



Development Opportunities: Challenges and Tools to Work with Local Governments

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Chris Smith, Attorney/Shareholder

Brion Winters, Attorney/Shareholder



Chris Smith

christopher.smith@vonbriesen.com

Chris is a Co-Captain of von Briesen's Real Estate Team. He focuses his practice on real estate development, eminent domain and property tax, with a particular emphasis on drafting and negotiating development agreements, TIF and public-private partnerships.

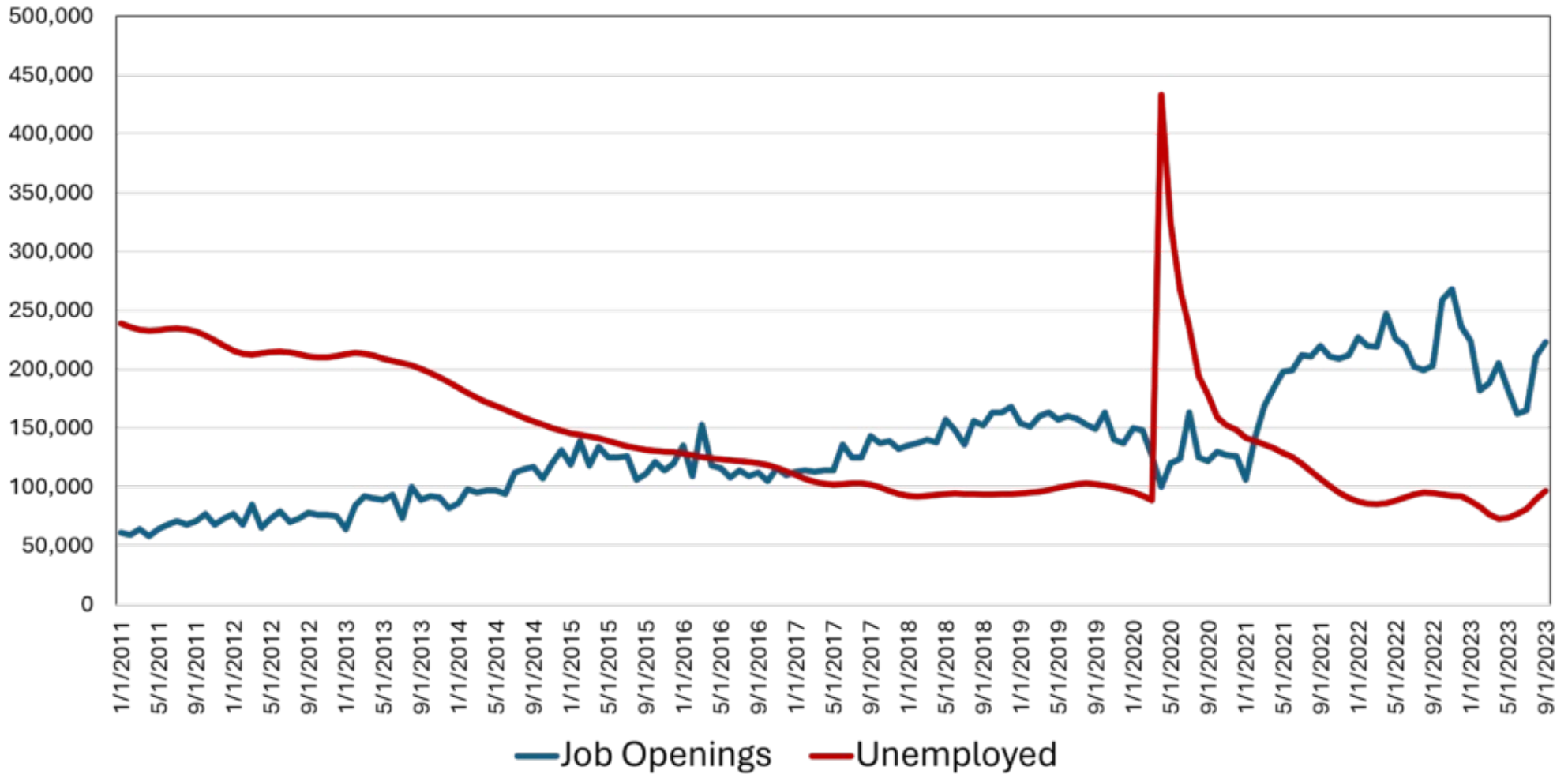


Brion Winters

brion.winters@vonbriesen.com

Brion is a Co-Captain of von Briesen's Real Estate Team. His practice focuses on transactional aspects of real estate; from drafting custom development agreements, purchase agreements, condominium documents and easements to creating or expanding TIF districts, negotiating and drafting complex lease agreements and various zoning and land use issues.

Labor Shortage Patterns for Wisconsin



Source: BLS: State Job Openings and Labor Turnover Summary

Workforce Challenges

- The youngest Baby Boomer will reach age 65 in 2030
- Average life expectancy is now over age 79
- We are here to highlight another issue:
Lack of Workforce Housing

Workforce Housing Challenges

Wisconsin's Housing Shortage – Generally

Recent study* indicates at least 200,000 new housing units are required to accommodate all the people who want to live and work in the state.

*<https://www.lwm-info.org/1706/More-Housing-Wisconsin#:~:text=Wisconsin%20is%20experiencing%20a%20significant,to%20live%20and%20work%20here>

What Does It All Mean?

- It means that the employees you will need are not going to have a place to live.
- This will be a major challenge in recruiting.



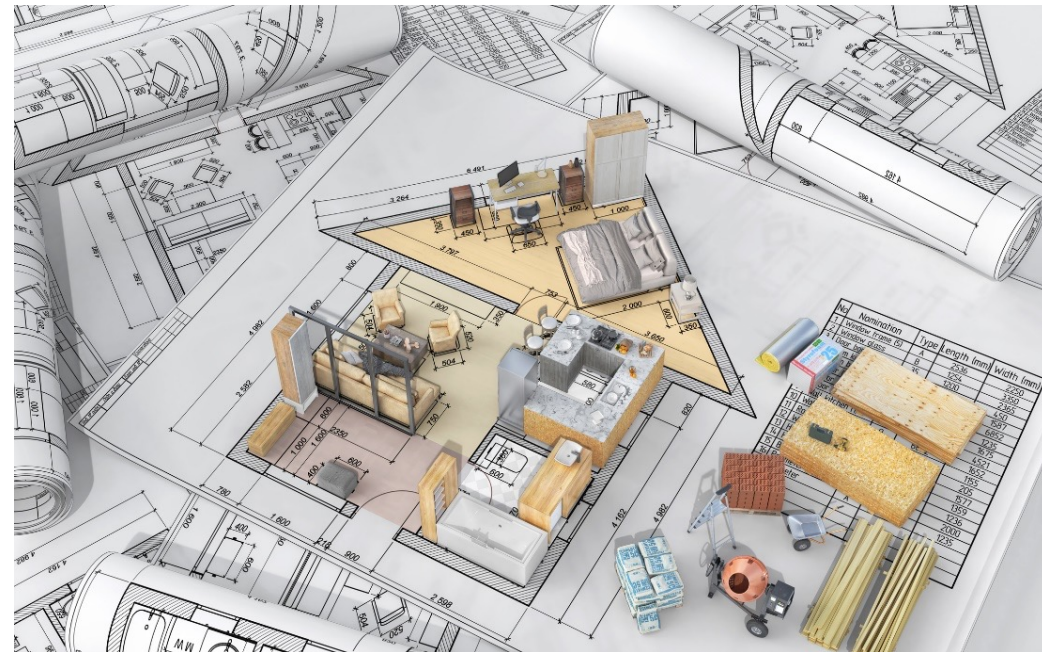
Good News: You Can Fix this Problem

- You can become a residential real estate developer
- You are already a real estate developer
- The tools are there already
- This is the next phase of residential real estate development



Strategies: Residential Real Estate Development

1. Do your homework – research your area
2. Site control strategies
3. Available incentives



Step 1: Do Your Homework

1. Review local, county and regional development plans
2. Familiarize yourself with applicable housing studies
3. Identify existing TIF Districts

Discover what your municipality has already determined they want and show them how your plans aligns with theirs.

Step 2: Site Control

In addition to traditional means (i.e. purchase), municipalities and sometimes other entities have tools to assist in controlling the site:

- Government can use condemnation to eliminate blight
- Third party can acquire options on your behalf



Step 3: Available Incentives

- Is your proposed development already in a TIF District?
- Can the municipality create a TIF District to assist your development?
 - Many ways to assist:
 - Government pays for infrastructure, up-front grant, pay-go incentive
 - Are there any TIF Districts near closure?
 - Lobby for Affordable Housing extension

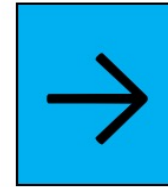
PRE-TID CREATION

- Agricultural Land
- 40 Acres
- Assessed at \$500,000
- Annual Tax Revenue*: \$5,000
 - Municipality 37%: \$1,850
 - School Dist. 40%: \$2,000
 - County 19%: \$950
 - Tech College 4%: \$200



DURING LIFE OF TID

- Land is developed
- Assessed at \$10,000,000
- \$9,500,000.00 of INCREMENT
- Annual Tax Revenue: \$5,000.00
 - Municipality: \$1,850
 - School Dist.: \$2,000
 - County: \$950
 - Tech College: \$200
- Annual tax revenue from Increment that TID Keeps: \$95,000.00

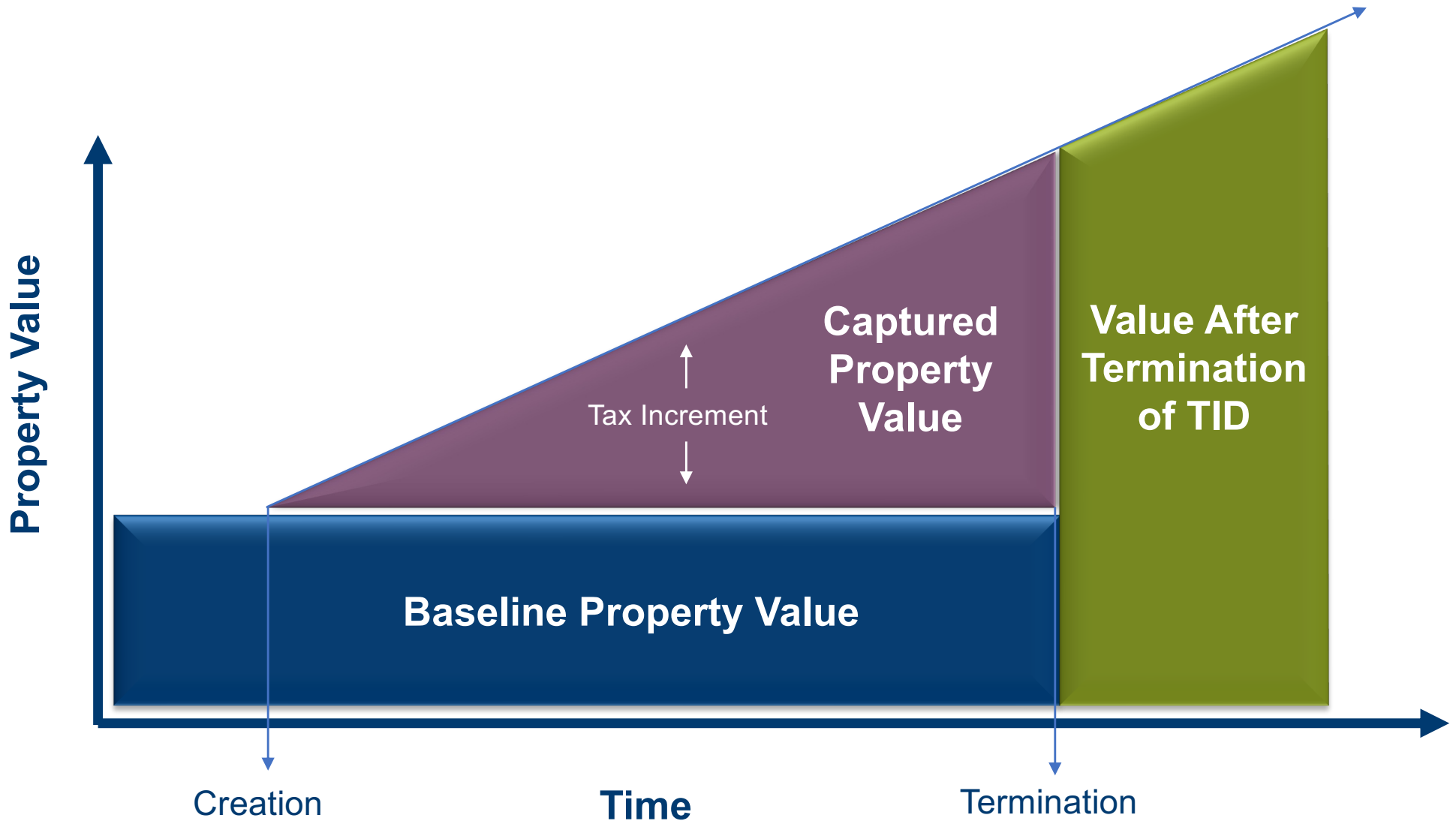


AFTER TID CLOSES

- Assessed at \$10,000,000
- Annual Tax Revenue: \$100,000.00
 - Municipality: \$37,000
 - School Dist.: \$40,000
 - County: \$19,000

*Mill rate \$10.00 per \$1000.00





Feedback is Important!

- Increasingly important – Remember to provide feedback on steps 1, 2 and 3
- What is broken in each step?
- *“The golden mean of anger—which, again, Aristotle calls “mildness”—represents an appropriate amount of anger, reserved for the right situations, to be directed at people who deserve it. Like fascists, or corrupt politicians, or anyone associated with the New York Yankees.”*

— Michael Schur, [How to Be Perfect: The Correct Answer to Every Moral Question](#)

Broken Steps: 1

- Are the locally adopted plans realistic?
- Have they been updated since the comp plan law was adopted?
- Do they reflect the current market demand?
- Are their housing studies up to date?
- Does the community have TIF policies, and do they reflect the current environment?
- Has their zoning been updated since 1972?

Broken Steps: 1

- Short example: Conditional uses
 - Many communities want a variety of housing types, but only permit higher-density or non-traditional as conditional uses
 - Developers have started to push back, and communities are taking notice
 - The planners agree, but elected officials need to legislate instead of permit

Broken Steps: 2

- Site control
 - Do your governmental bodies really want to be proactive?
 - Are local developers willing to partner and think creatively?
 - Teamwork from all sides is important, but make sure to have those conversations early and often.

Broken Steps: 3

- Does the community really know what it wants to incentivize?
- Do those incentives match what the market wants, and where there are shortcomings in financing?
- Again – partnerships – is the developer willing to provide a public good, and is the community willing to actually negotiate?

Workforce Housing

- <https://www.wheda.com/about-wheda/legislative-priorities/bipartisan-housing-legislation-package>
- **2023 Wisconsin Act 14** (as amended by 2023 Wisconsin Act 209): Residential Housing Infrastructure Revolving Loan Fund and Program (WHEDA "Infrastructure Access Loan")
- **2023 Wisconsin Act 15**: Main Street Housing Rehabilitation Revolving Loan Fund and Loan Program (WHEDA "Restore Main Street Loan")
- **2023 Wisconsin Act 17**: Workforce Housing Rehabilitation Loan Program (WHEDA "Home Repair and Rehab Loan (Home R&R Loan)")
- **2023 Wisconsin Act 18**: Commercial-to-Housing Conversion Revolving Loan Fund and Loan Program (WHEDA "Vacancy-to-Vitality Loan")

Act 14 – Residential Housing Infrastructure Revolving Loan Fund and Loan Program

\$275MM allocation to WHEDA to fund loans to developers to cover the costs of installing, replacing, upgrading or improving housing infrastructure related to workforce housing or senior housing.

- “Developer” means a person other than a governmental unit that constructs or creates residential housing.
- “Residential housing” means new, single-family or multi-family housing for rent or sale that: (a) is subject to taxation under Wis. Stats. §70; (b) has not been the subject of a claim for state/federal historic rehabilitation tax credit; and (c) has not received financial assistance from tax increments generated by an active TID.
- “Housing infrastructure” means the portion of the installation, replacement, upgrade or improvement of public infrastructure, or private infrastructure in rural areas if transferred to public use, that relates to an eligible project (i.e., workforce housing or senior housing).
- “Public infrastructure” means any of the following that is or will be owned, maintained or provided to or by a governmental unit (city, village, town, county or federally recognized American Indian tribe or band in Wisconsin): water distribution system; water treatment plant; wastewater treatment plant; sanitary sewer system; storm sewer system; stormwater retention pond; lift or pump station; street, road, alley or bridge; curb, gutter or sidewalk; traffic device; street light; or electric or gas distribution line.

Act 14 – Residential Housing Infrastructure Revolving Loan Fund and Loan Program

- “Workforce housing” means residential housing that:
 - a) if rented, (i) the estimated annual housing costs do not exceed (or are not expected to exceed) 30% of the area median income (with federal family size determinations/limitations) and utility costs (if not included in the rent) equal to the utility allowance determined by HUD, and (ii) the housing is occupied by individuals whose annual household income does not exceed the area median income; and
 - b) if occupied by owner, (i) the estimated annual housing costs do not exceed (or are not expected to exceed) 30% of 140% of the area median income (with federal family size determinations/limitations), and (ii) the housing is for purchase by individuals whose annual household income is not more than 140% of the area median income.
 - “Area median income” means the area median family income in the county in which the housing is located (adjusted for family size) as determined by HUD.
- “Senior housing” means residential housing that satisfies rent/own requirements above and that is intended and operated primarily for occupancy by at least one person 55 years old or older per dwelling unit.

Act 14 – Residential Housing Infrastructure Revolving Loan Fund and Loan Program

Loan program application conditions:

- Government Units:
 - **On or after January 1, 2023**, local governmental unit made changes to applicable zoning ordinance, subdivision regulations or other land development regulations to Increase development density, expedite approvals, reduce impact fees, or reduce parking, building or other development costs with respect to an eligible project.
 - **Within the last 5 years**, local governmental unit updated the housing element of its comprehensive plan.
 - Changes made prior to such timeframes will not qualify.
 - Compliance with Wis. Stats. §§66.1001 (comprehensive planning), 66.10013 (housing affordability report) and 66.10014 (new housing fee report), to the extent applicable.
 - Applicable sewer and water service area plan has been amended, if necessary.
 - Submits (with developer) a cost reduction analysis signed by governing body and developer.
 - May also provide loans for additional infrastructure costs to the eligible governmental unit for public infrastructure not directly related to the project itself.

Act 14 – Residential Housing Infrastructure Revolving Loan Fund and Loan Program

Loan program application conditions:

- Developers:
 - Secured financing for total cost of the development.
 - Obtained all necessary and applicable permits and other approvals.

Act 14 – Residential Housing Infrastructure Revolving Loan Fund and Loan Program

- Loan limitations – 20% of total cost of development for a loan to a developer and 10% of total cost of development for a loan to a governmental unit.
 - Loan agreement terms
 - Full loan amount due upon developer’s sale or transfer of all residential housing related to the loan.
 - Remains workforce housing or senior housing for at least 10 years following initial occupancy and annual certified rent roll for rentals and owner-occupied property may not be sold for a price that exceeds the price charged by the developer to the initial owner-occupier, adjusted annually (recorded land restriction).
 - Unlimited personal guaranties, unless no personal guaranty on first mortgage loan and developer’s loan to value does not exceed 75%.

Act 14 – Residential Housing Infrastructure Revolving Loan Fund and Loan Program

- Timeline
 - There is a semi-annual application process.
 - Current application period opened in September 2024 and closed in October 2024.
 - Current funding allocations were announced in December 2024.
 - Loan term sheet and award plan are currently available at (<https://www.wheda.com/about-wheda/legislative-priorities/bipartisan-housing-legislation-package/infrastructure-access-loan>).
 - Spring application cycle is anticipated to open March 2025 and close April 2025.

Workforce Housing – Act 15 – Main Street Housing Rehabilitation Revolving Loan Fund and Loan Program

- \$100MM allocation to WHEDA to fund subordinate loans for housing rehabilitation of an eligible project.
- “Housing rehabilitation” means the portion of an improvement to rental housing that relates to an eligible project if the improvement is to maintain the housing in a decent, safe and sanitary condition or to restore it to that condition, including any of the following:
 - Repairing/Replacing heating system, electrical system, internal plumbing system, interior wall or ceiling, roof, window, exterior door, flooring, insulation or siding, or
 - Remediating lead paint, asbestos or mold in accordance with applicable laws and regulations.
- “Rental housing” means single-family or multi-family housing offered or intended to be offered for rent that is subject to taxation under Wis. Stats. §70.

Workforce Housing – Act 15 – Main Street Housing Rehabilitation Revolving Loan Fund and Loan Program

- “Eligible project” means a housing rehabilitation project of existing workforce housing (same definition as Act 14 for rented property) that:
 - Is located on the 2nd or 3rd floor of an existing 2-story or 3-story building with commercial use on the main floor, provided commercial use is no more than 2/3rds of the building’s gross square footage;
 - The building is at least 40 years old and has not been significantly improved for at least 20 years prior to the application date;
 - Is vacant or has been underutilized;
 - Has not been the subject of a claim for state/federal historic rehabilitation tax credit; and
 - Has not received financial assistance from tax increments generated by an active TID.
- Eligible borrowers are any rental housing owner other than a city, village, town or county.

Workforce Housing – Act 15 – Main Street Housing Rehabilitation Revolving Loan Fund and Loan Program

- Loan program application conditions:
 - Government Units:
 - Same requirements as Act 14 loans regarding regulatory changes, updates to comprehensive plan, compliance with comprehensive plan statutes and submission of cost reduction analysis.
 - Developers:
 - Secured financing for total cost of the housing rehabilitation project **that are not covered by the loan from this loan program.**
 - Obtained all necessary and applicable permits and other approvals.
- Loan limitations – the lesser of \$20,000/dwelling unit or 25% of the total housing rehabilitation project costs.

Workforce Housing – Act 15 – Main Street Housing Rehabilitation Revolving Loan Fund and Loan Program

- Loan agreement terms
 - Same terms as Act 14 loans regarding the amount due on sale, remaining workforce housing for at least 10 years following initial occupancy and annual certified rent roll and unlimited personal guaranties (with same carveouts).
 - All remediation of hazardous materials or conditions shall comply with applicable laws and regulations. WHEDA receives environmental documents provided to senior lender.
 - All units must meet affordability requirements.
 - Interest rate of 3%, unless in municipalities with a population less than 10,000, then 1%. Rates determined in each application round.
 - Loan term is the lesser of the 10th anniversary of the initial occupancy or the term of the senior debt with an amortization equal to the senior debt amortization.
 - Loan-to-value (including senior debt and WHEDA loan) no higher than 100%.
 - Debt service coverage ratio (including senior debt and WHEDA loan) of at least 1:1.
 - No prepayment penalty, escrows, capital needs assessment, origination fee, loan structuring fee or application fee.

Workforce Housing – Act 15 – Main Street Housing Rehabilitation Revolving Loan Fund and Loan Program

■ Timeline

- There is a semi-annual application process.
- Current application period opened in September 2024 and closed in October 2024.
- Current funding allocations were announced in December 2024.
- Loan term sheet and award plan are currently available at (<https://www.wheda.com/about-wheda/legislative-priorities/bipartisan-housing-legislation-package/restore-main-street>).
- Spring application cycle is anticipated to open March 2025 and close April 2025.

Workforce Housing – Act 17 – Workforce Housing Rehabilitation Loan Program

- Modifies the existing Workforce Housing Rehabilitation Loan Program administered by WHEDA.
- \$50MM allocation of funds to WHEDA to fund loans for eligible rehabilitation to an owner-occupied, single-family, primary residence that was constructed at least 40 years prior to the date of the application.
- “Eligible rehabilitation” means an improvement to housing to maintain the housing in a decent, safe and sanitary condition or to restore it to that condition if the improvement is the removal of lead paint, asbestos, mold or other internal environmental contamination in accordance with applicable laws and regulations or constitutes a structural improvement, including any of the following:
 - Repairing/Replacing heating system, electrical system, internal plumbing system, interior wall or ceiling, roof, window, exterior door, flooring, insulation or siding, or
 - Repairing the foundation.
- Eligible borrowers have a household annual income that does not exceed 120% of the area median family income (same definition as Act 14).

Workforce Housing – Act 17 – Workforce Housing Rehabilitation Loan Program

- Loan terms
 - Monthly principal and interest payments (fully-amortizing).
 - Loan must be repaid in full upon the sale or transfer of the property.
 - Loan term shall not exceed 15 years.
 - Loan amount is the lesser of \$50,000 or 100% of the appraise value of the property after the completion of the eligible rehabilitation.
 - Applicant does not have another loan under this program pending at the time of application.
 - The home has not been the subject of a claim for state/federal historic rehabilitation tax credit.
 - The home has not received financial assistance from tax increments generated by an active TID.
 - All remediation of hazardous materials or conditions shall comply with applicable laws and regulations.

Workforce Housing – Act 18 – Commercial-to-Housing Conversion Revolving Loan Fund and Loan Program

- \$100MM allocation to WHEDA to fund subordinate loans to cover construction costs (including demolition) for an eligible project.
- “Eligible project” means a construction project for the conversion of a vacant or underutilized commercial (non-residential) building to a new residential housing development that consists of workforce housing or senior housing, provided the building has:
 - Been vacant for at least 1 year or has been underutilized,
 - Current zoning that permits residential use,
 - not been subject of a claim for a state or federal historic rehabilitation tax credit, and
 - not received financial assistance from tax increments generated by an active TID.
- “Residential housing development” means residential housing (single-family or multi-family housing for rent/sale that is subject to taxation under Wis. Stats. §70) that consists of 16 or more dwelling units.
- “Workforce housing” and “senior housing” have the same meanings as in Act 14.
- Eligible borrowers are any developer (other than a city, village, town or county, that converts a vacant or underutilized commercial building to residential use.

Workforce Housing – Act 18 – Commercial-to-Housing Conversion Revolving Loan Fund and Loan Program

- Loan program application conditions:
 - Government Units:
 - Same requirements as Act 14 loans regarding regulatory changes, updates to comprehensive plan, compliance with comprehensive plan statutes and submission of cost reduction analysis.
 - Developers:
 - Secured financing for total cost of the housing rehabilitation project **that are not covered by the loan from this loan program.**
 - Obtained all necessary and applicable permits and other approvals.
- Loan limitations – the lesser of \$1,000,000 per eligible project or 20% of the total project costs.

Workforce Housing – Act 18 – Commercial-to-Housing Conversion Revolving Loan Fund and Loan Program

- Loan agreement terms
 - Same terms as Act 14 loans regarding the amount due on sale, remaining workforce housing or senior housing for at least 10 years following initial occupancy and annual certified rent roll, sale price restrictions and unlimited personal guaranties (with same carveouts).
 - All remediation of hazardous materials or conditions shall comply with applicable laws and regulations.
 - All units must meet affordability requirements.
 - Interest rate of 3%, unless in municipalities with a population less than 10,000, then 1%. Rates determined in each application round.
 - Loan term and amortization match the term and amortization of the senior debt.
 - Loan-to-value (including senior debt and WHEDA loan) no higher than 100%.
 - Debt service coverage ratio (including senior debt and WHEDA loan) of at least 1:1.
 - No prepayment penalty, escrows, capital needs assessment, origination fee, loan structuring fee or application fee.

Workforce Housing – Act 18 – Commercial-to-Housing Conversion Revolving Loan Fund and Loan Program

■ Timeline

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Noteworthy Provisions Included in Tax Incremental District Development Agreements

- MRO Payments and Key Definitions
 - Subject to **appropriation** by City Council/Village Board
 - Cities (Wis. Stats. §§62.11(5) and 62.12(6)) and Villages (Wis. Stats. §61.34)
 - Maximum amount, “Available Tax Increment,” “Priority Project Costs” and “Final Payment Date”
- Guaranties (even with Pay-Go’s)
 - Personal guaranties for “Guaranteed Value” and “Shortfall Payment Obligations”
- Performance Deadlines, Termination Rights and Defaults
- Property Tax Exemption and Property Tax Assessment Challenge Restrictions
- Reconveyance Provisions or Security for Timely Performance After Conveying Property to Developer
- Reconstruction Obligations
- Assignment Restrictions



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