



## TIF Management

Jeanne Vogt – Ehlers

Jenny Boulton – Kennedy & Graven





## Top 10 List

1. Keep everything
2. Don't comingle funds
3. Adopt interfund loan resolution first, before spending anything in the TIF District
4. Document all Admin Costs (including staff time)
5. Document qualified costs / receive copies of invoices from Developer
6. Keep executed copies of Developer Agreement & TIF Note on file
7. Document costs paid for projects outside the TIF District
8. Annually monitor TIF budget to actual expenditures
9. Keep track of important TIF Dates
10. Understand implications of paying off in-district obligations



## Information Certified by the County Auditor

- District
  - Frozen Tax Rate
  - Fiscal Disparities election (if applicable)
  - Total original net tax capacity
  - Certification request date on County records
    - May differ from date on letter sent to County
  - Prior Planned Improvements
  - County TIF District number
- Parcel
  - Parcel number list
  - Original net tax capacity and market value
  - M.S. 469.177 Subd. 1(a) requires certification within 30 days of receipt of request for certification



## Common Certification Problems

- Parcels listed in the plan are not the same as the legal descriptions
  - Recommend PID number, if available
  - Need legal description if re-platting or partial PIN(s)
- Parcel list includes inactive and active parcels
  - May be an issue of timing or platting
- Parcel list does not match map
- Incomplete documentation received by the County to verify the County's checklist items



## Significant Administration Dates

- TIF Plan Approval Date by City Council
- Request for Certification Date
- County Auditor Certification Date
- First Receipt of Increment Date
- Expiration or Decertification Date





## TIF Management: A Two-Step Process

- Overall District File
- Annual District Calendar





## Overall District File

The primary rule in tax increment is to

*NEVER THROW AWAY RECORDS*

OSA guidance is to retain records for 10 years *after* the Decertification or expiration of a TIF District





# TIF Management: Two Files & Two Calendars

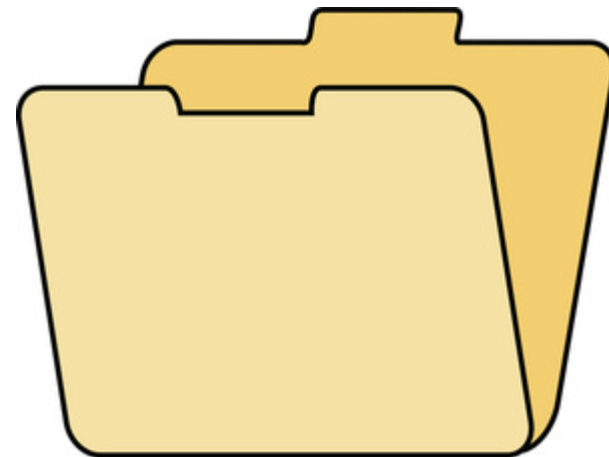
## 1. Overall District File

- TIF Plan and District Certification
- 4-Year Knockdown Provision
- Executed Developer Agreement & TIF Note
- Documented Costs
- Interfund Loan Resolution(s)
- Bond Schedules

## 2. Annual TIF District File

- Frozen Values and Net Tax Capacity
- Current Values and Net Tax Capacity
- Annual Expenditures
  - Admin and Capital costs
- Annual TIF Note Payments
  - Copies of check(s) and payment schedule(s)

Documents can be kept in  
any convenient format







# Overall District File – Basic District Information

## 1. One Page Summary

- TIF District Profile
- Name and Type of District
- Significant Dates
- Certification Information
- Obligation Information

TIF District Profile			
District Name			_____
Project Area			_____
District Type			_____
Date Approved			_____
Date Certification Requested			_____
Date Certified			_____
Date 1 <sup>st</sup> Increment Received			_____
District Duration in Plan			_____
Estimated Decertification Year			_____
Original Net Tax Capacity			_____
Original Local Tax Rate			_____
Limit on Pooling			_____
District Subject to Fiscal Disparities? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Amendments:	<i>Type</i>	<i>Date</i>	<i>Resolution #</i>
			_____
			_____
			_____
Notes / Comments			
_____			
_____			
_____			



## Overall District File – TIF Budget

- Budget Information
  - Documentation of all revenues and expenditures on file
  - Documentation of costs inside and outside TIF District
    - For pooling requirements
  - Review Budget periodically and modify as needed
    - Recommended annually
    - Don't exceed budgeted expenditures
    - Important to do because of excess increment calculations and spend down requirements



## Overall District File – Administrative Allotment

For Districts for which certification was requested after July 31, 2001

- *Lesser of:*
  1. 10% of total estimated tax increment expenditures authorized by the TIF Plan, or
    - Check actual expenditure/obligation to determine amount
    - Can't rely on budgeted amount in TIF Plan
  2. 10% of the total tax increment

For Districts for which certification was requested after June 20, 1982 and before August 1, 2001

- *Lesser of:*
  1. 10% of total estimated tax increment expenditures authorized by the TIF Plan, or
  2. 10% of the total tax increment expenditures for the *project*
    - Can add all expenditures from all TIF Districts in a project area
    - Most authorities just use the expenditures from the specific TIF District



## Overall District File – Interfund Loan Resolutions

- Needed within 60 days after making any expenditures that you want reimbursed with TIF
  - Includes Admin incurred to establish District
  - Approve resolution at beginning of TIF project
- Land acquisition cost can be re-structured, if land will be resold for private development
  - Interfund loan must be approved before sale of land at a write-down. The “advance” occurs at closing
- Monitor cash balances throughout the year to make sure you don’t go negative

It’s an “insurance policy” against negative cash balances.  
Just because you are authorized up to a specified dollar amount doesn’t mean you have to use it.



## Overall District File – Interfund Loan Resolutions

- Required Terms
  - Principal amount, term of years, and interest rate
  - Interest rate capped at annual statutory rate (4% in 2019)
    - Authority may fix interest rate, or
    - Vary annually along with statutory cap
- Remember, it’s still a “TIF Bond”
  - Include interfund loans in TIF Plan bonded indebtedness
  - May be refinanced with bonds or notes sold to third parties



## Overall District File – Developer Agreements

### Front End

- Developer Agreement spells out terms the Developer and City will each follow to complete the project, including (but not limited to)
  - Completion of Qualifying activity by developer
  - Reimbursement of qualified costs by City
  - Terms for the TIF Note
    - Maximum amount, interest rate, payment dates
  - Time of completion
  - Parcels included
  - May include job and wage goals or housing income limits



## Overall District File – TIF Notes

### Back End

- TIF Note is executed once terms of the Developer Agreement have been satisfied
  - Documentation of Qualified Costs received
    - Keep copies of paid invoices
  - Final Note amount determined
    - May be less than maximum amount in Developer Agreement
  - Starts the clock to calculate interest
  - Approved by TIF Authority
    - Recognized as a legal obligation



## Overall District File – 4-Year “Knockdown” Rule

- Each parcel MUST have qualifying activity within 4 years of County Certification Date
  - Evidence must be submitted to County Auditor by February 1 in the fifth year
  - In accordance with the TIF Plan
  - Timing of qualifying activity with parcel division(s)/new plat
  - Qualifying Activity includes:
    1. Demolition
    2. Rehabilitation
    3. Renovation
    4. Other Site Preparation
      - ✓ Street Improvements
      - ✓ Excludes installation of water and sewer utilities
  - No qualifying Activity
    - Parcel excluded from calculation of TIF





## Overall District File – 4 Year “Knockdown” Rule

- If qualifying activity occurs on a “knocked down” parcel
  - Responsibility of City/Authority
  - New Base Value at time of request
  - Notify County Auditor as soon as qualifying activity occurs
    - If notification occurs after buildout, base value will be too high
    - Loss of tax increment
  - Check with County Auditor for reinstatement requirements



## Overall District File – 5 Year Rule

### Post 1990 TIF Districts

- M.S. 469.1763 Subd. 3
  - Must have ONE of these obligations within 5 years after certification
    - Revenues are paid to a third party
    - Bonds issued and sold to a third party
      - Includes refunding bonds
      - NOT interfund loans and PAYGO Notes
    - Binding contracts with a third party and the revenues are spent under the contractual obligation
      - Not common
      - Example: Contract with contractor which states the activity will be paid with TIF revenue
    - Costs with respect to the activity are paid within five years, and contract reimburses a party
      - Standard PAYGO contract



## Overall District File – 5 Year Rule

### Post 1990 TIF Districts

- Consequences of not meeting one of these requirements is that money is deemed spent outside the district (even if actually spent inside)
  - Intertwined with pooling provisions



## Overall District File – 5 Year Rule

### Exceptions to 5 Year Rule

1. Spending from a housing district is deemed “within district”, so is not subject to pooling limits or 5 Year Rule
2. If authority elects extra 10% pooling for affordable housing, the extra pooled dollars are (sort of) deemed within the District
  - Mostly this means they are exempt from the 5 Year Rule
3. Little Known Fact: only “real” increment is subject to 5 Year Rule and pooling provisions
  - Increment derived from interest, land sale proceeds, and repayments is not so limited



## Overall District File – 6 Year Rule

### Pooling Outside the District

- Can pool outside the district, up to:
  - 20% for economic development and renewal & renovation districts
  - 25% for redevelopment districts
- Has to be spent within the Project Area
- Can be spent in another TIF district of any kind, or in no TIF District
- Spending must comply with all the rules that apply to the source District
  - Examples:
    - Pooled increment from a redevelopment district must comply with “4j” rules
    - Pooled increment from an economic development district must be used for other manufacturing and warehouse projects
    - Public infrastructure that supports these uses



## Overall District File – 6 Year Rule

### Use of Revenues for Decertification

- M.S. 469.1763 Subd 4
  - In each year beginning in the sixth year following certification of the district, if the “in-district” percentage exceeds the costs spent on in-district obligations, the difference between the in-district percentage of TIF and in-district expenditures must be used to pay or defease the following or be set aside to pay bonds and contracts that met the 5-Year Rule, or for housing:
    - Outstanding bonds that were issued in the first 5 years
    - Contracts entered into within the first 5 years or PAYGO contracts where the costs were spent within 5 years
    - Credit enhanced bonds
    - The amount provided by the TIF plan to be paid for housing activities
      - Either from a housing district or under the “10% extra pooling” rule



## Overall District File – 6 Year Rule

### Use of Revenues for Decertification

- The district must be decertified and the pledge of tax increment discharged when the outstanding bonds have been defeased and when sufficient money has been set aside to pay (based on the increment to be collected through the end of the calendar year) the following amounts:
  - Bonds and contracts that met the 5-Year Rule
  - The amount specified in the TIF plan for additional housing, if district is a housing district
  - The additional expenditures permitted by the TIF plan when authority makes the extra 10% election for housing



## Overall District File – 6 Year Rule

### Use of Revenues for Decertification

- After all the initial “first five year” bonds and contracts are paid, you MUST decertify the district unless:
  - It’s a housing district, and the TIF plan identifies other housing costs
  - The authority elected extra 10% pooling for housing
  - Even if district must be decertified, remaining fund balances may still be spent within TIF plan and pooling limits
- If you want to ensure ability to spend on housing, TIF plan must be amended before all “first five year” bonds and contracts have been paid off





## Overall District File – Decertification

### Expired District

- Two ways to do it:
  1. County monitors – automatic decertification at expiration
  2. City monitors – requests decertification
- OSA Confirmation of Decertified TIF District Form
- Outstanding obligations due to delinquent taxes
  - Excludes PAYGO
  - Notify County that obligations would go unpaid without delinquent taxes



## Overall District File – Decertification

### Early Decertification

- Shorter duration specified in TIF Plan
- No outstanding obligations / sufficient funds on hand
- Requested through resolution
- Include date of decertification
  - Immediately
  - End of tax payable year



## Annual District File - Calendar

- January
  - Determine PAYGO Payment due Feb. 1<sup>st</sup>
- February
  - Make bond payments
  - Verify and make PAYGO payments
  - Pay 2nd half interfund loans
- March
  - Business subsidy reporting for prior year to DEED. The forms can be found at: [https://mn.gov/deed/assets/mbaf-fillable\\_tcm1045-132596.pdf](https://mn.gov/deed/assets/mbaf-fillable_tcm1045-132596.pdf)
- June
  - Make any June bond payments



## Annual District File - Calendar

- July
  - Complete OSA Annual TIF Reporting Forms
  - Make bond payments
  - Verify and make PAYGO payments
  - Pay 1<sup>st</sup> half interfund loans
- August
  - Publish Annual Disclosure
- September
  - Review budget for compliance with TIF Plan, modify if needed



## Annual District File - Calendar

- December
  - Make December bond payments
  - Verify funds for February are escrowed
  - Make final accounting entries
  - Request compliance documentation for:
    - Economic Development Districts
    - Housing Districts
    - Business Subsidy Reporting



## Annual District File- Administrative Costs

- Document and keep copies on file
  - Actual invoices
  - Staff time
    - Use time sheets or other method to track time spent
- Pay yourself first
  - Pay as you incur costs
  - Interfund loan resolution MUST be adopted no later than 60 days after funds are transferred, advanced or spent if insufficient fund balances
  - Don't segregate somewhere else



## Annual District File – Tax Settlement Oddities

### “Excess” Increment – 3 Types

#### 1. Base Rate Excess Increment – NOT increment

- Occurs when Current tax rate exceeds Frozen tax rate
- Difference is distributed to County, City, and School District
- Included on the tax statement on Tax Increment line

#### 2. TIF Revenue exceeds costs authorized by TIF Plan – “Excess Increment” as defined by TIF Law

- Calculated on page 17 of OSA’s Annual TIF Reporting Form
- May result in returning tax increment to County

#### 3. Increment returned to County for other reasons – NOT increment

- Closing Fund, pooling calculations
- Distributed to County, City, and School District



## Annual District File – Tax Settlement Oddities

### “Excess” Increment

So what do you DO with it when you see it on your tax settlement?

“Excess” Tax Increment is NOT Tax Increment

If you see this on your tax settlement,  
you can put it in ANY fund  
Except your Tax Increment Fund(s)





## Annual District File – Tax Settlement Oddities

### Tax Court Petitions and TIF

- Property Owner contests valuation, tax court reduces market value
  - Petitions can take years to resolve
  - If settled, County pays refund out of TIF in next tax settlement
    - Could result in a negative tax settlement amount for TIF District
- Potential Issues:
  - Overpayment of PAYGO Note(s)
  - TIF District is now decertified and Fund closed
  - Negative Cash balance in TIF Fund
    - Do you have an interfund loan resolution in place?
- List of Pending Petitions should be provided by County Attorney's Office
  - Any parcels in TIF?



## Annual District File – PAYGO Notes

- Payment schedules can vary according to:
  - Date interest begins to accrue, if at all
    - Many TIF Notes are simple, non-compounding interest
  - Final payment dates
    - Track amounts paid to principal and interest
    - Know outstanding balance, don't overpay
  - Payment priorities over the PAYGO Note
    - If City bonds are issued in conjunction, development agreement will state priority pledge of TIF
- Do not use tax statement to determine TIF revenue
  - Use actual TIF received with tax settlement
  - Problematic if only a few parcels in the District included in TIF Note
    - County calculates TIF as a whole, not parcel by parcel



## Annual District File – PAYGO Notes

- Make sure all parcel(s) have paid taxes and how much they paid
  - Review semi-annually before TIF payment is made
- Check market values against Minimum Assessment Agreement (if applicable)
  - Assessors don't always catch
  - Inform County when value goes off
- May be in default of Development Agreement
  - Remedies may be to withhold all or portion of TIF payment until cured
- Multiple Notes
  - Calculate PAYGO amount on parcel by parcel basis
  - Tie all obligations back to a single value generated by District
  - Non performance by one development can have negative effects on others



## Annual District File – Changes in Base Values

### Base Net Tax Capacity Values Can Change

- Changes in property classification
  - Base classification = Current classification
  - Except Hennepin County
- Exempt to Taxable status
  - Exempt less than 1 year, use previous market value
  - Exempt more than 1 year, County will assign a new base value
- Lot Splits / Combinations / New Plats
  - Market Value should be reallocated, check with County Assessor
- Legislature changes class rate
  - Base class rate = Current class rate



## Annual District File – Housing Income Limits

- Rental vs. Owner Occupied
  - Annual for rental projects
    - 20/50 or 40/60
  - 1<sup>st</sup> buyer on owner occupied
    - 95% of units at 100% of AMI (2 or less persons) or 115% of AMI (3 or more)
- Must be monitored by the City or Authority
  - 3<sup>rd</sup> party reports
- Require annual certification of compliance
  - For rental projects is same documentation they send to MHFA if a tax credit project
- A future audit could require documentation
- Statutory non-compliance impacts (return TIF)



## Annual District File – TIF Reporting

- TIF Plans – Due to DOR & OSA within 60 days of filing for certification with County
  - Plan Collection Form – New Districts (PCN)
  - Plan Collection Form – Modified Districts (PCM)
- Annual reports for each District due August 1<sup>st</sup>
  - Failure to submit may lead to withholding of increment by County Auditor
- Pooled debt reports for each outstanding pooled bond due August 1<sup>st</sup>
- SAFES Authorization Form
  - If reports completed by a consultant



## Modifying a TIF Plan – Full Modification

- Public hearing and notification process required
  - Same as creating a new TIF District
  - Reasons:
    - Increasing geographic boundaries of TIF District within 5 years
    - Increasing bonded indebtedness
      - Bonds, PAYGO Notes, Interfund Loans
    - Increasing project costs, including Admin
      - Increasing interest costs only does not trigger full mod
    - Designating additional parcels to be acquired
      - Look closely at what was originally designated
    - Determination to capitalize interest
    - Increase portion of captured net tax capacity to be retained
      - Removing “negative drag” parcels from District
    - Expanding or reducing Project Area



## Modifying a TIF Plan – Minor Modification (Admin)

- In any case where a full modification is not required
  - Change in authorized uses within overall budget
    - Interest is not interchangeable with capital costs
  - Removing parcels
    - Current tax capacity > original tax capacity
  - Pooling for affordable housing (extra 10%)
    - As long as within budget
- Accomplished by resolution
- Either modification needs to be filed with County, Department of Revenue and OSA





# Mission Accomplished!



**Jenny Boulton**  
**Kennedy & Graven**  
(612) 337-9202  
jboulton@Kennedy-Graven.com



**Jeanne Vogt**  
**Ehlers**  
(651) 697-8571  
jvogt@ehlers-inc.com