ILLINOIS STATE BAR ASSOCIATION

MARCH 2022 VOL 58 NO. 2

Local Government Law

The newsletter of the Illinois State Bar Association's Section on Local Government Law

Tax Increment Financing Concepts for the Future

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The Illinois Tax Increment Allocation Redevelopment Act (the "TIF Act") was adopted by the Illinois Legislature in 1977 as 65 ILCS 5/11-74.4 *et. seq.* The TIF Act recognizes that many municipalities throughout the State have blighted and conservation areas which need to be developed or redeveloped to eliminate such conditions. In *City of Canton v. Crouch*, 79 ILL.2d 356 (1980) the Illinois Supreme Court, approved the use of TIF and stated, "Stimulation of economic growth and removal of economic stagnation are also objectives which enhance the public good." Since that time TIF has been widely used by municipalities as the most powerful local economic tool available. The use of TIF has sometimes led to common misunderstandings of its provisions which has contributed to numerous attacks over the years and nearly annual attempts at legislative changes to the Act, many of which would greatly reduce its success. The June 1, 2018, report of the General Assembly TIF Reform Task Force counted 1405 TIF districts in Illinois existing in 96 of the 102 counites in Illinois. These TIF Districts generated over $14.2 billion in TIF real estate tax increment. TIF is widely used because it is successful.

As communities throughout Illinois address population decline, declining tax revenue, aging and decaying public infrastructure, challenges for local businesses struggling to recover from the COVID-19 pandemic, and the current rapid rise in inflation, Tax Increment Financing is more important than ever as a local economic development tool. However, TIF is often misunderstood as a method for municipalities to be able to attract new private investment in a collaborative way with other units of government. This article examines numerous ways in which the TIF Act authorizes cities, towns, and villages in Illinois to work with other taxing bodies and developers to use TIF to stimulate local economic activity for the benefit of the entire community.

Cooperative Methods for Municipalities and Other Taxing Bodies

The TIF Act is often criticized for having a detrimental effect on other taxing districts who levy real estate taxes within the TIF District. That is because during the life of the TIF District, the equalized assessed valuation (EAV) within the TIF Area that the other taxing districts may continue to levy against is the most recently certified EAV that existed when the TIF District was established. This is referred to as the TIF Base EAV, which remains in effect during the up to 23-year life of the TIF District. The crucial issue in discussing the matter with representatives of other taxing

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bodies, is always whether the EAV growth within the TIF Area would have occurred absent the adoption of the TIF District and implementation of the economic incentives for development that TIF provides. Often it is difficult to convince another taxing body of this issue for a variety of reasons, not the least of which is that other taxing bodies are not normally involved in economic development to the extent a municipality is, and therefore lack a thorough understanding of current market conditions, financing requirements, infrastructure needs, and the high costs associated with new development. Although final authority as to whether or not to adopt a TIF District is a municipal decision, it is beneficial and more productive to have a positive relationship with the other taxing bodies. Seeking such support and collaboration will often result in achieving more economic development for the community that the other taxing bodies and the municipality share.

Numerous approaches are available within the TIF Act for using TIF real estate tax increment to encourage cooperation between municipalities, school districts and other taxing bodies. In addition, the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1 et. seq.) provides authority for cooperative agreements amongst public bodies. Approaches which are currently available through the TIF Act include:

- **Design the TIF Redevelopment Plan with Cooperative Options:** Incorporate a thoughtful impact analysis and anticipate some future assistance to other taxing bodies in the TIF Redevelopment Plan and Projects.
- **Count New Students from TIF Projects:** The TIF Act has a default method for assisting school districts by reimbursing a portion of TIF increment for a resulting "net increase" in student enrollment resulting from TIF-assisted residential development. 65 ILCS 5/11-74.4-3(q) (7.5)). Note that this formula as currently prescribed in the TIF Act has not been updated to reflect changes made in School funding because of Evidenced Base Funding enacted into law on August 31, 2017, by Public Act 100-0465.
- **Annual Capital Cost Reimbursements:** It may be possible to design a method based on an annual flat percentage or formula amount to reimburse capital costs that are deemed to be in furtherance of the objectives of the TIF Redevelopment Plan. Some capital cost reimbursements are "triggered" by certain events, such as the occurrence of new residential development. (65 ILCS 5/11-74.4-3(q)(7) and (u); 65 ILCS 5/11-74.4-4 (b) and (m).
- **Periodic, Lump-Sum Reimbursement:** Municipalities may agree to periodic reimbursement(s) of TIF funds during the life of a TIF District for specific capital projects, such as building improvements or repairs, purchase of equipment, or other capital expenditures. (65 ILCS 5/11-74.4-3(q)(7) and (u) and 5/11-74.4(b) and (m).
- **In-Kind Assistance:** If located within the TIF District Redevelopment Project Area, a municipality could repair or construct public infrastructure (e.g., roads, sidewalks, storm drains, etc.) that improves conditions for schools or other public facilities. (65 ILCS 5/11-74.4-3(q) (2,3,4) and 5/11-74.4(d-f), (i), and (m).
- **Return TIF Increment per Bond Referendum Rate:** Municipalities may agree to return TIF increment derived from a tax rate resulting from a taxing body's bond referendum thru an Intergovernmental Agreement. The taxing body can then adjust its

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annual levy.

- **Surplus Funds:** Municipalities may declare TIF surplus funds if uncommitted TIF funds exist, or such surplus was anticipated when the TIF Redevelopment Plan was designed. Surplus TIF funds are returned to a County Collector who then proportionately re-distributes the money to taxing bodies based on current real estate tax rates. (65 ILCS 5/11-74.4-7)
- **Payment in Lieu of Taxes:** The payment of estimated tax revenues from property in a TIF Area that that is derived from property acquired by a tax-exempt municipality which, per the TIF Plan, is to be used for private use. Such funds are paid to County Collector who then proportionately re-distributes the money to affected taxing bodies. (65 ILCS 5/11-74.4-3(9).
- **Costs of job training**, retraining, advanced vocational or career education. (65 ILCS 5/11-74.4-3(q)(10)).

The tangential benefits that TIF-supported development creates, such as new sales tax revenues, employment opportunities, broader private investment in the community, population growth, stable school enrollments, construction-related activities, and the jobs that new construction creates, are often overlooked. Municipalities who undertake an explanation of those benefits and explore the methods outlined above in collaboration with the other taxing bodies will often find the TIF establishment process does not have to be an adversarial event.

TIF Assistance Concepts in a Post Pandemic and High Inflation Environment

Historically, TIF Redevelopment agreements for developers and business owners have often been structured as a private "pay-as-you-go" reimbursements. In these cases, the developer's project generates the TIF increment through an increase in assessed valuation after the project is completed, and the developer is then annually reimbursed a negotiated percentage of the new real estate tax resulting from the project. Such reimbursements by the municipality to the developer may continue only for a specified period of time, may be limited to a reimbursement not to exceed a monetary cap for verified TIF eligible expenditures that the developer incurred for the project. Sometimes, this approach may be modified to provide for an accelerated, "up front" reimbursement to the developer at the commencement of the project, or after certain development benchmarks have been achieved by the developer, or perhaps even a hybrid combination of such terms as may be set forth in the redevelopment agreement. The pandemic, and the business community's ongoing recovery from such, along with the rapidly rising inflation, have led many municipalities to explore more flexible methods of using TIF funds within the authority provided by the TIF Act to more effectively offer the type of assistance necessary.

Municipalities have the ability to assist property owners and businesses within the boundary of a TIF District by entering into redevelopment agreements to reimburse the developer for certain types of TIF eligible costs. TIF eligible project costs are identified in the TIF Act at 65 5/11-74.4-3(q) and include:

- Costs of rehabilitation, reconstruction or repair, or remodeling of existing private buildings, fixtures, and leasehold improvements;
- Professional fees such as legal, accounting engineering and architectural fees;
- Site preparation;
- Demolition costs;
- Marketing of vacant sites;
- Certain financing costs;
- Relocation costs; and
- Property assembly costs, including the acquisition of land or other property, real or personal, or rights or interests therein. Assistance to commercial tenants to mitigate high business start-up costs involving property lease payments and other leasehold improvements are also possible. This could be greatly beneficial for a business owner who was severely impacted by the pandemic and is struggling to recover and continue its operations. The municipality should of course always review its TIF Redevelopment Plan to ensure that any redevelopment agreement and expenditure is consistent with the TIF Plan and compliant with the TIF Act.

In summary, the TIF Act can be successfully utilized in a positive manner that will benefit residents, the business community and other taxing bodies who levy real estate taxes within the TIF District. Tax Increment Financing is a valuable tool with which cities, towns, and villages may achieve a level of community and economic development far beyond current expectations. TIF is particularly useful to communities where local leaders envision a resurgence of population, a robust local economy, and a town capable of providing the varied public services, security, and a quality of life that so many young families, workers, business owners, and other future new residents are seeking. ■