



TAX INCREMENT FINANCING (TIF)

National Association of Realtors

November 2002

Prepared for the National Association of Realtors by

Professor Craig L. Johnson, PhD
Indiana University
School of Public and Environmental Affairs

Robinson & Cole LLP | Boston, MA

Part One

TIF Primer

Executive Summary

Since the first TIF law passed in California in 1952, tax increment financing (TIF) has spread throughout the nation to become a useful, effective tool for local governments to finance capital projects in support of economic development. Though TIF laws are on the books in 48 states and the District of Columbia, the application of generic TIF principles varies greatly across states.

TIF was originally designed and justified as a local method of self-financing the redevelopment of blighted urban areas. TIF has successfully fulfilled its original intent by spurring the redevelopment of several blighted areas. Now, the use of TIF to raise project finance money has expanded into other areas. TIF bond proceeds commonly finance projects in non-blighted, as well as blighted areas, and for a variety of purposes associated with redevelopment, development, or related physical infrastructure improvements, such as elementary and secondary educational facilities, roads, bridges, parking facilities, recreational facilities, water and wastewater facilities, and electrical power plants.

TIF has financed a wide variety of successful commercial and industrial projects. In addition, TIF projects have been successful at building affordable housing, assisting in the revitalization of low-income and moderate-income neighborhoods, and tackling modern, technical redevelopment problems, like redeveloping contaminated sites such as brownfields.

TIF is also a fiscal tool used to overcome problems associated with local fiscal stress. TIF has been adopted by cities facing various forms of fiscal stress, including tax and expenditure limitations, infrastructure demands from population growth, and declines in intergovernmental aid. TIF has been used in communities with a wide range of socioeconomic characteristics, demonstrating its breadth as a development tool. In addition, there is empirical evidence that TIF programs in Michigan accelerated property

value growth, and TIF programs in Indiana raised property values and employment levels.

TIF has the revenue raising ability to finance projects by itself, but it is flexible enough to be used as a part of a larger package of financial incentives to retain and expand businesses or attract new business to the community. [TIF and alternative economic development techniques, particularly impact fees.]

Though TIF is most often thought of as a financing tool, it is also a land development and improvement tool. The TIF plan, usually referred to as a redevelopment plan, provides governments and community stakeholders with a forum and process to manage their redevelopment and growth for years to come. In the process, TIF provides a vehicle for local governments and the private sector to develop public-private partnerships to work on promoting economic development.

A Primer on TIF

Introduction

Though originally created for the limited purpose of financing the redevelopment of blighted communities, TIF has developed into an integral part of the revenue structure of many local governments across the nation. The rapid growth of TIF as an economic development technique of choice to finance land acquisition, site development, property rehabilitation, road improvements, water and sewer expansion, and building expansion, began in the early 1980's. Local government officials were faced with cuts in federal funds for economic development and infrastructure projects. At the same time voters began to protest property tax increases and, led by the passage of Proposition 13 in California, capped local property tax increases.

Local government officials turned to TIF as an annual source of local property tax revenue that they could use to finance economic development projects, and other physical infrastructure projects, without having to raise property tax rates. Moreover, with TIF they could leverage future general fund revenues to support the repayment of property-

tax backed debt, without having to go directly to voters for approval, and without violating debt limitations.

Ultimately, TIF became popular because it is both an effective financing tool *and* a land development tool. Its basic structure and processes fits well into the general structure of local government. The TIF template that has been exported to local jurisdictions around the nation; its generic framework easily adapts to different state environments and the circumstances of unique local jurisdictions.

TIF is used to pay for land and real estate improvements, capital projects, in specific geographic areas. TIF can be applied to most geographic areas, but is best suited to large tracts of land in need of significant redevelopment or land that is in the process of being developed. TIF can be used to fund new development or the rehabilitation of older communities.

TIF is considered a “self-financing” way to pay for economic development projects. Development projects are financed with tax revenues generated by the new development. Government officials do not have to impose a new tax, but rather simply reallocate new revenues from development to pay for development costs. Government officials can tap into their local property tax base for development, the primary source local government revenue throughout the nation, without imposing a new tax, or higher tax rate. Moreover, officials have broad discretion over the use of TIF funds, so they can use TIF funds to fund a variety of develop purposes and capital projects.

The TIF process can be initiated any time the community sees a development opportunity. TIF revenues may be used on a “pay-as-you-go” basis, with the annual stream of revenue often used to fund small projects. More often, TIF revenues are used to pay debt service costs over the life of the project, often a twenty-thirty year period. This is referred to as “pay-as-you-use” financing. TIF is effective at generating large amounts of capital for up-front capital investments.

TIF Debt

Officials use TIF to raise enough money, relatively quickly and inexpensively, to finance major, large-scale, multi-million dollar capital improvement projects. The proceeds from the sale of TIF bonds sold in the municipal securities market are used to

finance development project costs. This results in substantial benefits to developers. First, the cost of borrowing to developers is substantially cheaper if the government sells securities to finance development rather than the developer having to go to the bank or capital markets for financing. TIF bonds provide substantial interest cost savings to developers because most of them are tax-exempt. But even when the government sells taxable TIF bonds, developers still receive substantial cost savings because the interest costs are still lower, and the terms of repayment are much more generous to developers than they would be without government assistance, providing for longer repayment periods, government funded escrow accounts, and additional credit enhancement.

TIF debt is secured primarily by the incremental tax revenues derived from property taxes levied within the tax increment district. The incremental revenue does not represent a new tax, but rather a reallocation of a portion of the municipality's general property tax revenues. Municipalities issue tax increment debt, in part, to circumvent constitutional and statutory debt limitations and voter approval requirements on tax-supported debt. Unlike traditional general obligation (GO) bonds, tax increment bonds in most states are not subject to municipal debt limits or public referendum requirements. Therefore, local officials have much more discretion to sell TIF securities than they do general obligation securities, and it gives them more debt capacity to finance infrastructure improvements. Though, it should be noted that any future problems that arise with the governments TIF bonds will likely spill over to the general government, and could adversely impact credit quality throughout the government.

The TIF financing structure is designed to capture new tax revenues generated from increased property values expected to result from development. As a result, TIF districts must be located in areas capable of realizing a significant (and sufficient) increase in assessed property value in order to meet their debt service obligations in full and on time. If the tax base does not grow as projected, debt repayments may be put in jeopardy, as has happened in some TIF districts. In order to strengthen the likely repayment of TIF debt, and thereby reduce borrowing costs, TIF debt repayment is sometimes also supported, in a secondary position, by an additional pledge of the governments' general fund or special tax revenues. In addition, while the redevelopment authority receives the incremental revenues, it does not have control over setting the

property tax rate. This control remains wherever it was prior to establishment of the tax increment district (TID), usually the city or county.

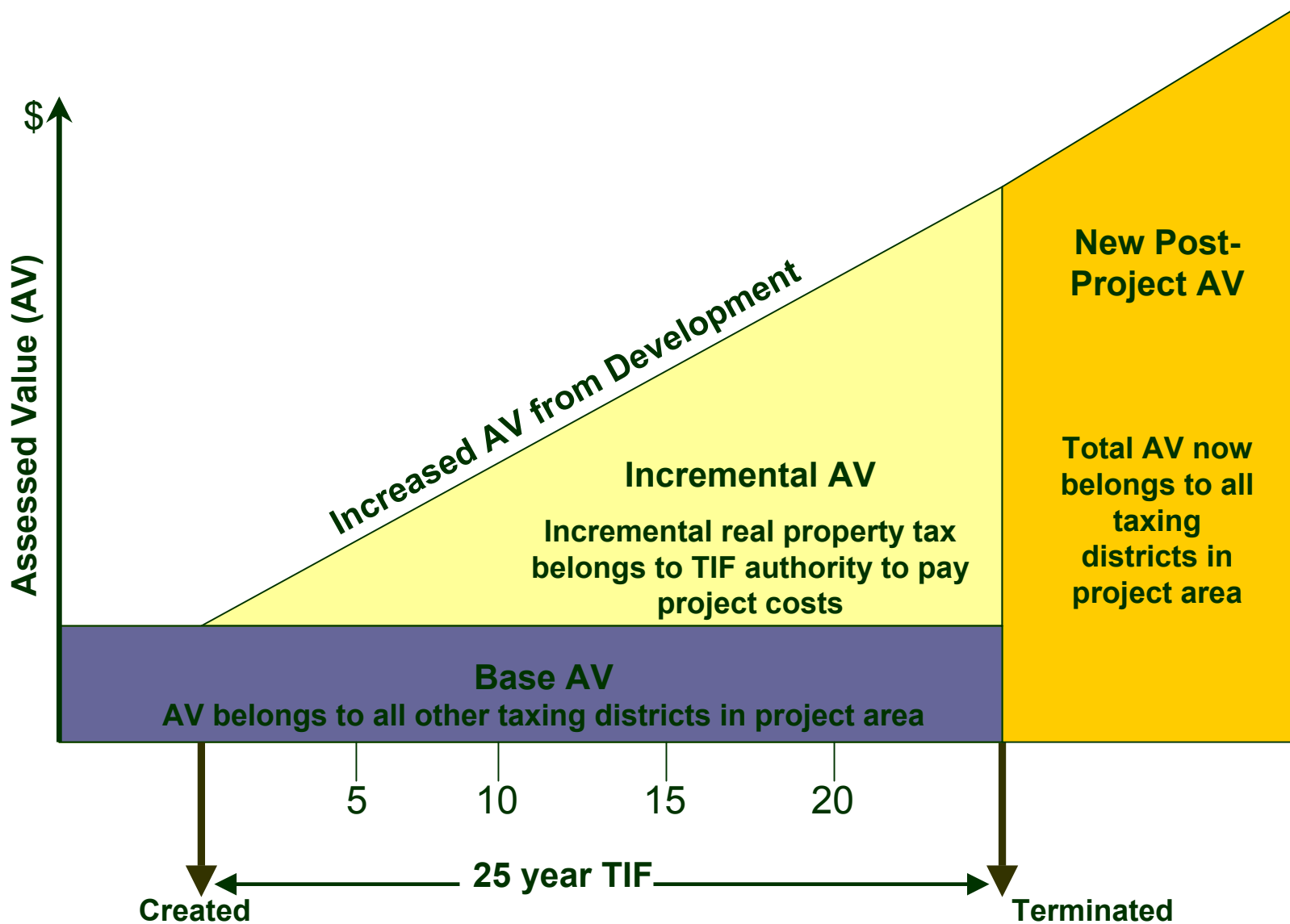
The Basic TIF Financing Structure

Tax increment financing policies are implemented through the creation of special tax increment districts (which are called allocation areas in California), which are distinct geographical areas. TIF districts (TIDs) commonly share boundaries with the enabling government, usually a city, or the TID may be a small part of a city, such as a section of the downtown area, or an industrial park between the city and residential suburbs. TIDs are usually governed by a redevelopment commission and operated by a redevelopment authority.

Redevelopment authorities or commissions are usually established and indirectly operated by local government officials to provide financial, organizational, and regulatory support for development activities. They are authorized to enter into contractual arrangements with private firms, and they sell TIF debt in the municipal securities market to generate funds for capital expenditures. Redevelopment authorities were used by general governments as a way to provide the community with off-balance sheet capital asset financing, but the new government-wide financial reporting requirements imposed by GASB Statement No. 34 should increase the transparency of transactions engaged in by redevelopment authorities that financially benefit, or harm, the sponsoring general government.

TIDs are special taxing districts set-up to generate revenue to pay for ongoing development costs. Once the TID is established a base year is determined. The base year is set at the beginning of the project, usually the year the TID is adopted. The assessed valuation of property in the TID is frozen at the base year. This area is labeled “Base AV” in Exhibit 1. The base year assessed value of property (Base AV) belongs to all the taxing districts in the TID. After the base year, all the assessed value in the TID - above the base value - belongs to the TID; this portion of the tax base is referred to as the incremental assessed value (Incremental AV). The other taxing units in the TID, the general government, library district and water district, for example, do not have a legal claim to the incremental assessed value, unless specifically dictated by law. But, they still have the base assessed value. At the date the TID is terminated, the incremental assessed

Exhibit 1. TIF Assessed Value (AV) Over Project Life



value reverts back to the other taxing units (New Post-Project AV). The TID is dissolved, and the tax base of the overlapping taxing units is made whole, at a higher assessed value level.

Exhibit 2 provides an example of the revenue flows from the base and incremental assessed values. The example is of a 5 year TIF project with assessed values increasing, simulating the expected property base growth from the implementation of the TIF development project. The overlapping jurisdictions consist of a sponsoring government (general government) and overlapping contributing governments (water and sewer district, a library district, and a school district). Each overlapping jurisdiction is a governmental taxing unit with associated tax rates. The sum of the individual tax rates is the governmental jurisdictions' total, or overall, tax rate (\$5.00). Once the TIF is adopted, this becomes the TIF tax rate as well.

In the second year after the base year is established, and the construction is complete and the facility is operational, the assessed value grows from \$500,000 to \$600,000, an increase of \$100,000. The \$100,000 assessed value is the incremental assessed value, and belongs to the TIF district. The \$500,000 is the base value, and remains with the sponsor and contributing jurisdictions. Since the incremental assessed value in Base Year + 2 is \$100,000, and the tax rate in the jurisdiction is \$5.00 per \$100 assessed value, the incremental revenue to the TIF district is \$5,000 ($\$100,000 * .05$), the incremental assessed value multiplied by the total tax rate of the TIF district. This is \$5,000 that the redevelopment authority can use to pay for development costs.

The incremental revenue in the TID grows from \$5,000 in the beginning to \$15,000 in the final year of the TIF (Base Year + 5), the termination year of the TID. Over the five years, the share of the revenues allocated to the TIF district from grows from 16.67 percent to 37.50 percent of the combined base plus incremental assessed value. At the end of the fifth year, the entire assessed value reverts back to the sponsor and contributing jurisdictions, and is \$300,000 higher than prior to the TIF project.

TIF in Practice

Practices used in the TIF process are most easily understood within a comprehensive development planning and financing process framework. The TIF

Exhibit 2. An Example of the Flow of Tax Increment Revenue: Base Year, Assessed Value, and Incremental Revenue

		Assessed Values:	Base Year	Base Year +1	Base Year +2	Base Year +3	Base Year +4	Base Year +5	Post-TIF
			\$500,000	\$500,000	\$600,000	\$650,000	\$700,000	\$800,000	\$800,000
	Tax Rate per \$100 AV		<u>Revenue</u>						
<u>Jurisdiction</u>									
Sponsor	\$1.75		\$6,250	\$6,250	\$6,250	\$6,250	\$6,250	\$6,250	\$10,000
<u>Contributor</u>									
Water and Sewer District	\$0.50		\$3,750	\$3,750	\$3,750	\$3,750	\$3,750	\$3,750	\$6,000
Library District	\$0.25		\$4,250	\$4,250	\$4,250	\$4,250	\$4,250	\$4,250	\$6,800
School District	\$2.50		\$9,500	\$9,500	\$9,500	\$9,500	\$9,500	\$9,500	\$15,200
<u>Total</u>									
	\$5.00								
<u>Tax Revenues</u>									
Base Year (to contributors)			\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$40,000
Incremental Revenue (to TIF District)			\$0	\$0	\$5,000	\$7,500	\$10,000	\$15,000	\$0
Total			\$25,000	\$25,000	\$30,000	\$32,500	\$35,000	\$40,000	\$40,000
<u>Revenue Allocation</u>									
Share to sponsor and contributors			100.00%	100.00%	83.33%	76.92%	71.43%	62.50%	100.00%
Share to TIF District			0.00%	0.00%	16.67%	23.08%	28.57%	37.50%	0.00%



Exhibit 3.

The TIF Process

Create redevelopment plan

- ✓ Determine geographical boundaries
- ✓ Finding of blight or significant economic benefit
- ✓ Estimate project timeline and project costs
- ✓ Establish tax base, revenue increment, and debt financing policies
- ✓ Include special features
- ✓ Establish evaluation requirements and termination date

Determine project feasibility

- ✓ Need
- ✓ Economic benefits
- ✓ Financial feasibility
- ✓ Area eligibility
- ✓ Public-Private partnerships

FORMULATION

Conduct public disclosure

- ✓ Public hearings
- ✓ Involve affected districts

Get political and legal approvals

- ✓ Draft new ordinances
- ✓ Draft public-private sector agreements

ADOPTION

IMPLEMENTATION

Manage construction process

- ✓ Obtain land
- ✓ Prepare site
- ✓ Construction
- ✓ Post-construction management

Manage project finances

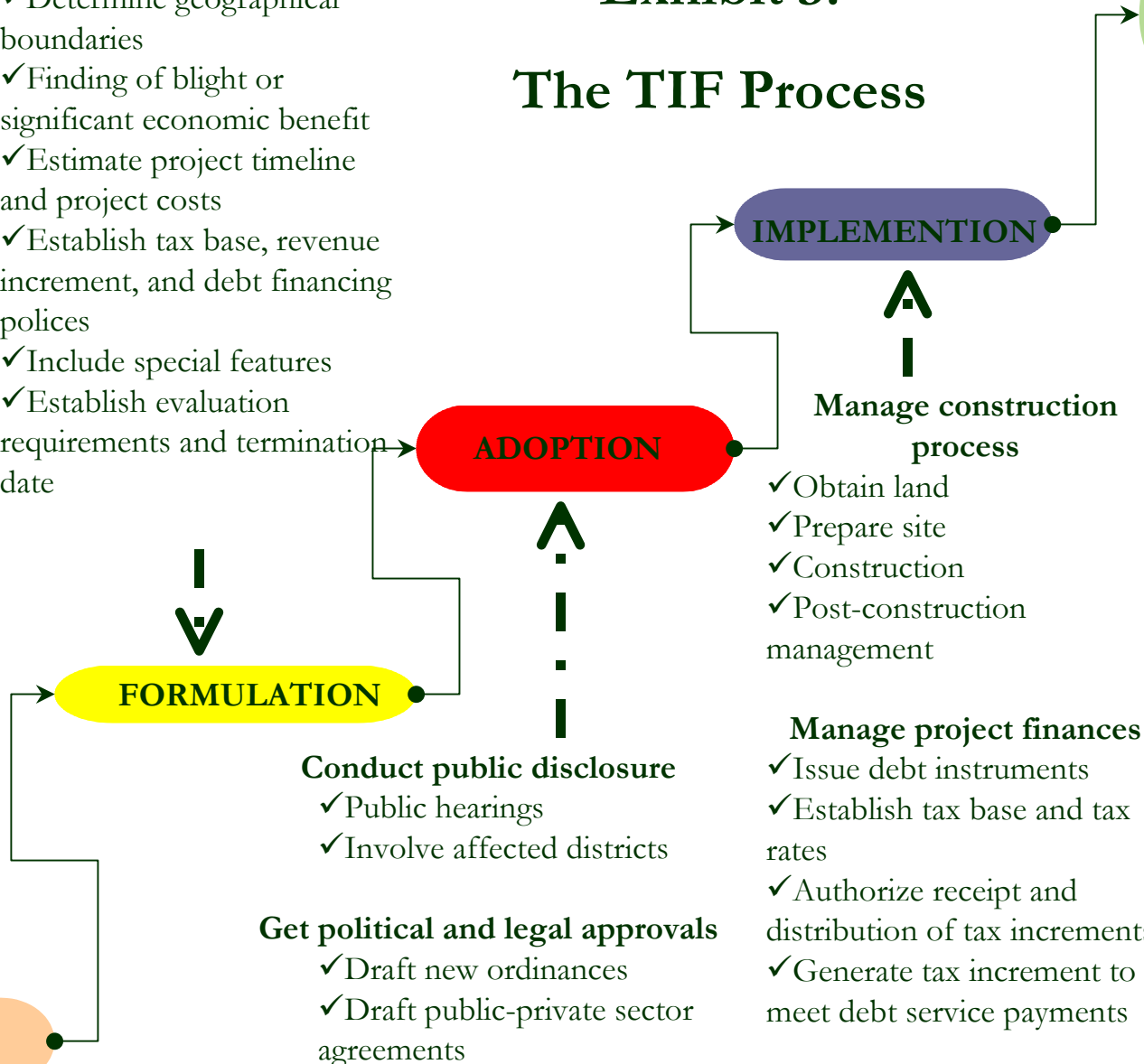
- ✓ Issue debt instruments
- ✓ Establish tax base and tax rates
- ✓ Authorize receipt and distribution of tax increments
- ✓ Generate tax increment to meet debt service payments

EVALUATION & TERMINATION

Dissolve tax increment district

- ✓ Evaluate project
- ✓ Total assessed value, base and incremental, now belong to overlapping governments

INITIATION



development process progresses through five stages: 1. Initiation. 2. Formulation.. 3. Adoption. 4. Implementation. 5. Evaluation and Termination. Exhibit 3 provides an illustration of the process of a TIF project, highlighting some of the major items that must be handled along the way from project initiation to termination.

Initiating the Project

The first stage is initiation of the development process. A TIF project is usually initiated by the public sector, but also may be initiated by a private firm or non-profit agency interested in developing or redeveloping a geographic area. During this stage, the need to develop a specific project area is discussed by public sector and private sector decision-makers. They begin to take preliminary steps to address several development issues, including, the eligibility of the project area, the needs of the community, and financial feasibility and expected economic benefits from the project. In addition, a variety of public-private sector partnership scenarios may be probed to ascertain the level and breadth of interest.

If TIF legislation is not already on state and local statutes at this stage of the process, the basic enabling legal framework must be developed for general governments to set up tax increment districts, redevelopment authorities for day-t-to-day administration, along with an independent governing body. The enabling legislation should also spell out the formal process that taxpayers and affected local governments, such as school districts, can use to exert influence during the TIF approval process. A formal disclosure process involving public hearings that includes all local taxpayers and governing bodies that may be affected by the TIF project may be costly and delay the project somewhat, but it will likely increase public confidence in the project, increase local official accountability to community stakeholders, and increase the likelihood of project success and improved quality of life in the community in the long run.

Plan Formulation

Once the development process is initiated, the next step involves creating the redevelopment plan. This stage of the process brings together the two basic aspects of TIF, land development planning and project financing. The redevelopment plan serves

many purposes, but primarily it is a planning tool that sets forth the objectives, project timetable, and forms the written basis for communicating these matters to stakeholders, especially taxpayers, in the community. The plan is a statement of the objectives of the redevelopment project and should reflect the interests and existing plans of the community as a whole, which are commonly described in a community master plan.

TIF land planning begins with determining the geographical boundaries of the TIF district. Another way to think of this issue is: What property is going to be TIF'ed? The area of the TIF district may be larger than the actual area of new construction. For example, the actual construction project may be a four square block downtown area, while the TIF district may include the entire downtown "business" district, which might consist of 50 square blocks.

This is one area of controversy because some TIF districts encompass far more surrounding area than the TIF project itself. TIF districts should not be drawn merely to capture the assessed property values of surrounding areas. If surrounding areas do not receive an economic benefit from the TIF project, then they should not be included in the TIF district. On the other hand, if the benefits of the TIF project "spillover" to the surrounding community, as they will with most large public improvement projects, since they generate substantial social benefits, then the surrounding areas, and their overlapping governments should bear some of the cost of the project. The bottom line is that the properties included in the TIF, beyond the limited area of the actual construction project, may affect the success of the TIF project.

Another area of controversy at this stage of the process is the necessity of justifying TIF projects. The basic notion is that since TIF projects spend public funds, they should serve a public purpose. The initial theoretical justifications for TIF were that: 1) it would be used to finance redevelopment projects in *blighted* communities, and 2) these projects would not be financed without, or "*but for*," TIF.

TIF was not envisaged as a financing source for general government expenditures or projects in non-blighted areas. While at least 33 states have at one time required local officials to opine on the level of blight in the potential project area, the vacuousness of the definition of "blight" often makes it a meaningless exercise. An important dimension of a blight finding is whether it is a quantifiable, and therefore, measurable. A quantified

blight finding limits TIF to projects that those that can meet specific and measurable adoption criteria. Most states that require a finding of blight, do not require that it be quantified, and some courts have explicitly rejected the notion that a blight finding need be quantified, or even explained. In most states a non-quantified finding of blight, or a finding of economic benefits such as employment gains is required in order to begin the redevelopment process.

Related to the blighted finding is the “but for” test. The theoretical idea behind the “but for” test is that if the development would have occurred without the expenditure of public TIF funds, then a larger public purpose is not served, and therefore, TIF should not be used. However, determining whether development would have occurred is an extremely difficult matter. Many states require projects to cross some form of “but for” hurdle prior to project approval, but the tests are usually very low hurdles and not uniformly or rigorously applied. Most states have resorted to a simple finding by the authorizing governmental body that development would not occur without the assistance and public funds supplied by the government.

In the plan formulation stage, officials also begin to flesh out the actual details of the project or projects. Taxpayers should be provided with details on the scale and scope of the project, along with detailed estimates of project costs and a project timeline. Most states require an estimate of project costs in the redevelopment plan. If debt is going to be used to finance the project, then debt financing polices should also be put in place, especially the amount of debt authorized to be issued, the redevelopment authority ability to issue debt, and limitations on the amount of outstanding debt and maximum allowable debt service payments.

The redevelopment plan should also capture several other special features pertinent to overall TIF development policy, such as environmental protections, affordable housing requirements, quality of life neighborhood impact statements, and legal and practical guidance on negotiating and executing contracts with private firms.

Plan Adoption

The plan adoption stage of the TIF process involves public hearings and other vehicles for stakeholder participation prior to approval of a redevelopment plan or the

creation of TIF district. These mechanisms are designed to ensure that public projects involve public participation so that stakeholder input is infused into the decision making process. Most states require public hearings prior to plan approval or district creation. Fewer states require a hearing on the creation of the redevelopment plan and the TIF district.

In general, there is tremendous range over the required legal participatory mechanisms across the states. At one end of the spectrum, some states encourage input from all taxing districts affected by the TIF project. Some states go so far as to require approval from affected taxing districts. Other states do not provide affected taxing districts any formal process for influencing TIF project decisions, much less a veto over the redevelopment plan or the proposed TIF district. Clearly, there are tradeoffs in the level of participation afforded overlapping taxing districts.

At a minimum, enabling legislation should require local officials to design projects that proportionately spread costs and benefits across all affected jurisdictions. Affected taxing districts, school districts, for example, have a significant stake in any actions that affect the revenue flowing from their property tax base. Therefore, they should be able to help determine the redevelopment plan and characteristics of the TIF district. They should not, however, be given complete veto power. States with participatory mechanisms that give affected taxing districts some influence over the process, without giving them complete veto power, are enabling the districts to protect their self interest, without unduly constraining the whole jurisdiction. This balance should yield the best results in terms of promoting efficiency, effectiveness, and equity in the adoption process.

Once the redevelopment plan is adopted, enabling legislation is on local and state statutes, financing and administrative organizations have been established, and templates of public-private sector agreement are drawn, then work can commence on developing the project area.

Plan Implementation

The administration of the project area is guided by the parameters laid out in the enabling statutes. The implementation phase of the TIF project from the government

perspective involves providing general oversight of the construction process and managing the finances of the redevelopment authority and TIF district. TIF projects are usually large financial undertakings that impact local government finances for several years. By setting financing restrictions and carefully managing the flow of funds, local governments can develop financial plans under less uncertainty.

Almost all states allow the sale of TIF bonds to finance the costs of development. The impact on local government finance can be substantial if the bonds are considered obligations of the overlapping tax districts, since stringent limitations are often imposed by state constitution or statute on the amount of debt taxing authorities can issue or have outstanding. There are at least three different ways that states have chosen to deal with the relationship between TIF debt and local debt limitations. The least restrictive and most frequently used method is to allow TIF debt to be repaid from tax increments and to set forth explicitly in the enabling statute that it shall not be counted in calculating an overlapping taxing districts outstanding debt for the purposes of a debt limit. The next least restrictive way is to place separate restrictions on the amount of TIF debt that can be issued or outstanding. This is usually accomplished by setting the limits in the redevelopment plan. In either way mentioned above, an unintended result could be the transfer of power and future resources from overlapping taxing jurisdictions to the redevelopment authority.

Other states have chosen to simply omit comment on debt limits in the enabling statute. This approach leaves municipalities open to court challenges, especially regarding whether TIF debt should count against local debt limits. It has become increasingly clear in several decisions that the courts are finding against local governments that issue TIF debt that exceeds debt limits. Therefore, a states' decision to remain silent on this issue may ultimately be the most restrictive on TIF debt issuance.

Debt instruments are sold to generate proceeds to make capital expenditures. In the initial stage of the physical infrastructure improvement, land is purchased, cleared if necessary, and prepared for development. Often the assessed value in the project area will initially drop, which may adversely affect overlapping tax districts.

A policy choice may be made to reduce, or "write-down," the value of the land prior to setting the assessed base value to increase the eventual incremental revenue

flows. But since this may reduce the assessed property value of overlapping taxing districts, it should be accomplished in a way that holds overlapping taxing districts harmless or reimburses municipalities for financial losses.

In general, overlapping taxing districts that rely on property tax revenue to finance needed public expenditures should be protected from harm resulting from TIF projects. Often, TIF has been accused of siphoning off needed funds for school districts in particular. While this may have been the case in the early years of TIF, many states use methods to protect school district property tax bases. Some states mandate that school district property tax bases be fully excluded from TIF districts. Other states give schools the choice to participate in the incremental base, or opt out. Some states that give school districts a choice, give them the option of opting in for only a portion of their tax base. Though states use a variety of techniques to protect school districts in particular, and overlapping taxing districts in general, the most important point is that it can be done. TIF need not be synonymous with the raiding of overlapping government tax bases.

Another major set of financial management responsibilities involves the management of incremental revenue flows. The redevelopment authority is responsible for managing incremental funds. Ideally, the increase in the assessed value from development will generate just enough revenue to pay development costs, administer the project, and service the debt. But it is common for TIF projects to generate surplus revenues. The accumulation of “excess” revenues should be limited, and ultimately returned to taxing districts.

Evaluation and Termination

Finally, the last stage is the evaluation and termination of the TIF project. Once project construction is complete and the project has an operational history, it is important to formally evaluate the expected versus actual results. In addition, a public assessment of the redevelopment authority and TIF district every two or three years may be effective at holding redevelopment authorities accountable to stakeholders.

Another important aspect is the end date of the TIF. Because of a lack of oversight in some states, some TIF districts became “perpetual” governments. The life of a TIF district, or the time period for which increments can be collected, should be

expressly limited in statute. Maximum time limits are usually twenty-thirty years, provided that all debt has been repaid. As long as debt is outstanding, most TIF districts can exist and collect revenue.

Part Two

TIF Case Studies

Circle Centre Mall – A Downtown Revitalization Success Story

On September 8, 1995, in the heart of downtown Indianapolis, the Circle Centre Mall opened to the public with four floors covering 800,000 square feet of retail space, including nearly 100 specialty stores, restaurants, and nightclubs, along with 9 theater screens and 12,000 parking spaces within one block. After more than 15 years of planning and six years of construction, the major centerpiece of the urban revitalization of downtown Indianapolis was complete.

The Circle Centre Mall turned out to be the crowing jewel of a twenty-year downtown revitalization effort that included building three major professional sports facilities: the RCA Dome where the Indianapolis Colts of the NFL play football, the Conseco Fieldhouse where the Indiana Pacers play NBA basketball, and Victory Field, an award winning minor league baseball stadium. As part of the rebirth of downtown Indianapolis, numerous other sporting facilities were built or renovated, and more than a dozen hotels and many other cultural amenities were also completed: a zoo, two museums, two-large-format theaters, several office buildings and NCAA national headquarters.

The Circle Centre Mall project ended up costing \$320 million. The project began with an initial price tag of \$100 million in 1979, but projected costs escalated quickly and steadily, eventually up to \$970 million, of which \$230 million was expected to come from city, and \$740 from private developers. Ultimately, the Circle Centre Mall was funded by a public-private partnership consisting of TIF funding from the city of Indianapolis, an equity contribution from the Circle Centre Development Company, and private loans from a consortium of three European banks.

The majority of funding for Circle Centre is from TIF dollars, without which the mall would have never been built. TIF funding was generated from the net proceeds of two TIF bond issues sold in 1988 and 1992. Of the \$293.5 million bond issue sold in 1992, \$265 million was dedicated to the Circle Centre Mall project. TIF debt will be

repaid from the real estate tax revenues generated by the new development and business activity in the project area.

The project area is a consolidated TIF redevelopment district that includes the mall, but in total includes 192 blocks encompassing many miles of real estate surrounding the mall. The city was responsible for land acquisition, which was often contentious and involved several court cases, infrastructure and utility improvements, the preservation of historic building facades, and the construction of parking garages and the core and shell of the mall building.

Despite the glorious opening mentioned above, the project did not go smoothly from beginning to end. The deal started to unravel in the middle of 1990. In July, a major prospective anchor pulled out of Circle Centre Mall project, raising uncertainty about the viability of the project. On top of the problems finding viable anchors, and in the middle of the national economic recession, American United Life Insurance Co. filed suit to stop the city from collecting property taxes on the AUL Building, which was a major portion of the city's mall financing plan. AUL ultimately filed suit against the city's use of tax increment financing for the mall, arguing that it had been overtaxed by almost \$750,000. The lawsuit was eventually resolved in favor of AUL. Ironically, the settlement worked out well for the TIF district. The base assessed value was lowered retroactively by \$33 million, from \$133 million to \$100 million, which represented a \$33 million incremental assessed value windfall for the TIF district.

Finally, when Simon and Associates announced it would not meet a December 1 deadline to sign a permanent agreement because they had not been able to arrange financing, it became public knowledge that the financing package was falling apart. Without additional private financing the mall project would remain indefinitely in its current stage of development - a massive hole in the middle of downtown Indianapolis. The project would simply run out of money and come to a screeching halt. This signaled a wild scramble for private financing.

The Indianapolis business community was asked to step up to the plate and help, and did so handsomely. Twenty Indianapolis companies came together by April of 1991 to form the Circle Centre Development Company, and agreed to invest \$50 million in the mall project, which helped give the stumbling project a renewed sense of life. Complete

project financing wasn't finalized until late in 1992 when a group of European banks agreed to provide a \$72.5 million loan for the mall, and the city agreed to commit \$30 million more to the project. By this time the scope of the project had changed dramatically.

On June 25, 1991, city officials presented the public with major changes to the mall project. The mall was scaled back from roughly \$1 billion to between \$500-\$700 million, scoped down from 4 major anchors to 2, and a new timetable was laid out pushing back the completion date of the mall. On February 19, 1992, newly elected Mayor Stephen Goldsmith put the city's commitment to the mall on hold until leasing and financing arrangements were resolved. He sent a dramatic signal highlighting the precarious nature of project negotiations by delaying a \$10 million garage construction contract.

The mall project turned an important corner with the start of 1994. Mayor Goldsmith and the development group, Circle Centre Development Group, signed a new agreement giving the city additional safeguards, which publicly demonstrated the commitment of both sides to finish the project despite what had sometimes been a rocky public-private partnership. At this point, the city had already spent \$110 million of its \$187 million commitment in construction costs, but the outcome of the mall project was still far from certain.

The mall was finally completed in the early fall of 1995. On opening day approximately 60,000 people visited the mall. Since that time, the mall has been an economic success story and continues to average 800,000 shoppers per month. Its economic impact on the city and the state was estimated at \$2.1 billion through 2000, and continues to climb.

Stapleton - From International Airport to International Model of Smart Growth

Stapleton International Airport served as Denver's municipal airport from 1929 to 1995. In 1989, after the city made the decision to move the airport to the present Denver International Airport site, the citizens of Denver began to plan the future use of the old

airport site. Over the next six-years a community vision evolved for a new approach to development, a real world example of sustainable development on a grand scale. To finance this new vision, the community called on a reliable form of redevelopment planning and finance used often in the Denver area - TIF.

Once the world's fifth-busiest airport, now Stapleton was to become the nation's largest urban redevelopment project. The Stapleton Redevelopment Project is the largest urban infill project in the country, covering 4,700 acres. It is quickly becoming one of the nation's largest, mixed-use urban communities, offering a diverse range of housing models, housing prices, jobs and open space.

On January 31, 2000, Mayor Webb stated publicly, "The vision described in the Development Plan for Stapleton is ambitious and the redevelopment of Stapleton is my highest priority for the next several years." Stapleton now prides itself on being a pedestrian-friendly urban community, and is a national and international model for smart growth in the 21st Century. The Stapleton Redevelopment Project was awarded a prestigious international award, the *Stockholm Partnerships for Sustainable Cities Award for Smart Growth*. Smart growth may be defined as growth that is economically sound, environmentally friendly, and supportive of a livable community – growth that enhances our quality of life.

Eventually, the Stapleton Redevelopment Project will add 1,700 acres of new parks to Denver's parks inventory and more than 12,000 new homes, and there will be 17 million square feet of new commercial development available for a diverse array of business. When fully developed, Stapleton will have an estimated 31,000 residents and over 34,000 employees. The first residents are expected to move in by the end of 2002, and the first businesses are already up and running.

Stapleton Development Corporation (SDC)

The redevelopment of Stapleton airport began in 1995 with creation of the Stapleton Development Corporation (SDC) as a private, nonprofit corporation authorized to act as the city's steward in the redevelopment project. The SDC signed a Master Lease and Disposition Agreement (MLD) with the city in 1998, giving SDC the responsibility

to maintain and lease Stapleton for 15 years, an option to purchase Stapleton property, and the authority to sell parcels for uses consistent with the Stapleton Redevelopment Plan. In 1997, SDC prepared a blight study. This was the first step in determining Stapleton's eligibility for TIF, since in Denver tax increment revenue must be used for infrastructure improvements that have a public benefit and support redevelopment.

TIF is a perfect financing vehicle for the Stapleton redevelopment project because it allows revenues generated from improvements made to the redevelopment site to pay for needed infrastructure, other facilities, and related costs. The Stapleton TIF has a twenty-five year life, and is structured to finance infrastructure development as well as the increased demands from new residential and commercial development. During the first five years of TIF revenues, 100 percent of the property tax increment is devoted to Stapleton redevelopment projects. Thereafter an increasing percentage of the total tax increment (both sales and property) will be retained by the city. The retained percentage reaches 47 percent by year twenty, which will largely go to pay the increased demands from new residents for city services, such as police, fire, roadway and utility services.

TIF base assessed value in 2001 is \$28,189,478, the assessed value increment is \$16,982,682, and the estimated incremental revenue is \$835,000. It is anticipated, that over the twenty-five construction period, the annual property tax increment is estimated to grow to \$93,000,000 (Resolution No. 54, Denver City Council, 2000.)

Stapleton Purchase Agreement

Forest City Enterprises, Inc. is responsible for all in-tract infrastructure and the creation of additional acreage of neighborhood parks. Forest City will advance the front-end financing for the regional infrastructure with repayment through tax increment financing overseen by the Denver Urban Renewal Authority. Forest City will pay \$79.4 million for 2,935 acres (which is the amount of remaining land that has not already been sold or set aside for the 1,116 acres of regional open space) plus a "systems development fee" of \$15,000 for each acre purchased, resulting in a total payment of \$123.4 million. The purchase price was set by an FAA-approved appraisal process.

Recent Developments

A ribbon cutting ceremony was held on June 27, 2002 for the first retail outlet at Stapleton, The Home Depot, which built a 115,000 square foot warehouse center incorporating the newest merchandise and design elements. It is in Quebec Square, a 740,000 square foot regional retail center at Stapleton. The Home Depot anchors Quebec Square along with a Super Wal-Mart and Sam's Club, which are scheduled to open their doors in the fall. In August, Stapleton broke ground on its first mixed use residential neighborhood, an affordable senior housing project expected to provide 100 rental homes for seniors, and announcing shortly before that the building of higher-end single-family homes starting in the mid \$400,000s with an approximate square footage range from 2,800 to 3,200 square feet.

Tax Increment Financing in Anne Arundel County, Maryland – Managing Growing Areas

Anne Arundel County, Maryland is a fast growing area, noted for its high quality of life. County planners and elected officials are concerned with how they might better manage the on-going and future growth of the county. One technique they've drawn on recently as a part of their smart growth management plan is tax increment financing.

The county recently used tax increment financing to fund two major development projects: 1. the Arundel Mills Mall; 2. Parole Town Center. Arundel Mills Mall, a \$230 million project on the sprawling wooded area at the Baltimore-Washington Parkway and Route 100 in Hanover, opened on November 17, 2000. Sitting within 10 miles of over 800,000 people in one of the wealthiest areas in the United States of America, Arundel Mills Mall is the largest mall in Maryland with 1.3 million square feet of retail space, and over 200 stores in retail and entertainment.

The County sold \$28,000,000 in tax increment bonds on November 24, 1999 to help fund the Arundel Mills Mall Project. Most of the TIF bond proceeds are used to finance a portion of the costs related to major public infrastructure transportation and

utility improvements. The bonds are secured by the proceeds of tax collections arising from TIF revenues in the Route 100 Development District, created in 1997. There is also a back-up, or secondary source of repayment. To the extent that TIF revenues are insufficient to cover debt service payments, a special tax will be levied on the taxable parcels within the Arundel Mills Special Taxing District. The Development District and the Special Taxing District are geographically coincident.

The Anne Arundel County Council passed a resolution limiting the aggregate principal amount of bonds for the project to \$28 million. This choice resulted in a need for a special tax to pay debt service costs prior to the mall being completed and put on the tax rolls. Other jurisdictions have chosen to fund debt service costs during the construction phase from general fund appropriations, developer or private firm equity, or selling a bond issue large enough to completely fund interest costs during construction, this is referred to as capitalizing interest.

The special tax may be needed to cover debt service once the capitalized interest runs out. Capitalized interest of \$2.9 million was raised in the bond issue to cover three debt service payments in July 2000, January 2001 and July 2001. If the mall does not have an appraised assessed value by January 2002, then the special tax will have to be levied. The special tax will be levied only when tax increment revenues are insufficient to cover debt service on the bonds. The special tax is an additional component of the county's general property tax on real property in the special taxing district. The county had the choice of increasing the size of the bond issue well above \$28 million to include more capitalized interest, or providing a special tax debt service back-up; they choose the special tax. Though special tax revenues are generated from the property tax base in the district, it is subject to local limitations on property tax revenues. Property tax revenues in the district can not be increased more than the Consumer Price Index annual percentage change for the previous year, or by 4.5 percent, which ever is less.

The Route 100 Development District consists of approximately 394 acres located within the Baltimore/Washington Corridor in Anne Arundel County, Maryland near the intersection of Maryland Route 100 and the Baltimore-Washington Parkway (I-295). The Mills Project is eight miles south of Baltimore and 23 miles north of Washington, D.C. The land in the District is comprised of two parcels, a site of approximately 174 acres, the

Mall Parcel, and an adjacent site of approximately 220 acres, the “Auxiliary Use Parcel,” of which 135 acres are developable.

Based on the pre-issue appraisal report, the appraised “as is” value of the property on June 15, 1999 is \$39,000,000, (Mall Parcel \$19,000,000 and Auxiliary Use Parcel \$37,300,000) and the prospective market value on January 1, 2001 after completion of Arundel Mills and certain portions of the public facility improvement projects is \$274,300,000 (Mall Parcel \$237,000,000 and Auxiliary Use Parcel \$37,300,000), and the prospective market value of the Appraised Property (Mall Parcel only) in June 1, 2002 is \$265,000,000.

The latest TIF project in Anne Arundel County is the Parole Town Center Project. The Parole Town Center Development District was created in December 1999. The development district is situated just outside the City of Annapolis. The district is primarily commercial in nature with an aggregate assessed value of approximately \$845 million as of January 1, 2002. With the development of other major shopping venues in the 1980’s elsewhere in the Development District, Parole Plaza became a less desirable shopping destination and began to falter.

In July of 2002, the County sold \$8,300,000 in TIF bonds exclusively repaid from TIF revenues to fund a portion of the County’s required contribution to the State of Maryland to construct certain public improvements within the district, including improvements to roadways, streets, and ramps. These improvements are designed to support, among other projects, a mixed used redevelopment project in Parole Town Center, consisting of the building of a new intermodal transit facility in Parole Plaza, and a 250 unit/12 story residential tower at the core of Parole Plaza, retail buildings including a Wal-Mart, a grocery store, and smaller shops to replace the existing retail square footage on the site, a public plaza, and a future 324,000 square foot, 16-story, office tower that will share parking with the intermodal transit facility.

Lewiston, Maine and Wal-Mart: Affecting Business Location Decisions

In January 2002, Wal-Mart Stores, Inc. selected Lewiston, Maine as the site for a new food distribution center to service all of its New England Supercenters. Construction on the \$45 million, 485,000 square foot facility on a 13-acre site is scheduled to begin in the spring of 2003 with planned service to stores expected in April 2004.

The city of Lewiston was one of many competing locations for the distribution center. Wal-Mart's real estate team, led by a private consultant, considered several locations in New England for the distribution facility. Among the reasons for Wal-Mart choosing Lewiston over other more centrally located sites, was the financial incentive put together by Lewiston and the state of Maine.

Lewiston agreed to establish a TIF district that will return 50 percent of the taxes paid on real property within the district to Wal-Mart for 20 years. There is no TIF reimbursement on personal property, even though personal property is TIF-eligible in Maine. The 50 percent TIF abatement on real property is offered to Wal-Mart to offset higher than normal development costs on the site, which is a former sand and gravel pit, and higher transportation costs because Lewiston is not centrally located in New England. The state of Maine will also reimburse Wal-Mart for personal property taxes on machinery and equipment.

The TIF agreement commits Lewiston to transfer 61 acres of city owned land, currently used as the city's sand and gravel pit operation, to Wal-Mart at no cost. The city and State of Maine have also agreed to relocate utilities and to make transportation infrastructure improvements in the area.

The TIF agreement commits Wal-Mart to invest a total of \$45.5 million, which includes \$20.5 million in real property and \$25 million in personal property. Wal-Mart has agreed to employ 350 people within three years of the distribution center becoming operational, with a longer-term goal of 450 people. The average annual wages will be \$12 per hour for jobs created in transportation and material moving, \$13 per hour for jobs created in administrative support, \$15.50 per hour for jobs in technical and related support services, and \$40,000 per year for executive, administrative and managerial positions.

Overall, the project is expected to generate substantial net benefits for the economies of the city of Lewiston, and the state of Maine. During the twenty-year life of the TIF, the city expects an annual net increase of \$350,000-\$600,000 in general fund revenues, and a minimum of \$900,000 per year after the TIF expires. In addition, the state of Maine expects to receive an additional \$900,000 in annual state personal income tax revenue and \$400,000 in state sales tax revenue from an additional \$39 million in additional payroll and firm expenditures.

Redeveloping Brownfields in Minnesota

Financing the redevelopment of brownfields is a major policy problem in the United States, especially in older industrial cities. Brownfields are contaminated commercial or industrial properties that are abandoned or underused. Redeveloping brownfield sites involves decontaminating toxic land and rehabilitating the land into productive use. TIF can be used to raise money to fund each phase of the brownfield redevelopment process, from site identification, site assessment, pollution abatement and clean-up, to property redevelopment.

In the state of Minnesota, the Environmental Response and Liability Act provides the legislative framework for the redevelopment of brownfields.¹ Local communities in Minnesota have the explicit authority to use TIF to finance the redevelopment of brownfields.

TIF is structured to finance the redevelopment of brownfield sites by enabling local governments to establish two types of environmental remediation districts. Soil condition districts are established to remove or remediate contaminants, pollution or hazardous substances. Soil condition districts are allowed when the market value of the contaminated property is less than the cost of environmental cleanup.

¹ . The following information on brownfield redevelopment in Minnesota draws from: Zachmann, Joseph and Susan D. Steinwall, "The Use of TIF in Redeveloping Brownfields in Minnesota," in *Tax Increment Financing and Economic Development: Uses, Structures, and Impact*, eds. Craig L. Johnson and Joyce Y. Man (State University of New York Press, 2001.)

For sites with hazardous substance contamination, local governments may establish a hazardous substance TIF sub-district within a TIF district, creating a hazardous substance sub-district. Hazardous substance sub-districts provide local governments pursuing brownfield redevelopment two advantages: 1. Land assessed values in the sub-district can be significantly reduced in order to help finance the hazardous substance clean-up. Writing-down the base assessed value increases the amount of tax increment revenue in the future. 2. The geography of a hazardous substance sub-district is not limited to the area of immediate contamination. The sub-district can include land that is adjacent to the contaminated property, using the value of the adjacent land to help support the clean-up effort.

During the excavation phase of a major commercial and industrial redevelopment project in a TIF district in Roseville, Minnesota, it was discovered that much of the property was contaminated with hazardous substances. The environmental contamination put the viability of the project in jeopardy because it was estimated that the clean-up would add \$2.7 million to the cost of the project.

The city decided to create a hazardous substance sub-district, and wrote the assessed value of the land down to zero. The write-down produced \$1.5 million in additional tax increment revenue. The remainder of the funding was produced by adjusting the project to generate a greater amount of tax increment revenue from the rest of the TIF district. The environmental contamination was then completely abated, construction resumed, and ultimately, the redevelopment project was a success.

City of Chicago - A case of success and excess

On the first page of the city of Chicago's Department of Planning & Development's web site on Tax Increment Financing they proclaim their almost supernatural belief in TIF:

“Under Mayor's Daley's leadership, the City of Chicago has been able to attract and retain thousands of jobs, improve neighborhoods, restore historic buildings,

clean up contaminated land and provide job training and affordable housing – all without raising local property taxes. How? By using TIF districts!” (www.ci.chi.il.us/PlanAndDevelop/Programs/TaxIncrementFinancing.html)

As of August 2002, there were 120 TIF districts approved in the city of Chicago, with most of the growth occurring since 1996. Needless to say, TIF is very popular with the administration. The web site goes on to describe the city’s TIF program, and provide profiles of several TIF districts throughout the city, highlighting some of the avowed success stories. In addition, a section of the site, “More Questions About TIFs,” purports to answer TIFs’ critics about alleged problems with TIF.

For example, the rhetorical question is posed: “Would development occur without a TIF?” The administration’s answer: “*No*. If development could occur without a TIF district, under state law the area would not be eligible to become a TIF district.” Next question: “Do TIFs hurt schools and other local taxing bodies like the Park District?” “*No*. TIFs do not take money away from the schools. TIFs create money for the schools, ...” This type of pie-in-the-sky analysis where all the possible benefits of TIF are proselytized, while any costs are unabashedly denied, has made TIF the center of a brewing political controversy in Chicago.

On the anti-TIF side of the argument is the Neighborhood Capital Budget Group (NCBG), which has published a series of reports on TIF. They argue that Mayor Richard M. Daley has used TIF as his primary neighborhood development tool, for non-blighted and growing communities, as well as blighted communities. According to NCBG research, many TIF districts were growing at or beyond the city’s average annual growth rate prior to the TIF designation. Rather than as a development tool for bighted communities, TIF, they argue, is being used as a planning tool to influence the character of land use, and as a budgeting tool, to allocate revenues to support the administration’s pet development projects. Moreover, they argue, too much of the city’s equalized assessed value (EAV) is captured by TIF districts, rather than going to overlapping taxing districts. They say that the approximately 13 percent of the city’s property tax base falls within a TIF district.

To correct the above-mentioned TIF ills, among other perceived community problems, they are engaged in a public reform campaign. They were influential at getting certain TIF reforms passed in the Illinois legislature in 1999, and have proposed a series of new reforms, many of which are incorporated into their “TIF Bill of Rights” and “TIF Reform Platform.”

Clearly, in the city of Chicago TIF has moved beyond a rational development financing technique. It is now a political issue and one’s views - pro and con – are being wielded as a political sword. Like most things in life, the truth lies somewhere in the middle of the debate.

The evidence on TIF in Chicago is mixed. TIF is being used to develop some blighted areas, in those areas there are success stories, and there are stories where TIF has not been successful. TIF is also being used to capture on-going property value growth, and stimulate further development, in non-blighted areas. This approach of stimulating further growth in areas currently undergoing stagnant or slow growth is due to the lessons learned in Chicago, and in TIF districts outside of the Chicago area in Illinois, where at least a few TIF districts in decaying blighted areas were not successful at attracting new development. But, the lesson from these districts has nothing to do with TIF, but rather on general development projects. *If you build it, they will not always come.* Capital projects must first and foremost be sound, financially-viable projects, whether financed by TIF or any other method.

Even harsh critics of the way the Daley administration has used TIF acknowledge that TIF has increased property tax revenue growth roughly 21 percent higher than it would have been “*but for*” TIF (NCBG, 2002). This figure may even be a low ball estimate because of methods used by the NCBG. Apparently, NCBG used simplistic percentage growth rates, that do not account for time value of money and compounding, and their assumptions of linear growth rates do not accurately capture growth trends, much less control for the influence of exogenous economic and area-specific real estate market factors on real estate values.

In a non-random sample of 36 TIF districts analyzed by the NCBG, \$363 million of private investment was subsidized by \$94 million of TIF funding. Therefore, for every TIF dollar spent, \$3.86 of private investment was generated. On the surface this indicates

that TIF has been a good investment for the city. This figure is an accurate measure of the impact of TIF if the private investment would not have occurred without TIF. No one knows for certain which developments would not have occurred.

Finally, EAV in TIF districts has grown at 7 percent in TIF districts, compared to 2.9 percent for the entire city. This type of growth in an older, Midwestern city with an aging infrastructure and manufacturing based economy should not be taken lightly. Nor, however, should it be assumed that it is all the result of TIF. But, TIF is not designed to grow the property tax base, albeit this should be the long-term result of TIF projects. TIF is designed to help finance capital development projects that produce a positive net present value for the community.

Therefore, many non-capital-development related reforms that requested by the NCBG are inappropriate. While most TIF revenue is currently being used for capital improvements and infrastructure projects, some is used for job training, relocation expenses, and day care services. NCBG proposes to spend more TIF money on non-capital improvement related purposes like job training and social services – an inappropriate use of TIF funds.

Illinois TIF legislation was passed in 1977 and amended in 1999 to increase public accountability and public participation in the creation and implementation of TIF districts. Among the 1999 TIF reforms are more detailed definitions of blight, mandated housing impact studies for certain TIF districts, strengthened public notice requirements, and required annual TIF district reports. These are all movements in the right direction – strengthening stakeholder involvement and influence in the TIF process.

Clearly, additional amendments to the TIF legal framework in Illinois are required. Specifically, legislation should be enacted to ensure that school districts and other overlapping taxing districts are not overburdened by project development costs or hurt by real reductions in the base value from inflation, but are still required to pay their fair share of development costs. In addition, a cap on the amount of assessed value that can be captured by a TIF district is warranted. TIFs should not be allowed to consume an ever-growing excessive portion of the property tax base. Currently at 13 percent, the EAV captured by Chicago's TIF districts is becoming excessive.

References

Baden, Brett M. and Don L. Coursey. “An Examination of the Effects of Impact Fees on Chicago’s Suburbs.” Downloaded on 8/30/2002 at <http://www.harrisschool.uchicago.edu/publications/pb/1-1.html>.

Council of the City and County of Denver. Resolution No. 54. Downloaded on 10/21/2002 at <http://198.202.202.66/historical/template17384.asp?evie>.

Governmental Accounting Standards Board, Governmental Accounting Standards Series, Statement No. 34 of the Governmental Accounting Standards Board, Basic Financial Statements – and Management’s Discussion and Analysis – for State and Local Governments, June 1999, Governmental Accounting Standards Board of the Financial Accounting Foundation.

Johnson, Craig L. and Joyce Y. Man, eds. Tax Increment Financing and Economic Development: Uses, Structures, and Impact. (State University of New York Press, 2001.)

Part Three

Analysis of TIF Enabling Legislation

&

TIF Case Law

TIF ENABLING LEGISLATION

Under the federal system of government, the power to regulate an activity in order to protect the health, safety, morals, and general welfare of the public is an expression of the police power, and resides with the state governments. Local governments, such as municipalities and counties, are subdivisions of the state and have no inherent authority to act. Instead, local governments derive their authority from specific delegations of the state's police powers. When a state decides to delegate authority to localities, it adopts what is known as enabling legislation. A common example is a state zoning enabling act. The states have passed such acts to entrust local governments with the responsibility to protect the public's health, safety, morals, and general welfare through land use regulations. Over the last fifty years, to facilitate these objectives, most states have given local governments the power to implement TIF in depressed areas and, increasingly, for other purposes.

KEY ELEMENTS OF TIF STATUTES

The key elements in the TIF process are the following:

- Establishment of authority;
- Needs assessment;
- Redevelopment planning;
- Plan adoption
- Project finance;
- Project monitoring; and
- Plan termination.

These key TIF elements and their implementation under an enabling statute are described below.

ESTABLISHMENT OF AUTHORITY

Because local units of government are primarily charged with establishing and managing TIF programs, enabling legislation must be supplied to provide the necessary basis of authority. When considering whether to adopt the required enabling legislation, states examine a variety of factors. Foremost among those factors is the recognition that TIF, because it does not involve direct tax increases or financial support from other units of government, is palatable to legislators and voters.

Enabling legislation may be structured in a number of ways. All TIF enabling legislation must specify the governing authority to manage the TIF district. Among the forty-seven states that allow TIF, the significant majority have delegated the power to establish districts to municipalities. In some instances, both municipalities and counties may establish districts, while in others the local governing body may delegate the power to a designated redevelopment agency. Even where redevelopment authority is delegated to subordinate agencies, that delegation may not include all powers. For example, powers that may not be included in the

designation to a redevelopment agency include the powers to borrow money, issue bonds, acquire or dispose of real property, to enter into contracts, or to prepare and approve general plans and redevelopment plans.

NEEDS ASSESSMENT

After TIF has been authorized as a tool for redevelopment at the state level and adopted locally, the intricacies of the TIF project must be determined. Because TIF involves the government's taxing and spending powers, even if only indirectly, its efforts must be for a legitimate public purpose. In addition, TIF projects must meet various statutory requirements. The needs assessment element establishes the relationship between the TIF project and the constitutional and statutory standards it must satisfy.

An important mechanism for ensuring TIF is, in fact, for a public purpose and thereby insulated from the pressures of constitutional challenge is a "*blight*" finding. The blight finding serves an important limiting function, and may take one of two forms. Typically, a blight finding is *qualitative*. For example, in New Mexico a local governing body must find that "one or more slum, blighted, or land redevelopment areas exist in the municipality" ¹ A qualitative blight finding provides a standard that must be met by local governing authorities before they may utilize TIF, but it lacks definiteness and does not fully prevent overuse of the technique. In contrast, a small minority of states require a more tangible, *quantitative* blight finding. In South Dakota, a local governing authority cannot implement TIF unless it finds that at least "twenty-five percent, by area, of real property within the district is a blighted area" ² A quantitative blight finding remedies gaps in the looser qualitative standard, but its relative inflexibility has the potential to hamper useful or necessary redevelopment.

Not all states require a blight finding, however. In such states, TIF may be used for a broader array of development purposes. In New Jersey, for example, the governing body must determine that the development reduces congestion, enhances mobility, assists in the redevelopment of municipalities, or otherwise improves quality of life. ³ Thus, TIF is not always limited to remedying conditions of blight.

In addition to a blight finding, some states require that redevelopment projects satisfy what is known as the "*but for*" test. The test is intended to ensure that TIF is only used in cases where the desired redevelopment would not occur in the absence of government assistance. In this way, the "*but for*" test, though it lacks defined benchmarks, provides a degree of assurance that a given use of TIF will serve a public purpose and that TIF will not be used where it is not necessary to support redevelopment. Where the "*but for*" test is in place, the question that must be answered is whether the same type and level of private investment would occur in the TIF district in the absence of the incentive. If so, TIF may not be utilized.

From the perspective of economic efficiency, the "*but for*" test is a useful requirement. This is so because the test helps ensure that government assistance is not used to aid private

¹ N.M. STAT. ANN. § 3-46-29 (2002).

² S.D. CODIFIED LAWS § 11-9-8(1) (1992).

³ N.J. STAT. ANN. §52.27D-471 (2001).



redevelopment activity that would happen even without such support. The local governing authority in Georgia, for example, must make a finding that “[t]he redevelopment area on the whole has not been subject to growth and development through private enterprise and would not reasonably be anticipated to be developed without the approval of the redevelopment plan”⁴ If the private redevelopment that is expected to be stimulated by TIF would occur even in its absence, use of the tool is prohibited.

In addition to the blight finding or “but for” test, a number of states require some form of feasibility, or cost-benefit, analysis. This threshold requirement is meant to ensure that TIF projects are not undertaken unless they will generate more revenues than costs. For this reason, a feasibility or cost-benefit analysis is arguably more rigorous than a “blight” finding or “but for” test in ensuring that a TIF project will serve a public purpose. However, each of these prerequisites to district designation provide a means of ensuring that TIF is not authorized unless a public purpose will be served.

REDEVELOPMENT PLANNING

In addition to the threshold issues addressed in the basic needs assessment, most states require detailed redevelopment plans to be prepared before a TIF district may be created. The project plan is a key document in an effective redevelopment strategy. The project plan describes the objectives of the strategy and formalizes to the community the purposes for which TIF may be used. Often, the project plan must be designed to conform with a community’s master or comprehensive plan. This is essential if the plan is to promote orderly land use planning and community development, and to facilitate predictability in the redevelopment process. If conformity with existing planning documents is not mandated, TIF projects may fail to meet predetermined community objectives. In addition, where a TIF project is not consistent with a comprehensive plan, it may not provide the predictability that could stimulate private investment.

Use of Eminent Domain as a TIF Tool.

As one of the tools to achieve redevelopment planning, eminent domain, which is an inherent power of government, is often explicitly delegated to local governments or redevelopment agencies. Statutes often permit governing authorities to exercise the power of eminent domain in connection with approved TIF projects. When eminent domain is authorized, it is typically used either to clear blighted land for more efficient redevelopment or to facilitate land assembly in areas where many interests own land. Thus, TIF statutes often specifically authorize eminent domain to enlarge the governing body to efficiently acquire the numerous parcels that may be necessary for effective redevelopment.

Permissible TIF Purposes.

TIF was originally designed to remedy blighted and slum areas. Broadly speaking, tax increments may fund all of the following project costs:

- Costs of studies, surveys, and development plans;

⁴ GA. CODE ANN. § 36-44-8(3)(G) (2001).



- Costs of land assembly and building demolition;
- Costs of rehabilitation, reconstruction, repair, or remodeling of buildings;
- Costs of constructing public improvements such as streets and water and sewer lines; and
- Costs of relocating dislocated persons or businesses.⁵

Tax increment revenues may also be used to fund other specifically defined project costs, including commercial, industrial, and residential. Other significant categories of project costs include employment and job creation, low and moderate income housing, recreation, and education, among others. While many states explicitly specify these categories of eligible projects, others are silent on the issue.

These categories of eligible TIF projects may be subject to defined physical area and property value limitations. The TIF enabling statute in Maine provides a good example of both types of limitations. With respect to physical area, the statute provides that “[t]he total area of a single development district may not exceed 2% of the total acreage of the municipality. All development districts may not exceed 5% of the total acreage of the municipality.”⁶ The property value limitation states that “[t]he aggregate value of equalized taxable property . . . of a tax increment financing district . . . may not exceed 5% of the total value of equalized taxable property within the municipality”⁷ Thus, a given redevelopment project in Maine must be limited both in physical size and in aggregate value.

PLAN ADOPTION

The plan adoption stage of the TIF process involves important procedural requirements. The great majority of TIF statutes provide participatory mechanisms to allow the public to inquire about and comment upon a proposed TIF district. In most states, this means that there must be notice and a fair public hearing at which affected individuals may express their opinions and concerns. Surprisingly, this is not always required. Some states go further, however, and offer various other mechanisms for public participation. For example, project plans may have to be submitted to planning commissions for their review and recommendations. Other states provide school districts and other taxing entities the opportunity to offer their input.

PROJECT FINANCE

TIF projects tend to involve expensive improvements that are financed with the issuance of debt. The most common source of debt financing for up-front capital expenses comes from TIF bonds, which act like revenue bonds in the sense that principal and interest payments are generally funded with project revenues. A few jurisdictions, are more risk averse, and fund projects on what is referred to as a pay-as-you-go basis. Under the pay-as-you-go method of financing, developers finance the costs of improvements and construct the improvements. In this way, the developer bears the risk that sufficient tax increments are generated to pay project costs.

⁵ 65 ILL. COMP. STAT. 5/11-74.4-3(q) (2002).

⁶ ME. REV. STAT. ANN. tit. 30-A, § 5253(1)(B) – (C).

⁷ *Id.* at § 5253(1)(C).



Alabama and Minnesota are two examples of states that allow pay-as-you-go redevelopment.⁸ In either case, as improvements are made in the district and the assessed value of property increases above the base level, tax increments are applied to repay outstanding bonds or the ongoing costs of redevelopment.

Several issues surround the use of TIF bonds. From the perspective of local government, the level of outstanding bonds is critical since states may impose caps on the overall level of debt that may be issued or outstanding in any jurisdiction. This concern is mitigated in most states by the fact that enabling statutes specifically exempt TIF bonds from any constitutional or statutory debt limitations. Such states also tend to explicitly require TIF bonds to be repayable from tax increments. On the other hand, potential investors are concerned with the riskiness of redevelopment projects. Consequently, many states treat TIF bonds like general obligation bonds, and back them with the full faith and credit of the government.

PROJECT MONITORING

Because TIF involves the government's taxing and spending powers, TIF projects must meet constitutional public purpose requirements. One means of providing the appropriate guidelines for satisfaction of both constitutional and statutory standards is use of a "blight" finding or the "but for" test. Those mechanisms are effective at the outset of a given TIF project, but they provide little assistance once a project is underway. For example, the day it is initiated a TIF project might appear to be on course to satisfy all of its stated objectives. However, several years after the project has been underway, when the physical and financial landscapes have had a chance to adjust, a TIF project may no longer be necessary. To ensure TIF projects are relevant and stay on target, many states have annual reporting requirements, whereby local governing authorities must keep state actors informed about the status of approved TIF projects.

PLAN TERMINATION

The final step in the TIF redevelopment process, in most states, is the termination of the district. Typically, a TIF enabling statute specifies a distinct period of time within which the objectives of the TIF district must be satisfied. Like many other enabling provisions, time limitations are designed to mitigate potential overuse of this development tool. In the absence of specific time limits, governing authorities may implement TIF projects beyond the time period for which they are necessary. Like other economic development tools, TIF is not meant to be utilized in a given area for an unlimited time period. Instead, TIF should focus redevelopment energies and resources on a distressed area only for the time period necessary to facilitate economic revitalization. Accordingly, most TIF districts are time limited, generally for periods of twenty to thirty years. However, not all TIF districts face these limits and, because there are no guarantees that plan objectives will be achieved in the statutory time period, it is not clear such rigid limits are appropriate. Some enabling statutes provide that TIF districts may last until the development goals they are designed to promote are achieved or until the governing authority, by ordinance or resolution, dissolves the district.

⁸ ALA. CODE § 11-99-8 (2002); MINN. STAT. § 469.1766 (2001).



ANALYSIS OF TIF CASE LAW

Since its inception as a favored method of financing economic development, TIF challenges have taken place in courts nationwide. The issues litigated have been varied, from broad challenges to the constitutionality of a given TIF statute to narrow questions whether statutory procedures were followed in a specific case.

KEY LEGAL CHALLENGES TO TIF

From the litigated issues, the following five are the most relevant from the perspective of REALTORS®:

1. To what extent must a given TIF project satisfy a public purpose standard?
2. Does TIF–authorized eminent domain constitute an unconstitutional taking?
3. May a TIF project divert revenues from other taxing districts?
4. What determines whether a given TIF project satisfies a statutory “blight” finding?
5. What determines whether a given TIF project conforms with the terms of any comprehensive or master plan in the TIF district?

These five categories of issues are briefly explained below.

PUBLIC PURPOSE STANDARD

TIF projects are typically designed to contribute to a variety of public objectives. For example, TIF may be authorized where it is intended to generate economic development in a specified area. Projects may also be authorized where they will provide infrastructure improvements, such as utilities and roads, necessary to encourage redevelopment. Questions often arise whether particular development objectives are for a sufficiently public purpose. The outcome of such cases tends to hinge upon the basis of whether the primary purpose of the project is public or private.

The public purpose requirement also comes into play when states take action that directly benefits private enterprise. Most commonly, plaintiffs have challenged whether tax increments and other public resources may be directly committed to private businesses. Similar to government actions that indirectly benefit private entities, such as infrastructure provision, courts resolve these issues by examining whether the public receives at least some benefits.

TAKINGS ISSUE

The federal Constitution and most state constitutions limit the government’s exercise of its inherent power to condemn land. The Fifth Amendment to the United States Constitution provides “nor shall private property be taken for public use, without just compensation.” Though there is considerable debate regarding the precise meaning of this clause, broadly speaking the Fifth Amendment requires that when private property is taken by the government, it must be put to public use. In addition, when private property is taken and put to public use, just



compensation—i.e., fair market value—must be paid to the person whose property was taken. State constitutions contain similar language, and may provide further protection to private property owners.

Despite the financial compensation the just compensation requirement guarantees, other interests, such as emotional attachment to property, will go uncompensated. It is not surprising, then, that when eminent domain is proposed in connection with a TIF redevelopment project, affected landowners may file suit. Aside from the many procedural challenges that have been filed, eminent domain is one of the most commonly litigated TIF issues.

DIVERSION OF REVENUES

Other issues are litigated with greater frequency, but one of the more controversial issues concerns the division of property taxes between the original taxing jurisdiction and other taxing jurisdictions such as schools and fire districts. These districts have challenged whether property tax increments, over which they claim an entitlement, can validly be diverted for the benefit of TIF projects. Such cases are often facial challenges to the validity of the property tax revenue diversion scheme rather than to the application of the scheme in a specific case.

BLIGHT FINDING

Most states have certain prerequisites to adoption of a redevelopment plan and authorization of project financing with TIF revenues. Requiring a locality to make a blight finding is one of the most important checks the legislature can provide to ensure that TIF is not used in areas where it is not needed. Consequently, numerous plaintiffs have questioned the adequacy of blight findings in particular TIF projects. TIF opponents have generally challenged whether a blight finding provides sufficient evidence to withstand judicial scrutiny.

CONFORMITY WITH COMPREHENSIVE PLAN

Many TIF statutes require that redevelopment plans conform, or are consistent, with existing comprehensive or master plans. From the legislative perspective, the concern is to ensure that redevelopment projects foster legitimate development objectives that have undergone rigorous public participation processes and will contribute to community goals. TIF projects are more likely to do so if they are designed in a manner that is consistent with existing community plans. The term “conformity” or “consistency” is flexible and broad. Where these statutory provisions exist, they tend to be as broad as their terms suggest. Usually, the governing body has only to make a finding that the TIF plan is consistent with, or will conform to, the comprehensive plan. Few cases have challenged the adequacy of this finding.

REVIEW OF THE CASE LAW

INTRODUCTION

The cases important to REALTORS[®] reveal several key issue-driven themes. As might be expected under *stare decisis* or precedent—the legal principle that requires lower courts to



follow the decisions of higher courts—the resolution of TIF cases depends largely upon the type of issue involved. Lower courts are bound by the precedent of higher courts and will typically rule differently on an issue only when the facts are so different as to lead to another result. Thus, the courts in a given jurisdiction almost uniformly rule consistently upon issues they are called upon to decide. What is interesting, however, is that the type of issue litigated provides a reasonably reliable means of predicting the ultimate outcome of that issue in whatever jurisdiction it is litigated. So, when one observes that courts in one jurisdiction consistently rule one way upon a certain issue they face repeatedly, it can be expected that when courts in another jurisdiction consider the same issue, they will come to a similar conclusion.

Of 262 cases addressing some aspect of TIF, there are twenty-nine that address the five issues of relevance to REALTORS®. One case addressed two key issues. The following table provides a summary of TIF case law by issue.

SUMMARY OF TIF CASE LAW	
ISSUE	NUMBER OF CASES
Public Purpose Standard	14
Takings Issue	2
Diversion of Tax Revenues	4
Blight Finding	8
Conformity with Comprehensive Plan	2

As the table demonstrates, issues relating to the public purpose requirement are the most common. Cases challenging whether a given TIF plan conforms with existing comprehensive plans are the least common. The cases addressing key issues are explained below.

WHAT DETERMINES WHETHER A GIVEN TIF PROJECT SATISFIES A STATUTORY “BLIGHT” FINDING?

Plaintiffs have experienced the most success in cases where they have challenged the adequacy of a governing authority’s blight finding. The courts in California and Illinois have considered many of these challenges and have been particularly receptive to plaintiff’s claims. California has been stringent in requiring municipalities to prove blight, rather than parrot the statutory language. For example, the Court of Appeal was not receptive to a blight finding by the Diamond Bar City Council in a case where the city council determined that the designated TIF area suffered from blight that was so pervasive that redevelopment would be required in order to alleviate the conditions of blight. According to the court, municipalities must *demonstrate* “the extent to which the alleged blighting conditions have prevented or substantially hindered the economically viable use of the properties.”⁹

⁹ Beach-Courchesne v. City of Diamond Bar, 95 Cal. Rptr. 2d 265 (Cal Ct. App. 2000).



Similarly, in Illinois the state appellate court has set a high bar for municipal blight findings. The court has ruled that areas where new building is taking place that signals economic development, and where property is in routine disrepair, the area is not blighted for purposes of TIF district designation.¹⁰ The Illinois courts have developed similar precedent in cases dealing with the “but for” test. For example, an area may not be considered blighted where 90 percent of the proposed area is under single ownership, the area was once subjected to a small flood affecting only a few acres, and there are a few abandoned buildings that do not impede development. The court also ruled in that case that the “but for” test cannot be satisfied where the designated TIF district is within a corridor experiencing growth and development.¹¹

WHAT DETERMINES WHETHER A GIVEN TIF PROJECT CONFORMS WITH THE TERMS OF ANY COMPREHENSIVE OR MASTER PLAN IN THE TIF DISTRICT?

In the few cases that have challenged the conformity of a TIF project with a municipality’s comprehensive or master plan, plaintiffs have been successful. In the City of Decorah, Iowa, the comprehensive plan specified that cul-de-sacs could be no longer than 600 feet. The city adopted an urban renewal project, however, that proposed a 4,000 foot cul-de-sac. The city claimed that the cul-de-sac was part of a *future* plan to construct a collector street in the urban renewal area. The state supreme court rejected the plan as not *presently* in conformity with the comprehensive plan, despite the claim that it would later conform.¹²

MAY A TIF PROJECT DIVERT REVENUES FROM OTHER TAXING DISTRICTS?

There is little predictability in cases challenging the legality of diversion of ad valorem property tax increases from other taxing units, such as schools and fire districts. In Kentucky, the state supreme court reasoned that taxes raised for educational purposes may only be used for those purposes. The court rejected the notion that tax increments would be money the schools would not have had anyway because, according to the court, “the fact is that neither could this portion of the tax increments ever be realized except through taxes levied for and in the name of the common schools.”¹³ That reasoning has not carried the day in most other courts, however. For example, in Michigan the supreme court reasoned that TIF does not result in an unconstitutional diversion of tax revenues. There is no true diversion of tax revenues because the additional tax revenues would not otherwise exist if it were not for the TIF legislation that encourages redevelopment in the TIF area.¹⁴

DOES TIF-AUTHORIZED EMINENT DOMAIN CONSTITUTE AN UNCONSTITUTIONAL TAKING?

In contrast to the outcomes that have favored TIF opponents, plaintiffs have almost uniformly failed in their challenges to TIF with respect to the issues of eminent domain and the public purpose requirement. The courts have resolved the TIF cases on these issues with the level of deference they have accorded general economic or community development on these issues.

¹⁰ Henry County Board v. Village of Orion, 663 N.E.2d 1076 (Ill. App. 3d 1996).

¹¹ Castel Properties, Ltd. v. City of Marion, 631 N.E.2d 459 (Ill. App. 3d 1994).

¹² Knudson v. City of Decorah, 622 N.W.2d 42 (Iowa 2000).

¹³ Miller v. Covington Dev. Auth., 539 S.W.2d 1 (Ky. 1976).

¹⁴ In Re Request for Advisory Opinion, 422 N.W.2d 186 (Mich. 1988).



Thus, plaintiffs face a high bar that they normally are unable to surmount. Courts are exceedingly deferential to legislative determinations in this area. The appellate court in Minnesota held that “this legislative determination will not be overturned ... unless it is manifestly arbitrary or unreasonable.”¹⁵ Thus, where land is condemned for the purpose of job creation and retention, the municipality will not be considered to have acted unreasonably. Likewise, the Florida Supreme Court considered a case where a redevelopment project financed by TIF would involve the relocation of persons from the project area. The court declined to invalidate the project, reasoning that “[t]he wisdom of authorizing the cataclysmic demolition and redesign of neighborhoods is not for the Court to determine.”¹⁶

TO WHAT EXTENT MUST A GIVEN TIF PROJECT SATISFY A PUBLIC PURPOSE STANDARD?

Similarly, plaintiffs have experienced little success challenging TIF on the grounds that public funds are being spent unconstitutionally for the benefit of private enterprise. The courts typically reason that such expenditures are proper so long as the private benefits are merely incidental, and the benefit to private enterprise is not the primary purpose of the expenditure. Courts have also been explicit in authorizing urban renewal for the unabashed purpose of facilitating private enterprise, so long as there are some public benefits. In Iowa, the supreme court affirmed a 1,075 acre urban renewal plan to provide TIF-financed infrastructure for a \$150 million regional mall and other retail facilities.¹⁷ The courts in Kansas are arguably even more deferential. There, eminent domain and TIF financing have been authorized for the purpose of developing an auto race track facility.¹⁸ These cases suggest the difficulty plaintiffs face should they chose to challenge TIF on these grounds.

The following chart summarizes the outcome of key cases by issue.

OUTCOME OF CASES BY ISSUE		
ISSUE	YES	NO
Did TIF project satisfy public purpose standard?	13	1
Did TIF-authorized eminent domain constitute an unconstitutional taking?	0	2
Did TIF project improperly divert revenues from other taxing districts?	2	2
Did TIF project satisfy statutory “blight” finding?	2	6
Did TIF project conform with terms of comprehensive or master plan in the TIF district?	0	2

¹⁵ City of Rochester v. Greenheck, 1989 WL 61 (Minn. App. 1989).

¹⁶ Florida v. Miami Beach Redevelopment Agency, 392 So.2d 875 (Fla. 1981).

¹⁷ McMurray v. City Council of Des Moines, 642 N.W.2d 273 (Iowa 2002).

¹⁸ Kansas v. Wyandotte County, 962 P.2d 543 (Kan. 1998).



SUMMARY OF TIF ENABLING STATUTES





**NATIONAL ASSOCIATION OF REALTORS®
TAX INCREMENT FINANCING (TIF) STUDY
State Enabling Statutes**

	Alabama	Alaska	Arizona	Arkansas
STATUTE REFERENCE	Tax Increment Districts ALA. CODE § 11-99-1 et seq. (2002)	Municipal Debt ALASKA STAT. § 29.47.460 et seq. (2001)	—	Community Redev. ARK. CODE ANN. §14-168-301 et seq. (2001)
ESTABLISHMENT OF AUTHORITY				
Governing Authority	Municipalities Counties (§ 11-99-3)	Municipalities (§ 29.47.460(a))		Municipalities Counties (§ 14-168-305(a))
Powers Delegable	—	—		—
NEEDS ASSESSMENT				
Requirements for District Designation	Blight finding (§ 11-99-4(3))	Blight finding (§ 29.47.460(a))		Blight finding (§ 14-168-305(c))
“But For” Test	Yes (§ 11-99-4(5))	—		—
Feasibility/Cost-Benefit Analysis	—	—		—
REDEVELOPMENT PLANNING				
Project Plan Required	Yes (§ 11-99-4(4))	—		Yes (§ 14-168-306)
Conformity with Plan	Yes (§ 11-99-4(5))	—		—
Eminent Domain Authorized	Yes § 11-99-1(c)	Yes (§ 29.47.460(2))		Yes (§ 14-168-304(7))
Permissible Purposes	Commercial Industrial Residential (§ 11-99-8(2))	—		Commercial Industrial Residential (§ 14-168-312(d))
Other Permissible Purposes	—	—		Employment (§ 14-168-312(d))
Area/Property Value Limits	Yes (§ 11-99-4(3))	—		Yes (§ 14-168-310)
PLAN ADOPTION				
Notice & Hearing Requirement	Yes (§ 11-99-4(1))	—		Yes (§§ 14-168-305(b), 14-168-306(e))
Other Input Mechanisms	Designation of representative (§ 11-99-4(2))	—		School board notice (§ 14-168-306(e))
PROJECT FINANCE				
Bonds	Yes (§ 11-99-8(a))	Yes (§ 29.47.460(a))		Yes (§ 14-168-315)
Bonds Subject to Debt Limit	No (§ 11-99-8(b))	—		No (§ 14-168-317(a))
Bonds Backed by Full Faith & Credit	Yes (§ 11-99-8(f))	—		No (§ 14-168-314(b))
PROJECT MONITORING				
Reporting Requirement	—	—		Impact report (§ 14-168-322)
PLAN TERMINATION				
Specific Time Period	30 years (§ 11-99-4(3)(b))	—		25 years (§ 14-168-308(a))
Alternative Time Period	—	—		—

NATIONAL ASSOCIATION OF REALTORS®
TAX INCREMENT FINANCING (TIF) STUDY
State Enabling Statutes*

	California	Colorado	Connecticut	Delaware
STATUTE REFERENCE	Community Redevelopment Law CAL. HEALTH & SAFETY CODE § 33000 et seq. (2002)	Urban Renewal Law COLO. REV. STAT. § 31-25-101 et seq. (2002)	Tax Incremental Financing Program CONN. GEN. STAT. § 32-285 (2002)	_____
ESTABLISHMENT OF AUTHORITY				
Governing Authority	Municipalities Counties (§ 33200)	Municipalities (§ 31-25-104)	Connecticut Development Authority (§ 32-285(a))	
Powers Delegable	Yes (§ 33101)	Yes (§ 31-25-105)	_____	
NEEDS ASSESSMENT				
Requirements for District Designation	Blight finding (§ 33367(d)(1))	Blight finding (§ 31-25-107(1))	General economic development (§ 32-285(a))	
“But For” Test	Yes (§ 33367(d)(11))	_____	_____	
Feasibility/Cost Benefit Analysis	Yes (§ 33367(d)(3))	_____	Yes (§ 32-285(e)(3))	
REDEVELOPMENT PLANNING				
Project Plan Required	Yes (§ 33330)	Yes (§ 31-25-105(d))	Yes (§ 32-285(c))	
Conformity with Plan	Yes (§ 33367(d)(4))	Yes (§ 31-25-107(4))	_____	
Eminent Domain Authorized	Yes (§ 33342)	Yes (§ 31-25-105(1))	_____	
Permissible Purposes	Commercial Industrial Residential (§ 33670(b))	Commercial Industrial Residential (§ 31-25-107(a))	Commercial Industrial (§ 32-285(b))	
Other Permissible Purposes	Recreational (§ 33670(b)) Low and moderate income housing (§ 33334.2)	Disaster Areas (§ 31-25-108)	Employment (§ 32-285(b))	
Area/Property Value Limitations	_____	_____	Yes (§ 32-285(f)(1))	
PLAN ADOPTION				
Notice & Hearing Requirement	Yes (§ 33361)	Yes (§ 31-25-107(3))	_____	
Other Input Mechanisms	Participation of owners (§ 33380) Project Area Committee (§ 33385)	Planning commission review (§ 31-25-107(2)) School district participation (§ 31-25-107(9))	Legislative notice (§ 32-285(e)(4))	
PROJECT FINANCE				
Bonds	Yes (§ 33341)	Yes (§ 31-25-109(1))	Yes (§ 32-285(g)(1))	
Bonds Subject to Debt Limit	Yes (§ 33334.1)	No (§ 31-25-109(6))	_____	
Bonds Backed by Full Faith & Credit	_____	Yes (§ 31-25-109(2)(a))	Yes (§ 32-284(c))	
PROJECT MONITORING				
Reporting Requirement	_____	_____	Annual report (§ 32-285(j)(1))	
PLAN TERMINATION				
Specific Time Period	30 years (§ 33333.2(a)(2))	25 years (§ 31-25-107(9))	July 1, 2005 (§ 32-285(k))	
Alternative Time Period	_____	_____	_____	

NATIONAL ASSOCIATION OF REALTORS®
TAX INCREMENT FINANCING (TIF) STUDY
State Enabling Statutes*

	District of Columbia	Florida	Georgia	Hawaii
STATUTE REFERENCE	Tax Increment Financing D.C. STAT. § 2-1217.01 et seq. (2002)	Community Redevel. Act of 1969 FLA. STAT. ch. 163.330 et seq. (2002)	Redev. Powers Law GA. CODE ANN. § 36-44-1 et seq. (2002)	Tax Increment Financing Act HAW. REV. STAT. § 46-101 et seq. (1985)
ESTABLISHMENT OF AUTHORITY				
Governing Authority	Chief Financial Officer (§ 2-1217.03(a))	Municipalities Counties (§ 163.370)	Municipalities Counties (§ 36-44-5(a))	Counties (§ 46-104)
Powers Delegable	Yes (§ 2-1217.03(a))	Yes (§ 163.356)	Yes (§ 36-44-6(a))	—
NEEDS ASSESSMENT				
Requirements for District Designation	Blight finding (§ 2-1217.03(b))	Blight finding (§ 163.355)	Blight finding (§ 36-44-8(3)(G))	—
“But For” Test	Yes (§ 2-1217.03(b))	—	Yes (§ 36-44-8(3)(G))	—
Feasibility/Cost Benefit Analysis	Yes (§ 2-1217.03(a))	—	—	—
REDEVELOPMENT PLANNING				
Project Plan Required	Yes (§ 2-1217.03(a))	Yes (§ 163.360)	Yes (§ 36-44-8(1))	Yes (§ 46-103)
Conformity with Plan	Yes (§ 2-1217.03(b))	Yes (§ 163.360(2))	Yes (§ 36-44-8(1))	Yes (§ 46-103)
Eminent Domain Authorized	Yes (§ 2-1217.05(b))	Yes (§ 163.375)	Yes (§ 36-44-6)	—
Permissible Purposes	Commercial Industrial Residential (§ 2-1217.05(b))	Commercial Industrial Residential (§ 163.370(1)(c))	Commercial Industrial Residential (§ 36-44-11(e))	Commercial Industrial Residential (§ 46-110(2))
Other Permissible Purposes	Entertainment (§ 2-1217.05(b))	Coastal and Tourist Area Revitalization (§ 163.370(i)(c))	Open and green space, mass transit (§ 36-44-	—
Area/Property Value Limitations	—	—	Yes (§ 36-44-17)	—
PLAN ADOPTION				
Notice & Hearing Requirement	—	Yes (§ 163.360(5)-(6))	Yes (§ 36-44-7(b))	—
Other Input Mechanisms	Approval by Council (§ 2-1217.04)	Notice to taxing authorities (§ 163.346)	Board of Education consent (§ 36-44-8(1))	—
PROJECT FINANCE				
Bonds	Yes (§ 2-1217.02(a))	Yes (§ 163.385)	Yes (§ 36-44-14(a))	Yes (§ 46-106(2))
Bonds Subject to Debt Limit	No (§ 2-1217.10(b))	No (§ 163.385(2))	No (§ 36-44-14(c))	No (§ 46-106(i))
Bonds Backed by Full Faith & Credit	No (§ 2-1217.10(b))	No (§ 163.387(5))	No (§ 36-44-14(c))	No (§ 46-106(i))
PROJECT MONITORING				
Reporting Requirements	—	—	—	Annual report (§ 46-108)
PLAN TERMINATION				
Specific Time Period	—	30 or 40 years (§ 163.362(10))	—	—
Alternative Time Period	—	—	Upon resolution (§ 36-44-12)	Determined by ordinance (§ 46-109)

NATIONAL ASSOCIATION OF REALTORS®
TAX INCREMENT FINANCING (TIF) STUDY
State Enabling Statutes*

	Idaho	Illinois	Indiana	Iowa
STATUTE REFERENCE	Local Economic Development Act IDAHO CODE § 50-2901 et seq. (2002)	Tax Increment Allocation Redev. Act 65 ILL. COMP. STAT. 5/11-74.4-1 et seq. (2002)	Redevelopment of Blighted Areas IND. CODE § 36-7-14-1 et seq. (2002)	Urban Renewal Law IOWA CODE ANN. § 403.1 et seq. (2001)
ESTABLISHMENT OF AUTHORITY				
Governing Authority	Municipalities (§ 50-2904)	Municipalities (§ 5/11-74.4-4)	Municipalities Counties (§ 36-7-14-12.2)	Municipalities (§ 403.3)
Powers Delegable	Yes (§ 50-2904)	—	Yes (§36-7-14.14)	Yes (§403.14)
NEEDS ASSESSMENT				
Requirements for District Designation	Blight finding (§ 50-2904)	Blight finding (§ 5/11-74.4-3(a))	Blight finding (§ 36-7-14-15)	Blight finding (§ 403.4)
“But For” Test	—	Yes (§ 5/11-74.4-3(n)(J))	Yes (§ 36-7-14-15)	—
Feasibility/Cost Benefit Analysis	Yes (§ 50-2905)	Yes (§ 5/11-74.4-4.1)	Yes (§36-7-14-17)	—
REDEVELOPMENT PLANNING				
Project Plan Required	Yes (§ 50-2905)	Yes (§ 5/11-74.4-4(a))	Yes (§ 36-7-14-16)	Yes (§ 403.5)
Conformity with Plan	—	Yes (§ 5/11-74.4-3(n)(J))	Yes (§36-7-14-31)	Yes (§ 403.5)
Eminent Domain Authorized	—	Yes (§ 5/11-74.4-4(c))	Yes (§36-7-14-20)	Yes (§403.7)
Permissible Purposes	Commercial Industrial Residential (§ 50-2909(1))	Commercial Industrial Residential (§ 5/11-74.4-8)	Commercial Industrial Residential (§ 36-7-14-39)	Commercial Industrial Residential (§ 403.19)
Other Permissible Purposes	—	—	Employment (§36-7-14-39)	Disaster Areas (§ 403.5)
Area/Property Value Limitations	Yes (§ 50-2905)	Yes (§ 5/11-74.4-9)	—	—
PLAN ADOPTION				
Notice & Hearing Requirement	Yes (§ 50-2906(3))	Yes (§ 5/11-74.4-5 to 4-6)	Yes (§ 36-7-14-17)	Yes (§ 403.5)
Other Input Mechanisms	—	Joint review board (§ 5/11-74.4.5)(b)	Notice of taxing units (§ 36-7-14-17)	Consultation with affected taxing entities (§ 403.5(2))
PROJECT FINANCE				
Bonds	Yes (§ 50-2909(1))	Yes (§ 5/11-74.4-7)	Yes (§ 36-7-14-25.1)	Yes (§ 403.9)
Bonds Subject to Debt Limit	No (§ 50-2910)	No (§ 5/11-74.4-7)	No (§36-7-14-25.1)	No (§ 403.9(2))
Bonds Backed by Full Faith & Credit	No (§ 50-2910)	Yes (§ 5/11-74.4-7)	No (§36-7-14-25.1)	Yes (§ 403.12(5))
PROJECT MONITORING				
Reporting Requirements	—	—	Yes (§36-7-14-13)	Yes (§403.23)
PLAN TERMINATION				
Specific Time Period	24 years (§ 50-2904)	23 or 35 years (§ 5/11-74.4-3(n)(J))	30 years (§ 36-7-14-39)	10-20 years (§ 403.22)
Alternative Time Period	—	—	—	—

NATIONAL ASSOCIATION OF REALTORS®
TAX INCREMENT FINANCING (TIF) STUDY
State Enabling Statutes*

	Kansas	Kentucky	Louisiana	Maine
STATUTE REFERENCE	Dev. And Redev. Areas in and Around Cities KAN. STAT. ANN. § 12-1770 et seq. (2001)	Kentucky Increment Financing Act KY. REV. STAT. ANN. § 65.680 et seq. (2002)	Tax Increment Dev. Act LA. REV. STAT. ANN. § 47:8003 et seq. (2001)	Municipal Dev. District ME. REV. STAT. ANN. tit. 30-A, § 5251 et seq. (2001)
ESTABLISHMENT OF AUTHORITY				
Governing Authority	Municipalities (§ 12-1771a)	Municipalities Counties (§ 65.684)	Municipalities Counties (§ 47:8004(A))	Municipalities (§ 5251(2))
Powers Delegable	—	—	Yes (§ 47:8004)	—
NEEDS ASSESSEMENT				
Requirements for District Designation	Blight finding (§ 12-1771a(a))	General Economic Development (§ 65.684)	—	Blight finding (§ 5253(1)(A))
“But For” Test	—	—	—	—
Feasibility/Cost-Benefit Analysis	Yes (§12-1772(a))	—	—	Yes (§ 5254(5))
REDEVELOPMENT PLANNING				
Project Plan Required	Yes (§ 12-1772(a))	—	Yes (§ 47:8013(A))	Yes (§ 5253(2))
Conformity with Plan	Yes (§ 12-1772(b))	—	Yes (§ 47:8013(B))	—
Eminent Domain Authorized	Yes (§ 12-1773(a))	—	—	Yes (§5253(3))
Permissible Purposes	Commercial Industrial Residential (§ 12-1775(b))	Commercial Industrial Residential (§ 65.684)	Commercial Industrial Residential (§ 47:8009(10))	Commercial Industrial (§ 5251(2))
Other Permissible Purposes	Auto Race Track Facilities (§ 12-1771(b))	Employment (§ 65.6851)	Cultural (§ 47:8009(10))	Employment (§ 5251(2))
Area/Property Value Limitations	Yes (§ 12-1771)	—	—	Yes (§ 5253(B)-(C))
PLAN ADOPTION				
Notice & Hearing Requirement	Yes (§ 12-1772(b)-(c))	Yes (§ 65.6851)	Yes (§ 47:8013(B))	Yes (§ 5253(1)-(2))
Other Input Mechanisms	County And School District Input (§ 12.1771(d))	—	Planning body review (§ 47:8013(A))	Advisory board (§ 5260)
PROJECT FINANCE				
Bonds	Yes (§ 12-1774(b))	Yes (§ 65.692)	Yes (§ 47:8017(A))	Yes (§ 5257)
Bonds Subject to Debt Limit	Yes (§ 12-1774(b))	—	No (§ 47:8017(K))	No (§ 5257)
Bonds Backed by Full Faith & Credit	Yes (§ 12-1774(b))	—	Yes (§ 47:8017(B))	Yes (§ 5257)
PROJECT MONITORING				
Reporting Requirements	Biennial Status Report (§ 12-1771a(i))	—	Annual Report (§47:8024)	—
PLAN TERMINATION				
Specific Time Period	—	20 years (§ 65.686(3))	30 years (§ 47:8011(E))	30 years (§ 5253(2))
Alternative Time Period	—	—	—	—

NATIONAL ASSOCIATION OF REALTORS®
TAX INCREMENT FINANCING (TIF) STUDY
State Enabling Statutes*

	Maryland	Massachusetts	Michigan	Minnesota
STATUTE REFERENCE	Tax Increment Financing Act MD. CODE ANN. § 14-201 et seq. (2001)	Economic Development Incentive Program MASS. GEN. LAWS ch. 23A, § 3E (2002) MASS. GEN. LAWS ch.40, § 59 (2002) MASS. GEN. LAWS ch.59, § 5, cl. (51) (2002)	Tax Increment Finance Authority Act MICH. COMP. LAWS § 125.1801 et seq. (2002)	Tax Increment Financing MINN. STAT. § 469.174 et seq. (2001)
ESTABLISHMENT OF AUTHORITY				
Governing Authority	Municipalities Counties (§ 14-203)	Municipalities (Ch. 40 § 59)	Municipalities (§ 125.1803(1))	Municipalities (§ 469.175(3))
Powers Delegable	—	—	Yes (§125.1803(1))	Yes (§ 469.175(3))
NEEDS ASSESSMENT				
Requirements for District Designation	—	Blight Finding (Ch. 40 § 59 (i))	—	Blight finding (§ 469.175(3))
“But For” Test	—	—	Yes (§ 125, 1813(1))	Yes (§ 469.175(3))
Feasibility/Cost-Benefit Analysis	—	—	—	—
REDEVELOPMENT PLANNING				
Project Plan Required	—	Yes (Ch. 40 §59(ii))	Yes (§ 125.1816)	Yes (§ 469.175(1))
Conformity with Plan	—	—	Yes (§ 125.1818(1)(g))	Yes (§ 469.175(3))
Eminent Domain Authorized	Yes (§ 14-205)	—	Yes (§125.1810)	Yes (§ 469.176(4))
Permissible Purposes	Commercial Industrial Residential (§ 14-203)	Commercial Industrial (Ch. 40 §59(ii))	Commercial Industrial Residential (§ 125.1816)	Commercial Industrial Residential (§ 469.176(4))
Other Permissible Purposes	—	—	Educational (§125.1816)	—
Area/Property Value Limitations	—	—	—	Yes (§ 469.176(4)-(7))
PLAN ADOPTION				
Notice & Hearing Requirement	—	—	Yes (§125.1817)	Yes (§ 469.175(3))
Other Input Mechanisms	—	Economic Assistance Coordinating Council Approval (Ch. 40 §59 (vii))	Development Area Citizens Council (§ 125.1820)	County Auditor and School Board Clerk Consultation (§ 469.175(2))
PROJECT FINANCE				
Bonds	Yes (§ 14-203)	No (Ch. 40 §59(iii))	Yes (§125.1815(1))	Yes (§ 469.178(2))
Bonds Subject to Debt Limit	—	—	—	—
Bonds Backed by Full Faith & Credit	Yes (§14-204)	—	Yes (§125.1815(2))	Yes (§ 469.178(2))
PROJECT MONITORING				
Reporting Requirements	—	—	—	—
PLAN TERMINATION				
Specific Time Period	—	20 years (Ch. 40 §59 (iii))	—	8-25 years (§ 469.176(1b))
Alternative Time Period	—	—	Specified in financing plan (§ 125.1813(1)(h))	—

NATIONAL ASSOCIATION OF REALTORS®
TAX INCREMENT FINANCING (TIF) STUDY
State Enabling Statutes*

	Mississippi	Missouri	Montana	Nebraska
STATUTE REFERENCE	Tax Increment Financing Act MISS. CODE ANN. § 21-45-1 et seq. (2001)	Real Property Tax Increment Allocation Redevelopment Act MO. ANN. STAT. § 99.800 et seq. (2002)	Urban Renewal Law MONT. CODE ANN. § 7-15-4201 et seq. (2001)	Community Development Law NEB. REV. STAT. § 18-2101 et seq. (2002)
ESTABLISHMENT OF AUTHORITY				
Governing Authority	Municipalities Counties (§ 21-45-9)	Municipalities Counties (§ 99.820)	Municipalities (§ 7-15-4209)	Municipalities (§ 18-2102.01)
Powers Delegable	—	Yes (§ 99.820(2)-(3))	Yes (§7-15-4231)	Yes (§ 18-2102.01)
NEEDS ASSESSMENT				
Requirements for District Designation	Blight finding (§ 43-35-13(a))	Blight finding (§ 99.810(1))	Blight finding (§ 7-15-4216)	Blight finding (§ 18-2109)
“But For” Test	—	Yes (§ 99.810(1))	—	Yes (§ 18-2116)
Feasibility/Cost-Benefit Analysis	—	Yes (§ 99.810(5))	Yes (§ 7-15-4217(4))	Yes (§ 18-2116)
REDEVELOPMENT PLANNING				
Project Plan Required	Yes (§ 43-35-13(b))	Yes (§ 99.810)	Yes (§ 7-15-4212)	Yes (§ 18-2111)
Conformity with Plan	—	Yes (§ 99.810(2))	Yes (§ 7-15-4217)	Yes (§ 18-2116)
Eminent Domain Authorized	—	Yes (§ 99.820(1))	Yes (§ 7-15-4259)	Yes (§ 18-2122)
Permissible Purposes	Commercial Residential (§ 21-45-7)	Commercial Industrial (§ 99.845)	Commercial Industrial Residential (§ 7-15-4288)	Commercial Industrial Residential (§ 18-2147)
Other Permissible Purposes	Recreational (§ 21-45-7)	Employment (§ 99.845)	Aerospace Transportation and Technology (§ 7-15-4288)	Recreational (§ 18-2147)
Area/Property Value Limitations	—	Yes (§ 99.847(2))	—	—
PLAN ADOPTION				
Notice & Hearing Requirement	Yes (§ 21-45-11)	Yes (§§ 99.825-830)	Yes (§§ 7-15-4214 to 4215)	Yes (§ 18-2115)
Other Input Mechanisms	Planning commission review (§ 43-35-13(b))	County must obtain permission from municipality (§ 99.815)	Planning commission review (§ 7-15-4213)	Recommendation of Planning Commission or Board (§ 18-2112)
PROJECT FINANCE				
Bonds	Yes (§ 21-45-9)	Yes (§ 99.835(1))	Yes (§ 7-15-4301)	Yes (§ 18-2124)
Bonds Subject to Debt Limit	No (§ 21-45-9)	No (§ 99.835(5))	No (§ 7-15-4321)	No (§ 18-2125)
Bonds Backed by Full Faith & Credit	No (§ 21-45-13)	No (§ 99.835(5))	No (§7-15-4301(2))	No (§ 18-2124(3))
PROJECT MONITORING				
Reporting Requirements	—	Annual Report (§ 99.865)	—	Annual Report (§ 18-2117.01)
PLAN TERMINATION				
Specific Time Period	—	23 years (§ 99.810(3))	15 years (§ 7-15-4292)	15 years (§ 18-2147)
Alternative Time Period	Specified in financing plan (§ 21-45-11(e))	—	—	—

NATIONAL ASSOCIATION OF REALTORS®
TAX INCREMENT FINANCING (TIF) STUDY
State Enabling Statutes*

	Nevada	New Hampshire	New Jersey	New Mexico
STATUTE REFERENCE	Community Redevelopment Law NEV. REV. STAT. § 279.382 et seq. (2002)	Municipal Economic Development and Revitalization Districts N. H. REV. STAT. ANN. § 162-K et seq. (2002)	Revenue Allocation District Financing Act N.J. STAT. ANN. § 52:27D-459 et seq. (1992)	Urban Development Law N.M. STAT. ANN. § 3-46-1 et seq. (2002)
ESTABLISHMENT OF AUTHORITY				
Governing Authority	Municipalities Counties (§ 279.432)	Municipalities (§ 162-K:3)	Municipalities (§ 52:27D-462)	Municipalities (§ 3-46-31)
Powers Delegable	Yes (§ 279.428)	—	Yes (§ 52:27D-462)	Yes (§ 3-46-40)
NEEDS ASSESSMENT				
Requirements for District Designation	Blight finding (§ 279.586(1))	—	Promotion of redevelopment (§ 52:27D-471)	Blight finding (§ 3-46-29)
“But For” Test	—	—	Yes (§ 52:27D-471(a))	—
Feasibility/Cost-Benefit Analysis	—	—	Yes (§ 52:27D-463(i))	—
REDEVELOPMENT PLANNING				
Project Plan Required	Yes (§ 279.564)	Yes (§ 162-K:6)	Yes (§ 52:27D-470)	Yes (§ 3-46-30)
Conformity with Plan	Yes (§ 279.568)	—	—	Yes (§ 3-46-30(D))
Eminent Domain Authorized	Yes (§ 279.424(2))	Yes (§ 162-K:6)	Yes (§ 52:27D-461)	Yes (§ 3-46-32)
Permissible Purposes	Commercial Industrial Residential (§ 279.676(1)(b))	—	Commercial Industrial (§ 52:27D-460)	Commercial Industrial Residential (§ 3-46-45)
Other Permissible Purposes	Recreational (§ 279.676(1)(b))	—	Recreational (§ 52:27D-460)	Disaster Areas (§ 3-46-30(G))
Area/Property Value Limitations	Yes (§ 279.676(2))	Yes (§ 162-K:5)	Yes (§ 52:27D-462(b))	—
PLAN ADOPTION				
Notice & Hearing Requirement	Yes (§ 279.580)	Yes (§ 162-K:4)	—	Yes (§ 3-46-30)
Other Input Mechanisms	Property owners participation (§ 279.566)	Advisory Board (§ 162-K:14)	—	Approval of taxing districts (§ 3-46-45(C)(7))
PROJECT FINANCE				
Bonds	Yes (§ 279.622)	Yes (§ 162-K:8)	Yes (§ 52:27D-481)	Yes (§ 3-46-35)
Bonds Subject to Debt Limit	No (§ 279.638(2))	No (§ 162-K:8)	—	No (§ 3-46-35(B))
Bonds Backed by Full Faith & Credit	Yes (§ 279.638(2))	Yes (§ 162-K:8)	Yes (§ 52:27D-483)	No (§ 3-46-35(A))
PROJECT MONITORING				
Reporting Requirements	—	—	—	—
PLAN TERMINATION				
Specific Time Period	30-45 Years (§§ 279.438-439)	—	—	5 Years (§ 3-46-45(C)(5))
Alternative Time Period	—	—	—	—

NATIONAL ASSOCIATION OF REALTORS®
TAX INCREMENT FINANCING (TIF) STUDY
State Enabling Statutes*

	New York	North Carolina	North Dakota	Ohio
STATUTE REFERENCE	Municipal Redevelopment Law N.Y. GEN. MUN. LAW § 970-a et seq. (2002)	—	Urban Renewal Law N.D. CENT. CODE § 40-58-01 et seq. (1989)	Municipal Tax Increment Financing OHIO REV. CODE ANN. § 5709.40 et seq. (2002)
PLAN INITIATION				
Governing Authority	Municipalities (§ 970-e)		Municipalities (§ 40-58-07)	Municipalities (§ 5709.40(B)-(C))
Powers Delegable	Yes (§ 970-n)			—
NEEDS ASSESSMENT				
Requirements for District Designation	Blight finding (§ 970-f)		Blight finding (§ 40-58-05)	Blight finding (§ 5704.40(B))
“But For” Test	Yes (§ 970-e)		—	—
Feasibility/Cost-Benefit Analysis	Yes (§ 970-f)		—	—
REDEVELOPMENT PLANNING				
Project Plan Required	Yes (§ 970-f)		Yes (§ 40-58-06)	—
Conformity with Plan	Yes (§ 970-e)		Yes (§ 40-58-06)	—
Eminent Domain Authorized	Yes (§ 970-i)		Yes (§ 40-58-08)	—
Permissible Purposes	Commercial Industrial Residential (§ 970-p)		Commercial Industrial (§ 40-58-20.1)	Commercial Industrial Residential (§ 5709.43(A))
Other Permissible Purposes	Employment (§ 970-p)		—	Research (§ 5709.40(A))
Area/Property Value Limitations	—		—	Yes (§ 5709.40(B)-(D))
ESTABLISHMENT OF AUTHORITY				
Notice & Hearing Requirement	Yes (§ 970-h)		Yes (§ 40-58-06)	—
Other Input Mechanisms	Property owners' participation (§ 970-f)		—	Board of education approval (§ 5709.40(C)-(D))
PROJECT FINANCE				
Bonds	Yes (§ 970-o)		Yes (§ 40-58-10)	Yes (§ 5709.40(F))
Bonds Subject to Debt Limit	No (§ 970-o)		No (§ 40-58-10)	—
Bonds Backed by Full Faith & Credit	No (§ 970-o)		No (§ 40-58-10)	—
PROJECT MONITORING				
Reporting Requirements	Annual Report (§ 970-q)		—	Status report (§ 5709.40(G))
PLAN TERMINATION				
Specific Time Period	—		—	10-30 Years (§ 5709.40(c))
Alternative Time Period	—		—	—

NATIONAL ASSOCIATION OF REALTORS®
TAX INCREMENT FINANCING (TIF) STUDY
State Enabling Statutes*

	Oklahoma	Oregon	Pennsylvania	Rhode Island
STATUTE REFERENCE	Local Development Act OKLA. STAT. 62, § 850 et seq. (2001)	Urban Renewal OR. REV. STAT. § 457.010 et seq. (2001)	Tax Increment Financing Act PA. STAT. ANN. tit. 53, § 6930.1 et seq. (1997)	Tax Increment Financing Act R.I. GEN. LAWS § 45-33.2-1 et seq. (2001)
PLAN INITIATION				
Governing Authority	Municipalities Counties (§ 854)	Municipalities Counties (§ 457.035)	Municipalities Counties (§ 6930.5)	Municipalities (§ 45-33.2-5)
Powers Delegable	—	Yes (§ 457.045)	—	—
NEEDS ASSESSMENT				
Requirements for District Designation	Blight finding (§ 856(B)(4))	Blight finding (§ 457.035)	Blight finding (§ 6930.5(a)(6))	Blight finding (§ 45-33.2-4(5))
“But For” Test	Yes (§ 852(2))	—	Yes (§ 6930.5(a)(6))	Yes (§ 45-33.2-4(5))
Feasibility/Cost-Benefit Analysis	—	Yes (§ 457.085(3))	Yes (§ 6930.5(a)(4))	—
REDEVELOPMENT PLANNING				
Project Plan Required	Yes (§ 858)	Yes (§ 457.085)	Yes (§ 6931.5(a)(4))	Yes (§ 45-33.2-4(6)a)
Conformity with Plan	Yes (§ 858(C))	Yes (§ 457.095)	Yes (§ 6930.5(a)(6))	Yes (§ 45-33.2-3(4))
Eminent Domain Authorized	Yes (§ 854)	Yes (§ 457.170)	Yes (§ 6930.5(a)(6))	Yes (§ 45-33.2-5)
Permissible Purposes	Commercial Industrial Residential (§ 852(6))	—	Commercial Industrial Residential (§ 6930.5(a)(2))	Commercial Industrial Residential (§ 45-33.2-2)
Other Permissible Purposes	Educational (§ 852(6))	Recreational (§ 457.085(1)(d))	—	Employment (§ 45-33.2-2)
Area/Property Value Limitations	Yes (§ 856)	Yes (§ 457.420)	Yes (§ 6930.5(a)(6))	Yes (§ 45-33.2-3(7))
PLAN ADOPTION				
Notice & Hearing Requirement	Yes (§ 859)	Yes (§ 457.095)	Yes (§ 6930.5(a)(5))	—
Other Input Mechanisms	Review Committee (§ 855) School District Protests (§ 862)	Taxing District Recommendations (§ 457.085(5))	Opt-out option (§ 6930.5(a)(7))	—
PROJECT FINANCE				
Bonds	Yes (§ 863)	Yes (§ 457.320)	Yes (§ 6930.9(b))	Yes (§ 45-33.2-6)
Bonds Subject to Debt Limit	No (§ 863(G)-(H))	Yes (§ 457.440)	No (§ 6930.9(k)(2))	No (§ 45-33.2-11)
Bonds Backed by Full Faith & Credit	No (§ 863(G))	Yes (§ 457.320)	Yes (§ 6930.9(h))	No (§ 45-33.2-6)
PROJECT MONITORING				
Reporting Requirements	Annual Report (§ 867)	—	Bi-Annual Report (§ 6930.10)	Annual Report (§ 45-33.2-18)
PLAN TERMINATION				
Specific Time Period	25 years (§ 861(A))	—	20 years (§ 6930.5(a)(6))	—
Alternative Time Period	—	—	—	—

NATIONAL ASSOCIATION OF REALTORS®
TAX INCREMENT FINANCING (TIF) STUDY
State Enabling Statutes*

	South Carolina	South Dakota	Tennessee	Texas
STATUTE REFERENCE	Tax Increment Financing Law S.C. CODE ANN. § 31-6-10 et seq. (2001)	Tax Incremental Districts S.D. CODIFIED LAWS § 11-9-1 et seq. (2002)	Redevelopment TENN. CODE ANN. § 13-20-201 et seq. (2001)	Tax Increment Financing Act TEX. TAX CODE ANN. § 311.001 et seq. (2001)
PLAN INITIATION				
Governing Authority	Municipalities (§ 31-6-30)	Municipalities Counties (§ 11-9-2)	Housing Authorities (§ 13-20-205(a))	Municipalities (§ 311.003)
Powers Delegable	—	—	Yes (§ 13-20-213(b))	—
NEEDS ASSESSMENT				
Requirements for District Designation	Blight finding (§ 31-6-80)	Blight finding (§ 11-9-8)	Blight finding (§ 13-20-202(a))	Blight finding (§ 311.005)
“But For” Test	Yes (§ 31-6-80)	—	—	Yes (§ 311.003(a))
Feasibility/Cost-Benefit Analysis	Yes (§ 31-6-80)	Yes (§ 11-9-13)	—	Yes (§ 311.011(c))
REDEVELOPMENT PLANNING				
Project Plan Required	Yes (§ 31-6-80)	Yes (§ 11-9-13)	Yes (§ 13-20-203)	Yes (§ 311.011)
Conformity with Plan	—	Yes (§ 11-9-17)	Yes (§ 13-20-211(a))	Yes (§ 311.011(d))
Eminent Domain Authorized	—	Yes (§ 11-9-2)	Yes (§ 13-20-212(a))	Yes (§ 311.008(b))
Permissible Purposes	Commercial Industrial Residential (§ 31-6-70(2)(b))	Commercial Industrial (§ 11-9-32)	Commercial Industrial (§ 13-20-205(a))	Commercial Industrial Residential (§ 311.014)
Other Permissible Purposes	Recreational (§ 31-6-70(2)(b))	—	Recreational (§ 13-20-203(a))	—
Area/Property Value Limitations	—	Yes (§ 11-9-7)	—	Yes (§ 311.006)
PLAN ADOPTION				
Notice & Hearing Requirement	Yes (§ 31-6-80)	Yes (§ 11-9-3)	Yes (§ 13-20-203(a)(3))	Yes (§ 311.003(c))
Other Input Mechanisms	Taxing District Comments (§ 31-6-80)	Planning Commission Recommendations (§ 11-9-4)	Municipal or County Approval (§ 13-20-2051)	Property Owner Protest (§ 311.003(d))
PROJECT FINANCE				
Bonds	Yes (§ 31-6-40)	Yes (§ 11-9-33)	Yes (§ 13-20-202(a)(8)(A))	Yes (§ 311.015)
Bonds Subject to Debt Limit	No (§ 31-6-40)	No (§ 11-9-36)	—	No (§ 311.015(i)-(j))
Bonds Backed by Full Faith & Credit	No (§ 31-6-40)	No (§ 11-9-36)	Yes (§ 13-20-213(e)(1))	No (§ 311.015(i))
PROJECT MONITORING				
Reporting Requirements	—	—	—	Annual Report (§ 311.016)
PLAN TERMINATION				
Specific Time Period	—	15 years (§ 11-9-25)	—	—
Alternative Time Period	Upon Resolution (§ 6-33-70)	—	—	Determined by ordinance (§ 311.017)

NATIONAL ASSOCIATION OF REALTORS®
TAX INCREMENT FINANCING (TIF) STUDY
State Enabling Statutes*

	Utah	Vermont	Virginia	Washington
STATUTE REFERENCE	Redevelopment Agencies Act UTAH CODE ANN. § 17B-4-101 et seq. (2002)	Tax Increment Financing VT. STAT. ANN. tit. 24, § 1891 et seq. (2001)	Tax Increment Financing VA. CODE ANN. § 58.1-3245 et seq. (2002)	Community Revitalization Financing WASH. REV. CODE ANN. § 39.89.010 et seq. (2002)
PLAN INITIATION				
Governing Authority	Municipalities Counties (§ 17B-4-201)	Municipalities (§ 1892)	Municipalities Counties (§ 58.1-3245.2(A))	Municipalities Counties (§ 39.89.030)
Powers Delegable	Yes (§ 17B-4-201)	—	—	—
NEEDS ASSESSMENT				
Requirements for District Designation	Blight finding (§ 17B-4-401(1))	—	—	—
“But For” Test	Yes (§ 17B-4-403(1)(s))	—	—	—
Feasibility/Cost-Benefit Analysis	Yes (§ 17B-4-403(2))	—	—	—
REDEVELOPMENT PLANNING				
Project Plan Required	Yes (§ 17B-4-401)	Yes (§ 1892(a))	Yes (§ 58.1-3245.3)	Yes (§ 39.89.050(3))
Conformity with Plan	Yes (§ 17B-4-403(1))	—	—	Yes (§ 39.89.030(3))
Eminent Domain Authorized	Yes (§ 17B-4-1101)	—	—	—
Permissible Purposes	Commercial Industrial Residential (§ 17B-4-1007)	Commercial Industrial Residential (§ 1893)	Commercial Industrial Residential (§ 58.1-3245.1)	Commercial Industrial Residential (§ 39.89.030)
Other Permissible Purposes	Education housing development (§ 17B-4-1007)	Employment (§ 1893)	General Fund (§ 58.1-3245.4)	—
Area/Property Value Limitations	Yes (§ 17B-4-404)	—	—	—
PLAN ADOPTION				
Notice & Hearing Requirement	Yes (§ 17B-4-402(1))	Yes (§ 1892(a))	Yes (§ 58.1-3245.2(B))	Yes (§ 39.89.050(2))
Other Input Mechanisms	Record owners of property objections (§ 17B-4-406) Taxing Entity Committee (§ 17B-4-1002)	—	—	Approval of Taxing Districts Buyer districts veto power (§ 39.89.030(4)-(5))
PROJECT FINANCE				
Bonds	Yes (§ 17B-4-1202)	Yes (§ 1898)	Yes (§ 58.1-3245.4)	Yes (§ 39.89.070(1)) (§ 39.89.100)
Bonds Subject to Debt Limit	No (§ 17B-4-1206(2))	Yes (§ 1898(b))	Yes (§ 58.1-3245.4:1)	No (§ 39.89.100(2))
Bonds Backed by Full Faith & Credit	No (§ 17B-4-1206(2))	Yes (§ 1898(b))	Yes (§ 58.1-3245.4)	Yes (§ 39.89.080(1)-(2))
PROJECT MONITORING				
Reporting Requirements	—	—	—	—
PLAN TERMINATION				
Specific Time Period	25 years (§ 17B-4-1004(4))	—	—	—
Alternative Time Period	—	Upon Resolution (§ 1894)	Upon Resolution (§ 58.1-3245.5)	—

NATIONAL ASSOCIATION OF REALTORS®
TAX INCREMENT FINANCING (TIF) STUDY
State Enabling Statutes*

STATUTE REFERENCE	West Virginia The West Virginia Tax Increment Financing Act W. VA. CODE § 7-11B-1 et seq. (2002)	Wisconsin Tax Increment Law WIS. STAT. ANN. § 66.1105 et seq. (2002)	Wyoming Wyoming Urban Renewal Code WYO. STAT. ANN. § 15-9-101 et seq. (2002)
PLAN INITIATION			
Local Governing Authority	Municipalities Counties (§ 7-11B-7)	Municipalities (§ 66.1105(3))	Municipalities (§ 15-9-105)
Powers Delegable	Yes (§ 7-11B-4(15))	Yes (§ 66.1105(3))	Yes (§ 15-9-133)
NEEDS ASSESSMENT			
Requirements for District Designation	Blight finding (§ 7-11B-7(d))	Blight finding (§ 66.1105(4))	Blight finding (§ 15-9-107)
“But For” Test	Yes (§ 7-11B-7(f)-(g))	Yes (§ 66.1105(4m))	—
Feasibility/Cost-Benefit Analysis	Yes (§ 7-11B-8(b))	Yes (§ 66.1105(4m))	—
REDEVELOPMENT PLANNING			
Project Plan Required	Yes (§ 7-11B-8)	Yes (§ 66.1105(4))	Yes (§ 15-9-108)
Conformity with Plan	—	Yes (§ 66.1105(4))	Yes (§ 15-9-110)
Eminent Domain Authorized	Yes (§ 7-11B-4(7))	—	Yes (§ 15-9-114)
Permissible Purposes	Commercial Industrial Residential (§ 7-11B-17)	Commercial Industrial Residential (§ 66.1105(9))	Commercial Industrial Residential (§ 15-9-120)
Other Permissible Purposes	—	—	—
Area/Property Value Limitations	—	Yes (§ 66.1105(4))	—
PLAN ADOPTION			
Notice & Hearing Requirement	Yes (§ 7-11B-7(b))	Yes (§ 66.1105(4))	Yes (§ 15-9-109)
Other Input Mechanisms	West Virginia Development Office Approval (§ 7-11B-7(c))	Joint Review Board (§ 66.1105(4m))	Planning Commission (§ 15-9-108)
PROJECT FINANCE			
Bonds	Yes (§ 7-11B-19)	Yes (§ 66.1105(9))	Yes (§ 15-9-119) (§ 15-9-127)
Bonds Subject to Debt Limit	No (§ 7-11B-22)	No (§ 66.1105(9))	No (§ 15-9-122)
Bonds Backed by Full Faith & Credit	No (§ 7-11B-19(c))	No (§ 66.1105(4))	Yes (§ 15-9-127)
PROJECT MONITORING			
Reporting Requirements	Annually (§ 7-11B-15)	Annually (§ 66.1105(6m))	Annually (§ 15-9-136)
PLAN TERMINATION			
Specific Time Period	30 years (§ 7-11B-10)	27 years (§ 66.1105(7))	25 Years (§ 15-9-207)
Alternative Time Period	—	—	—

*The statutes cited are from Westlaw’s electronic database, and are current through the year of the session cited.

SUMMARY OF TIF CASE LAW



CALIFORNIA

Beach-Courchesne v. City of Diamond Bar, 95 Cal. Rptr. 2d 265 (Cal Ct. App. 2000)

FACTS:

Diamond Bar approved redevelopment project involving 1,300 acres of land. City council made finding that project area suffered from blight, and that the blight was so pervasive that redevelopment would be necessary in order to alleviate those conditions.

TYPE OF PLAINTIFF:

Private landowners, supported by nineteen cities as amici.

TIF ISSUE(S):

What quantum of evidence is necessary to support the “substantial evidence” requirement of a blight finding pursuant to the Community Redevelopment Law (“CRL”)?

COURT HOLDING(S):

Under the CRL, existing unsafe and unhealthy conditions may be used to satisfy a finding of physical blight. Potential health and safety concerns are not sufficient. In addition, a blight finding supported only by conclusionary and summary terms that parrot the statutory language is insufficient. To satisfy the substantial evidence requirement, it is necessary to *demonstrate* “the extent to which the alleged blighting conditions have prevented or substantially hindered the economically viable use of the properties.”

Emmington v. Solano County Redevelopment Agency, 237 Cal. Rptr. 636 (Cal. Ct. App. 1987)

FACTS:

A redevelopment project involving more than 10,000 acres of land primarily devoted to agriculture was proposed. The plans for the project proposed development of water-dependent industrial uses in the project area, but the expected involvement by private enterprise never materialized. A redevelopment plan that described the project area as “blighted” was then proposed. The blight finding was based on evidence that many parcels in the project area were prone to flooding and on the determination that blight existed in the area due to a lack of public improvements needed to effectuate the provisions of the project plan.

TYPE OF PLAINTIFF:

Private citizen.

TIF ISSUE(S):

What type of evidence is sufficient to support a blight finding under the Community Redevelopment Law (“CRL”)?

COURT HOLDING(S):

To satisfy the CRL’s blight finding, it must be shown that the conditions causing blight substantially interfere with the land’s current use or that those conditions render the project area a serious social or economic liability to the community. Challenges in attracting private industry to an area are insufficient to constitute blight and may not be used to “[unleash] the extraordinary powers of redevelopment.”

Regus v. City of Baldwin Park, 139 Cal. Rptr. 196 (Cal. Ct. App. 1977)

FACTS:

Project area was designated on two separate non-contiguous sites, located more than one mile apart, along the San Bernardino Freeway. Both sites had excellent freeway access, but had experienced difficulty capitalizing on freeway-oriented uses. The proposed project area was characterized by irregular parcelization that inhibited land assembly for effective development. Little evidence was presented to show that the sites contained deteriorating structures, and no evidence was presented regarding physical dangers or health hazards to the inhabitants of either site. The driving motivation behind the project was for one of the project sites to capture tax revenues from new construction at the other site in order to undertake profitable development at both sites.

TYPE OF PLAINTIFF:

Individual plaintiffs, as residents and taxpayers, and unincorporated association of city residents.

TIF ISSUE(S):

Is expectation of economic improvement and the possibility of speculative gain sufficient to constitute blight, under the Community Redevelopment Law (“CRL”)?

COURT HOLDING(S):

Under the CRL, a redevelopment project may not be approved unless the project area is blighted. The *possibility* that an area might be made more profitable is insufficient to constitute blight. Non-contiguous sites may not be designated under a single redevelopment plan where one site is included solely to provide sufficient money for the entire project area. In addition, the courts will distinguish between development and redevelopment. Redevelopment plans designed to facilitate consumptive rather than productive activities are disfavored. “Private enterprises may embark on such speculative competitive enterprises. Under present laws, public entities may not.”

COLORADO

Oberndorf v. Denver, 900 F.2d 1434 (10th Cir. 1990)

FACTS:

City and non-profit group worked together to create public/private partnership with development company to revitalize downtown Denver. A multi-block area was designated for urban renewal that would be financed by TIF and involve use of eminent domain.

TYPE OF PLAINTIFF:

Private landowners.

TIF ISSUE(S):

May eminent domain be used to promote urban renewal?

COURT HOLDING(S):

Eminent domain and urban renewal may be used to facilitate public purposes and will not be considered a taking unless no public purpose exists. An urban renewal plan that is rationally related to economic revitalization satisfies the constitutional standard. Elimination of blight and economic revitalization are legitimate public purposes.

FLORIDA

Florida v. Miami Beach Redevelopment Agency, 392 So.2d 875 (Fla. 1981)

FACTS:

City redevelopment agency declared 235-acre area blighted and prepared redevelopment plan that would involve relocation of persons who would be displaced from designated project area. Proceeds from TIF bonds were authorized to acquire by eminent domain land for the project.

TYPE OF PLAINTIFF:

State attorney and affected homeowners.

TIF ISSUE(S):

May areas determined to be blighted be acquired and cleared by way of eminent domain and subsequently transferred for redevelopment and commercial use to private entities?

COURT HOLDING(S):

So long as the use is not purely private, redevelopment projects supported by eminent domain, bond issuance, and substantial private and commercial uses post-development are constitutional public uses. In such cases, courts will defer to proper legislative determinations of public use. “The wisdom of authorizing the cataclysmic demolition and redesign of neighborhoods is not for the Court to determine.”

ILLINOIS

Henry County Board v. Village of Orion, 663 N.E.2d 1076 (Ill. App. 3d 1996)

FACTS:

City adopted TIF ordinances and redevelopment project and plan based on the following blight conditions: inadequate sewer system, slow economic development growth, and steadily declining population. As part of its plans, city determined to finance a new sewer system that would primarily benefit parcels located outside of the proposed TIF district. Plaintiffs challenged city’s TIF district designation on the grounds that the proposed project area was not blighted.

TYPE OF PLAINTIFF:

County board and affected taxing districts.

TIF ISSUE(S):

Whether the conditions present in the proposed TIF district are blighted within the terms of the state statute?

Whether a TIF ordinance that serves a legitimate public purpose, but confers those benefits on non-TIF areas, is valid?

COURT HOLDING(S):

Where new building was taking place in the proposed district signaling economic development, and the majority of the improved property suggested it was in routine disrepair, the area cannot qualify as a blighted area eligible for TIF district designation.

TIF may not be used for purposes that do not confer substantial benefits *within* the boundaries of the proposed district. TIF improvements must be used for the substantial present benefit the designated TIF district, not for the prevention of future blighted conditions.

Castel Properties, Ltd. v. City of Marion, 631 N.E.2d 459 (Ill. App.3d 1994)

FACTS:

City formed TIF plan to create \$18 million subsidy for shopping mall developers on 260 acre parcel of farmland located near state-federal highway interchange. For many years prior to TIF district designation, development was shifting westward, towards the interchange area near the farmland. Plaintiffs challenged validity of TIF district as unlawful subsidization of shopping mall development on unblighted site.

TYPE OF PLAINTIFF:

Development company and citizen taxpayers.

TIF ISSUE(S):

Whether conditions concerning diversity of ownership, flooding, and deterioration of structure or site improvement in neighboring areas constitute blight, as defined by statute?

COURT HOLDING(S):

Where 90 percent of proposed TIF area is under single ownership, there was once a small flood affecting a few acres of a large parcel, and a few abandoned buildings exist that do not impede development, those factors are insufficient evidence of blight. The “but for” test cannot be satisfied where the designated TIF area is within a corridor experiencing growth and development.

IOWA

Knudson v. City of Decorah, 622 N.W.2d 42 (Iowa 2000)

FACTS:

City designated 200-acres as a hospital, medical, and residential urban renewal area. Urban renewal project proposed to construct senior housing and other residential structures along with associated public improvements. Plaintiffs challenged use of TIF bonds for residential area development in an urban renewal area.

TYPE OF PLAINTIFF:

Residents and taxpayers.

TIF ISSUE(S):

Whether urban renewal project is inconsistent with city’s comprehensive plan?

COURT HOLDING(S):

An urban renewal plan and any associated urban renewal project must be consistent with the city’s comprehensive plan. Since the comprehensive plan in this case limited the length of cul-de-sacs to 600 feet, this project’s proposed 4,000 foot cul-de-sac, even if part of a future plan to build a collector street, does not conform. Urban renewal plans and projects that do not presently conform with a comprehensive plan will be held in violation of its requirements.

KANSAS

Kansas v. Wyandotte County, 962 P.2d 543 (Kan. 1998)

FACTS:

City unified government entered into agreement with private company to develop auto race track facility and designated the proposed 400-acre area as a major tourism area.

TYPE OF PLAINTIFF:

County district attorney.

TIF ISSUE(S):

Whether development of auto race track facility is a valid public purpose for which TIF bonds may be issued and for which eminent domain may be exercised?

COURT HOLDING(S):

Where government action fulfills a public purpose, the propriety of such action will not be reviewed by the courts. Whether a private entity stands to profit from government action is not determinative. Development of an auto race track facility and associate projects are valid public purposes for which TIF bonds may be issued an eminent domain exercised.

KENTUCKY

Miller v. Covington Dev. Auth., 539 S.W.2d 1 (Ky. 1976)

FACTS:

Suit to challenge the constitutionality of the Tax Increment Act.

TYPE OF PLAINTIFF:

Taxpayers.

TIF ISSUE(S):

Whether ad valorem tax revenue increases may be diverted from schools and used for development projects not relating to educational purposes?

COURT HOLDING(S):

Property tax increments collected for educational purposes may not be used for any other purpose, including development projects. According to the court, “[i]f tax increment financing will confer any

benefit on the school districts involved, it is purely incidental, fortuitous, far in the future, and at this point speculative.”

MAINE

Delogu v. State of Maine, 720 A.2d 1153 (Me. 1998)

FACTS:

Taxpayers challenged tax incentive package given by municipality to ship builder to encourage expansion of its facility.

TYPE OF PLAINTIFF:

Taxpayers.

TIF ISSUE:

Whether tax incentive package violated public purpose doctrine under state constitution?

COURT HOLDING:

In order for taxation and spending legislation to withstand judicial scrutiny, it must be for a public purpose. Court held that great weight is given to legislative finding of public purpose and that legislature had found public purpose for the tax incentive package to shipbuilder. Court further held that the tax incentives provided to shipbuilder indirectly benefited employment by allowing Maine to retain shipbuilding jobs. Court upheld the tax incentive package.

MICHIGAN

In Re Request for Advisory Opinion, 422 N.W.2d 186 (Mich. 1988)

FACTS:

Governor and state senate requested advisory opinion concerning the constitutionality of tax increment financing legislation.

TYPE OF PLAINTIFF:

None.

TIF ISSUE:

Whether TIF resulted in an unconstitutional diversion of funds from other public entities?

COURT HOLDING:

In nonbinding advisory opinion, court held that tax increment financing does not result in the unconstitutional diversion of tax revenues. Court reasoned that there is no true diversion of tax revenues because the additional tax revenues would not otherwise exist if it were not for the TIF legislation encouraging development in the TIF area.

School District v. City of Auburn Hills, 460 N.W.2d 258 (Mich. App. 1990)

FACTS:

School district brought action challenging public funding of private business development.

TYPE OF PLAINTIFF:

Abutting School District.

TIF ISSUE:

Whether use by the municipality of tax increment financing to assist private entity was for a public purpose?

COURT HOLDING:

Indirect benefits of job creation and retention by private entity are sufficient to find public purpose.

MINNESOTA

City of Minneapolis v. Wurtele, 291 N.W.2d 386 (Minn. 1980)

FACTS:

City petitioned for condemnation of parcels within TIF district, and landowners within the district appealed.

TYPE OF PLAINTIFF:

Landowners in TIF district.

TIF ISSUE:

Whether taking of private land within TIF district was for public purpose?

COURT HOLDING:

Indirect benefit to private enterprise does not negate the public purpose of a condemnation action. A municipality's finding of a public purpose can only be negated by a showing of bad faith by the plaintiff. Job creation and retention are valid public purposes.

R.E. Short Company v. City of Minneapolis, 269 N.W.2d 331 (Minn. 1978)

FACTS:

City designated area as TIF development district. The City acquired the property within the district by exercising its powers of eminent domain. The City entered into a development contract with a private developer for a parking facility within the district. The plaintiffs sought to have the contract voided.

TYPE OF PLAINTIFF:

Taxpayers.

TIF ISSUE:

Whether the municipality's adoption of TIF program served a public purpose?

COURT HOLDING:

“Once the legislature authorizes tax-increment financing by a municipality, declares such financing to serve a public purpose, and enumerates the type of projects that may be financed and that such projects will serve a public purpose, these declarations are given great weight by the courts.” A municipality’s finding of “public purpose” may only be set aside “if it is established that the city’s action is manifestly arbitrary and capricious.”

Johnson v. City of Minneapolis, 649 N.W.2d 873 (Minn. App. 2002)

FACTS:

City created TIF district and entered into negotiations with developer to build a mall on one of the sites within the TIF district. Developer sent notices to the property owners of the parcels that comprised site that their property may be taken. The developer and City could not come to a final agreement and no property was acquired.

TYPE OF PLAINTIFF:

Landowners in TIF district.

TIF ISSUE:

Whether taking occurred within TIF district?

COURT HOLDING:

Control was never exercised over the parcels within the TIF district to amount to a taking, thus no compensation was required.

Walser Auto Sales, Inc. v. City of Richfield, 635 N.W.2d 391 (Minn. App. 2002)

FACTS:

Tax increment financing used to develop new headquarters for large corporate retailer in the City of Richfield.

TYPE OF PLAINTIFF:

Taxpayers.

TIF ISSUE:

Whether TIF expenditure was for public purpose?

COURT HOLDING:

Courts will look to determine if the “public purpose” is the primary purpose of establishing the TIF district. District court applied improper standard because it did not determine that the public purpose was primary. Court remanded to the district court to determine if the purpose of the TIF district is primarily public.

Housing and Redevelopment Auth. v. Walser Auto Sales, Inc., 630 N.W.2d 662 (Minn. App. 2001)

FACTS:

City housing authority petitioned for quick-take condemnation of land containing auto dealership in connection with redevelopment project using TIF financing for headquarters of large corporate retailer. Auto dealership challenged the housing authority's blight finding.

TYPE OF PLAINTIFF:

Property owner of condemned land.

TIF ISSUE:

Whether sufficient evidence was produced to establish blight?

COURT HOLDING:

Courts will look to the factual circumstances of the case. Court held that land was "blighted" within meaning of TIF statute because the auto dealership was incompatible with nearby residential neighborhoods, created traffic safety issues, created parking and overcrowding, created excessive noise, and the buildings were obsolete.

City of Rochester v. Greenheck, 1989 WL 61 (Minn. App. 1989)

FACTS:

Property owner challenged city's condemnation of his land in TIF district.

TYPE OF PLAINTIFF:

Property owner of condemned land.

TIF ISSUE:

Whether taking of land in TIF district was for public purpose?

COURT HOLDING:

Whether taking is for public purpose "is in the first instance a legislative determination." "This legislative determination will not be overturned . . . unless it is manifestly arbitrary or unreasonable." In this case, court held that there is a public purpose of job creation and retention, and that city did not act unreasonably in finding as much.

MISSOURI

Tax Increment Financing Comm'n of Kansas City v. J.E. Dunn Const., 781 S.W.2d 70 (Mo. 1989)

FACTS:

City filed petition under TIF statute to condemn and take land of private property owner for redevelopment.

TYPE OF PLAINTIFF:

Property owner of condemned land.

TIF ISSUE:

Whether taking of land was for public purpose?

COURT HOLDING:

City made legislative determination that use to which land would be put is a public purpose. Court held that unless property owner shows that city's determination is arbitrary or is the product of fraud, collusion or bad faith, the court will uphold the city's determination. Courts will defer to the finding of the city.

JG St. Louis West LLC, v. City of Des Peres, 41 S.W.3d 513 (Mo. App. 2001)

FACTS:

Shopping mall owner and taxpayers brought action against city for passing ordinances approving tax increment financing for new shopping mall development

TYPE OF PLAINTIFF:

Competitor and taxpayers.

TIF ISSUE:

Whether city's finding of blight in area for new shopping mall was supported by evidence of blight?

COURT HOLDING:

Courts will defer to legislative findings unless opponent can show city's decision was arbitrary or induced by fraud, collusion or bad faith. Finding of blight was supported by evidence showing that existing shopping mall needed to expand to remain commercially viable.

City of St. Charles v. DeVault Mgmt., 959 S.W.2d 815 (Mo. App. 1998)

FACTS:

City filed petition of condemnation for property within TIF District. Property owner challenged condemnation necessity on the grounds that TIF redevelopment area was not consistent with city's comprehensive plan.

TYPE OF PLAINTIFF:

Property owner of condemned land.

TIF ISSUE:

Whether city's failure to conform TIF district designations to city's comprehensive plan was fatal to the designation?

COURT HOLDING:

City's failure to conform its TIF redevelopment plan to the city's comprehensive plan established that condemnation of property owner's land was unwarranted and not in compliance with the law.

NEBRASKA

Fitzke v. City of Hastings, 582 N.W.2d 301 (Neb. 1998)

FACTS:

Property owners challenged City's designation of their area as "blighted" under the TIF statute. City wanted to designate campground as blighted for purposes of TIF redevelopment of area.

TYPE OF PLAINTIFF:

Residents in TIF district and taxpayers.

TIF ISSUE:

Whether determination by city that area was "blighted" was supported by substantial evidence?

COURT HOLDING:

To expand TIF district, the additional land must be declared blighted. Property in question was not blighted because city's determination was not supported by substantial evidence. The property in question was a 58-acre parcel used as cornfields.

OHIO

Princeton City School District v. Zaino, 760 N.E.2d 375 (Ohio 2002)

FACTS:

City passed ordinances declaring several parcels as TIF redevelopment parcels. Public improvements would be developed on the parcels. The city encouraged property owners within the TIF area to apply for exemptions under the TIF statute. The tax commissioner exempted properties within the TIF area. The school district appealed the tax commissioner's decision to the board of tax appeals. The board upheld the exemptions.

TYPE OF PLAINTIFF:

School district.

TIF ISSUE:

Whether tax commissioner could review the city's determination that TIF served public purpose?

COURT HOLDING:

Tax commissioner cannot review city's finding of public purpose.

SOUTH CAROLINA

Wolper v. City of Charleston, 336 S.E.2d 871 (S.C. 1985)

FACTS:

Property owner challenged city's adoption of TIF ordinances.

TYPE OF PLAINTIFF:

Taxpayer.

TIF ISSUE:

Whether TIF ordinances served a public purpose?

COURT HOLDING:

Determination of public purpose is primarily for the legislature and courts should not interfere unless the determination is clearly wrong. Court further holds that incidental benefit to private individuals is not fatal to finding of public purpose. Finally, Court holds that revitalization of blighted and deteriorating areas is a proper public purpose.

SOUTH DAKOTA

Meierhenry v. City of Huron, 354 N.W.2d 171 (S.D. 1984)

FACTS:

Attorney general and taxpayers challenged the constitutionality of legislation allowing municipalities to establish tax increment financing ordinances.

TYPE OF PLAINTIFF:

Attorney general and taxpayers

TIF ISSUE:

Whether TIF statute violated the public purpose doctrine in South Dakota?

COURT HOLDING:

Legislative enactments are accorded presumption in favor of validity and should not be held unconstitutional unless their infringement of constitutional restrictions is so plain and palpable as to admit of no reasonable doubt. The general principle is that acquisition of land in blighted areas and sale or leasing of such land for private development is deemed a legitimate public purpose. Court held that TIF statute serves a public purpose and does not violate the public purpose doctrine.

TEXAS

City of El Paso v. El Paso Community College District, 729 S.W.2d 296 (Tex. 1987)

FACTS:

School district claimed that Texas constitution requires that school district taxes be used only for education purposes.

TYPE OF PLAINTIFF:

School district.

TIF ISSUE:

Whether taxes collected pursuant to TIF were in violation of state constitution requiring school taxes be used only for educational purposes.

COURT HOLDING:

Texas constitution is not violated if school taxes in TIF district are used for non-educational purposes.

WASHINGTON

Leonard v. City of Spokane, 897 P.2d 358 (Wash. 1995)

FACTS:

Property owner brought action against city claiming that TIF ordinance violated state constitution by diverting school tax revenues to public improvements.

TYPE OF PLAINTIFF:

Property owner.

TIF ISSUE:

Whether TIF unconstitutionally diverted school funds towards public improvements and away from education?

COURT HOLDING:

The City argued that in the absence of TIF, these funds otherwise would not exist and that these additional tax revenues created because of TIF should be capable of being used for non-educational purposes. Court held that TIF unconstitutionally diverts tax revenues from public schools.

WISCONSIN

Sigma Tau Gamma Fraternity House Corp. v. City of Menomonie, 288 N.W.2d 85 (Wis. 1980)

FACTS:

Fraternity challenged the city's right to condemn its property under TIF statute.

TYPE OF PLAINTIFF:

Property owner of condemned land.

TIF ISSUE:

Whether TIF act authorized condemnation of land and whether TIF served public purpose?

COURT HOLDING:

TIF did not authorize condemnation. In order to take private property, city must use existing eminent domain powers or other statutory authority. TIF serves public purpose because revenues would be used for public improvements, and elimination of blight is a public purpose. Court will defer to a legislative finding of public purpose, and there is a presumption of constitutionality afforded to that determination.