

TIF 101:

ADVICE FOR MUNICIPALITIES CONSIDERING THE FIRST USE OF TAX INCREMENT FINANCING

Part 2 in a 3-part series: How is the TIF Plan Approved?

By David Bushek and Rich Wood

This is the second article in a three-part series. Part 1 addressed questions regarding the preparation of a TIF plan and the appropriate use of TIF. This Part 2 will discuss the process for approval of a TIF plan. Part 3 will provide an overview of the effective use of a TIF contract and financing alternatives to implement a TIF plan.

Cities and counties that are considering the use of tax increment financing (TIF) for the first time, or that may have previously used TIF on a limited basis, frequently have several questions about the TIF plan approval process. This article is designed to address the most common questions that arise for approval of a TIF plan by a city or county (collectively referenced as "municipalities") under the Real Property Tax Incremental Redevelopment Act, Sections 99.800 to 99.865 (TIF Act). Additional specific procedural issues may arise during consideration of a TIF plan, and the municipality should consult with legal counsel in these cases.

Is A Public Hearing Required?

Yes. The TIF Act requires that the municipality's TIF commission hold a public hearing before approval of a TIF plan, approval of redevelopment projects and designation of a redevelopment area. The TIF Act does not require the governing body of the municipality to also hold a public hearing.

What Are The Notice Requirements For The Public Hearing?

Notice of the public hearing must be provided to (1) all taxing jurisdictions located wholly or partially within the redevelopment

area at least 45 days prior to the date of the public hearing, (2) the persons in whose name the general taxes for the last preceding year were paid on property lying within the redevelopment project or redevelopment area at least ten days prior to the date of the public hearing, and (3) the public by publication at least twice in a newspaper of general circulation in the area of the proposed development with the first notice published not more than 30 days prior and the second notice not more than ten days prior to the date of the hearing. Copies of the notice must also be sent to the Missouri Department of Economic Development.

The public hearing notices are required to contain (1) the time and place of the public hearing, (2) a description of the general boundaries of the proposed redevelopment area or redevelopment project by street location, where possible, (3) a statement that all interested persons shall be given an opportunity

to be heard at the public hearing, (4) a description of the proposed TIF plan or redevelopment project and a location and time where the entire plan or project proposal may be reviewed by any interested party, and (5) any other matters that the TIF commission may deem appropriate.

At What Point In Time Should A Municipality Send Out The Initial (45-Day) Public Hearing Notices?

Ideally, the municipality should have a complete TIF plan on file that contains or is accompanied by all information and documentation required by the TIF Act prior to mailing the initial notices to the taxing districts; some municipalities may send the initial notice when the TIF plan is nearly complete because the initial notice is mailed so far in advance of the public hearing. If the TIF plan is not yet complete, the taxing district notices may provide that the complete TIF plan will be on file with the municipality on a specific date that

Chart 1

Number of members appointed by:	Entity Creating TIF Commission				
	City (outside St. Louis County)	City (inside St. Louis County)	County (other than St. Louis County)	St. Louis County	St. Louis City
City or county creating the Commission	6	6	6	6	6
School districts	2	2	2	2	2
County in which located	2	3	0	3*	0
Other taxing districts	1	1	1	1	1
Total members	11	12	9	12	9

* These members are appointed by three cities that have TIF districts in the county.

is stated in the initial notice.

What Is The Makeup Of The TIF Commission?

Before using TIF, a municipality must create a TIF commission by ordinance. The composition of the TIF commission depends on (1) whether a city or county is undertaking the redevelopment project, and (2) the location of the municipality undertaking the redevelopment project, as described in Chart 1.

What Happens If The Other Taxing Districts Do Not Coordinate For Appointment Of A TIF Commissioner?

In each of the various locations described above, the TIF Act requires that one member of the TIF commission be appointed, in any manner agreed upon by the affected districts, to represent all other districts (besides the school districts and the county) that levy ad valorem taxes within the area selected for a redevelopment project or the redevelopment area. These other taxing districts must appoint one commissioner using any method to which they mutually agree. Ideally, each of the other taxing districts represented by this person will confirm to the municipality in writing their consent to a particular individual to sit on the TIF commission. Disputes involving the manner in which this commissioner is appointed should be resolved by the districts that are represented by this provision.

What Happens If The Taxing Districts Fail To Appoint Commissioners?

The TIF commission is specifically authorized by the TIF Act to hold meetings and conduct business with less than all seats filled. The number of seats filled is used to determine whether a quorum exists for a TIF commission to hold a meeting and conduct business. A quorum is always one more than half of a public body's occupied seats, unless adopted procedural rules establish a different requirement. For example, if the TIF commission is statutorily authorized to have 11 members, but only nine seats have been filled, then five members of the TIF commission must be present at a meeting to have a quorum and conduct business on behalf of the TIF commission.

Must The Municipality Investigate Alternative Proposals For Development Before Approving A TIF Plan?

Yes. The TIF Act requires that each municipality, or its TIF commission, must establish written procedures relating to bids and proposals for implementation of TIF redevelopment projects. There is little guidance provided in the TIF Act regarding what must be contained in the written procedures, except that the procedures must provide reasonable opportunity for any person to submit alternative proposals or bids. The written municipal procedures commonly provide that, when a TIF plan is proposed by a developer, the municipality will publish notice that the municipality will accept alternative bids and proposals for a designated period of time. The notice period typically overlaps with a portion of the initial 45-day notice period prior to the TIF commission public hearing.

If any alternative development proposals are submitted, these can be compared to the proposed development that is already on file with the municipality. The challenge that may arise in this situation is that the persons who may submit alternative development proposals do not have ownership or the right to purchase the property that is proposed for the redevelopment project area. When a TIF plan is prepared by the municipality, the written procedures should serve as a vehicle for the municipality to receive proposals for redevelopment in a blighted or substandard area in need of TIF assistance.

What Happens At The Public Hearing?

Once the municipality has established the TIF commission, a TIF plan has been prepared, notice of a public hearing has been provided, and a notice for alternative bids and proposals has been provided in accordance with procedures adopted by the municipality, then the TIF commission may hold the public hearing to consider the TIF plan. At the public hearing, the commission receives evidence and testimony from the developer, the staff of the municipality, any representatives of affected taxing jurisdictions, any affected property owners, and the general public regarding the proposed TIF plan, redevelopment projects, and designa-

tion of the redevelopment area. Once all evidence and testimony has been received, the TIF commission can close the hearing and consider the proposed TIF plan, redevelopment projects, and redevelopment area.

What Is The Role Of TIF Commissioners And What Questions Can They Ask?

The TIF commission makes a recommendation on a proposed TIF plan to the governing body of the municipality. It does not have the power to grant final approval of TIF plans, redevelopment projects, or the establishment of redevelopment areas – that final approval rests with the governing body of the municipality. At the public hearing, TIF commissioners may ask questions of the developer, municipal staff, and any other persons present at the hearing regarding any topics relevant to the TIF commission's consideration of the TIF plan, redevelopment projects, and redevelopment area. Each individual TIF commissioner should participate in the public hearing and deliberations regarding a TIF plan, evaluate the evidence and testimony received in the public hearing, and vote on a recommendation to the governing body. The TIF commission has the power to negotiate and enter into a TIF redevelopment contract with a developer and issue bonds to implement a TIF plan, but in most municipalities these functions are performed by the governing body of the municipality.

May The TIF Commission Continue The Public Hearing?

The public hearing may be continued one or more times as deemed necessary by the TIF commission to another specific date, time, and location without further mailed or published notice, provided that the TIF commission adopts a motion for such continuance during the public hearing and enters the motion in the minutes of the meeting. However, for those counties that are required by Section 99.820.3 RSMo to have a county TIF commission, the hearing may not be continued for more than 30 days beyond the date on which the hearing is originally opened unless the longer period is requested by the chief elected official of the municipality creating the commission and approved by a majority of the TIF commission.



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Does The TIF Commission Also Review Other Requests For Public Funding Assistance, Such As A Request To Form A Transportation Development District (TDD) Within The TIF Redevelopment Area?

It is common for a developer to seek the formation of a special funding district, such as a transportation development district (TDD) or community improvement district (CID), along with the approval of a TIF plan. The special funding district may impose a sales tax, special assessments, or another authorized funding source, which may also be used to fund eligible reimbursable project costs or repay bonds that are issued for a TIF redevelopment project. The TIF commission's review of a special funding district is not required by statute, but the TIF commission may review the financial effect that a special funding district will have on the generation of TIF revenue and the repayment of bonds or reimbursement of redevelopment project costs. It is common for the TIF commission and governing body to review the projected revenue that is expected to be generated

by a special funding district in conjunction with the estimated TIF revenues. This will allow the TIF commission to fully analyze the duration of the TIF and the effect of all public funding sources for the redevelopment projects. A TDD and CID is ultimately formed by court order and municipal ordinance, respectively, and the statutory process for each is distinct from the TIF approval process.

What Happens If One Of The Commissioners Fails To Attend A Meeting?

In the event that the TIF plan, redevelopment projects, and redevelopment area are considered at multiple meetings, a TIF commissioner that is absent from one or more meetings can still participate in the final recommendation if all evidence and testimony are available to the commissioner prior to the vote.

What Action Must The TIF Commission Take Following The Public Hearing, And Are There Time Limitations For Taking These Actions?

After deliberating, the TIF commission typically considers adoption of

a resolution that makes a recommendation to the governing body regarding the findings required under the TIF Act, the proposed TIF plan and projects, and the proposed redevelopment area. The TIF commission is required to vote on a proposed TIF plan, redevelopment projects, and designation of a redevelopment area within 30 days after the close of the public hearing. Once the TIF commission has made a recommendation, the proposed TIF plan is forwarded to the governing body for consideration. The TIF commission is required to make its recommendation to the governing body within 90 days after the close of the public hearing.

Is A TIF Commission's Recommendation Binding On The Governing Body Of The Municipality?

No. However, the TIF Act requires that if the TIF commission makes a recommendation in opposition to a proposed TIF plan, redevelopment project or designation of a redevelopment area, then the governing body must approve the plan, project, or designation of a redevelopment area by a two-thirds majority vote.

What Findings Are Required To Be Made By The Governing Body?

Prior to the adoption of a TIF plan, the TIF Act provides that the governing body must make six specific findings by ordinance or resolution, as applicable:

(1) The redevelopment area on the whole is a blighted area, a conservation area, or an economic development area, and has not been subject to growth and development through investment by private enterprise and would not reasonably be anticipated to be developed without the adoption of tax increment financing. This includes, but is not limited to, a detailed description of the factors that qualify the redevelopment area or project as a blighted area, conservation area, or economic development area, and an affidavit, signed by the developer or developers and submitted with the TIF plan, attesting to the blight or other characteristics of the property. The second part of this finding is commonly referred to as the "but for" test, which means that "but for" public assistance through the use of TIF, development of the redevelopment area would not reasonably be expected to occur.

(2) The TIF plan conforms to the municipality's comprehensive plan for the development of the municipality as a whole.

(3) The estimated dates for completion of any redevelopment project and retirement of obligations incurred to finance redevelopment project costs, which cannot be more than 23 years from the adoption of the ordinance approving a redevelopment project.

(4) A plan has been developed for relocation assistance for businesses and residences.

(5) A cost-benefit analysis has been prepared showing the economic impact of the TIF plan on each taxing district that is at least partially within the boundaries of the redevelopment area. The analysis must show the impact on the economy if the redevelopment project is not built, and is built pursuant to the TIF plan under consideration. The cost-benefit analysis must include a fiscal impact study on every affected political subdivision, and sufficient information from the developer for the TIF commission to evaluate whether the redevelopment project as proposed is financially feasible.

(6) That the TIF plan does not include the initial development of any gambling establishment.

How Does The TIF Commission Decide If The "But For" Test Is Met?

The developer's affidavit should attest to the fact that the developer would not construct the project if TIF assistance is not provided. Some municipalities require submission of a pro forma or similar analysis showing the developer's expected rate of return on its investment in the proposed redevelopment project both with TIF assistance and without TIF assistance. If the rate of return without the use of TIF assistance is too low for the developer to undertake the project, this may be viewed as evidence that the "but for" test is met. If the report shows an acceptable rate of return if TIF assistance is provided, this may be viewed as evidence that the project is financially feasible for the developer.

Must A Redevelopment Project Be Approved At The Time Of Approval Of The TIF Plan?

No. A municipality may delay approval of a redevelopment project for up to ten years after the TIF plan is approved. In addition, the TIF Act requires that TIF bonds must be retired no more than 23 years from the date that the redevelopment project is approved by ordinance. If these maximum time periods are used, the result is that a TIF plan may remain in effect for up to 33 years.

What Action Is Required Of The Governing Body, And Are There Time Limitations For Taking These Actions?

Within 14 to 90 days after the completion of the public hearing by the TIF commission, the governing body must introduce ordinances that approve the TIF plan and redevelopment projects, and designate redevelopment project areas. The ordinances should also make the statutorily required findings, designate the redevelopment area, and designate the developer. If an ordinance for a redevelopment project is not introduced within 90 days after the initial public hearing, then another public hearing will need to be conducted to then introduce the redevelopment project ordinance within the required

14- to 90-day window after the conclusion of the public hearing.

May Changes Be Made To The TIF Plan, And If So, What Is Required?

Changes may be made to a TIF plan, redevelopment project, or redevelopment area, and the requirements that must be met to make such changes depend on the timing of the changes, as follows:

(1) Prior to the conclusion of the public hearing, changes may be made to the TIF plan, redevelopment project, or redevelopment area, provided that each affected taxing district is given written notice of the changes at least seven days prior to the conclusion of the hearing.

(2) After the public hearing but prior to the adoption of an ordinance approving a TIF plan or redevelopment project, or designating a redevelopment area, changes may be made without another hearing if the changes do not enlarge the exterior boundaries of the redevelopment area, do not substantially affect the general land uses established in the TIF plan or substantially change the nature of the redevelopment projects. If no hearing is required, notice of the changes must be given by mail to each affected taxing district and by publication in a newspaper of general circulation in the area of the proposed redevelopment not less than ten days prior to the adoption of the changes by ordinance. If a new public hearing is required, then all of the mailed and published notices discussed above must occur before the public hearing.

(3) After the adoption of an ordinance approving a TIF plan or redevelopment project, or designating a redevelopment area, no ordinance may be adopted altering the exterior boundaries, affecting the general land uses established pursuant to the TIF plan or changing the nature of the redevelopment project without complying with the procedures provided in the TIF Act pertaining to the initial approval of a TIF plan or redevelopment project and designation of a redevelopment area. □

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