VANTAGE POINT

Experts weigh in on industry issues

Expansion of Ohio's Historic Preservation Tax Credit Program Takes Effect

By Nathan A. Felker
Walter | Haverfield LLP

Ohio's Historic Preservation Tax Credit program was enhanced this year by a significant, but limited, expansion of the state income tax credit available to owners and certain tenants undertaking the rehabilitation of historic buildings in the State of Ohio.

Under House Bill 483, which was signed into law by Governor John Kasich in June and took effect as of September 15, the Director of Development Services (whose office oversees Ohio's Historic Preservation Tax Credit Program) is permitted to approve an increased state tax credit of up to $25 million for a rehabilitation which qualifies as a "catalytic project." A catalytic project is one that will foster economic development within 2,500 feet of the historic building being renovated.

Both Federal and Ohio laws provide income tax credits for rehabilitation of certain historic buildings. However, while the Federal credit is far less confining as the amount of available credits is generally unlimited and not subject to a competitive award process (subject to certain restrictions), conversely the Ohio credit is essentially capped at $5 million for all non-catalytic rehabilitation projects, and projects may only claim the credit if so awarded thereto by the State.

The State awards rehabilitation tax credits twice each year through a competitive application process, and the aggregate maximum amount of rehabilitation tax credits that the State may award each fiscal year to all projects is limited to $60 million (plus a carry-over for unused credits from prior years). In light of these limitations and in order to reduce the impact that the approval of a "catalytic project" tax credit would have on the program during any fiscal year, the Director is limited to approving a single catalytic project per fiscal biennium (i.e., one catalytic project in each two-year State budgetary cycle). In addition, the owner or qualified tenant of the catalytic project may then only claim up to $5 million of the total awarded credit each tax year.

The State tax credit amounts to 25% of the "qualified rehabilitation expenditures" for the historic building, which represents a significant cost savings in terms of the overall project. Given the economics of a typical historic rehabilitation project, in which total project costs may exceed the building value when renovation is complete, it could be extremely difficult to finance the project without the benefits of the State tax credits. With a $5 million cap, the State tax credit is of limited benefit in projects that exceed $20 million in qualified rehabilitation expenses. By adopting the increased tax credit for catalytic projects, the State has expanded the opportunity for preservation of some of Ohio's more significant historical structures through redevelopment.

The State is currently considering a catalytic project award in the existing round of applications for historic preservation tax credits (i.e., "Round 13"). Candidates were required to submit applications for Round 13 by September 30, with the awards being announced by December 31. As to catalytic projects, the application required that they have qualified rehabilitation expenditures greater than $75 million, and the applicant was to include detailed information concerning all parcels within a 2,500-foot radius of the center of the building being rehabilitated, including square footage, occupancy levels, and rehab potential for rehabilitation of buildings and vacant land within that area. The applicant also had to provide a summary of total rehabilitation and development opportunities within the radius, along with a narrative explaining how the project will act as a catalyst to encourage further economic development for catalytic projects within the area.

According to the guidelines established by the State, the Director of Development Services is to evaluate the catalytic projects in comparison to all historic preservation projects submitted in Round 13 (catalytic and non-catalytic). The Director may also elect not to approve a tax credit award to any of the catalytic project applicants in the current round, with the possibility of allowing catalytic project applicants to apply during a subsequent award round in the fiscal biennium ending June 30, 2015.

In its infancy, it is yet to be seen how the catalytic project program may ultimately be administered by the State and how availability of an increased tax credit will impact the often complicated financial structure that accompanies tax credit-enhanced projects. With the considerable benefit it provides to developers, the catalytic project program is likely to see a number of applicants vying for the catalytic award. The first award of a catalytic project under the new program will likely set the precedent for how future catalytic projects will be evaluated and vetted by the State. P

Attorney Nathan A. Felker is a partner in the Real Estate Practice Group of Cleveland-based Walter | Haverfield LLP.