
**POOLING TAX INCREMENT FINANCING FOR REDEVELOPMENT IN
CLEVELAND: THE LAS VEGAS MODEL**

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INTRODUCTION

Tax increment financing (“TIF”) is a method of financing real estate development costs by tapping into potential future property tax revenues. Different states employ TIF in different ways but the essential mechanics are that a municipality agrees to apply future increases in property tax resulting from the improvements a developer plans to make to a piece of property in a way that benefits the developer's project. The developer can then use this anticipated revenue stream to secure financing for the project and offset certain costs of the development project. The arrangement is attractive to the municipality because it offers a way to encourage development within its borders without raising the taxes of its residents. From the developer's perspective, TIF helps fill financing gaps and provides a revenue stream which can be used to leverage the funds that are needed to begin a project.

The City of Cleveland typically approves TIF on a parcel by parcel basis under: (i) Ohio Revised Code (“ORC”) § 5709.41 (available for properties that were at one point owned by the

City) or (ii) ORC § 5709.40(B) (available for any property, improvements to which are found to serve a "public purpose" to the extent that the TIF proceeds will be used on "public infrastructure improvements").¹ Under these approaches, the developer agrees to make service payments in lieu of increased property taxes attributable to the developer's improvements, which the City then allocates to specific, predetermined costs associated with the developer's project. In other words, TIF in Cleveland is generally conducted on an individual parcel basis and the TIF funds generated are usually expended on the project that generates them.²

This paper examines tax increment financing as it is utilized in Las Vegas, Nevada (the "Las Vegas Model"). As explained below, TIF in Las Vegas is generated by all of the properties located within a designated downtown redevelopment area and deposited into a single fund that a local redevelopment agency uses for improvements it makes throughout the area to reduce blight and attract other businesses to it. The agency also uses this fund to make some property tax rebates directly to specific developers for costs attributable to their projects that qualify as public infrastructure. This paper further addresses whether a similar mechanism is available under Ohio law and, in particular, whether a neighborhood-based community development corporation ("CDC") could manage such a fund to spur development consistent with its neighborhood redevelopment plan.

¹ See THE URBAN DEVELOPMENT LAB (JASON KRAL, ALEXANDER MCELROY AND MATTHEW ROSSMAN), TAX INCREMENT FINANCING IN CLEVELAND (August 30, 2009), Appendix A. Out of the 14 TIF arrangements currently in operation in the City of Cleveland, 11 were approved pursuant to § 5709.41 and 2 were approved pursuant to § 5709.40(B).

² *Id.*

DISCUSSION

1. The Las Vegas Model

In order to understand how tax increment financing is utilized in Las Vegas, an explanation of Nevada's laws enabling the creation of local redevelopment agencies ("RDAs") is essential.³ Nevada law allows every city and county to create its own redevelopment agency as a means for addressing blighted areas within its boundaries.⁴ An RDA is activated by a resolution of the legislative body of the city or county acknowledging the need for its creation.⁵ An RDA is a public body charged with working in concert with local government, the community and private sector to reverse physical, economic and social blight within its designated boundaries.⁶ To do so, RDAs are granted a broad range of governmental powers,⁷ including the ability to: engage in land-use planning;⁸ borrow money and receive grants from public and private sources;⁹ exercise eminent domain;¹⁰ issue bonds;¹¹ and most importantly, for purposes of this paper, receive and expend TIF proceeds deriving from all properties within its boundaries.¹²

Critical to the formation of an RDA are the designation of a redevelopment area and adoption of a comprehensive redevelopment plan. In order to be established as a redevelopment area, an area must be predominated and injuriously affected by buildings and land that are

³ See generally Community Redevelopment Law, NEV. REV. STAT. tit. 22, ch. 279 (2009).

⁴ NEV. REV. STAT. § 279.426.

⁵ NEV. REV. STAT. § 279.428.

⁶ City of Las Vegas Redevelopment Agency, <http://lvrda.org/> (last visited June 28, 2010).

⁷ NEV. REV. STAT. § 279.460.

⁸ NEV. REV. STAT. §§ 279.516-279.609.

⁹ NEV. REV. STAT. § 279.490.

¹⁰ NEV. REV. STAT. § 279.492.

¹¹ NEV. REV. STAT. § 279.634.

¹² NEV. REV. STAT. § 279.676.

detrimental or inimical to public health, safety or welfare.¹³ The redevelopment area must include a blighted area¹⁴ but it may also include buildings and land that are not blighted if those parcels are deemed necessary to the effective redevelopment of the area.¹⁵ Once the boundaries of the area have been settled upon, the RDA works in cooperation with the planning commission and legislative body of the city or county in which it is located to prepare a comprehensive redevelopment plan setting forth how the RDA plans to remedy blight within its boundaries.¹⁶ The plan must be formally approved by the legislative body of the city or county.¹⁷ Once the plan is approved, the entire redevelopment area is conclusively presumed to be a blighted area.¹⁸

Las Vegas created an RDA in 1986 (the "LVRDA").¹⁹ Its boundaries encompass roughly 4,000 acres and include downtown Las Vegas.²⁰ By legislative action, the governing board of the LVRDA consists of the Mayor and City Council of Las Vegas²¹ (*note*: alternatively, the City Council could have provided that governing board members come from the community at large).²² The LVRDA is guided by an extensive redevelopment plan, which provides it with broad powers, within its boundaries, to acquire (including by eminent domain), manage and demolish property, redevelop and rehabilitate land and existing structures, and provide for utilities, roads, streets, landscaping, parking facilities and other public improvements.²³

¹³ NEV. REV. STAT. § 279.519.

¹⁴ *See generally* NEV. REV. STAT. § 279.388 (definition of blighted area).

¹⁵ NEV. REV. STAT. § 279.519.

¹⁶ NEV. REV. STAT. §§ 279.516-279.609.

¹⁷ NEV. REV. STAT. § 279.570.

¹⁸ NEV. REV. STAT. § 279.589.

¹⁹ City of Las Vegas Redevelopment Agency, <http://lvrda.org/76.htm> (last visited June 28, 2010).

²⁰ *Id.*

²¹ City of Las Vegas Redevelopment Agency, Frequently Asked Questions, *available at* http://lvrda.org/files/RDA_FAQ_brochure.pdf.

²² NEV. REV. STAT. § 279.440.

²³ AMENDED AND RESTATED CITY OF LAS VEGAS REDEVELOPMENT PLAN, Section III, Part A (City of Las Vegas Redevelopment Agency) *available at* <http://www.lasvegasnevada.gov/files/RDAplanAmendment.pdf>.

TIF plays two roles in the LVRDA. Most significantly, as with other RDAs, the LVRDA's budget comes principally from tax increment financing derived from all of the properties within the LVRDA's boundaries.²⁴ Generally speaking, the amount of property tax derived from these properties was "frozen" at the point that the ordinance creating the LVRDA was passed.²⁵ Local government continues to receive this amount each year; all subsequent increases in the amount of property tax attributable to those properties (the "increment") are directed to the LVRDA.²⁶ From this increment, eighteen percent is deposited into a Housing Set-Aside fund for affordable housing within the redevelopment area, and eighty-two percent is deposited into a fund to support the LVRDA's operations and for specific projects consistent with the redevelopment plan.²⁷

Since 1986, the LVRDA has received \$166 million in property tax increment, or roughly \$7.5 million per year.²⁸ According to its 2008-2009 Budget, the LVRDA allocated thirteen percent of its budget to its operating costs, and invested 87% directly into redevelopment projects through its existing programs.²⁹ For example, some of the LVRDA's 2008 redevelopment activities included: funding \$50,000 of exterior upgrades to the El Cortez Cabana Suites through the agency's Visual Improvement Program;³⁰ partnering with property owners to fund a \$5.5 million Fremont Street streetscape improvement project;³¹ and funding renovation of the Historic Fifth Street School that now provides tenant space to an assortment of local arts and

²⁴ APPLIED ANALYSIS, ECONOMIC IMPACT ANALYSIS 4 (City of Las Vegas Redevelopment Agency) (Jan. 16, 2009) *available at* http://www.lasvegasnevada.gov/files/RDA_EconImpactReport.pdf.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ ANNUAL REPORT 52 (City of Las Vegas Redevelopment Agency) (2008) *available at* http://www.lvrda.org/files/2008_RDAannualReport.pdf.

³¹ *Id.* at 2.

architecture organizations.³² The LVRDA also administers a Fast Track program to assist businesses with expediting entitlements and permitting within the redevelopment area³³ and the Retail Downtown Las Vegas program to assist retailers to find locations and aid developers in finding tenants.³⁴

The other way in which the LVRDA utilizes TIF is by offering property tax rebates to individual developers to reimburse them for certain public infrastructure expenses they incur on their projects.³⁵ This is more akin to the individual parcel TIF commonly utilized in Ohio. That is, the individual developer is reimbursed by the LVRDA using tax increment deriving from his or her project.

There are several noteworthy limitations on the rebates individual developers receive. First, the value of the rebate cannot exceed 41% of the increment generated by the developer's property (18% must go to the Housing Set-Aside fund and at least 41% must go to the LVRDA's general budget).³⁶ Second, the rebates only apply to expenses incurred by the developer for public infrastructure costs related to the project (for example, constructing streets, curbs, gutters, water lines, storm drainage facilities, traffic signals, paving, sidewalks, flood control improvements, and utilities).³⁷ The LVRDA holds the funds available for the rebate and reimburses the developer annually upon the developer's providing evidence of the qualifying expenses. Finally, property tax rebates are only available for projects that the LVRDA

³² *Id.* at 5.

³³ City of Las Vegas Redevelopment Agency, <http://lvrda.org/146.htm> (last visited June 28, 2010).

³⁴ City of Las Vegas Redevelopment Agency, <http://lvrda.org/143.htm> (last visited June 28, 2010).

³⁵ ECONOMIC IMPACT ANALYSIS, *supra* note 24 at 6.

³⁶ TAX INCREMENT FINANCING APPLICATION PROCEDURE B (City of Las Vegas Redevelopment Agency) *available at* http://lvrda.org/files/TIF_Application_FINAL_12-24-2007.pdf.

³⁷ *Id.* at C-D.

determines are of benefit to the redevelopment area or surrounding neighborhood and for which there is no other reasonable means of financing the qualifying expenses.³⁸

As of January 2009, the LVRDA had only expended \$2.5 million on tax increment rebates in its history.³⁹ As of this date, it had committed up to \$49.2 million in additional future TIF rebates to ongoing development projects.⁴⁰ Relative to the \$166 million the LVRDA has received in property tax increment since 1986, individual property tax rebates have been a small expenditure thus far.

In summary, the Las Vegas Model provides for TIF revenue generated by all of the properties within the city's redevelopment area to be pooled in a fund that is used for continued redevelopment of the area. The fund is managed by a public, city-controlled agency pursuant to a comprehensive redevelopment plan. It also allows for a portion of the tax increment associated with particular properties to be rebated to the developers of those properties for certain public infrastructure expenses associated with their projects.

2. Statutory Bases for Tax Increment Financing in Ohio

Ohio law provides multiple mechanisms for tax increment financing. Although none exactly match the Las Vegas Model, there are elements of the model present within each. We briefly examine below the analogous features of each of these mechanisms, along with a discussion of Cleveland's experience with each.⁴¹

³⁸ *Id.*

³⁹ ECONOMIC IMPACT ANALYSIS, *supra* note 24 at 6.

⁴⁰ *Id.*

⁴¹ For a more detailed description of the features of mechanisms for TIF most commonly utilized in Cleveland, see TAX INCREMENT FINANCING IN CLEVELAND, *supra* note 1.

Before embarking on this, it is worth noting that school funding has a significant effect on the amount of money Ohio TIF generates under all of the mechanisms discussed below. In Cleveland, for example, 55.09% of the property tax on a parcel of commercial property is allocated to the Cleveland Municipal School District and so any use of TIF potentially diverts funds from the CMSD.⁴² For each of the mechanisms discussed below, Ohio law requires approval by the local school board for a TIF that will last for longer than 10 years or pursuant to a TIF in which more than 75% of the increment will be diverted from the taxing authorities. The effect of this veto power is that most significant Ohio TIF arrangements are only approved if they ensure that the local school district will receive a significant percentage of the amount of money it would have received but for the TIF. As a matter of policy, the City of Cleveland (under the Jackson administration) only approves TIF projects that provide for full compensation of the Cleveland Municipal School District.⁴³ The net result is that Cleveland TIFs only generate proceeds equal to approximately half of the property tax attributable to property improvements.

§ 5709.41 TIF

The City of Cleveland primarily utilizes TIF under ORC § 5709.41.⁴⁴ The preference for § 5709.41 TIF is most likely a result of two factors: it is easy to qualify a property under this statute and the TIF revenue generated is not restricted to use for public infrastructure improvements, as it is under most other TIF mechanisms, making it attractive to developers.⁴⁵

⁴² Cuyahoga County, Taxes By District, City of Cleveland, *available at* <http://treasurer.cuyahogacounty.us/PDF/taxesbydistrict/Cleveland.pdf> (last visited Nov. 14, 2008).

⁴³ Interview with Jeff Shoykhet, Office of Economic Development, City of Cleveland (Oct. 10, 2008).

⁴⁴ Interview with Greg Huth, Former Director, Office of Economic Development, City of Cleveland (Nov. 21, 2009), *see also* Appendix A to TAX INCREMENT FINANCING IN CLEVELAND, *supra* note 1.

⁴⁵ Interview with Greg Huth, Former Director, Office of Economic Development, City of Cleveland (Nov. 21, 2009).

In order to qualify a property for TIF under § 5709.41, the City must have owned the property at some point in time.⁴⁶ In practice this is easy to achieve; for any property for which the City wishes to utilize 5709.41, the City will acquire the property from the developer and then immediately convey it back to satisfy the City ownership requirement. The City then exempts any improvements (i.e. increases to the assessed value) to the property from property tax for a fixed number of years. The City may exempt up to 100% of the value of the improvements for up to 30 years, subject to school board approval and compensation as discussed above.⁴⁷ In return, in almost all cases, the City requires the developer to pay service payments in lieu of the exempted taxes⁴⁸ which are generally equal to and collected in the same manner as the property taxes that would have been charged against the improvements if not for the exemption.⁴⁹ These service payments constitute the TIF funds or proceeds.

The TIF funds are paid into an urban redevelopment tax increment equivalent fund which is controlled by the City⁵⁰ and, by law, used for the purposes set forth in the City Council resolution that establishes the fund. However, in the case of § 5709.41 TIF, it is not uncommon for City Council to forego establishing a fund for service payments and to enter into a contract directly with the developer that devotes the TIF proceeds to servicing any debt incurred by the developer in connection with the project creating the improvements.⁵¹ In either case, the funds are typically devoted only to the developer's project, although § 5709.41 requires only that the

⁴⁶ OHIO REV. CODE § 5709.41(B)(1).

⁴⁷ OHIO REV. CODE § 5709.41(C)(2).

⁴⁸ Interview with Greg Huth, Former Director, Office of Economic Development, City of Cleveland (Nov. 21, 2009); see also Appendix A to TAX INCREMENT FINANCING IN CLEVELAND, *supra* note 1.

⁴⁹ OHIO REV. CODE § 5709.42(A).

⁵⁰ OHIO REV. CODE § 5709.43(B).

⁵¹ Interview with Greg Huth, Former Director, Office of Economic Development, City of Cleveland (Nov. 21, 2009).

funds be used for the purposes specified in the ordinance creating TIF for that parcel.⁵² There is one significant limitation – properties utilized for residential developments are typically excluded from TIF under § 5709.41; in Cleveland, this exclusion does not apply if the residential development is in a “blighted area.”⁵³

§ 5709.40(B) TIF

This form of TIF is similar in operation and implementation to § 5709.41 (including the restriction on use for residential developments) with some noteworthy exceptions. There is no City ownership requirement. The City does, however, need to determine that the improvements the developer contemplates for the property constitute a “public purpose”, which is very broadly defined and applied.⁵⁴ Also, the TIF proceeds must be deposited in a municipal public improvement tax equivalent fund which can only be utilized for “public infrastructure improvements” that benefit the parcel(s) from which the TIF proceeds are collected and only for the purposes outlined in the ordinance approving TIF for those parcels.⁵⁵

§ 5709.40(C) – INCENTIVE DISTRICT TIF

Generally speaking, Ohio cities use TIF under § 5709.41 and § 5709.40(B) on individual parcel projects (i.e. TIF proceeds generated by a parcel are directed towards expenses that benefit a project on that parcel). In fact, the law requires this for a § 5709.40(B) TIF. In this way, most Ohio TIF arrangements are like the Las Vegas Model's individual project tax rebates.

⁵² OHIO REV. CODE § 5709.43(B).

⁵³ OHIO REV. CODE § 5709.41(B); TIF under this statute may only be used for residential purposes if a parcel is located in a “blighted area” in an “impacted city” as these terms are defined in Section 1728.01 of the Ohio Revised Code. The Ohio Department of Development has certified that Cleveland is an “impacted city”. See, e.g., City of Cleveland, Ohio Ordinance 2006-06 (Nov. 29, 2006).

⁵⁴ OHIO REV. CODE § 5709.40(B).

⁵⁵ OHIO REV. CODE § 5709.43(A).

ORC § 5709.40(C) – the incentive district TIF – more closely resembles the Las Vegas Model’s other use of TIF. This provision allows for the generation of TIF deriving from improvements from all properties within a designated district for a period of up to 30 years.⁵⁶ The TIF proceeds are pooled and can be spent on any public infrastructure improvement benefitting any parcel within the district.⁵⁷ Moreover, incentive district TIF can support residential development provided the TIF will also benefit specifically designated commercial or industrial projects.⁵⁸

In order to implement an incentive district TIF, a city needs to establish an incentive district by adoption of an ordinance by its legislative body.⁵⁹ Also, the district must meet the statutory definition of an incentive district under § 5709.40(C). First of all, the area cannot exceed three hundred acres.⁶⁰ Second, the area must be contiguous.⁶¹ Finally, it must exhibit at least one of seven characteristics of distress.⁶² Demonstrating “characteristics of distress” is significantly less demanding than demonstrating “blight” under Ohio law.⁶³

The city ordinance creating the TIF will exempt the improvements from property tax and, in almost all circumstances, require property owners to make service payments in lieu of taxes to generate the TIF proceeds.⁶⁴ The proceeds will be deposited into a municipal public

⁵⁶ OHIO REV. CODE § 5709.40(C)(1).

⁵⁷ State of Ohio Department of Development, *Tax Increment Financing Incentive Districts* (Including provisions enacted by amended substitute HB 66 enacted June 2005, and amended HB 530, enacted March 2006), available at <http://development.ohio.gov/cms/uploadedfiles/EDD/OTI/TIFincentiveDistrictsSummary.pdf> (last visited June 28, 2010).

⁵⁸ OHIO REV. CODE § 5709.40(C)(3).

⁵⁹ OHIO REV. CODE § 5709.40(C).

⁶⁰ OHIO REV. CODE § 5709.40(A)(5).

⁶¹ *Id.*

⁶² *Id.*

⁶³ See TAX INCREMENT FINANCING IN CLEVELAND, *supra* note 1, for more detail regarding how local TIF incentive districts have demonstrated “distress.”

⁶⁴ OHIO REV. CODE § 5709.42.

improvement tax increment equivalent fund, controlled by the city⁶⁵ and used to finance the public infrastructure improvements or housing renovations designated in the ordinance.⁶⁶

Incentive District TIFs are subject to additional requirements not applicable to other Ohio TIF mechanisms. In addition to the amount that the local schools may require from the TIF proceeds, a portion of the service payments from property owners within an incentive district must go to reimburse local taxing authorities for amounts they would have received under certain social service and health tax levies (e.g. senior citizen services, county hospitals, public welfare and parks to name a few) but for the tax exemption authorized pursuant to the TIF.⁶⁷ The end result is that a smaller percentage of TIF dollars go to the TIF fund in Incentive District TIFs. Also, the county in which an incentive district longer than ten years and/or with an exemption greater than 75% of the taxes due must review the TIF application and, under certain circumstances, will receive compensation for some of its foregone taxes.⁶⁸ The municipality must notify property owners within the district and hold a public hearing for them prior to enactment of the ordinance creating the district.⁶⁹ Finally, the municipality and the school district may need to enter into a profit sharing arrangement for employee income taxes if the projects receiving assistance will generate more than \$1,000,000 in payroll.⁷⁰ Currently, Cleveland has no Incentive District TIFs.⁷¹

⁶⁵ OHIO REV. CODE § 5709.43.

⁶⁶ *Id.*; OHIO REV. CODE § 5709.40(A)(3).

⁶⁷ OHIO REV. CODE § 5709.40(F).

⁶⁸ OHIO REV. CODE § 5709.40(E).

⁶⁹ OHIO REV. CODE § 5709.40(C)(2).

⁷⁰ *Tax Increment Financing Incentive Districts, supra* note 57.

⁷¹ *See* Appendix A to TAX INCREMENT FINANCING IN CLEVELAND, *supra* note 1.

ORC CHAPTER 1728 – CURC TIF

Chapter 1728 of the ORC provides another mechanism for utilizing TIF that structurally parallels the Las Vegas model. It involves the creation of a community urban redevelopment corporation (“CURC”) that is responsible for the revitalization of a “blighted area” of a city through the adoption and implementation of a municipally-approved “community development plan.”⁷² The community development plan may involve land acquisition, demolition and removal of structures, redevelopment and rehabilitation of the area, zoning and land use planning.⁷³ The CURC may then undertake specific redevelopment projects approved by the municipality and enter into a financial agreement with the municipality to finance its projects.⁷⁴

For projects it undertakes pursuant to a financial agreement with the municipality, the CURC may arrange with the city that improvements will be exempt from taxes and that the CURC will make service payments in lieu of the taxes to generate TIF.⁷⁵ The city agrees to deposit the service payments into an urban development tax increment fund.⁷⁶ As with the § 5709.41 TIF, this means that the TIF proceeds can be used for a wide variety of urban development purposes specified in the ordinance authorizing the TIF and not just for public infrastructure improvements.⁷⁷ Furthermore, use of the proceeds is not restricted to benefitting the parcels that generated it.

It should be noted, however, that TIF only applies to projects the CURC undertakes and, apparently, only to properties for which the CURC is obligated to make property tax payments.

⁷² OHIO REV. CODE §§ 1728.01-1728.13.

⁷³ OHIO REV. CODE § 1728.01(D).

⁷⁴ OHIO REV. CODE § 1728.07.

⁷⁵ OHIO REV. CODE §§ 1728.10-1728.11.

⁷⁶ OHIO REV. CODE § 1728.112.

⁷⁷ *Id.*

Because of this, TIF under CURC may need to be supplemented with other forms of TIF to generate the necessary critical mass of funds needed to transform a blighted area. Currently, Cleveland does not have any active CURC TIFs.⁷⁸ For the most part, local neighborhood development groups have not utilized the CURC vehicle in any regard, in contrast to Cincinnati area CDCs several of which have established as CURCs (but for reasons unrelated to generating TIF).⁷⁹

ORC CHAPTER 725 – URBAN RENEWAL TIF

One other mechanism for TIF under Ohio law merits brief mention here. That is the capacity for a municipality to make TIF available on a property-by-property basis for properties located in an area that the municipality has declared to be a “blighted area” or “slum area” pursuant to Chapter 725 of the Ohio Revised Code. A particular project that furthers a municipally-approved “urban renewal plan” may qualify for TIF under this Section.⁸⁰ TIF proceeds in this instance are typically used to pay off bonds issued by the city to support the particular project that the developer/owner of the property undertakes.⁸¹ Currently, Cleveland has only one urban renewal TIF in place.⁸²

3. Challenges To Implementing the Las Vegas Model Posed by Local TIF Practice

Although Ohio's various tax increment financing mechanisms provide a broad range of possibilities for redeveloping urban properties, there is no direct analog to the Nevada RDAs or

⁷⁸ See Appendix A to TAX INCREMENT FINANCING IN CLEVELAND, *supra* note 1.

⁷⁹ Interview with Patricia Garry, Executive Director, Community Development Corporations Association of Greater Cincinnati (June 28, 2010).

⁸⁰ OHIO REV. CODE §§ 725.01(C), 725.02.

⁸¹ OHIO REV. CODE §§ 725.03-725.04.

⁸² See Appendix A to TAX INCREMENT FINANCING IN CLEVELAND, *supra* note 1.

their corresponding use of TIF. In other words, Ohio law does not provide for a neighborhood development agency with broad quasi-governmental powers that is funded by TIF derived from all properties within the neighborhood.

Short of this, Ohio's various TIF mechanisms could be pieced together to allow a Cleveland neighborhood with a redevelopment plan to approximate some of the features of the Las Vegas Model under the right circumstances. However, a look at how Cleveland's municipal government has utilized TIF historically shows several differences in local practice and philosophy. First of all, the funds generated by TIF are typically rebated directly to the developer, rather than rolled over into a fund benefiting redevelopment of a larger area. Second, the City has typically been specific as to the acceptable uses of TIF funds in ordinances authorizing TIF, rather than allowing the funds to be spent in the accomplishment of more general redevelopment purposes. Finally, even when TIF revenue has been allocated for general purposes, the City has still exercised ultimate control over distribution of the funds. Given that political will and the cooperation of municipal government is an essential requirement for implementing TIF, we explain each of these practical "barriers" in more detail below. We also explain how they are likely not insurmountable.

As noted above, Cleveland typically approves TIF on a parcel by parcel basis.⁸³ The TIF funds consist of the service payments made by a particular developer in lieu of taxes. These service payments are deposited into an account controlled by the City and used to offset the developer's costs associated with the TIF project. In this sense, TIF has served as an incentive

⁸³ See Appendix A to TAX INCREMENT FINANCING IN CLEVELAND, *supra* note 1.

for particular developers to pursue particular projects. Utilizing TIF to spur development throughout a neighborhood would require a change in strategy for the City and local developers.

One recent example of an openness to such a change in approach is worth mentioning. In 2006, the City approved TIF for the Steelyard Commons project – a big-box retail development on former industrial property – utilizing O.R.C. § 5709.41.⁸⁴ The authorizing ordinance designated that thirty percent of the TIF revenue would be used for the purpose of offsetting the impacts of the Steelyard Commons on adjacent neighborhood commercial districts and a portion of the remaining seventy percent would be used for improvements to the Tow Path Trail and Canal Basin Park, which are public recreational grounds.⁸⁵ Thus, the City allocated TIF funds for uses other than reducing the developer's costs and for property well outside the boundaries of the developer's project. Intense lobbying by local retailers and Councilman Joe Cimperman directed at the impact that the big-box stores planned for Steelyard Commons would have on small and independent stores influenced how TIF would be spent in this particular case.⁸⁶ This example illustrates that the City will, under the right circumstances, rollover TIF funds for the purpose of supporting redevelopment in a larger area.

A second practical barrier is that the City usually precisely identifies exactly how TIF funds will be used. As noted above, the use of TIF funds are typically negotiated upfront between the City and the developer and memorialized in a binding city ordinance or contract. In general, the City likes to know exactly where TIF revenue will go before it approves a project.⁸⁷

⁸⁴ City of Cleveland, Ohio, Ordinance 1780-05 (Jan. 4, 2006).

⁸⁵ *Id.*

⁸⁶ *Making the Commons pay off*, PLAIN DEALER, Jan. 15, 2006, at H2.

⁸⁷ Interview with Greg Huth, Former Director, Office of Economic Development, City of Cleveland (Nov. 21, 2009).

Usually, the specific improvements that will be financed by TIF funds are listed on an exhibit to the ordinance authorizing the TIF.⁸⁸

In contrast, the Las Vegas Model involves creating a pool of funds and then allowing the LVRDA discretion, within the general objectives of the overall redevelopment plan, to expend the funds over time on projects and costs it believes further neighborhood development. Once again, the Steelyard Commons project is illustrative of a recent example in which the City of Cleveland displayed a willingness to be more flexible under the right circumstances. In this case, 30% of the TIF proceeds are to be used "for retail assistance programs and other commercial and industrial initiatives, including land acquisition, within the City."⁸⁹ The ordinance does not specify exactly what those programs and initiatives will be. Instead, the funds are to be distributed quarterly in the form of grants under criteria developed by the City and the Cleveland Citywide Development Corporation ("CCDC") and were to be guided by a, at the time the ordinance was adopted, yet to be completed retail impact study.⁹⁰ In order to qualify for consideration, a project needs to fall into one of the five general categories specified in the ordinance, including development of neighborhood retail, streetscape, arts programs and industrial sites.⁹¹ Although the City laid out certain guidelines for how the TIF funds may be used, this project evidences the City's willingness to allocate TIF funds for redevelopment expenses that have not been specifically identified under the right circumstances.

The final practical barrier is the City's preference for retaining ultimate control over the expenditure of TIF funds. Political pressure and the agenda of a particular mayor or City

⁸⁸ See, e.g., City of Cleveland, Ohio, Ordinance 1645-05 (9/14/05)

⁸⁹ City of Cleveland, Ohio, Ordinance 1780-05 (Jan. 4, 2006).

⁹⁰ *Id.*

⁹¹ *Id.*

Council could hinder implementing a neighborhood driven initiative to allocate TIF funds in a way that best supports a neighborhood plan for redevelopment. It is worth noting, however, that the LVRDA, while nominally a separate agency from the City of Las Vegas, is in fact governed by a board consisting of the Las Vegas mayor and City Council members.⁹² The City essentially runs the LVRDA. The presence of a detailed redevelopment plan that constrains the activities of the LVRDA and calls for some role of neighborhood property owners seems to be a critical piece of keeping the LVRDA focused on the best interests of the downtown district in its decision-making. Under Ohio's TIF statutes, there appears to be room for similar safeguards – for example, referencing a community renewal plan in the authorizing TIF ordinance and/or creating a neighborhood based CURC, pursuant to ORC Chapter 1728, to oversee the specific use of the TIF funds.

4. Implementing the Las Vegas Model in Cleveland

With an understanding of what Ohio law provides and the possible challenges posed by local TIF practice, we now turn to possible strategies for implementing some form of the Las Vegas Model in Cleveland. As the discussion above clearly demonstrates, the aspect of the Las Vegas Model involving individual property tax rebates for public infrastructure costs associated with a particular development project is already ubiquitous in Ohio. The aspect that merits further discussion here is the pooling of TIF proceeds from a large number of properties to support redevelopment throughout a neighborhood pursuant to a redevelopment plan.

⁹² City of Las Vegas Redevelopment Agency, *supra* note 21.

STRATEGY 1 – COMPOUNDING MULTIPLE INDIVIDUAL TIF PARCELS

This strategy entails orchestrating the use of one of Ohio's individual parcel based TIF mechanisms (§ 5709.41 or § 5709.40(B)) on multiple contiguous or nearby properties to generate funds to support general neighborhood redevelopment projects. Of these two mechanisms, § 5709.41 deserves particularly close attention for several reasons. The first is that the City of Cleveland uses § 5709.41 as the basis for TIF frequently and rarely uses other TIF mechanisms. Accordingly, it has a strong comfort level with it and might be more inclined to utilize it for something innovative. The City's use of it for the Steelyard Commons project, which as discussed in **Section 3.** of this Paper involved some pooling of funds for general neighborhood purposes, provides a model for how this might be done.⁹³

The second reason is the flexibility built into § 5709.41 for the use of TIF funds. It does not require that the TIF funds generated by improvements to a parcel be utilized in a way that benefits that particular parcel nor even that it be used for public infrastructure. It does not require the establishment of a separate fund for the TIF proceeds generated by each parcel.⁹⁴ By statute, the only requirement is that the money be deposited into an urban development tax increment equivalent fund and used for the purposes authorized in the municipal resolution or ordinance establishing the fund, with one exception – the funds could only be used on residential projects if they are in a “blighted area”.⁹⁵ Conceivably, the fund could remain open over an extended period of time receiving proceeds from multiple TIF properties, pooling them and spending them on multiple projects. The ordinance authorizing the Steelyard Commons project suggests that a

⁹³ City of Cleveland, Ohio, Ordinance 1780-05 (Jan. 4, 2006).

⁹⁴ OHIO REV. CODE § 5709.43(B).

⁹⁵ *Id.*; OHIO REV. CODE § 5709.41(B), *supra* note 53.

nonprofit development corporation could be put in charge of recommending uses for the fund and that this could be done pursuant to a planning document (e.g., expenditure of the Steelyard Commons fund was to be guided by a retail impact study).⁹⁶

We should be careful to note, however, that while § 5709.41 holds some potential for replicating certain aspects of the Las Vegas Model, it lacks the structure and breadth that Nevada law provides to RDAs. For example, all properties within an RDA automatically generate TIF for the RDA upon adoption of a redevelopment plan by the city or county legislative body. Under § 5709.41, the City would need to reach an agreement with each owner of a property it wished to include, each of whom, in most cases, would have to first convey the property to the City and then receive it back. For this reason, this form of TIF would undoubtedly have to be restricted to a much smaller area than most RDAs and utilized in circumstances where a local CDC controls much or all of the property to be included and/or where other owners/developers in the neighborhood support this type of an initiative.

Also, the basis for the control and use of these funds to support a wide variety of activities that promote ongoing neighborhood development by a designated agency (e.g. the RDA's ability to take properties by eminent domain, buy and sell properties, engage in planning and redevelopment, issue bonds, etc.) is well-established under Nevada law. In Cleveland, the authorizing ordinance would have to spell out a structure for every aspect of the control and expenditure of funds under § 5709.41. This would require careful design by the City's law department and support from City Council members, most of whom would be voting to support a project that would not impact and, in fact, would draw some tax dollars away from their districts.

⁹⁶ City of Cleveland, Ohio, Ordinance 1780-05 (Jan. 4, 2006).

Section 5709.40(B) might also be utilized for the compounding of multiple individual TIF projects in a manner similar to § 5709.41. For example, the City of Euclid recently approved a single TIF fund utilizing § 5709.40(B) for multiple parcels in its downtown district to support certain public improvements to the area.⁹⁷ The city of Cleveland did likewise for a collection of properties on the East Bank of the Flats.⁹⁸ There are, however, significant additional limitations that make this mechanism useful only in a more specific set of circumstances. Foremost is that each expenditure from the fund would need to benefit each of the properties included in the TIF District.⁹⁹ Furthermore, expenditures could only support "public infrastructure improvements" specifically designated in the authorizing ordinance.¹⁰⁰ This lack of flexibility in the expenditure of TIF proceeds significantly undercuts certain important aspects of the Las Vegas Model.

STRATEGY 2 – CREATING AN INCENTIVE DISTRICT TIF

The creation of an incentive district TIF utilizing § 5709.40(C) would seem to be the mechanism under Ohio law that provides the closest match to the Las Vegas Model. In contrast to STRATEGY 1, only one ordinance is necessary to capture all of the properties within a district and it is not necessary, as a legal matter, to secure the approval of all (or even any) of the property owners within the district.¹⁰¹ Once an incentive district is established, service payments associated with all improvements within the district are deposited into one fund.¹⁰² This has the

⁹⁷ City of Euclid, Ohio, Ordinance 37-2008 (Feb. 19, 2008), *available at* http://www.cityofeuclid.com/uploads/previous_site_pdf_library/37-2008.pdf.

⁹⁸ City of Cleveland, Ohio, Ordinance 1645-05 (Nov. 9, 2005).

⁹⁹ OHIO REV. CODE § 5709.40(B).

¹⁰⁰ *Id.*

¹⁰¹ OHIO REV. CODE § 5709.40(C)(1)-(2).

¹⁰² OHIO REV. CODE § 5709.43(A).

effect of pooling TIF revenue from multiple projects. The incentive district can cover an area as large as 300 acres¹⁰³ which would entail a significant portion of most Cleveland neighborhoods.

There is no requirement that any improvement funded by the TIF benefit all of the properties located within the district.¹⁰⁴ This is unlike the restriction contained in § 5709.40(B) and means that considerable discretion could be exercised as to what projects within the district are most worthwhile. Furthermore, the funds will usually be able to support residential projects within the district.¹⁰⁵

There is, however, considerable uncertainty to this strategy because of the fact that it has never been utilized in Cleveland and because of all of the additional steps involved. Use of the incentive district TIF requires that the ordinance creating the TIF articulate the public infrastructure improvements to be made.¹⁰⁶ The district must meet the definition of an incentive district, which includes demonstrating "characteristics of distress".¹⁰⁷ Furthermore, use of this mechanism requires, under most circumstances, additional school board involvement and county approval, public hearings and a reduction in proceeds relative to other TIF mechanisms for the county health and social service levies discussed earlier in this Paper.¹⁰⁸

The incentive district TIF seems ideal when the need for particular public infrastructure improvements is clear upfront and pooling TIF proceeds from multiple properties is necessary to generate enough funds to support the improvements. Outside of particular, articulated public infrastructure needs, this form of TIF has less potential for general neighborhood development

¹⁰³ OHIO REV. CODE § 5709.40(A)(5).

¹⁰⁴ *Tax Increment Financing Incentive Districts*, *supra* note 57.

¹⁰⁵ OHIO REV. CODE § 5709.40(C)(3).

¹⁰⁶ *Id.*

¹⁰⁷ OHIO REV. CODE § 5709.40(A)(5).

¹⁰⁸ OHIO REV. CODE § 5709.40(E)-(F).

than the Las Vegas Model. Like STRATEGY 1, it does not provide the structure and breadth that the Las Vegas Model, by virtue of Nevada law, provides to the RDA. Furthermore, there does not appear to be room for discretion in expenditure of the funds over time to meet evolving neighborhood needs or to directly attract particular businesses.

One possible approach for overcoming this shortcoming, not previously tried in Cleveland, would be to set up an Incentive District TIF in conjunction with a detailed economic development or urban renewal plan for the neighborhood at issue that is formally approved by City Council. There is a basis for doing so under § 5709.40(A), which provides the definition of an Incentive District, and requires submission of such a plan to demonstrate inadequate public infrastructure for an area as a characteristic of distress.¹⁰⁹ A plan like this could involve a neighborhood CDC in the decision-making process for the use of TIF funds (as the CCDC was utilized in the Steelyard Commons project).¹¹⁰ If the City wanted a greater degree of control, it could insist that the CDC be a CURC and seek approval from the City for every specific project it pursues utilizing the TIF funds. It could also articulate a very broad range of possible public infrastructure improvements as a way of providing flexibility to the CDC and the City to fund improvements over time that best serve the evolution of the neighborhood. With a reputable CDC at the helm, amendments to the list of articulated public infrastructure improvements could be sought from City Council as the need arose. While the City of Cleveland has not created this type (or any form of) Incentive District to this point, it does appear that the capacity for one exists under Ohio law.

¹⁰⁹ OHIO REV. CODE § 5709.40(A)(5)(f).

¹¹⁰ City of Cleveland, Ohio, Ordinance 1780-05 (Jan. 4, 2006).

STRATEGY 3 – UTILIZING A SPECIALIZED TIF MECHANISM DESIGNED FOR
COMBATING BLIGHT

ORC Chapter 1728 – the Community Urban Redevelopment Corporation ("CURC") – provides a structure, analogous to the RDA, that the Ohio TIF mechanisms discussed in STRATEGIES 1 and 2 lack. It is an entity, separate from the city that creates it, that may be authorized to engage in a broad range of quasi-governmental activities related to blight remediation and prevention.¹¹¹ Furthermore, like an RDA, it is guided by a municipally approved "Community Development Plan" for the redevelopment and renewal of a blighted area.¹¹² Another plus – TIF generated on CURC projects are, like § 5709.41 TIF proceeds, placed in an urban redevelopment tax increment fund and can be used for any purposes authorized in the ordinance creating the TIF (including residential projects).¹¹³

While similar in some ways to the Las Vegas Model, the CURC is also distinguishable in several critical ways. First, and perhaps most importantly, is that TIF is only generated on projects that the CURC itself manages and only with respect to property taxes that the CURC would owe.¹¹⁴ Because of this, it would not be supported by tax increment from all properties throughout the area it serves. Second, like the RDA, the CURC must work in "blighted areas."¹¹⁵ Based on recent amendments to Ohio law defining this term as areas in which "at least 70% of the parcels are blighted",¹¹⁶ demonstrating that an area is blighted has become a considerably more difficult task and effectively means that CURCs can only operate in extensively blighted

¹¹¹ See generally OHIO REV. CODE Chapter 1728.

¹¹² OHIO REV. CODE § 1728.01(F).

¹¹³ OHIO REV. CODE § 1728.112.

¹¹⁴ OHIO REV. CODE § 1728.111.

¹¹⁵ OHIO REV. CODE § 1728.01(F)(2).

¹¹⁶ OHIO REV. CODE § 1.08; OHIO REV. CODE § 1728.01(E).

areas. Contrast this with the LVRDA which operates in an area marginally distressed but not extensively blighted. Finally, a CURC is subject to the pervasive control of the city that creates it. The city controls the urban redevelopment tax increment fund into which the TIF proceeds are deposited, enters into a financial agreement with the CURC, and also must approve each project that the CURC wishes to pursue.¹¹⁷

Combining these distinctions from the Las Vegas Model with the fact that the City of Cleveland currently has no CURC TIF arrangements in place and the CURC appears to be a less viable option for replicating the Las Vegas Model, except, to an extent, in conjunction with STRATEGY 2.

CONCLUSION

The Las Vegas Model is a uniquely designed approach to neighborhood redevelopment that has received national accolades. It combines a well structured neighborhood-based development agency with broad quasi-governmental authority and a powerful funding source that allows the agency and neighborhood to build on their own successes.

Ohio law provides multiple mechanisms for tax increment financing. None truly replicate The Las Vegas Model, although each mechanism involves some aspect of the Model. The ideal approach for applying the Las Vegas Model in Cleveland would be if the Ohio legislature created an analogous neighborhood-based redevelopment agency with the same form of tax increment financing as is available for RDAs in Nevada. Short of that, combining the existing mechanisms for TIF in Ohio with a well-defined neighborhood redevelopment plan and

¹¹⁷ OHIO REV. CODE § 1728.07.

an effective community development corporation to implement it could be an adequate, if less ideal, substitute.

Critical to any attempt to effectively utilize TIF in Ohio is the cooperation and support of local government. While the City of Cleveland has used TIF regularly to incentivize projects it supports on a parcel by parcel basis, it would take the right circumstances to convince the City to approve TIF for a redevelopment effort that is more open-ended and wide reaching. Given the City's statutory role in approving and orchestrating TIF arrangements, a conversation about an innovative approach to TIF must begin at the municipal level.