

At the Intersection of Main Street and Wall Street

Tax Exempt Bonds and Private Business

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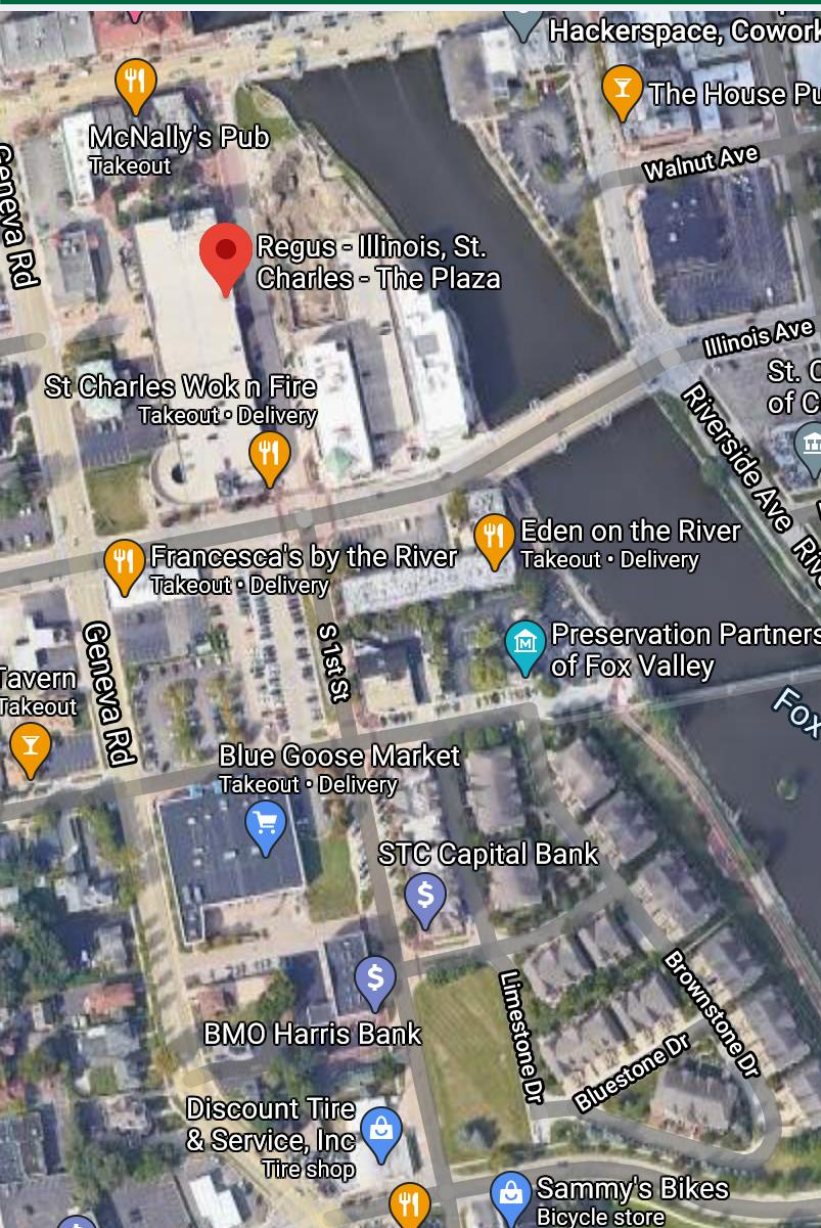
Overview

- Trends in Use Arrangements
 - Underutilization of bond-financed property
 - Revenue maximization
 - Operating Cost Efficiencies
 - Impact of COVID-19
- Real World Examples
- Tax-exempt Bond Private Activity Summary
- Addressing Challenges

PBU Trends

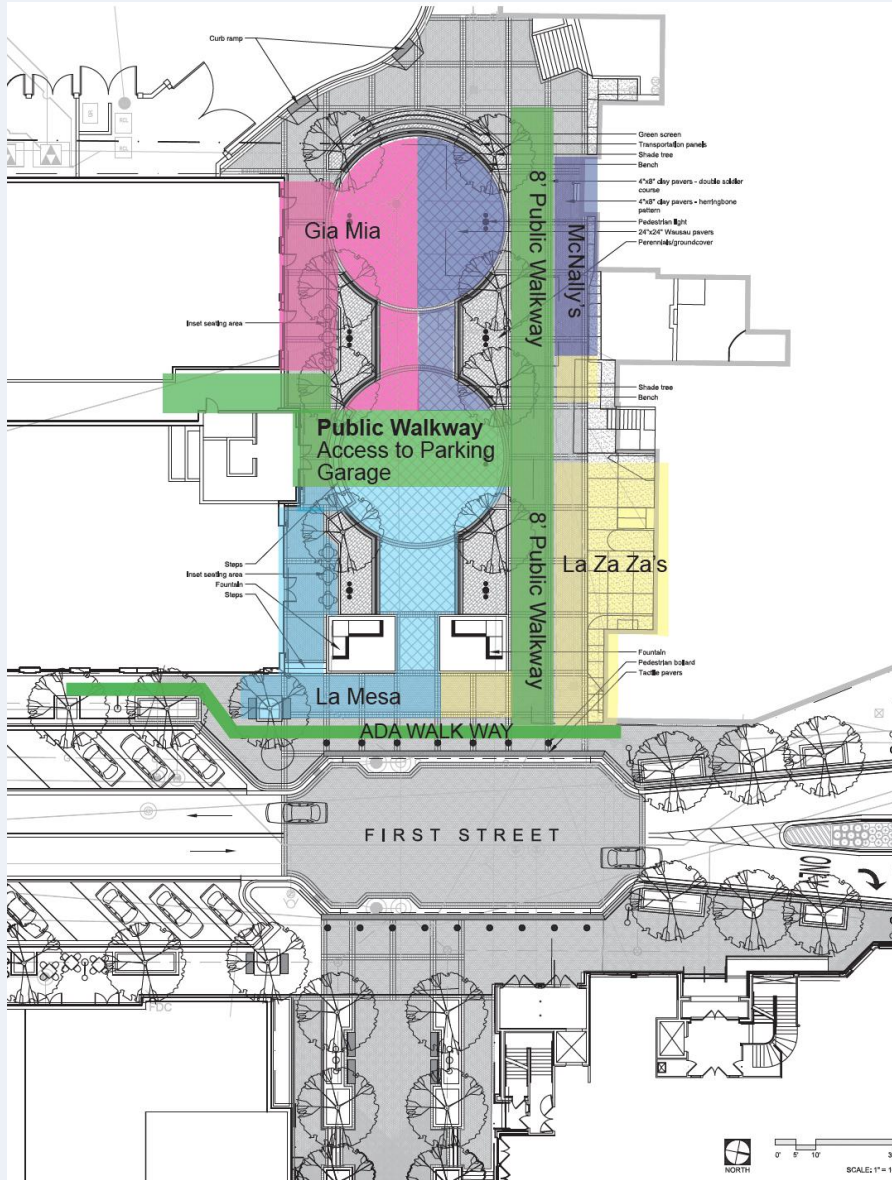
- Bond-financed facilities underutilized
 - Lease/sell/divest/partner
- Revenue Maximization
 - Naming rights/sponsorship/partnerships
- Increase operating efficiencies
 - Hiring third party operators, transitioning some traditionally governmental services to outside parties
- COVID-19 effects

Poll Question 1



Real World Examples

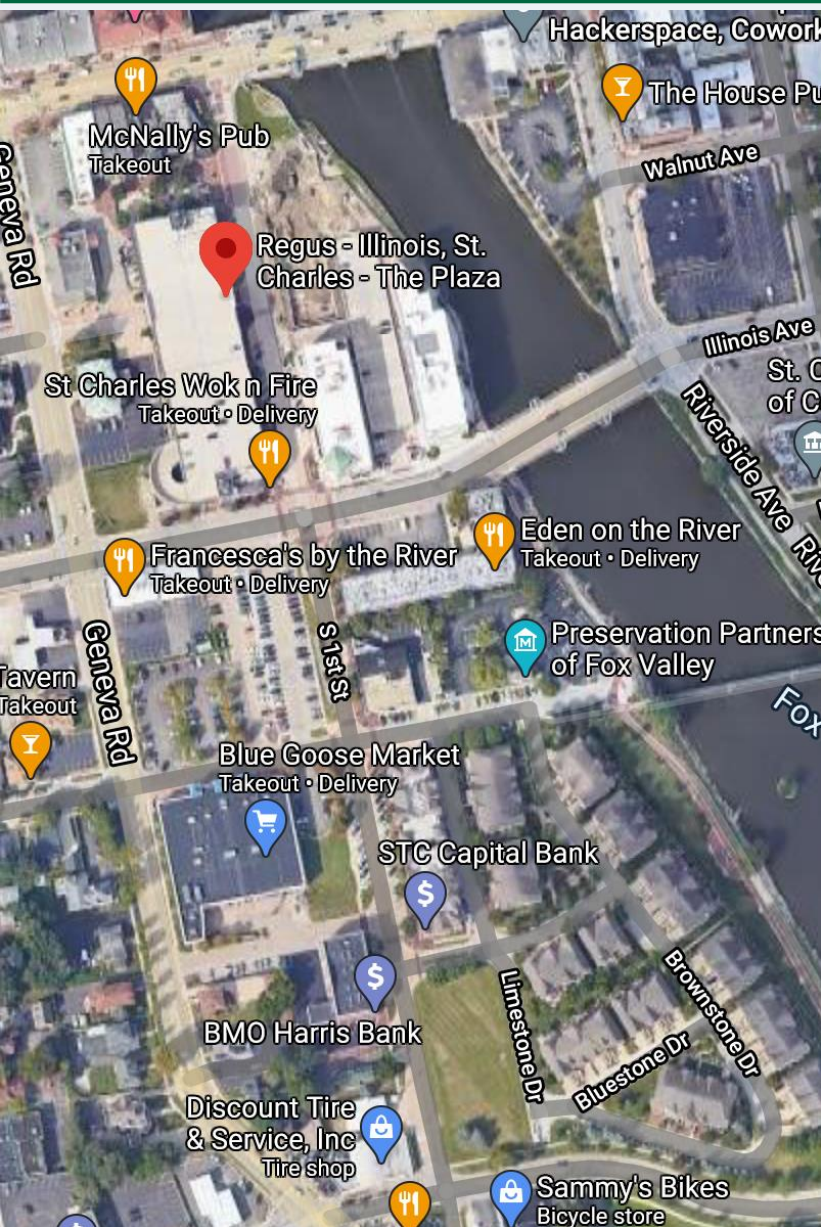
- Tax-exempt Bonds issued to fund public improvements in TIF District – mature in 2036
 - Repaid from TIF Increment with GO backstop
- Bond proceeds are used to finance:
 - Land acquisition, public rights of way, utilities, streetscape, hardscape, 2 public parking garages and 2 hardscaped plazas, “East Plaza” and “West Plaza”
 - East Plaza completed in 2019/West Plaza completed in 2008
- General fund reserves and revenues fund approximately 20% of the project consisting of initial land acquisition and certain construction costs



- West Plaza – traditionally used for public space
 - Some minor encroachment into ROW from outdoor dining through City-wide permit procedure – 2-100 days
 - Expansion of outdoor dining
 - Limited to restaurants around plaza
 - Application procedure



- First street closed between East and West plaza to establish a “picnic area”
 - Public has access at all times
 - No entity has a use arrangement
 - Food from any business can be brought in
 - East Plaza is public carry out space



- Parking Garage
 - Requests for reserved parking spots for businesses
 - Currently open on "first-come, first-served" basis
- Potential PBU Arrangements
 - Outdoor dining permits & Parking Arrangements
 - Structuring to fit a short-term exception
 - Computation of Potential PBU
 - Can equity in the project be used to offset any potential PBU?
- Other Hypotheticals
 - Local company wants to name plaza and in turn provide the City yearly payments for 20 years of naming rights
 - Is it a difference if it's just advertising in the plaza?
 - Promises to a developer in a TIF District to maintain/operate public improvements

Private Activity Summary

- Governmental Use Bonds Private Activity Restrictions:
 - Private use/private payment & security restrictions
 - Policy reason- federal government supports public purpose
 - If governmental use bonds are in fact private activity bonds, not tax-exempt
- Private Activity Bond
 - Any bond that meets the (i) “private business use test” AND (ii) “private payment or security test”
 - Must satisfy **BOTH** tests for bonds to lose tax-exempt status
 - Any bond that meets the “private loan financing test”
 - Directly or indirectly loaning proceeds to non-governmental persons

Poll Question 2

Test 1 - Private Business Use Test

- Generally, test is met if more than 5% of the proceeds of an issue are to be used in a private business use during measurement period - \$15,000,000 limit
 - Can get up to 10% if no more than 5% is unrelated/disproportionate
 - Measured ***over the life of the bonds***
- Private business use (PBU):
 - Use (directly or indirectly) in a trade or business carried on by a nongovernmental person
 - For these purposes, Federal government is a nongovernmental person
 - Nongovernmental persons include 501(c)(3) organizations
 - Use as a member of the general public is not private business use

Types of PBU Arrangements

- Ownership
- Actual or beneficial use pursuant to a lease, management, service, incentive payment, research or output contract
 - Certain safe harbors/exceptions
- Any other similar arrangement, agreement or understanding, whether written or oral
- Any "special legal entitlement" to use of bond-financed property similar to above listed
 - E.g., priority rights, preferential benefits, naming rights

PBU Exceptions

- Certain short-term arrangements
 - 50-day, 100-day, 200-day exceptions
 - Who is the primary user (individual/business user)
 - Generally applicable rates for use or fair market value rates
 - Facility not provided primarily for that user
 - Based on term of use, not term of contract (e.g., 5-year contract for 10 days of use per year may qualify for 50 day exception)
- Incidental uses
 - Less than 2.5% of facility and proceeds, generally non-possessory use, not related to other use by same person
 - E.g., ATM, advertising, kiosks, vending

PBU Exceptions

- Qualified Improvements
 - Improvements to buildings already p-in-s (1 yr +), not to specific private use space, no more than 15% private use in building, no private security
- Safe Harbors for Certain Contracts
 - Research contracts – Rev. Proc. 2007-47
 - Management/service contracts – Rev. Proc. 2017-13
 - Output contracts - exceptions in regulations (e.g., short-term arrangements, small purchases)

PBU Measurement

- Measured over life of bonds
- Various measurement methodologies
 - Cost, space, time, combination, other
- Allocation of non-bond proceeds to private business use
 - Mixed sources of funding for a project - "Floating equity"
 - Certain time frames required for contributions of equity
 - Equity is allocated to private business use before bond proceeds

Test 2 – Private Payment/Security Test

- Met if more than the lesser of 5%/10% or \$15,000,000 of the debt service on the bonds, over the life of the bonds, is, directly or indirectly:
 - Secured by any interest in (i) property used or to be used in a private business use or (ii) payments in respect of such property OR
 - To be derived from payments (whether or not to the issuer) in respect of property, or borrowed money, used or to be used in a private business use
- Payments do not have to come from private business users to be considered private payments
 - Payments are related to property
 - Certain exceptions to private payments

Recap – Private Activity Tests

Test 1: Private Business Use above 5%/10% (or \$15,000,000)

Test 2: Private Payment or Security below 5%/10% (or \$15,000,000)
= Tax Exempt

Test 1: Private Business Use above 5%/10% (or \$15,000,000)

Test 2: Private Payment or Security above 5%/10% (or \$15,000,000)
= Private Activity Bonds

If Private Business Use for a bond issue exceeds lesser of 5%/10% or \$15,000,000
MUST keep private payments/security under lesser of 5%/10% or \$15,000,000

Poll Question 3

Sale of Bond Financed Property and Remediation

- Sale of Bond-Financed Property to non-governmental entity
- Generally, will need to take remedial action
 - Redeem/defeasement bonds
 - Recycle proceeds from sale into another good tax-exempt project
 - Alternative use of the bond-financed assets
 - (e.g., change governmental bonds to 501(c)(3) bonds)
- Certain conditions need to be met and certain timing limitations

Questions?

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