ICSC Webinar

NY TIF - The New Opportunity for Redevelopment

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Moderator

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Agenda

- Acknowledgments
- Introductions
- How TIF fits into the Governor's Economic Development Agenda
- TIF 101 from Lawyer's Perspective
- How TIF can be Deployed for Transformative Change
- Q & A

How TIF fits into the Governor's Economic Development Agenda

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TIF 101 from a Lawyer's Perspective

Kenneth S. Kamlet, Esq.

Attorney, Hinman, Howard & Kattell, LLP

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Outline

1. What is “TIF”?
2. Eligible uses of TIF funds
3. Recent changes to New York TIF law
4. Elements of New York’s TIF law
5. TIF process
6. Potential complications
   a) Dependent school districts
   b) Constitutional limitations
   c) Documenting “blight”
7. Ideal uses of TIF

1. What is TIF?

TIF is a self-financing economic development tool used widely and successfully to revitalize “blighted” properties by investing in needed infrastructure.

It can be used by localities to stimulate private investment in targeted areas by “*capturing the future tax benefits of real estate improvements, in order to pay for the present cost of those improvements*” (CDFA).

TIF is not a tax and doesn’t increase the burden on taxpayers. To the contrary, by promoting expansion of the tax base, it reduces the burden on individual and business taxpayers

1. What is TIF?

TIF bonds are "*revenue bonds*." Repayment comes solely from the "tax increment" due to new development.

Because TIF bonds aren't repaid from the general treasury, they don't count against the locality's *constitutional debt limit*.

Using TIF to expand the tax base can also help a locality meet its 2-percent cap under the Tax Cap law, because a "growth factor," which considers positive growth, is subtracted from the locality's baseline tax levy amount in computing the cap.

2. When Can TIF Be Used And For What?

There are four main restrictions on the use of TIF bonds:

They can only be used:

1. to promote the redevelopment of "blighted" areas;
2. where such redevelopment "cannot be accomplished by private enterprise alone (the "but-for" test)
3. in accordance with a locally-approved development plan; and
4. for specified "objects and purposes"

2. When Can TIF Be Used And For What?

What are allowable "objects and purposes"?:

- acquisition of land
- demolition and removal of structures and site preparation
- construction of streets, walkways, docks, drainage, parking, flood control, water and sewer and other public utilities, parks and playgrounds
- other public improvements or services integral to the authorized redevelopment plan for which a "period of probable usefulness" has been established by the Local Finance Law (§ 11.00)

"Site preparation" would include the cleanup of "brownfield" sites that meet the "blight" definition

3. Why Are The Recent Changes To The TIF Law So Important?

- TIF legislation was first enacted in NY in 1984 as part of the Municipal Redevelopment Law (MRL)
- In the 28 years that followed, TIF has only been used in New York twice:
  - In **1987**, for $1.2 million of public improvements along the Rt. 9A Corridor in the *Village of Elmsford, Westchester County*
  - In **1994**, for $8 million of infrastructure improvements to support a 435,000-SF addition to the Eastview Mall (*Town of Victor, Ontario County*)

The law's major flaw was it allowed only municipalities to allocate tax increments toward repayment of TIF debt

Without school tax revenues, TIF bonds were viewed as too risky
This year's TIF amendments changed that….

3. Why Are The Recent Changes To The TIF Law So Important?

What Happened this Year?

- Thanks to the persistent efforts of enlightened legislators of both parties (notably, Catharine Young and Tom Libous in the Senate, and Robin Schimminger and Donna Lupardo in the Assembly), and the strong leadership of Governor Cuomo and his economic development team, the flaw in the law was fixed.

- It was done as part of the 2012 package of budget bills—specifically, Part U of the Education, Labor & Family Assistance (ELFA) bill. A. 9057 (Chapter 57), 2012 N.Y. ALS 57, 2012 N.Y. Laws 57.

3. Why Are The Recent Changes To The TIF Law So Important?

The new law added:

- a finding that "sound development… of blighted areas *increases public school enrollment* by providing affordable housing and employment opportunities *and the need for expanded public education facilities and services*."
- a provision for the *review of preliminary redevelopment plans* by the board of education of any school district in the project area
- a requirement that any redevelopment plan be submitted to the *board*s *of education* of the school districts impacted for *review and approval*
- a requirement that, for a board of education to be subject to such redevelopment plan and allocation of taxes, it *must adopt an approval resolution*
- language clarifying that, while the municipality issues tax increment bonds and pledges earmarked real property taxes to repay those bonds, the *"indebtedness contracted*" *is not* the indebtedness *of any school district*

4. Elements of New York's TIF Law

- Supports *industrial, commercial, residential, or mixed-use projects*

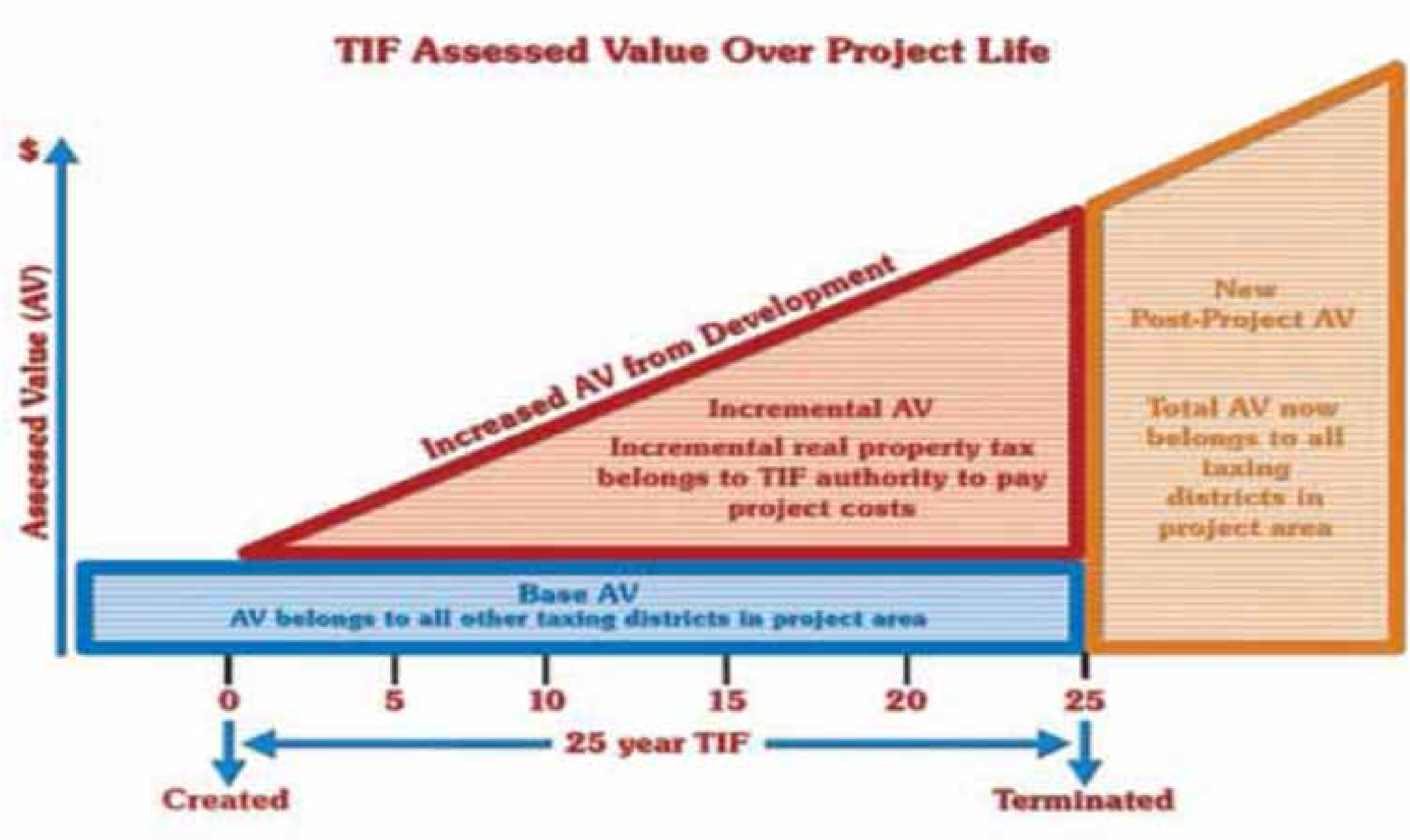
- TIF bonds and notes, including interest, are *tax-exempt*

- "*Project area*" need only be one in which blighted buildings or land predominate

- Municipalities *may not pledge full faith and credit* to backstop TIF bonds

5. The TIF Process

- Municipality and developer discuss public-private partnership
- Municipality performs "*survey area study*"
- Local legislature chooses "*project area*" (TIF district)
- Municipality prepares "*preliminary plans*"
- Local *planning agency review*s for Comp.Plan consistency
- Local School board reviews
- After approving prelim. plan, local legislature prepares *redevelopment plan*
- If *school board* wishes to opt-in, it must issue a *resolution of approval*
- Following re-review by planning agency and public hearing(s), *local legislature adopts plan*
- TIF bond is issued; project proceeds



Source: TIERRA GRANDE- "ABCs of TIF" by Robert R. Eversberg & Paul R. Goebel; cited in CDFA, 2007 Practitioner's Showcase: "Best TIF Program"

6. Potential Complications

- **a) Limitations on School Expenditures**
  - How does the 2012 legislation help the "Big Five" cities (NYC, Buffalo, Rochester, Yonkers, and Syracuse), which have dependent school districts whose finances they control?
    - The new law clarifies that allocating school revenues to support TIF projects is a valid school district "purpose" (under the NY Constitution, Art. VIII, §2)

- Even dependent school districts have some budgetary autonomy due to State and local "Maintenance of Effort" mandates

6. Potential Complications

- **b) Constitutional Limitations**
  - A 1983 constitutional amendment (Art. XVI, §6) allows municipalities but not school districts to contract TIF-backed indebtedness
    - Under the new TIF law, school districts may *allocate* incremental revenues to support a municipality's TIF bonds, but may not issue TIF bonds and are not deemed to have *contracted indebtedness*
  - The Constitution (Art. VIII, §2) also requires every municipality and school district to make annual appropriations to repay G-O debt—or to *set aside* a "sufficient sum" from "the *first revenues* thereafter received" to pay this debt. G-O bondholders may file suit to ensure that these "first revenues" are set aside to repay G-O debt.
    - The TIF law makes the pledge of real property taxes allocated and paid "a first lien on the revenues derived therefrom" and specifies that TIF bonds and notes "shall not be subordinate" to any other debt with respect to the pledge of such revenues
    - Critics are concerned that bond counsel will not be able to give a "clean" opinion in support of G-O bond issuance in the face of this uncertainty
    - There is no real inconsistency: Just as the Constitution exempts TIF bonds from the debt limit—because they are repaid from new revenues not tied to the Treasury and wholly attributable to TIF financing, earmarking incremental revenues (that would not otherwise have existed) to repay TIF debt does not detract from the general tax revenues available to repay G-O bonds.

6. Potential Complications

- **c) Documenting "Blight"**
  - MRL Definition: Areas where there is "a *predominance* of economically unproductive lands, buildings or structures, the redevelopment of which is needed to prevent further deterioration which would jeopardize the economic well-being of the people."
  - Clarification in the *Kaur* (2010) and *Goldstein* (2009) cases:
    - No need for "the degree of deterioration or precise percentage of obsolescence… [to] be arrived at with precision"
    - "[B]light is an elastic concept that does not call for an inflexible, one-size-fits-all definition"
    - Factors relevant to a "blight" finding:
      - irregularity of plats, inadequacy of streets, diversity of land ownership, incompatibility of land use types, overcrowding, crime, lack of sanitation, drain on municipal services, fire hazards, traffic congestion, pollution

7. Ideal Uses Of TIF

- Can be used on either a site-specific or area-wide basis
- Large, mixed-use projects have the benefit of not putting “all eggs” in one “basket” and may be more attractive to investors
- TIF is better-suited to large projects than small ones because of the high transaction costs associated with TIF deals
- TIF will be particularly attractive to older urban areas, particularly in Upstate NY, where “blight” abounds and high debt loads preclude use of G-O bonds
- Many Upstate cities and towns, including Binghamton and Clarkstown, have Comprehensive Plans which already incorporate TIF in their economic development strategies
- Also, many areas of the State include locally designated, State-recognized “*Brownfield Opportunity Areas*” (BOAs).

7. Ideal Uses Of TIF

BOAs:

- include multiple “brownfield” sites—i.e., they typically qualify as “blighted”; many of these sites are “strategically located
- are the result of area-wide planning to build consensus on future uses with an emphasis on “strategic brownfield sites”
- build multi-agency and private sector partnerships to leverage investments in neighborhood and community revitalization

To date, the Department of State has awarded grants for more than 120 BOA projects statewide. Virtually all designated BOA areas would be excellent candidates for TIF projects.

7. Ideal Uses Of TIF

- Late last year, Governor Cuomo launched his "New York Works Agenda" to invest in job-creating road, bridge, park, energy and water infrastructure projects

  - The Governor had to come up with creative finance methods because "the state is too close to its debt ceiling to simply borrow money to pay for the major projects"

  - These creative finance methods include public-private partnerships, such as the investment of union pension funds in road and bridge projects (which will create jobs for union workers)

  - *TIF*, which does not erode the constitutional debt limit, *is another technique for fostering public-private partnerships to create jobs and economic development*—it can be used by municipalities and IDAs in conjunction with private developers

Conclusions

- TIF bond sales rose from ~$1.7 billion/yr in ‘90-‘95 to $3.3 billion/yr in ‘05-‘10
- As of ’04-’05, TIF was the second most widely used economic development tool (next to general fund revenues) by municipalities of ≥10,000 and counties of ≥50,000
- From ’05 to ’10, seven states generated more than $500 million apiece in TIF bond revenues (CA, CO, MO, PA, MN, GA, and CT)
- With the 2012 TIF amendments, NY is now in a position to take advantage of the opportunities provided by TIF
- Shopping Center and mixed-use projects are among those that can benefit from TIF
- Additional TIF amendments (e.g., inclusion of incremental sales tax revenues as a funding source) could further improve this tool—but *the onus is on the development community to first show that we will use this tool to boost the local and state economies*

How TIF can be Deployed for Transformative Change

G. Lamont Blackstone

Principal

G. L. Blackstone & Associates LLC

Tax Increment Finance – The Basic Math of TIF

Art vs Science

Before TIF:

Market Value $70,000

	Residential	Commercial
Value	$ 70,000	$ 70,000
x Assessment Ratio	0.19	0.32
Assessed Value:	$ 13,300	$ 22,400
x Tax Levy	0.0572	0.0572
Tax	$ 760.76	$ 1,281.28

After TIF:

Market Value $600,000

	Residential	Commercial
Value	$ 600,000	$ 600,000
x Assessment Ratio	0.19	0.32
Assessed Value:	$ 114,000	$ 192,000
x Tax Levy	0.0572	0.0572
Tax	$ 6,520.80	$ 10,982.40

Increment:

Market Value $530,000

	Residential	Commercial
Market Value Increase	$ 530,000	$ 530,000
Property Tax Increase	$ 5,760.04	$ 9,701.12
Base Tax	$ 760.76	$ 1,281.28
Tax Increment	$ 5,760.04	$ 9,701.12
Total Tax	$ 6,520.80	$10,982.40

TIF & The Funding Gap

- Definition of the Funding Gap – that portion of the total development costs of a project which is not covered 100% by sources of private capital seeking risk-adjusted and market-rate returns.
- Return on Total Capital (ROTC) – the threshold of project financial feasibility
- The Funding Gap establishes the basis for meeting the “but-for” test.

TIF Examples in Other States

- **City Heights Retail Village – San Diego, CA**

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- **City Heights Retail Village – San Diego, CA:**
  - o $16mm TIF bond issue – small deal/large city
    - o Total development costs of approximately $33mm
    - o Bond proceeds used for land cost write-down & environmental remediation
    - o Increment limited by Proposition 13
  - o 110,000 sq. ft. supermarket-anchored shopping center on an under-utilized 8-acre site
    - Assemblage of 50 separate parcels & two city blocks
  - o Final phase of a master redevelopment program which included a new police substation, public library, community gym & continuing education ctr.

TIF Examples in Other States

- **Harbor Point Project – Stamford, CT:**
  - o $145mm bond issue – large deal/small city
    - o Net proceeds of $110.7mm (76% of total issue amount)
    - o 3 separate tranches -- $64.5mm/$64.5mm/$16mm
  - o 6mm sq. ft. TOD project
    - Residential/retail/office/hotel
    - Mixed-use with significant vertical elements
  - o 66-acre TIF district
  - o Phase 1 total development budget of $816mm
    - o TIF bonds were 18% of total development budget
  - o City of Stamford – population of 123,000

Design Considerations Affecting Bond Issue Sizing:

-- Bond issues range from $8mm to $150mm

-- District sizing or project-specific structure

-- Tax exempt vs. taxable status

-- Claimants to the increment (e.g., school districts & counties)

-- Duration of the capture period

-- Senior vs. subordinate bond tranches

-- Capital market conditions & interest rates

TIF Transaction Items & Team-Building

- Blight findings
  - o Urban planning firm and/or
  - o Development consultant
- Development project feasibility
  - Development consultant or financial analyst
  - Financial advisor
- Attorney review & opinions
  - Corporation counsel & counsel to the legislative body
  - Bond counsel
  - Environmental counsel (for EIS)
- Preliminary plan potentially including an EIS
  - Development consultant
  - Environmental counsel

TIF Transaction Items & Team-Building (cont.)

- Redevelopment plan
  - o Financial analyst/advisor
  - o Development consultant
- TIF projections
  - Financial advisor and/or financial analyst
  - Municipal assessor's office
- Bond issue structuring & underwriting
  - Investment banker
  - Bond counsel
  - Financial advisor

Some Risk Mgmt. Issues for TIFs

- **No buildings; no users. No users; no increment.**
  - •Review project marketability & feasibility
  - •Incorporate conditions precedent clauses for key development milestones, e.g., pre-leasing
- **See all the pieces of the puzzle.**
  - •Understand the total capitalization of the balance of the project
  - •Review the developer's funder commitment letters as early as possible for potential conflicts with the TIF documents

Some Risk Mgmt. Issues for TIFs (cont.)

- **Time is the common enemy of both public & private sector partners.**
  - Compress time frames for deal approvals and execution
  - Anchor tenants may elect to go elsewhere if projects take too long to execute
- **Don’t let appeals peel away the increment.**
  - The importance of the Assessor’s Office as a team member
  - Legality of waiver of property tax appeal clauses?

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Q & A

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