

IPED Historic Tax Credits Conference, 2009

Saving the Tax Credits in a Failed Transaction

Lance Robbins, Urban Smart Growth:
Saving the deal as pre-requisite to saving the credits

1. The Scramble for Priority
 - a. Resolution of competing priorities among secured, unsecured, might be secured
 - i. Drives structure of deal
 - ii. Dealing with unsecured creditors as a practical matter – Architects, GC, Consultants, **ENVIRONMENTAL CONTRACTORS**
 - iii. Bankruptcy option?
 - b. Personal Guarantees
 - i. Controlling influence on principals
 - ii. Tax impacts of unwinding the deal
2. The Impact of Government Financing: *Handle with Care*
 - a. Maintaining the entity receiving incentive is critical to receipt of incentive
 - i. Foreclosure & BK can clear title and deal with Jr. liens, but what of the entity
 - ii. Pre-packaged BK plan can bring owning/receiving entity through intact
 - b. Remember – foreclosing out a government agency will diminish hopes of future incentives from them or their kin
3. The Art of the Deal
 - a. Candor and Full Disclosure
 - b. Show the economics of the moment
 - i. Diligence in understanding the deal better than anyone else at the table
 - ii. Candor as to the unique dynamics of the players in the deal
 - iii. Impact of our illiquid markets
 - iv. The insolvency alternatives
 - c. **EMPATHY AND RESPECT**
 - i. Remember that you are dealing with businesses and business persons stressed on a multitude of levels and likely on a multitude of projects