



TIF Responsibly!

Best Practices to Protect Your Municipality

Tax Incremental Financing Under Fire!

BAYSIDE NEWS

A group of Bayside residents is suing the village after officials approved an \$84 million development



Eddie Morales

Milwaukee Journal Sentinel

Published 12:50 p.m. CT Jan. 21, 2022

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Judge dismisses challenge to Mukwonago TIF district

By Brian Huber - Freeman Staff Jan 16, 2024 Updated Jan 16, 2024

WI group suing City of Eau Claire over “Illegal TIF District”

By Clint Berge Apr 17, 2019 Updated Aug 24, 2022 0

Commercial Real Estate - Cover Story

What's at stake when opposition groups challenge local development?

Residents, governments and developers wage battle as disputes hit the courts

SUBURBS

Milwaukee-area communities are using tax incremental financing more than ever to fund developments, but not everyone likes it



Jim Riccioli

Milwaukee Journal Sentinel

Published 10:34 a.m. CT April 20, 2022 | Updated 4:53 p.m. CT April 21, 2022

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TAX REFORM

Tax incremental financing is a recipe for abuse

BY RICHARD ESENBERG - APRIL 30, 2018

Tax Incremental Financing Under Fire!

Common reasons for TIF opposition:

- NIMBY
- Developer handout
- Philosophical opposition to governmental involvement in private development
- Financial risk to taxpayers
- Will raise taxes

Tax Incremental Financing Under Fire!

Common reasons to challenge TIF & TIF projects

- Procedural defects
- Type of TID finding not supported; especially in cases of blight
- But for test not met
- Conflicts of interest

Best Practices to Protect Your Municipality

Support & Document Key Findings

Type of District

But for Test

Mitigate Financial Risk

Standards: Type of TID & But For Findings

Findings are Legislative Determinations

- Still important to document reasons why finding is supported
 - ✓ Some findings easy to support
 - 50% of area suitable for mixed use development
 - ✓ Others more subjective
 - Blighted area, newly platted residential, but for test
- Cannot be arbitrary & unreasonable

Type of TID Finding

Type	Max Life	At Least 50% of Proposed District Area Must Be:	Newly Platted Residential
Mixed Use	20 Years	Suitable for combination of industrial, commercial & residential uses	Max 35% (plus density requirement)
Industrial		Zoned & suitable for industrial development	Not Allowed
Blighted Area	27 Years	Blighted	Not Allowed
Conservation or Rehabilitation		In need of conservation or rehabilitation	Not Allowed
Environmental Remediation		Containing significant environmental pollution	Not Allowed

Mixed Use TID

- Must be suitable (50% of area) for **at least two** of the following uses:
 - ✓ Commercial
 - ✓ Industrial
 - ✓ Residential
- For true mixed-use buildings, pro-rate parcel acreage by sq. ft. of each use
- Newly platted residential (limit of 35%)
 - ✓ Newly platted not defined
 - ✓ Consider facts & circumstances
 - ✓ Legislative intent: limit urban sprawl
 - ✓ Multi-family **not** commercial
 - ✓ Density test

Industrial TID

Key is that land must be zoned & suitable for industrial development

- Lands identified as suitable for industrial use in a Mixed Use TID do not need to be zoned at time of creation

Lands identified as zoned & suitable for industrial development cannot be rezoned prior to the end of TID's expenditure period

- Option to identify areas as not suitable during Project Plan development

Blighted Area OR in Need of Rehab/Conservation

- Two different statutory provisions: Cannot mix & match
 - ✓ Blighted Area
 - Wis. Stat. § 66.1105(2)(ae)
 - ✓ In Need of Rehabilitation or Conservation
 - Wis. Stat. § 66.1337(2m)(a):
- Essential to tie specific conditions of property to specific legislative definitions

Blighted Area OR In Need of Rehab/Conservation

Helpful Supporting Documents

- Redevelopment area plans
- Environmental reports
- Property condition reports
- Photos
- Prior blight determinations

Sample Narrative: Blighted Area

On August 26, 2003, the Common Council approved the **South Shore Redevelopment Area Project Plan ("2003 Redevelopment Plan")** under Wis. § Stat. 66.1331 to promote redevelopment in an area that includes the territory to be included in the District. The 2003 Redevelopment Plan identified the following blighting influences as being present in the redevelopment area: There is **a predominance of properties in the area that are underutilized, functionally obsolete, in need of repair, nonconforming, or that otherwise contribute to the blighted conditions of the area** and/or impair or arrest the sound growth of the community. There are also a number of incompatible land uses in the district with little or no buffering or screening between these lesser and more intense land uses. This area originally developed primarily for manufacturing purposes and provided area residents an ability to easily walk to work. However, with transportation improvements, vacancy of existing industrial uses as well as automated improvements within the manufacturing industries themselves, **the structures have become functionally obsolete** to some extent and no longer rely on adjacent residential uses for their main labor supply.

All territory to be included in the District was identified as blighted on the map included on p.13 of the **2003 Redevelopment Plan**. Since adoption of the 2003 Redevelopment Plan the City has undertaken redevelopment activities to include acquisition of land and removal of obsolete structures. **Platting remains obsolete, site improvements have deteriorated, and some parcels will require environmental remediation**. As such, all territory to be included in the District remains a blighted area as defined in Wis. Stat. § 66.1105(2)(ae). More specifically, the territory in the District is: "An area which is predominantly open.....that consists of land upon which buildings or structures have been demolished and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community." **The table on the following page identifies specific blighting conditions residential on each parcel to be included in the District.**

MAP ID	TAX ID	ADDRESS	ACRES	BLIGHT ACRES	BLIGHTING CONDITIONS
1	90301330100	500 S MAIN ST	0.09	0.09	Obsolete platting impairs development.
2	90301350000	0 PIONEER DR	1.67	1.67	Obsolete platting impairs development.
3	90301330600	0 PIONEER DR	0.07	0.07	Environmental contamination.
4	90301330500	0 E 7TH AVE	2.77	2.77	Environmental contamination.
5	90301330400	0 PIONEER DR	1.76	1.76	Environmental contamination.
6	90301390100	43 E 7TH AVE	1.51	1.51	Razed site, environmental contamination (Phase I ESA)
7	90301380000	706 S MAIN ST	0.63	0.63	Razed site.
8	90301420000	710 S MAIN ST	0.15	0.15	Razed site.
9	90301490000	716 S MAIN ST	0.05	0.05	Razed site.
10	90301550100	0 E 8TH AVE	2.59	2.59	Razed site, environmental contamination (Phase I ESA)
11	90306110000	0 PIONEER DR	0.25	0.25	Obsolete platting impairs development.
12	90306110100	0 PIONEER DR	0.18	0.18	Obsolete platting impairs development.
13	90302110000	0 E 9TH AVE	0.25	0.25	Obsolete platting impairs development.
14	90301330300	0 PIONEER DR	1.28	1.28	Obsolete platting impairs development.
15	90301340000	0 E 9TH AVE	0.20	0.20	Obsolete platting impairs development.
TOTAL			13.45	13.45	100%

Sample Narrative: In Need of Rehab/Conservation

The improvements located on the parcel, the former Smith Elementary School are in need of rehabilitation or conservation as defined by Wis. Stat. § 66.1337(2m)(a). Specifically, the Plan includes:

1. Carrying out plans for a program of voluntary repair and rehabilitation of buildings or other improvements.
2. Rehabilitation of buildings and improvements on the property where necessary to eliminate unhealthful, unsanitary, or unsafe conditions, eliminate obsolete or other uses detrimental to the public welfare, to otherwise remove or prevent the spread of blight or deterioration.

The original school was designed by noted Oshkosh architect William Waters in 1896 as a four-classroom building with a central stair. In 1929, the firm of Auler, Jensen and Brown designed an addition to the west adding an additional 6 classrooms and recreational space. In 1996 the Oshkosh Area School District (“OASD”) added a gymnasium with two additional classrooms and central offices to the building. In June of 2019, the Oshkosh Board of Education voted to close Smith School after 124 years of educational service **citing \$3.7 million in needed repairs and maintenance.**

These costs are detailed in a presentation prepared by OASD dated May 22, 2019, titled “Facilities Planning: Smith Elementary” and in a related document titled “3315_OASD Study Document 8.1.17_smith.pdf” both of which are on file with the City. Some of the costs cited include replacement of the original building roof, correction of water infiltration into occupied space, exterior envelope tuck pointing, replacement of dated and failing plumbing fixtures, mold remediation, and building wide window replacement. The costs cited by the OASD support the conclusion that the property is in need of rehabilitation given that adaptive reuse of the property will require that many of the same repairs be made.

In May of this year, the Wisconsin Historic Preservation Review Board voted to include Smith School on the state register of historic places and nominated it for the National Register of historic places. A preliminary determination by the National Park Service suggested that this property is likely to be listed on the National Registry. It is anticipated that the National Park Service will make the final National Registry determination soon.

Architectural plans developed by Wesenberg Architects show the building being transformed into 31 total apartments including one-, two-, and three-bedroom units. **These plans have been reviewed by the Wisconsin Historical Society’s State Historic Preservation Office and have been determined to be consistent with the Secretary of the Interior’s standards for historic preservation by the state.** Should the National Park Service make an affirmative final determination on the National Registry Listing, as well as approve the proposed development plan, the project will be eligible to receive both federal and state historic preservation tax credits.

The historic status and local significance of the property, its inclusion on the state register of historic places and potential inclusion on the National Register of historic places combined with the need for rehabilitation work support the conclusion that the property is also in need of conservation.

“But-For:” Do Developers *Really* Need Assistance?

Base your decision on all TIF objectives, not just financial demonstration of need:

Right project for selected location?

Consistent with local plans?

Achieves community vision?



Use TIF to facilitate desirable project that wouldn't otherwise be possible:

Without assistance

In desired timeframe

With same quality or amenities

The “But-For” Test: Making the Case

- Joint Review Board (JRB) is ultimate decision-making body
- Community must “make the case” via But-For test
- Standard of proof can be subjective, must be reasonable
- Municipality should always provide supporting rationale & document it in the Project Plan



The “But-For” Test: Common Rationales



Contaminated land
and/or existence of
blighted buildings



Increased construction
costs



Market rents too low



Infrastructure costs too
high



Cheaper alternatives
elsewhere



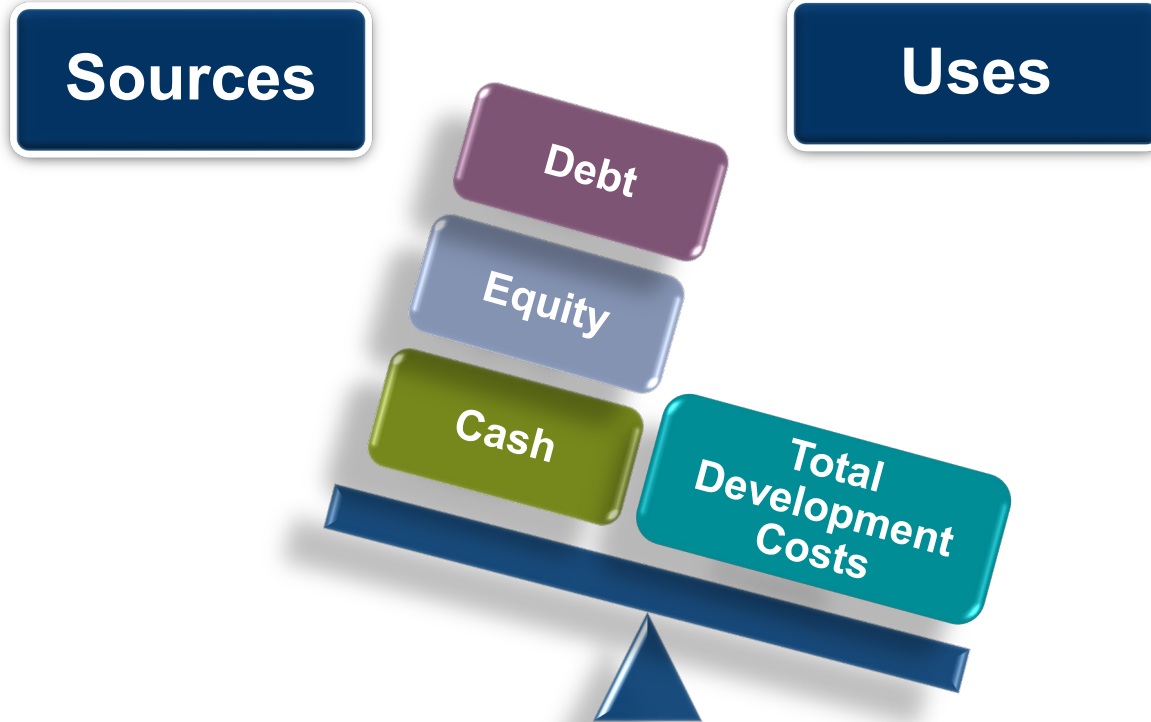
Municipal requirements
imposing additional
cost

Not Only “But-For,” But For “How Much?”

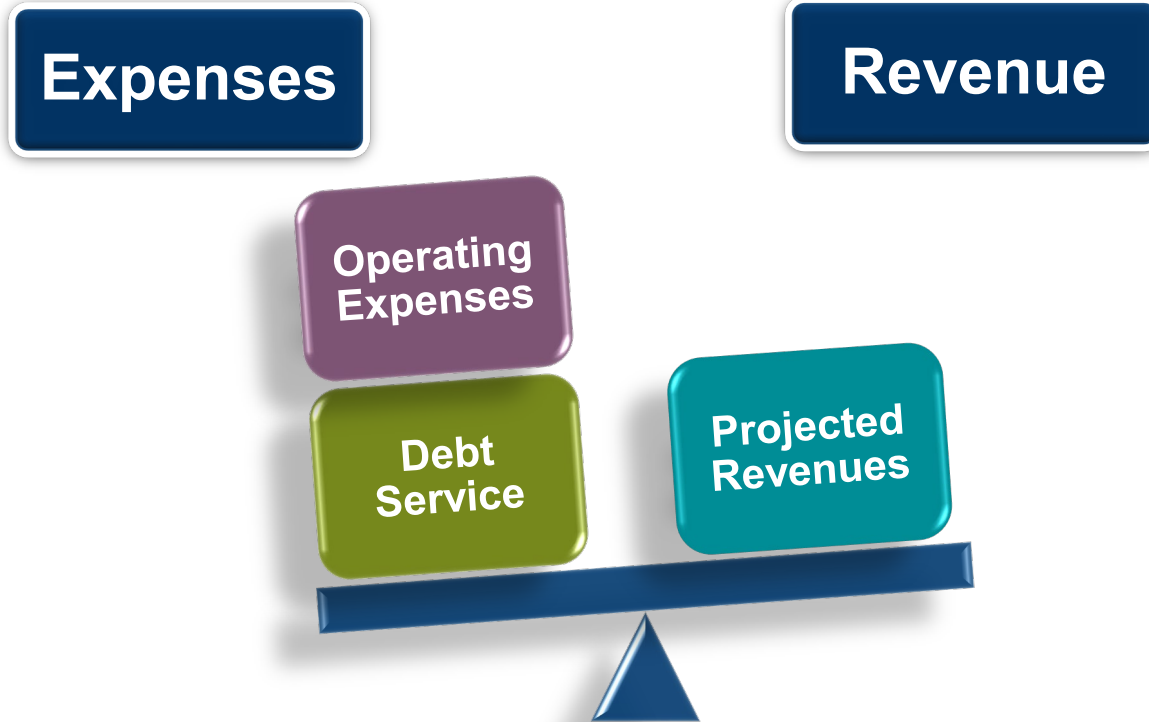
Identify the Financing Gap

- Determine amount of assistance needed to complete project & provide *reasonable* developer return

The Financial Gap: Sources & Uses



The Financial Gap: Ongoing Operations



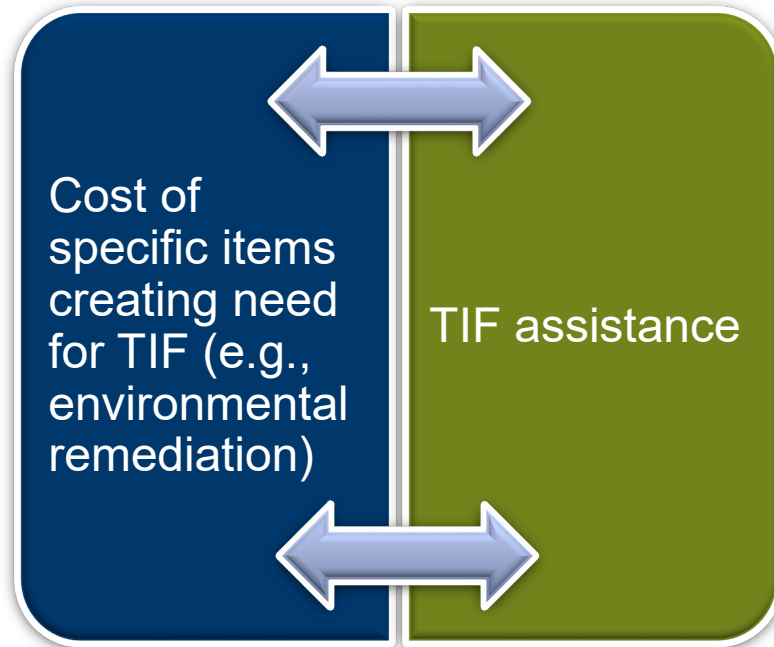
Identify the Financial Gap

- Best Practice
 - ✓ Require developer to submit project sources & uses, and ongoing cash flow projections *with and without* TIF support
 - ✓ Seek independent review of developer's project financials & opinion as to necessity for and amount of TIF assistance (*pro forma analysis*)
 - ✓ **Note:** Best practices most appropriate for income generating projects & real estate transactions, more difficult for owner-occupied industrial initiatives



Identify the Financial Gap: Alternative Solutions

When in-depth review isn't practical or desired, tie out assistance level to specific costs...



Mitigating Risk: It's All About Value

- Involve assessor in discussions EARLY
- Construction cost doesn't usually equal assessed valuation
- State assessed manufacturing property depreciates
- Don't rely solely on economic appreciation to make the numbers work
- Assessed vs. equalized values



Mitigating Risk: Developer Funds the Project

- “Pay-as-you-go”
 - ✓ Contractual agreement to pay developer certain percentage of tax increment it generates
 - ✓ Separate bond-like instrument (Municipal Revenue Obligation – MRO) developer can use as collateral for loan & payments may be assigned to lender
 - ✓ Municipality has no obligation to pay if no tax increment available

Best alternative to limit municipality’s financial risk

Mitigating Risk: Municipality Funds the Project

- Whether providing some or all funding, ensure your your taxpayers don't foot the bill
 - ✓ Value or debt service guaranteed by:
 - Letter of credit
 - Springing special assessment
 - Mortgage on TID project or other developer holdings
 - Pledged securities or personal guaranty
 - ✓ Restrictions on assessment appeals or tax-exempt use/Payment in Lieu of Taxes (PILOT) requirement

Mitigating Risk: Borrowing to Provide Incentives

Engage bond attorney early

Security provisions in developer agreements may trigger taxable financing requirement

Borrowing costs may increase

Don't provide up-front funding

Link payments to performance requirements & reimbursements

Contribute municipal capital pro rata to private investment (or last)

Phase costs in whenever possible

Mitigating Risk: Cash Flow Considerations

- Build a cushion into your cash flows
 - ✓ Plan to recover all project cost payments within 70%-80% of maximum allowable TID life
 - ✓ Structure debt & other obligations to require no more than 80%-90% of annual projected cash flows (comparable to revenue bond underwriting standards)
 - ✓ Get comfortable with the worst-case scenario!



Download the Presentation!





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