

GILMORE & BELL

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

ONE METROPOLITAN SQUARE
211 NORTH BROADWAY, SUITE 2350
ST. LOUIS, MISSOURI 63102-2733

314-436-1000
FAX: 314-436-1166
WWW.GILMOREBELL.COM

KANSAS CITY, MISSOURI
WICHITA, KANSAS
LINCOLN, NEBRASKA

SUMMARY OF TAX INCREMENT FINANCING IN MISSOURI

As of August 15, 2007

I. GENERAL

Municipalities can only spend public funds for public purposes. If the costs to be funded are public improvements – such as roads, traffic signals or utilities – then the municipality has a variety of options as to how to finance those public improvements. If the costs to be funded are not public improvements – such as land acquisition costs or site development costs – then public funds can be used to finance those costs only if the governing body of the municipality finds that the site is a “blighted area” or a “conservation area,” as defined under Missouri law. Tax increment financing is a method to encourage redevelopment of these areas.

The Missouri TIF law authorizes cities and counties to adopt a redevelopment plan that provides for the redevelopment of a designated area, and to use TIF to fund a portion of the project costs.

The theory of tax increment financing is that, by encouraging redevelopment projects, the value of real property in a redevelopment area should increase. When a TIF plan is adopted, the assessed value of real property in the redevelopment area is frozen for tax purposes at the current base level prior to construction of improvements. The owner of the property continues to pay property taxes at this base level. As the property is improved, the assessed value of real property in the redevelopment area increases above the base level. By applying the tax rate of all taxing districts having taxing power within the redevelopment area to the increase in assessed valuation of the improved property over the base level, a “tax increment” is produced. The tax increments, referred to as “payments in lieu of taxes,” are paid by the owner of the property in the same manner as regular property taxes. The payments in lieu of taxes are transferred by the collecting agency to the treasurer of the municipality and deposited in a special allocation fund. In addition, the county and city transfer 50% of all incremental sales and utility tax revenues to the treasurer of the municipality for deposit into the special allocation fund. All or a portion of the moneys in the fund can then be used to pay directly for redevelopment project costs or to retire bonds or other obligations issued to pay such costs.

The net effect of tax increment financing is to permit a developer to use a portion of property taxes that otherwise would be paid on the completed project to repay all or a portion of the development costs, thereby reducing the net annual debt service on the completed project (and thus increasing the rate of return on the project). In this manner, future tax increases are not abated, but rather are used to fund costs of the project.

II. PROCEDURES FOR ADOPTING TIF

The TIF Act

The TIF Act permits municipalities to undertake different redevelopment projects within a redevelopment area pursuant to the same redevelopment plan. If a redevelopment plan has multiple redevelopment projects, the municipality may designate different “redevelopment projects” and adopt tax increment financing at different times for each redevelopment project. This structure enables municipalities and developers to phase in projects and to derive additional benefits from the payments in lieu of taxes created by the redevelopment projects.

Before a municipality may implement tax increment financing, (1) the municipality must create a TIF commission as provided in the TIF Act, (2) a redevelopment plan, including a description of the redevelopment area and the redevelopment projects therein, must be prepared, (3) the TIF commission must hold a public hearing and make a recommendation to the municipality pertaining to the redevelopment plan, the redevelopment projects and the designation of the redevelopment area, and (4) the municipality must adopt an ordinance approving the redevelopment plan, the redevelopment projects and the designation of the redevelopment area as discussed below. Once the ordinance is adopted, tax increment financing may be implemented for one or more redevelopment projects within a redevelopment area. Because of various notice and hearing requirements, it will take at least 90 days (and more commonly 120 days or longer) to establish a TIF commission and adopt a TIF plan.

Effective January 1, 2008, if a TIF commission makes a recommendation in opposition to a proposed redevelopment plan, redevelopment project, or designation of a redevelopment area, or amendments thereto, the governing body of the municipality may only approve such plan, project, designation or amendment upon a two-thirds majority vote.

Also effective January 1, 2008, municipalities in St. Louis, St. Charles and Jefferson Counties must obtain the permission of a county TIF commission prior to the approval of a redevelopment project by the municipality’s governing body. It is unclear whether the county TIF commission replaces the municipal TIF commission – and therefore holds the required public hearing for the project – or whether the county TIF commission is *in addition to* the municipal TIF commission. The better argument, we believe, is that the county TIF commission replaces the municipal TIF commission; future legislation may be required to resolve the uncertainty.

Role of the TIF Commission

Before adopting tax increment financing, a municipality must create a TIF commission by ordinance of its governing body. The composition of the TIF Commission depends on (1) whether a city or a county is undertaking the redevelopment project, and (2) the location of the city or county undertaking the redevelopment project, as described in the following chart:

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.

The TIF commission conducts the public hearings required under the TIF Act, and makes recommendations to the governing body of the municipality concerning the adoption of redevelopment plans or redevelopment projects and the designation of redevelopment areas. The redevelopment plans, redevelopment projects and the designation of the redevelopment area must receive final approval of the governing body of the municipality.

As discussed above, effective January 1, 2008, it appears that in St. Louis, St. Charles and Jefferson Counties will no longer submit proposed redevelopment plans and projects to a city TIF commission for review, but instead will submit proposed redevelopment plans and projects to a county TIF commission. This county TIF commission will have 12 total members consisting of six members appointed by the county executive, three members appointed by cities in the county that have tax increment financing districts in a manner agreed upon by the applicable cities, two members selected by the school districts located in the county in a manner agreed upon by the applicable school districts, and one member selected by all other ad valorem taxing districts in a manner in which all such districts agree.

Designation of Redevelopment Area

The “redevelopment area” must contain property that may be classified as a “blighted area,” a “conservation area” or an “economic development area” (described below), or any combination thereof. The entire redevelopment area need not meet the criteria of one of these three categories, but must include only “those parcels of real property and improvements thereon directly and substantially benefitted by the proposed redevelopment project improvements.” Thus, a larger redevelopment area that includes property that is increasing in value can enhance the feasibility of a TIF project, provided the larger area, on the whole, is a blighted, conservation or economic development area and is “substantially benefitted” by the redevelopment project.

The TIF Act defines a blighted area, a conservation area and an economic development area as follows:

“*Blighted area*” is defined as

an area which, by reason of the predominance of defective or inadequate street layout, unsanitary or unsafe conditions, deterioration of site improvements, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, morals, or welfare in its present condition and use.

“*Conservation area*” is defined as

any improved area within the boundaries of a redevelopment area located within the territorial limits of a municipality in which fifty percent or more of the structures in the area have an age of thirty-five years or more. Such an area is not yet a blighted area but is detrimental to the public health, safety, morals, or welfare and may become a blighted area because of any one or more of the following factors: dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; abandonment; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; and lack of community planning.

“*Economic development area*” is defined as

any area or portion of an area located within the territorial limits of a municipality, which does not meet the requirements of [a blighted area or a conservation area], and in which the governing body of the municipality finds that redevelopment will not be solely used for development of commercial businesses which unfairly compete in the local economy and is in the public interest because it will: (1) discourage commerce, industry or manufacturing from moving their operations to another state; or (2) result in increased employment in the municipality; or (3) result in preservation or enhancement of the tax base of the municipality.

Two provisions of House Bill 1944, which was adopted by the Missouri General Assembly in 2006 and which amends Missouri’s condemnation laws, affect the TIF Act. First, farmland that is declared blighted cannot be acquired by eminent domain. Second, blight must be evaluated on a parcel-by-parcel basis, if any property in the redevelopment area will be acquired through (or under the threat of) condemnation.

Although the TIF Act provides for redevelopment projects in an “economic development area,” certain questions remain regarding the constitutionality of TIF financing in such an area that may require a court case to resolve. On October 5, 1992, a TIF project in Pettis County was ruled unconstitutional because, among other factors, the redevelopment area for the project was designated as an “economic development area.” *Pettis County R-XII (Dresden) v. County of Pettis*, No. CV492-129CC (Pettis Co., Mo.Cir.Ct. Oct. 5, 1992). It is unclear whether there are any instances under which a redevelopment project may be undertaken in an economic development area.

Preparation of Redevelopment Plan

Before proceeding with a redevelopment project, the municipality must approve a redevelopment plan that designates the redevelopment area, describes the redevelopment project and sets forth a comprehensive program for redevelopment. The TIF Act requires the following information to be included in the redevelopment plan:

1. Estimated redevelopment project costs;
2. The anticipated sources of funds to pay the costs;
3. Evidence of commitments to finance the project costs;
4. The anticipated type and term of the sources of funds to pay costs;
5. The most recent equalized assessed valuation of the property within the redevelopment area that is to be subjected to payments in lieu of taxes and economic activity taxes;
6. An estimate of the equalized assessed valuation after redevelopment; and
7. The general use of the land in the redevelopment area.

Additional information not required by statute may be included in the plan, such as the total acreage in the redevelopment area and the total payments in lieu of taxes and economic activity taxes estimated to be generated over the period the plan is in effect.

Public Hearing Regarding Redevelopment Plan

Before adopting tax increment financing, the TIF commission must hold a public hearing on the redevelopment plan and redevelopment project and the proposed redevelopment area. Notice of the hearing must be published and must be mailed to affected taxing districts and property owners. The TIF commission is required to vote on any proposed redevelopment plan, redevelopment area and redevelopment project within 30 days after the public hearing and to make recommendations.

Adoption of Ordinances by Municipality

The redevelopment plan will become effective upon adoption of an ordinance by the municipality that approves the redevelopment plan and the redevelopment project and designates the redevelopment area. The TIF Act does not specify in detail what information must be included in the ordinance approving the redevelopment plan. The TIF Act does state, however, that no redevelopment plan may be adopted without findings that:

- a. The redevelopment area on the whole is a blighted area, a conservation area or an economic development area, including a detailed description of the factors that qualify the redevelopment area.
- b. The redevelopment area 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 is sometimes referred to as the “but-for” test, as discussed above, and must be supported by an affidavit of the developer submitted with the redevelopment plan).
- c. The redevelopment plan conforms to the comprehensive plan for the development of the municipality as a whole.
- d. The estimated dates, which shall not be more than 23 years from the adoption of the ordinance approving a redevelopment project within a redevelopment area, of completion of

any redevelopment project and retirement of obligations incurred to finance redevelopment project costs have been stated.

e. A plan has been developed for relocation assistance for businesses and residences. The relocation plan must comply with the provisions of Sections 523.200 to 523.215 of the Revised Statutes of Missouri, as amended.

f. A cost-benefit analysis has been prepared showing the economic impact of the plan on each taxing district that is at least partially within the boundaries of the redevelopment area.

g. The redevelopment plan does not include the initial development or redevelopment of any gambling establishment.

III. CAPTURE/USE OF TIF REVENUES

Determination of TIF Revenues

After the ordinance is passed, the county assessor must determine the total equalized assessed value of all taxable real property within the redevelopment project area. Thereafter, the total equalized assessed valuation of taxable real property in the redevelopment project area in excess of the initial equalized assessed valuation is computed by the county assessor for each year that tax increment financing is in effect. The payments in lieu of taxes are made by property owners in the redevelopment area on the increase in current equalized assessed valuation of each taxable parcel of real property over and above the initial equalized assessed valuation of each such parcel, and such payments are deposited into the special allocation fund.

In addition, 50% of the increase in total revenues of incremental sales and utility taxes (referred to as “economic activity taxes”) are captured and deposited into the special allocation fund. Under the TIF Act, economic activity taxes do not include taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, licenses, fees, special assessments and personal property taxes. Any city or county which levies a children’s service sales tax pursuant to § 67.1775, RSMo. and approves a redevelopment plan or project after August 28, 2007 must reimburse the amount of the children’s services sales tax captured and deposited into the special allocation fund to the community children’s service fund established in conjunction with the imposition of the children’s services sales tax.

Issuance of Bonds or Other Obligations

Either the municipality or the TIF commission may issue bonds or other obligations under the TIF Act which are payable from moneys in the special allocation fund or other funds specifically pledged. The TIF Act provides that voter approval of TIF bonds is not required. The bonds or other obligations must mature within 23 years, may bear any interest rate and may be sold at public or private sale as determined by the municipality or TIF commission. The bonds or other obligations are not a general obligation of the municipality and, accordingly, do not count toward the municipality’s constitutional debt limitation.

Reporting/Hearing Requirements

The governing body of the municipality must submit to the Missouri Department of Economic Development an annual report concerning the status of each redevelopment plan and project. The municipality must also publish in a newspaper of general circulation in the county a statement showing the payments in lieu of taxes received and expended in that year, the status of the redevelopment plan and projects, the amount of outstanding bonded indebtedness and any additional information the municipality deems necessary.

Every five years, the governing body of the municipality must hold a public hearing to determine if the redevelopment project is making satisfactory progress under the proposed time schedule contained in the redevelopment plan. Notice of the public hearing must be given in a newspaper of general circulation in the redevelopment area once each week for four weeks immediately prior to the hearing.

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