

Introduction to Point/Counterpoint: Illinois TIF Law

Illinois has long history with tax increment financing

Twenty years ago, the phrase "tax increment financing" or "TIF" was foreign to the general public and largely unknown. However, widespread real estate development activity in the 90s changed all that. In recent years, the rapid growth of real estate development has been met with significant public opposition. Some of this development activity has included this



Vick

public financing component shining a spotlight on TIF. As a result, TIF has nearly become a household word.

Misinformation and confusion about TIF and the nature of

TIF "benefits" is prevalent and contributes to an apparent growing negative attitude toward this redevelopment tool.

Tax increment financing has not always existed in the state of Illinois. It is a creation of the state legislature rather than a fundamental legal doctrine. In 1977, the Illinois General Assembly passed the Tax Increment Allocation Redevelopment Act, and TIF was born.

The general purpose of TIF is to promote the redevelopment of real estate that is not being put to its best use as a result of deterioration of improvements, dilapidation, obsolescence, excessive vacancies and other factors causing development of the area to no longer be economically viable. The TIF Act states "that in order to promote and protect the health, safety, morals and welfare of the public, that blighted conditions need to be eradicated and conservation measures instituted, and that redevelopment of such areas be undertaken; that to remove and alleviate adverse conditions it is necessary

to encourage private investment and restore and enhance the tax base of the taxing districts in such areas by the development or redevelopment of project areas. The eradication of blighted areas and treatment and improvement of conservation areas and industrial park conservation areas by redevelopment projects is hereby declared to be essential to the public interest."

TIF is founded on the premise that it is in the best interest of the public to eliminate blighted areas so that real estate is utilized for its highest and best use. Rundown, dilapidated property harms the public interest by, among other things, diminishing property values, spawning crime and hindering growth. These conditions are socially detrimental and adversely impact communities in the state. Therefore, the redevelopment and improvement of these areas is beneficial to the public and a proper subject of governmental assistance.

The theory of TIF is that these adverse conditions exist because redevelopment is economically unfeasible under ordinary conditions. In order to entice redevelopment of these rundown, misused or otherwise underperforming areas, a supplemental source of financing is necessary to overcome the obstacles to development. TIF provides this supplement, making otherwise unfeasible developments into economically viable projects.

In general, TIF uses the real estate tax revenues generated by the increased equalized assessed valuation of the redeveloped property to repay the supplemental financing. These additional tax revenues are derived from the increased value - or taxable base - of the project after the redevelopment is completed. This is the "I" or so-called "Increment" in the TIF and sometimes referred to as the Incremental EAV.

In order to qualify for TIF, the subject property must meet certain criteria set forth

in the TIF Act. Although there are several categories of property that qualify for TIF, the usual category utilized is the "blighted area." While the details of the TIF process are beyond the scope of this article, the process usually begins with a determination by the municipality (sometimes at the behest of a real estate developer with a proposed plan of redevelopment) that a certain area is a blighted area and the establishment of a redevelopment project area or TIF district.

A professional consultant is often retained to study and evaluate the proposed project area and make a determination whether the area qualifies for the establishment of a TIF district by satisfying the TIF criteria. This study includes an examination of the physical condition of the project area in light of the so-called "but for test" (i.e., that "but for" the availability of TIF benefits, the redevelopment would not be feasible and, therefore, would not occur).

The process includes making the consultant's report available for public inspection, holding public hearings and passing municipal ordinances establishing the TIF district and authorizing the municipality to enter into development agreements with private developers to implement the redevelopment plan and allocate TIF benefits to be derived from the IEAV.

The TIF Act allows TIF revenues to be used to pay for the cost of all sorts of improvements referred to in the TIF Act as redevelopment project costs - ranging from property acquisition to street and utility infrastructure to engineering, architectural and other professional fees. Municipal bonds are commonly issued to raise the funds to pay for these TIF eligible costs, and the bonds are repaid by the tax revenues generated from the IEAV.

A common misconception about TIF is that it reduces tax revenues to

taxing districts for the benefit of private developers. This is simply incorrect. The tax revenues flowing from the EAV of the property prior to redevelopment - the Base EAV - continue to be distributed to the benefiting taxing districts as if the redevelopment had not occurred. Only the new increased revenues from the IEAV are paid to the municipality for allocation to repay eligible redevelopment project costs.

Ironically, tax revenues are more likely to diminish absent redevelopments enabled by TIF due to the continuing deterioration of blighted areas which further erodes the Base EAV. TIF arrests this decaying process with the redeveloped project area, protecting current tax revenue levels and generating additional revenues benefiting taxing districts after the bond indebtedness is retired.

Disputes over the application of TIF typically arise from the actual or perceived misuse of the process with ground zero being the determination of blighted conditions and application of the "but for test." Although the merits of all projects are, and should be, subject to healthy debate, local opposition often attacks legitimate projects using the TIF criteria as a pretext for underlying "not in my backyard" neighborhood opposition. Oftentimes communication on both sides of the debate is laden with unproductive rhetoric and hyperbole.

However, if properly used, TIF is an important and powerful tool for eliminating blighted conditions, permanently enhancing the taxable base, increasing future tax revenues, improving access to goods and services and creating jobs through new businesses operating in the redevelopment project areas

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Point: Should Illinois' TIF law be revised?

Illinois TIF law needs revision to prevent abuse

In my capacity as a Meatcutters Union official, I have seen firsthand the effects of ill-considered TIF districts in the Metro East area. The abuse of TIFs and other



Malec

tax incentives, such as business districts and sales tax sharing agreements, has led to the waste of millions in tax dollars - handed out

like candy to gigantic corporations and their politically connected, well-heeled developers. One result has been closure of union grocery stores and loss of my members' jobs. It isn't that my members or such stores can't compete with nonunion "big box" stores, given a level playing field; they most certainly can and do compete. But it's hard to compete with a "big box" grocery which is unfairly receiving millions in tax incentives.

The original TIF concept was simple and sensible: Take a crumbling downtown neighborhood or retail district, fix it up and help pay for the fix with the resulting increase in property tax revenues. But in the Metro East area, the concept has mutated into a developers' feeding frenzy. One municipality gave \$20 million in tax dollars, and another municipality gave \$10 million to fund "big box" retail developments in cornfields. A third municipality subsidized a big box shopping center which displaced several

hundred people from their homes - and the list goes on and on.

Why do municipal officials do these things? Developers and big retailers threaten mayors and city councils, saying in effect, "Give me tax incentives for a new store, or I will close my existing store and build my new store a half mile down the road in another municipality which will give me tax incentives." With that kind of gun to its head and with no independent review of the merits of the developer's proposal, how can any city ever say "no" - especially in an area like the Metro East area where there are well over 50 municipalities, all with the power to create TIFs? The only check on the creation of TIFs - the joint review board comprised of representatives of other taxing districts - has no ability to perform an independent analysis of a TIF proposal or stop an abusive proposal.

The TIF Act is so complicated that no normal mortal can figure it out. An army of lawyers and consultants reaps huge fees putting together dubious TIFs, all ultimately paid for by the taxpayers. In the Metro East, TIFs have become a self-fulfilling prophecy. Why would anyone do a major project without a TIF when TIF benefits are handed out to all comers, no questions asked?

I have no particular issue with residential TIF districts, so long as school districts are not adversely affected. Nor do I have any problem with retail development that is truly free market and not tax-subsidized. But I do propose some reforms to tame the abuse of retail TIFs, business districts and sales tax subsidies:

1. There should be an absolute

ban on the creation of TIF district, business districts and sales tax sharing arrangements in any area used for agricultural production. By definition, a farm is not "blighted" and does not need to be fixed up.

2. Every retail TIF, business district and sales tax sharing proposal should be accompanied by an assessment of its competitive impact within a 10-mile radius. No tax subsidies should be available for any development which would adversely affect competing stores which do not enjoy such subsidies.

3. The TIF joint review board would be expanded to include all municipalities within a 10-mile radius of the TIF district. The joint review board would hire its own consultants to review the TIF proposal. The joint review board would be empowered and required by law to veto a retail TIF district with adverse competitive effects.

4. There would be a joint review board similar to the TIF joint review board for all business districts for which sales tax subsidies are proposed.

5. Every retail TIF and business district proposal would be accompanied by a substantial application fee paid to the

municipality. The fee would be sufficient to fund an independent study sponsored by the joint review board as to the eligibility of the proposed district, the competitive impact of the development within a 10-mile trade area and the net tax effects of the district on all units of government within a 10-mile radius. The person or entity doing the study would have to certify that he or it has not worked for the developer in the past seven years.

6. There should be no judicial presumption that any TIF, business district or sales tax sharing arrangement is legitimate. In any litigation challenging a TIF district, business district or sales tax sharing arrangement, the burden of proof should be on the municipality.

I believe that such a program of reform would help restore sanity to the area of TIFs and other tax incentives. Because competition is the essence of free markets, tax incentives should never be used to help one business at the expense of another. And the practice of playing off one municipality against another must stop. All I seek here is a level playing field - and who could disagree with that?

Steve Malec is Secretary-Treasurer of UFCW Local 534 in Belleville.

IBJ Business News

Holland Construction building Salem aquatic center

Holland Construction Services Inc. is building the city of Salem's new family aquatic center, scheduled to open in May 2010.

Located in Bryan Memorial Park near the site of the recently demolished old pool, the \$3.385 million Family Aquatic Center will include an 8,937-square-foot main pool, a 720-square-foot toddler pool, large bathhouse, mechanical building and new drive and parking lot.

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Counterpoint: Should Illinois' TIF law be revised?

"Don't let a few bad apples spoil the bunch. Tax increment financing is a proven development tool."

My initial reaction when posed this question was an absolute "yes." Certain portions of the statute are ambiguous and could be better clarified. After all,



Moran

the TIF Act is extremely long - approximately 95,000 words - and can be hard to understand. I am of the opinion that in order to make something

better, we should be continuously evaluating its merits. The TIF Act is no exception.

Now I also know that not all TIF districts are good. There have been occasions where the use of TIF probably was not warranted. However, that is the exception and not the norm in terms of the overall TIF picture. As an economic development consultant who travels all over Illinois to assist communities with TIF, I can honestly say that almost all Metro East municipalities conduct their TIF activities appropriately. In the few cases where TIF issues exist, the problems come when communities lack an understanding of how to administer a TIF, or they did not plan appropriately when first establishing the district.

The fact is there is not a problem with the TIF statute. There is a problem with understanding exactly how TIF works. So, when I'm asked whether I believe the TIF statute should be changed, my

answer is "no" - the TIF statute is fine. It is our misunderstanding of TIF that needs to be addressed.

One of the main reasons the state created this economic development tool was because it realized that billions of dollars in federal and state aid to local governments was being eliminated - and municipalities were under extreme pressure to upgrade aging infrastructure, redevelop blighted areas and rehabilitate aging downtowns. At the same time, unfunded federal and state mandates had increased the financial burden on most municipalities. As a result, tax increment financing was created to assist communities in funding redevelopment efforts, and alleviate certain blighting conditions that if left unchecked would continue to throw communities into further economic decline.

As many of us know, the TIF Act does not allow us to establish a TIF district anywhere we please. Certain blighting conditions must be present within a designated area to qualify for tax increment financing. The TIF statute is very clear on this issue. Upon the appropriate documentation of blight, a TIF plan is created. This plan is meant to address and alleviate those blighting conditions over a certain period of time. One of the problems in our region is that blight is common. We live in a unique area in terms of how the statute defines blight. The Metro East - from a historical and geographical sense - is likely to have more blight issues than other parts of the state. This negatively

affects our ability to attract new businesses. TIF is meant to correct these blighting conditions, to the benefit of everyone.

Many of our developed areas date back to the 1800s. Think about our downtown areas and you'll realize that many of the buildings are 50 to 150 years old. TIF is utilized to assist downtown business owners to restore historic structures, demolish unsafe buildings and renovate older buildings. It is also used to update aging and deteriorated infrastructure and expand streetscape programs to assist businesses in creating an atmosphere for commerce.

A total of 150,000 residents, 4,000 businesses and 50,000 jobs are directly located in the American Bottoms - a floodplain area that encompasses 25 individual communities in the Metro East. TIF has played a vital role in funding upgrades to levee systems and has assisted with other flood control measures including stormwater detention - a major issue in the Metro East. Without the use of TIF, flooding would be an annual problem in the Metro East.

Those not living or working in flood prone areas may be living or working in areas that are undermined. There have been numerous instances of mine subsidence that have negatively affected school districts, businesses and residences. They are well-documented in local newspapers. TIF is often used to help stabilize mines and to prevent subsidence. Most developers consider

it too risky to develop a large project in these areas, and TIF incentives are often used to mitigate those concerns. Without it, large-scale development is extremely unlikely in these areas.

There is often a lack of media coverage on how TIF has assisted in the recruitment and retention of jobs within the Metro East. It is no secret that we are experiencing population loss and high unemployment. The decline of the manufacturing industry and the deterioration that has occurred in many of our now partially vacant industrial and commercial centers has put tremendous pressure on the region. Our infrastructure has slowly deteriorated. To resolve these issues, we actively compete for new businesses on a national basis every day. I can tell you that the use of TIF was integral in the location decisions of many of the major companies that employ Metro East citizens. Without the use of TIF, the necessary infrastructure upgrades, mine stabilization efforts, flood mitigation measures and other improvements would have never occurred, causing these same employers to look elsewhere.

In the end, I believe it unnecessary to change the Illinois TIF statute. Used appropriately, tax increment financing has more than proven its worth, and has made the Metro East a better place to both live and work.

Keith Moran is president of Moran Economic Development, a consulting firm specializing in TIF, business districts and other economic development programs.



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