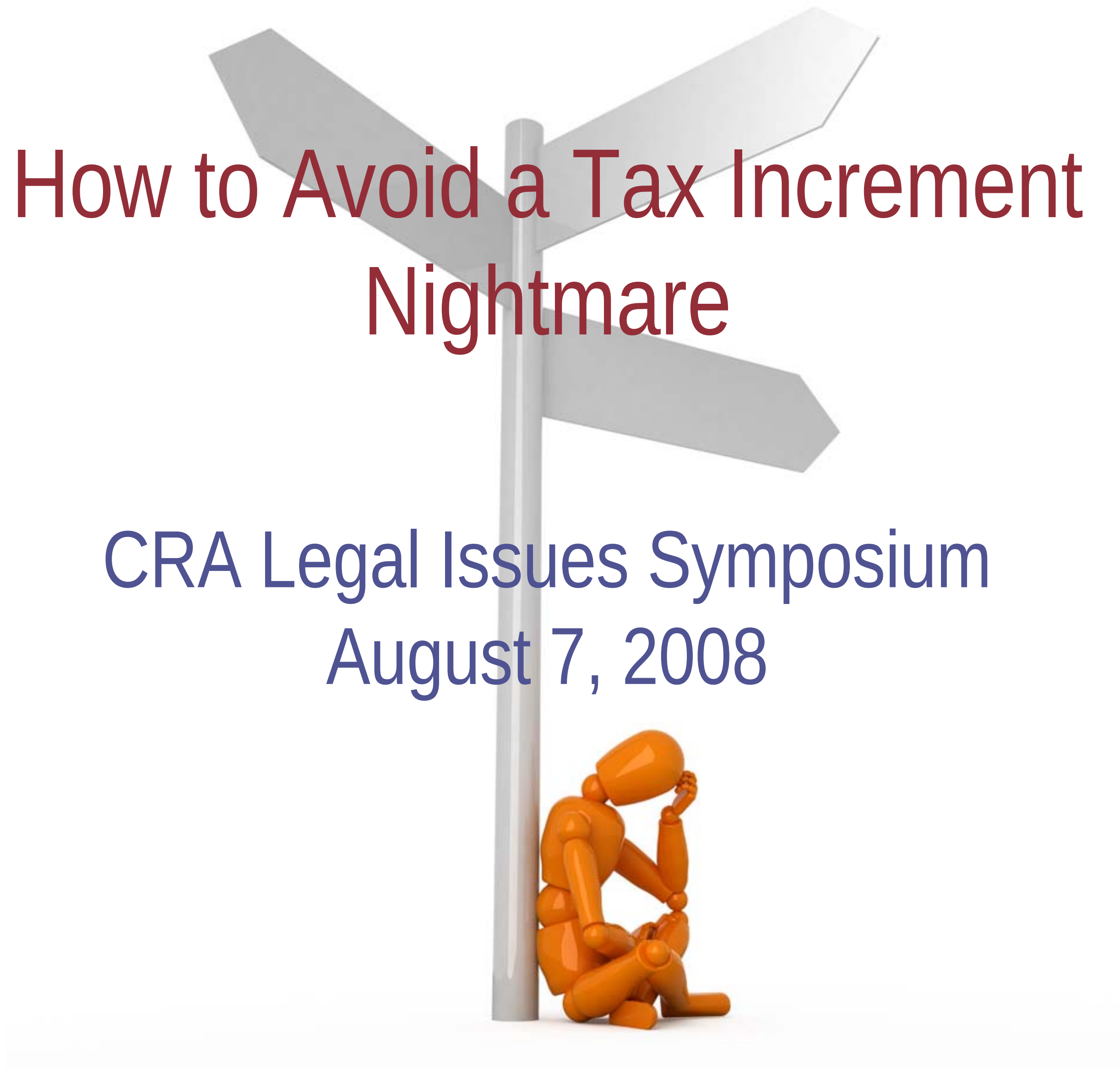
How to Avoid a Tax Increment Nightmare

CRA Legal Issues Symposium
August 7, 2008



Panelist Introductions

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Moderator

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Overview of Presentation

Strategic checklist to avoid tax increment nightmares:

A. Know your limits
B. Be aware of changing obligations
C. Monitor financial trends
D. Act strategically

A. Know Your Limits

- Time and fiscal limits vary by redevelopment plan, and sometimes within a plan.
- Legislation over the years (SB 211, SB 1045 and SB 1096) allows changes to some time limits through special procedures.

Time Limits for Pre-1994 Plans (w/o SB 211 or Other Amendments)

Incurring Debt	20 years from date of adoption or January 1, 2004
Redevelopment Activities	40 years from date of adoption or January 1, 2009
Receipt of Tax Increment	50 years from date of adoption or January 1, 2019
Eminent Domain	12 years from effective date of ordinance

Time Limits for New Plans or Added Territory

Incurring Debt	20 years from date of adoption
Redevelopment Activities	30 years from date of adoption
Receipt of Tax Increment (TI)	45 years from date of adoption
Eminent Domain	12 years from effective date of ordinance

Type of Limit	Years from Adoption/Applicability		
	New Plan/Area 1994 onward	Pre-1994	SB 211 Major Amendment for Pre-1994 Plan
Debt Issuance	20	20 or 1/1/04 *	20 or 1/1/04 *
Activities**	30	40 or 1/1/09	50 or 1/1/19
TI Collection**	45	50 or 1/1/19	60 or 1/1/29
Bond Limit	Yes	Yes	Increase?
TI Limit or Cap	No	Yes	Increase?
Eminent Domain	12	12	12 more?

* Can be repealed by ordinance per SB 211.

**Limits do not reflect SB 1045 or 1096 Amendments

Fiscal Limits

- Outstanding Bond Debt Limit
  - What constitutes “bonded” indebtedness?
- Tax Increment (TI) Limit
  - Not applicable to post 1994 redevelopment plans
  - Structure of TI limit can vary
  - ERAF add-on
  - Most “treacherous” limit

Plan Limit Covenant

- Bond Insurer must still pay the bonds—even when no more TI available under Plan Limit.
- Bond Insurer's response— "Plan Limit Covenant" in bond documents.
- Early covenant—just required Agency to manage its affairs so sufficient TI always available.
- Then came—"95% Covenant"—deposits into escrow to pay bonds when 95% TI limit hit.

Plan Limit Covenant (cont.)

- Then came—95% Covenant with annual review by Agency.
- Most recent—95% Covenant with annual calculation of all TI committed, including subordinate debt, and annual certification of percentage of TI committed.

Bond Insurers very concerned that "Plan Limit" will be reached before bonds are paid in full.

B. Be aware of changing obligations

- Payments to taxing entities
- Agency debt
- Housing set-aside
- Agency reporting requirements
- Other

Payments to Taxing Entities

Four Types

- Contractual Agreements (formerly HSC 33401)
- Inflationary 2% Revenue (HSC 33676)
- Statutory Payment (HSC 33607.5)
- Statutory Payment based on Adjusted Base Year (HSC 33607.7)

Agency Debt Obligations

- Tax Allocation Bonds
- Other Public Debt Instruments
- Disposition and Development Agreements
- Owner Participation Agreements
- Loans from City/County

Housing Obligations

- 20% of annual TI
- Debt service on tax allocation bonds
- Increases in set-aside percentage triggered by plan amendments
- Old “net” pass through agreements

Agency Reporting Requirements

- Statement of Indebtedness
- Annual Report
- Agency Budget
- Implementation Plan
- Mid-term Review of Implementation Plan
- Continuing Disclosure for Bonds

Pass-Through Agreements and Bond Documents

- Are pass-through payments senior or subordinate to bond payments?
- Why are senior-bond insurers and rating agencies concerned about pass-through payment structure, particularly payments that "step-up?"

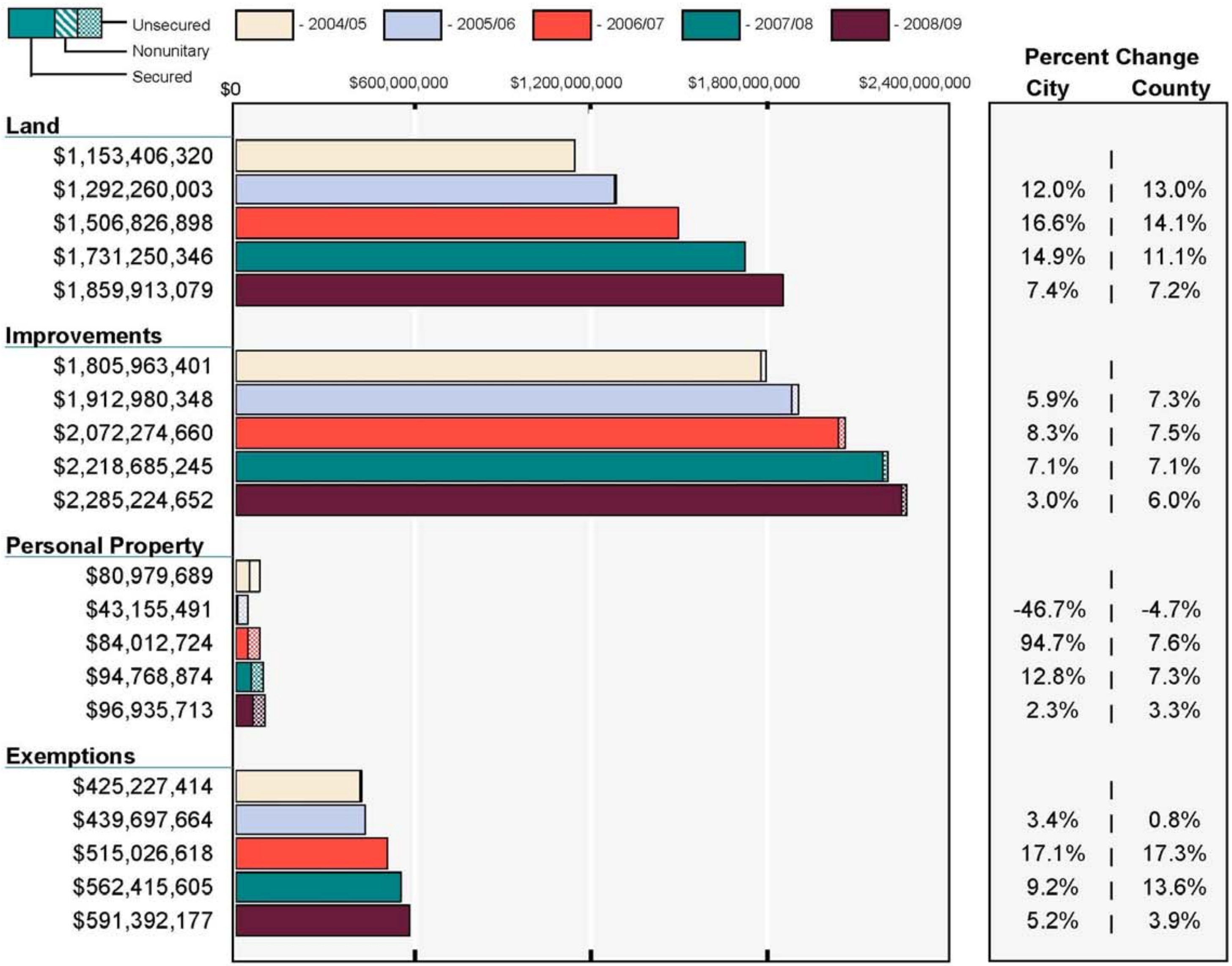
C. Monitor Financial Trends

1. Assessed Values
2. Appeals
3. Tax Increment

Assessed Values

- Review
- Audit
- New Development
- Base Year (Malaki)

SAMPLE REDEVELOPMENT AGENCY
2004/05 TO 2008/09 ASSESSED VALUES



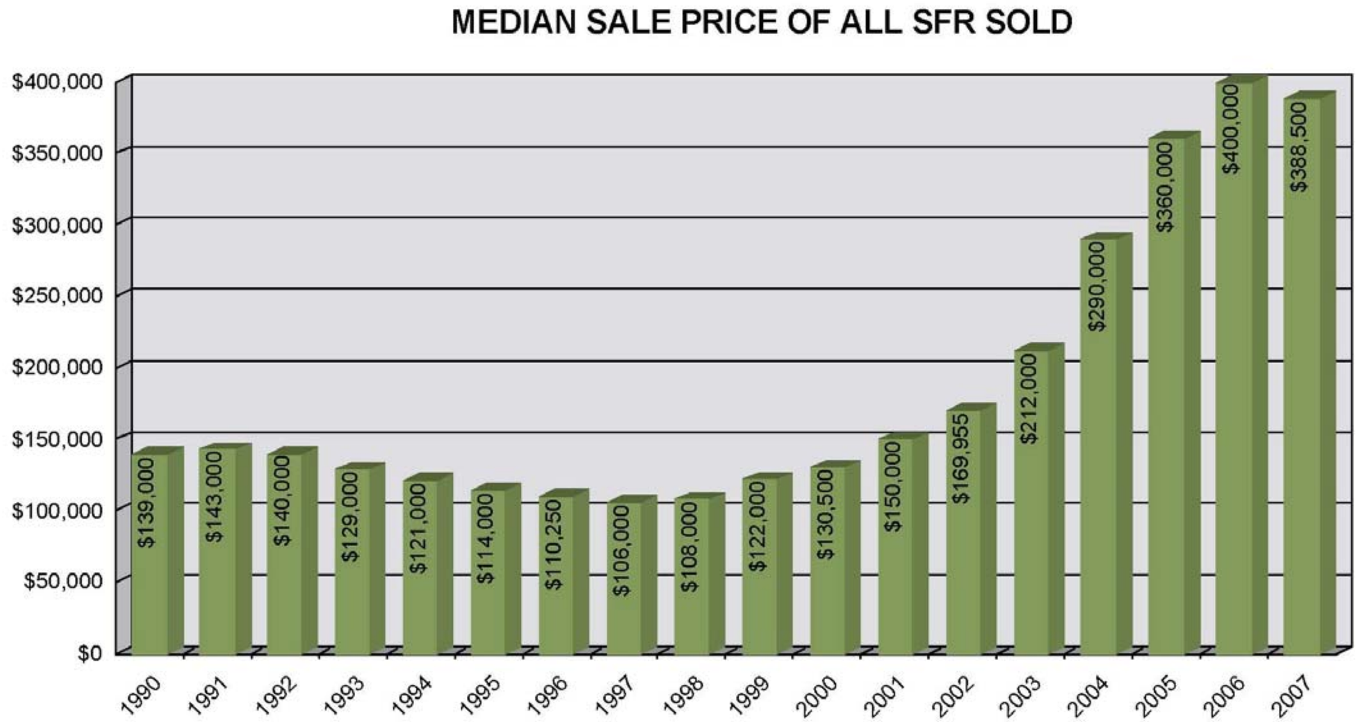
Appeals

- Information
- Proposition 13 appeals
- Proposition 8 appeals
- Refunds

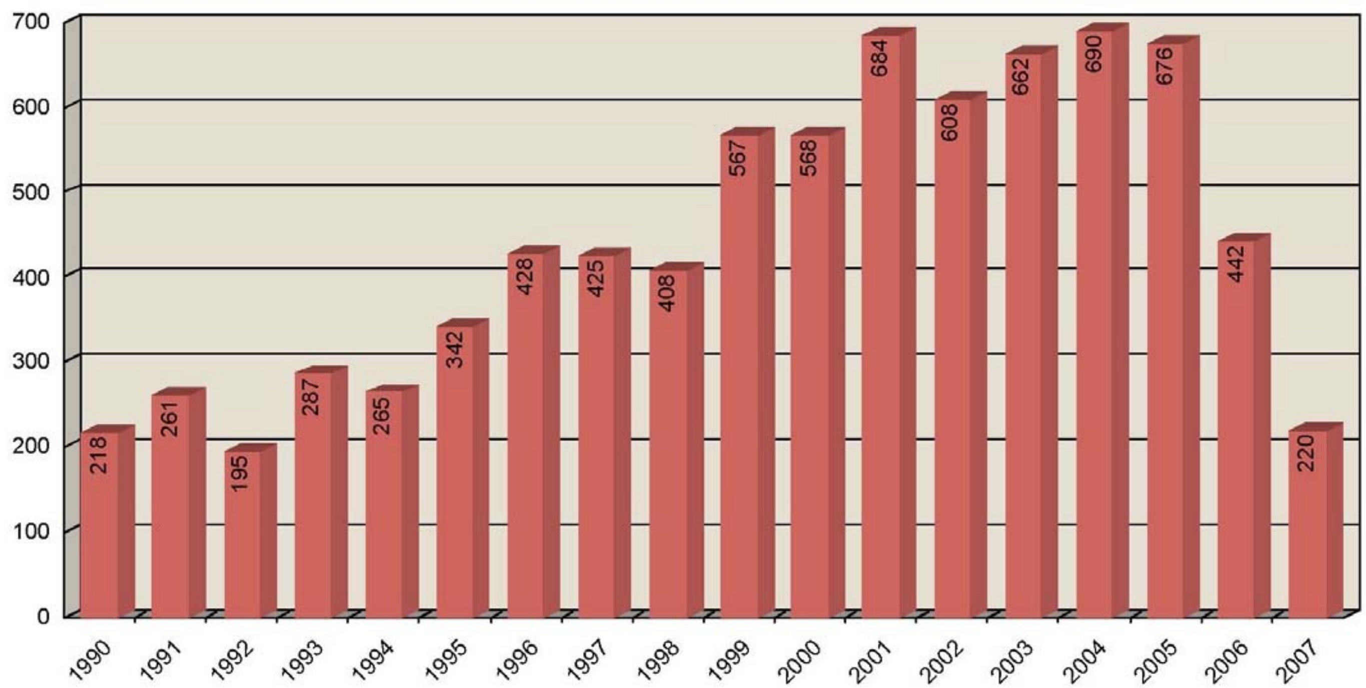
Tax Increment

- Receipts to Levy
- Refunds
- Supplemental Taxes
- Declining Taxes

THE CITY OF SAMPLE
SAMPLE REDEVELOPMENT PROJECT
SALES VALUE HISTORY 1990-2007*



NUMBER OF SFR FULL VALUE SALES TRANSACTIONS



Source: HDL, Coren & Cone

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SAMPLE REDEVELOPMENT AGENCY
POTENTIAL VALUE LOSS DUE TO PROP 8 APPEALS

Single Family Residential Full Value Sales (01/01/2004 - 5/31/2008)

					Peak Median Sales Price**	Peak Median Sales Price after Estimated Market Reduction		
						@10%	@15%	@20%
					$483,000	$434,700	$410,550	$386,400
Year	**Taxable Value**	**% Change**	**$ Change**	**Units Sold***	**Median Price**	**10% Correction**	**15% Correction**	**20% Correction**
2004	$2,763,406,127			433	$333,500			
2005	$3,112,215,156	12.6%	$348,809,029	482	$420,000		($4,554,900)	($16,195,200)
2006**	$3,430,416,740	10.2%	$318,201,584	429	$483,000	($20,720,700)	($31,081,050)	($41,441,400)
2007	$3,723,009,627	8.5%	$292,592,887	226	$465,000	($6,847,800)	($12,305,700)	($17,763,600)
2008	$3,928,603,859	5.5%	$205,594,232	75	$365,000			
					Total Potential A/V Loss From Appeals:	**($27,568,500)**	**($47,941,650)**	**($75,400,200)**
Estimated 2009	$4,007,175,936	2.0%	$78,572,077		**Net effect on Value:**	**$51,003,577**	**$30,630,427**	**$3,171,877**

D. Act Strategically

1. Invest TI in TI generating projects
2. Assess future capacity for redevelopment
3. Consider amending and/or adopting new redevelopment plans

Assess Future Capacity for Redevelopment

1. Revenues
2. Restraints
3. Obligations
4. Available funds for new programs

Sample Agency Analysis of Future Capacity

1. Available Revenues Under Limitations
2. Superior Obligations
3. Potential Bond Size
4. Subordinate Obligations

Strategy for Issuing Bonds as Project Termination Approaches

- Still have at least 10 years of debt service.
- Low and moderate income housing bonds may be available longer.
- Problem may be timely application of unspent bond proceeds.

When can housing funds be collected after termination of the Redevelopment Project?

Summary of Plan Amendments

1. Easy- Simple ordinance modifications pursuant to SB 211, 1045, 1096
2. Short Process-Plan Amendment with only Report on the Plan ("Short Amendment")
3. Longer Process-Plan Amendment with changes to fiscal limits or merger ("Major Amendment")
4. Longest Process- SB 211 Amendment to add 10 Years ("SB 211 Major Amendment")

“Short” Plan Amendments

1. Revise land use standards
2. Revise other powers and limitations, e.g. owner participation rules
3. Extend eminent domain deadline*
4. Increase outstanding debt limit ($)*

**Need to follow additional special procedures*

“Major” Plan Amendments

1. Add territory to project area
2. Increase TI collection limit
3. Extend debt issuance deadline for post-1993 plans
4. Extend deadline for plan effectiveness
5. Merge project areas
6. Add significant improvement projects

Merger Amendment

A merger allows existing redevelopment plans to be merged in one of two ways:

- Merged plan and project areas for all purposes
- Financial pooling of tax increment with retention of separate plans for each constituent project area

SB 211 Major Amendment:
10 Year Extension for Pre-1994 Plans

Pre-1994 plans have a time limit for:

- Plan effectiveness (later of 40 years after plan adoption or January 1, 2009*)
- Collecting tax increment (10 years beyond plan effectiveness time limit)
- Both time limits can be extended ten years

** Before consideration of other amendments*

Amendment Checklist

1. Evaluate Agency time and fiscal limits for each redevelopment plan.
2. Adopt the "easy process amendments," where possible.
3. Assess plan components to determine if you should consider any other amendments.
4. Compare financial cost versus benefit of amendment options.

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