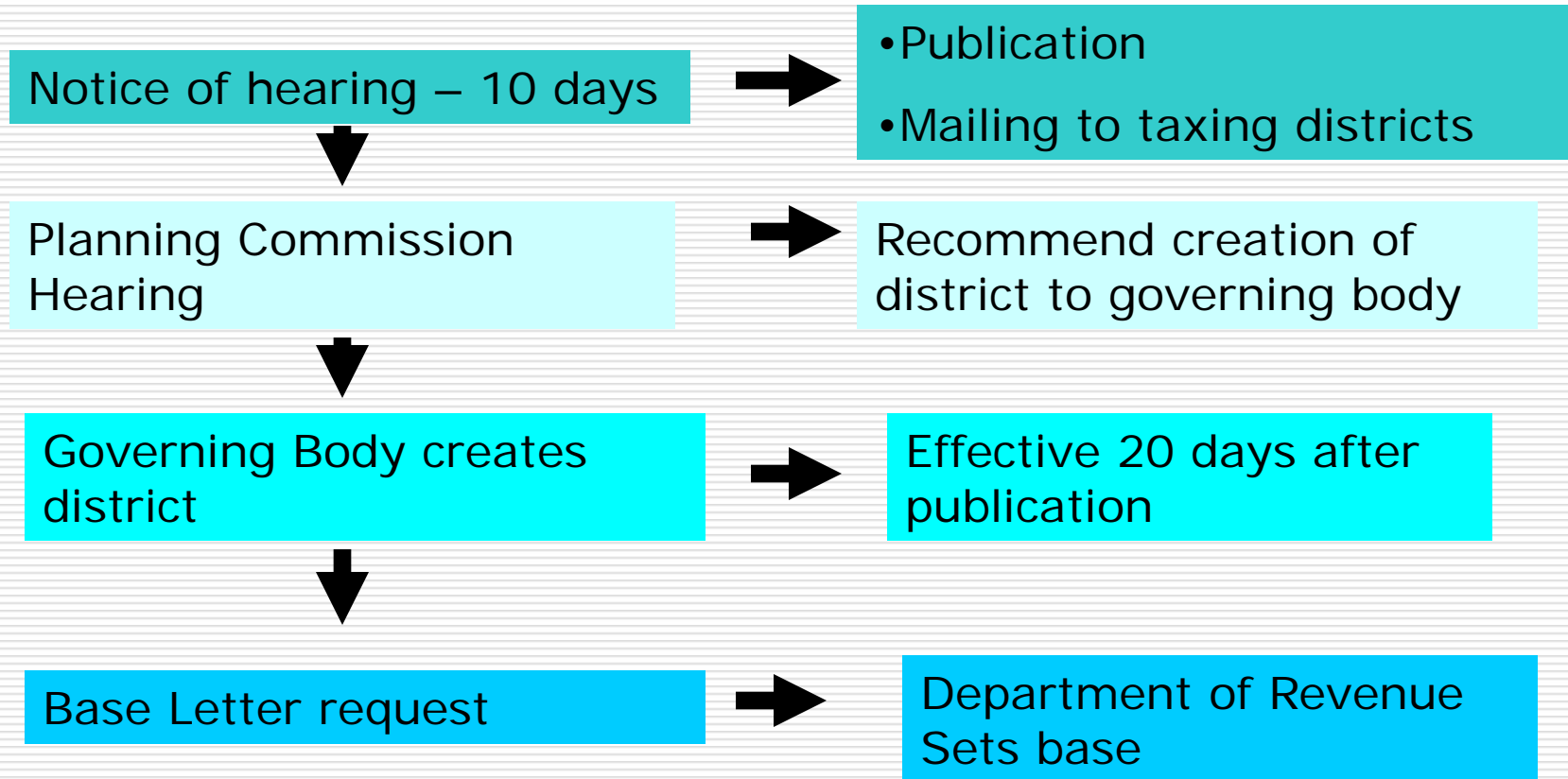
Stages

- Planning
- Creation
- Financing

Planning Stage



Creation Stage



Determination of Blight or Economic Development

- ❑ Not less than 25% must be blighted or
- ❑ Not less than fifty percent, by area, will stimulate and develop the general economic welfare through the promotion and advancement of industrial, commercial, manufacturing, agricultural, or natural resources;
- ❑ Improvement likely to enhance significantly the value of all other real property in the district

Blight Factors-SLUM

- Impairing growth
 - Substandard structures
 - Inadequate street layout
 - Faulty lot layout
 - Deterioration of site or improvements
 - Diversity of ownership
 - Conditions endangering life or property
 - Any combination of the above

Blight Factors-OPEN

- Predominantly open which has obsolete platting, diversity of ownership, deterioration of structures or of site improvements and substantially impairs sound growth

Blight Factors -CRIME

- Dilapidation, age, or obsolescence
- Inadequate provisions for ventilation, light, air, sanitation, or open spaces
- High density of population and overcrowding
- The existence of conditions which endanger life or property by fire and other causes, or
- Any combination of such factors;

conducive to ill health, disease, infant mortality, juvenile delinquency or crime.

Financing Plan

- Project Costs

"Project costs" are any expenditures made or estimated to be made, or monetary obligations incurred or estimated to be incurred, by a municipality which are listed in a project plan as costs of public works or improvements within a tax incremental district, plus any costs incidental thereto, diminished by any income, special assessments, or other revenues, other than tax increments, received, or reasonably expected to be received, by the municipality in connection with the implementation of the plan.

Project Costs - Capital Costs

- Capital costs, including the actual costs of the construction of
 - public works or improvements,
 - buildings, structures, and permanent fixtures;
 - the demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and permanent fixtures; the acquisition of equipment;
 - the clearing and grading of land; and
 - the amount of interest payable on tax incremental bonds or notes issued pursuant to this chapter until such time as positive tax increments to be received from the district, as estimated by the project plan, are sufficient to pay the principal of and interest on the tax incremental bonds or notes when due;

Project Costs - Financing Costs

- Financing costs, including
 - all interest paid to holders of evidences of indebtedness issued to pay for project costs,
 - any premium paid over the principal amount thereof because of the redemption of such obligations prior to maturity and
 - a reserve for the payment of principal of and interest on such obligations in an amount determined by the governing body to be reasonably required for the marketability of such obligations;

Project Costs – Real Property assembly

- Real property assembly costs, including the actual cost of the acquisition by a municipality of real or personal property within a tax incremental district less any proceeds to be received by the municipality from the sale, lease, or other disposition of such property pursuant to a project plan;

Project Costs – Professional Services

- Professional service costs, including those costs incurred for architectural, planning, engineering, and legal advice and services;

Project Costs - Imputed costs

- Professional service costs, including those costs incurred for architectural, planning, engineering, and legal advice and services

Project Costs - Organizational Costs

- Organizational costs, including the costs of conducting environmental impact and other studies and the costs of informing the public of the creation of tax incremental districts and the implementation of project plans; and

Project Costs – Discretionary payments

- Payments and grants made, at the discretion of the governing body, which are found to be necessary or convenient to the creation of tax incremental districts or the implementation of project plans or to stimulate and develop the general economic welfare and prosperity of the state.

Grants

- "Grant," the transfer for a governmental purpose of money or property to a transferee that is not a related party to or an agent of the County

Financing

- ❑ Pay as you go-collect tax increment and pay for projects
- ❑ Governmental Entity fronts costs and then is reimbursed
- ❑ Issue Bonds
 - Obligations payable solely from Tax Increment Fund
 - Interest Taxable
 - Interest Tax Exempt

Financing – Bonds tax exempt

- Payable solely from Generally applicable taxes
 - No guaranty by private individual or
 - No change in tax payer rights or obligations

- Proceeds used for
 - Governmentally owned improvements
 - Grant to developer – no payback

Procedural Issues

- Timing of creation of district
 - Maximum TIF 20 years
 - Timing of payments
 - Timing of construction (5 year limitation on expenditure)
 - Timing of revenues
 - Discretionary formula (0 -20-40-60-80-100)

Constitutional Debt Issue Article XIII

- “Ultimately the “credit” of a city is its power to levy general taxes. When it pledges all or part of that power, it pledges its credit and in a realistic sense incurs an obligation. We think the bonds must realistically be treated as a debt for the purposes of § 3.”

- Meierhenry v. City of Huron 354 N.W.2d 171, *178 (S.D., 1984)

Methods of paying Costs

- Methods of paying project costs. Payment of project costs may be made by any of the following methods or by any combination thereof:
 - (1) Payment by the municipality from the special fund of the tax incremental district;
 - (2) Payment out of the municipality's general funds;
 - (3) Payment out of the proceeds of the sale of municipal improvement bonds issued by the municipality under chapter 9-44;
 - (4) Payment out of the proceeds of revenue bonds issued by the municipality under chapter 9-54;
 - (5) Payment out of the proceeds of the sale of tax incremental bonds or notes issued by the municipality under this chapter.

Permissible uses of fund

- 11-9-32. Permissible uses of special fund. Moneys shall be paid out of the special fund created under § 11-9-31 only to pay project costs of the district, to reimburse the municipality for the payments or to satisfy claims of holders of tax incremental bonds or notes issued for the district.

Definition of Bond

- "Bond," any obligation . . .
 - for the payment of a specified sum of money at a specified future date,
 - for the repayment of money borrowed by a public body,
 - issued by a public body pursuant to authority granted in any law,
SDCL § 6-8B-1(1)

Tax-Exempt Bonds

□ APPLICABLE LAW

- Under section 103 of the Code, interest on a State or local bond is included in gross income if the bond is a private activity bond under [section 141](#) and is not a qualified bond. [Section 141\(a\)](#) defines a private activity bond as each bond within an issue that meets either the private business tests or meets the private loan financing test.
- There are two private business tests. The first is the private business use test set forth in [section 141\(b\)\(1\)](#) of the Code.
 - An issue meets this test if more than 10 percent of the proceeds of the issue are to be used for any private business use.
- The second is the private security or payment test set forth in [section 141\(b\)\(2\)](#).
 - An issue meets this test if the payment of principal or interest on more than 10% of the issue's proceeds is directly or indirectly (1) secured by an interest in property used or to be used for a private business use, (2) secured by payments in respect of property used or to be used for a private business use, or (3) derived from payments in respect of property or borrowed money used or to be used for a private business use.

Exception from private security

- "generally applicable taxes" are not treated as payments for purposes of [section 141\(b\)\(2\)](#)

Examples of County

□ Grants – Incentives

- Ethanol Plants – infrastructure - roads
- Beef Plants - grant
- Nursing Homes – grant (fire safety)
- Manufacturing Facilities – infrastructure improvements sewer, water & storm
- Grain Handlers – Road

Examples of Municipalities

- Streets, curb, gutter, sewer ect.
- Land
- Parking
- Pretreatment
- Buildings
- Relocation

QUESTIONS
