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TAX INCREMENT FINANCING

OPPORTUNITIES AND CONCERNS

by Rose Naccarato

INTRODUCTION

Two recent projects in Knoxville illustrate the uses for, and the controversy around, tax increment financing (TIF). As a tool for the redevelopment of South Knoxville's waterfront, TIF is expected to get a project that has languished in the planning stages off of the ground. As reported in the *Knoxville News-Sentinel*:

> The cost estimates reflected in the city's newly released draft financial strategy for the South Knoxville waterfront's redevelopment are meant to make the difference between another rosy idea that collects dust on a shelf and an actual, workable plan…Based on a "vision plan" crafted from a series of public workshops, the financial strategy estimates that $139 million is needed for public improvements over 20 years that could spur $814 million in private development — a $5.86 return for every $1 of public money spent…TIF has been the tool of choice for the Haslam administration in attracting private development back to the downtown core…And now, as officials look south, they expect to rely just as heavily on the same approach to fund the waterfront plan's public infrastructure projects, including new roads, additional parking, parks and greenway.[1]

At the same time, considerable controversy has resulted from the use of similar financing for a private developer to convert Knoxville's World's Fair Park into updated condominium and retail space. Also reported in the *News-Sentinel:*

> Knoxville City Council members voted to approve the necessary tax break Tuesday to finalize the city's controversial, $1.82 million sale of the Candy Factory and seven nearby Victorian houses…the 15-

[1] Hickman, Hayes. 2006. Who will find the waterfront? Crafting doable financial strategy for South Knox area a slippery task. *Knoxville News-Sentinel* May 8, 2006, A1.

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year tax increment financing provision should result in a $1.6 million tax break for a private developer, who is planning a $9 million renovation to the properties… But aside from the question of whether to sell the sites, city resident Danny Garland questioned whether the TIF was even necessary to lure a willing condo developer. "How many people's front yards include the Sunsphere?" he asked… "The TIF becomes a profit margin for the developer."…

Bill Lyons, the city's senior director of policy development, said the developers stand to earn a 20 percent profit margin on their investment…City officials have been quicker to emphasize the estimated $10 million windfall to the city. Aside from the sale price, the city will be free of a $3 million-$4 million backlog of repairs and the cost of ongoing maintenance needs. The properties will go back on the tax rolls…The terms weren't enough to convince Councilman Steve Hall, who lodged the lone vote against the deal and questioned the administration's logic in selling the buildings…"I don't know, if we got rid of everything in the city of Knoxville that didn't make money, what we would have left," Hall said to hearty applause at the Council meeting.[2]

TAX INCREMENT FINANCING

Tax increment financing was the brainchild of the California state government. First used in 1952 as a creative way to find matching funds for federal dollars, TIF was a tool for the redevelopment of blighted areas. Generally, TIF works through the following steps:[3]

- a geographic area is designated (the TIF district);
- a plan for specific improvements in the TIF district is developed;
- bonds are issued and the proceeds are used to pay for the planned improvements;
- the improvements encourage private development and thus raise property values above where they would have been without the improvements;
- with higher values, property tax revenues rise; and
- property tax revenue from increased assessments over and above the level before the TIF project began (the tax increment) is used to finance the debt.

TIF did not spread quickly beyond California, with only six additional states passing enabling legislation by 1970. As federal funding for local redevelopment projects dried up through the 1970s and 1980s, however, more and more states saw TIF as a useful tool. Currently, forty-nine states and the District of Columbia have enabling legislation for TIF; Arizona is the only state that does not, though it has

[2] Hickman, Hayes. 2006. Landmarks' future decided; Council approves tax break in sale of Candy Factory, houses. *Knoxville News-Sentinel* January 18, 2006, A1.
[3] Devine, Theresa J. 2002. *Learning from experience: A primer on tax increment financing.* New York City Independent Budget Office Fiscal Brief.

approved individual TIF projects. TIF does not generally produce enough revenue to fully fund development projects, and is generally one part of a development financing package.

Some states require that there be an element of "public good" in the TIF project, either redeveloping a blighted area or developing any area in a way that benefits the public at large. Some states allow the latter type of development for TIF, so that a desirable piece of property might be developed into, for example, mixed use residential and retail space with affordable housing included, instead of an office building. While the former project might generate less profit for developers, it can be made desirable with a TIF package. Some states loosened their TIF qualifying restrictions in the 1990s to include a looser definition of "public good" or to subsidize economic development that will bring jobs. Most states still require "blight" and "but for" findings, with the latter meaning that the property would not be redeveloped at all "but for" the TIF.

Tennessee authorizes the use of TIF by local housing authorities. In addition, Tennessee has state-administered tourism development programs that authorize sales tax revenue TIF for financing convention centers (and other tourism-related public use facilities) and stadiums for professional sports teams.

TAX INCREMENT FINANCING

Though there is no state repository of information on local TIF projects, local governments are required to keep up with them. To serve as an example of a large Tennessee city's use of TIF, a list of Nashville's TIF projects was obtained from the Metropolitan Development and Housing Agency (MDHA).

Nashville's projects ranged from a loan as small as $77,500 to help an Eckerd store in the Phillips Jackson area to one as high as $13,500,000 for the Bellsouth Tower. Some projects, like the Cumberland Apartments, have proved quite successful and have likely helped to spur redevelopment of their areas. Others, such as Church Street Centre, failed in that task.

Nearly half of the projects (nineteen of forty-one) included residential housing. Such housing offered a total of 2,039 units, of which 326 (or roughly 16%) were "affordable" housing. The best evidence to date of the success of the TIF-spurred residential redevelopment of downtown Nashville is that Signature Tower developer Tony Giarratana, who originally requested and was approved for TIF, recently decided he no longer needed such financing to make his project a success.

TENNESSEE PROPERTY TAX REVENUE TIF

Tennessee's sales tax programs are not the subject of this report, but they are summarized in the appendix. Discussions of TIF generally refer to property tax revenue TIF. In Tennessee, TIF is administered by local housing authorities under TCA §§ 13-20-201 – 13-20-217. Housing authorities have quite a bit of latitude under this law. They may acquire property for redevelopment:

- if they are blighted areas;
- in order to remove, prevent or reduce blight, blighting factors, or the causes of blight;
- if the condition of the title, diverse ownership, layout or other conditions are such that acquiring the property presents the only path to redevelopment;
- and then sell or lease the land acquired for redevelopment;
- and authorize TIF.

Before a housing authority may make use of these powers, it must hold public hearings in the areas impacted by the plan and then gain the approval of those cities, towns and counties (with some population restrictions).

The powers of housing authorities to acquire property for redevelopment have changed little since they were initially created in 1945, though redevelopment may now be accomplished by an entity acting on behalf of the authority, presumably a private developer, which was not the case in 1945.

Tennessee's TIF provisions were originally passed in 1978 and have had no substantive changes since that time.

Tennessee adjusts base tax levels such that the tax revenues that continue to accrue to the local governments with taxing authority over the property reflect the last assessment prior to the TIF designation and the most current property tax rates in any given year. This method allows for increases in base revenues to reflect property tax rate increases, but it assumes that all increases in the property's value over time are due to redevelopment, and none to inflation or a more general increase of property values in the area.

There is no central state depository of information on local TIF; TIF bonds are not designated as such with the state and no other TIF reporting requirements exist. Nonetheless, several local governments list TIF as one of the tools they have at their disposal to encourage economic development.

THE VALUE OF TIF TO LOCAL GOVERNMENTS

TIF offers "self-financing" for development projects, allowing local governments to encourage development, and to compete for businesses, without having to pay upfront development costs. Local governments have found TIF to be especially useful in funding infrastructure improvements needed to attract development. Such development could be either commercial or residential.

If a municipality is facing a debt limit, TIF bonds usually do not count against such a limit. Furthermore, repayment of the debt does not have to be made from the local government's budget; it comes from the property tax revenue set aside for that purpose. TIF can help avoid the tax increases that sometimes accompany development.

Local governments have fewer development incentives to offer than state governments to attract businesses, but TIF has proved a valuable tool for local governments for that purpose.

ISSUES SURROUNDING TIF

The expansion over time of the use of TIF to aid in any development project, rather than to aid only in the development of "blighted areas" that would not be redeveloped "but for" TIF, has created some controversy. Many of the studies of these issues have centered on Chicago, as that city has embraced TIF and used it to a much greater extent than other cities.

OPPORTUNITY COST VS. CURRENT ASSESSED VALUE

If a piece of property has enough profit potential to be developed without TIF, then there seems little reason that a local government should give up many years of future property tax revenues to pay for a portion of the development. Even though the local government receives property taxes based on the assessed value at the time of redevelopment, it is not remunerated for the property tax revenues it would have received if another developer had used the same property for a non-TIF project. The *opportunity cost* to the local government is not considered.

Economists define opportunity cost as the value of the next best alternative use of the resource. If a piece of property would be profitable without TIF, one must presume that developers would be willing to shoulder the costs themselves, allowing the local government to fully realize property tax revenues from the beginning. These missed revenues are, an economist would say, the proper comparison. This is not to suggest that a TIF project would never be the best use of the property, only that base revenues should, perhaps, reflect the opportunity cost to the local government rather than the assessed value at the time of the TIF.

When TIF projects were used solely to develop blighted areas, opportunity costs and current assessments were the same. No one would develop the property "but for" the TIF, and all eventual extra property tax revenues paid to the local government were a bonus that resulted from their use of TIF. But when alternative uses for the property are a real possibility, those alternative uses should be used for calculating the base amount retained by the local government. Of course, alternative uses that are not actually developed, and the future property tax streams from them, must be estimated, so such a system would pose its own difficulties.

Nonetheless, several studies report that TIF is used in areas where development would have occurred anyway, and that the resulting diversion of property tax dollars is costing taxpayers millions. Of note is a study by the Neighborhood Capital Budget Group, a coalition of nearly 200 Chicago area community organizations and local economic development groups, that concluded that the explosion of TIF in Chicago would make the city lose out on $254.8 million in property tax revenue in 2002 from development that would have occurred without TIF.

If TIF is used to make a use of the property that benefits the public more attractive than one that does not, then the local government is missing out on future revenues because it has decided that the public good is best served by subsidizing a less profitable type of development. The lost revenue is benefiting the public rather than a private developer, and such a situation does not raise the same issues.

FINDINGS OF BLIGHT AND "BUT FOR"

This is less of an issue in Tennessee than in other states, as Tennessee does not require these findings in order for TIF to be authorized, but it is one of the larger issues of contention over TIF nationally. Tennessee allows local housing development agencies to create TIF projects 1) on a finding of blight, or 2) in order to remove, prevent or reduce blight, blighting factors, or the causes of blight. The second qualification could be used to describe almost any property a housing authority chose for redevelopment.

Many other states, however, require a straight finding of blight; that the property would not be redeveloped "but for" the TIF. As TIF has become more a tool for economic development than one for redevelopment of blighted areas, these findings have become more difficult to justify. A few of the worst examples include one reported by the Corporation for Enterprise Development:

> In Addison, a suburb of Chicago, a Hispanic neighborhood was thought to be blighted because homes had 'dust on the windowsills' and 'unwashed dishes in the kitchen sink."[4]

Another author reports that:

> Baraboo, Wisconsin created a TIF for an industrial park and a Wal-Mart that were built on farmland; the "blight" was based on a single uninhabited house.[5]

Many states have updated their laws to have a looser definition of blight, as Tennessee law does, or to directly allow for economic development TIF, based on luring business and jobs rather than redeveloping blighted areas.

SHIFTING DEVELOPMENT RATHER THAN CREATING IT

Though there is some disagreement in the literature, the preponderance of evidence in recent studies concludes that TIF is more likely to shift investment from one area to another than to create new investment. For example, a well-regarded study of Chicago TIF by Richard F. Dye and David F. Merriman concluded, among other things, that "evidence shows that commercial TIF districts reduce commercial property value growth in the non-TIF part of the same municipality."[6] Of course, sometimes the purpose of TIF is to shift development. A

[4] Parrish, Leslie. 1999. *Increasing the accountability and efficiency of tax increment financing*. Washington, DC, p. 2
[5] McGraw, Daniel. 2006. Giving away the store to get a store. *Reason* 37: 38.
[6] Dye, Richard F. and David F. Merriman. 2006. Tax increment financing: A tool for local economic development. *Land Lines* 18: 2-7.

TIF might aid in bringing business that has moved out to the suburbs back to downtown areas, for example. Redevelopment of downtown areas is often seen as an end in itself, even if it comes at the expense of development in other areas of the same municipality.

Sometimes TIF is justified as a lure for economic growth and jobs. When it is used this way, TIF district growth should not shift development from other areas; it should be a lure for new development. A study of five Chicago TIF projects by the Developing Neighborhood Alternatives Project found that

> [A]ll of the areas immediately surrounding these TIF districts lost jobs, and these losses more than offset the number of jobs gained in the TIF district. The net decline in jobs was greater, and in three cases dramatically greater, then the decline experienced by Chicago as a whole.[7]

This study made assumptions about how jobs should change inside and near the TIF area that have to be accepted on faith. The methodology compared changes in the number of jobs in the best way possible, but there is simply not enough information to draw conclusions about cause. These job losses cannot be definitively tied to TIF, as no one can know what would have happened in the absence of TIF. Nonetheless, the consistency of the finding across all five TIF districts studied, that job losses in the immediate surrounding areas were so great as to offset TIF district job gains and still leave a net loss rate greater than that of the city as a whole, is troubling. The data covered ten years (1989 to 1998) and included a geographically and economically diverse set of five Chicago TIF districts. The surrounding areas included the four blocks surrounding the TIF district in all directions. In addition to comparing TIF districts to their surrounding areas, they were also compared to the city of Chicago as a whole.

The study authors also argue that TIF favors big businesses that can negotiate incentive packages with local governments, and leaves small businesses that pay all local taxes to fund financial incentives given to their competitors.

OVERLAPPING TAX DISTRICTS/ DIVERSION OF EARMARKED REVENUES

Sometimes different tax districts overlap and more than one taxing authority has claim to property tax revenues in an area. Special school districts or fire services districts, for instance, might be justifiably angry if they are unable to tax the increasing assessed value of property within TIF districts, especially if the development there has required an increase in the services those districts must supply. Likewise, in some districts there may be only one taxing authority, but a set proportion of tax revenue is earmarked for a particular purpose, like education. Freezing taxable assessed values within TIF districts can affect funding in these cases.

Many state laws now require that provisions be made for earmarked funds and

[7] Developing Neighborhood Alternatives Project. 2003. *The right tool for the job? An analysis of tax increment financing.* Chicago, IL.

overlapping tax districts when setting up TIF districts. In Tennessee, public hearings must be held and the approval of affected cities, towns and counties is required. If a county does not approve, a city within it may move forward if it exempts the county tax portion of the property tax from the TIF.

ILL-CONCEIVED PROJECTS

TIF has been used to finance some projects that never should have happened; the result is that cities borrow money through bond sales and TIF districts fail to produce enough extra property tax revenues to pay the bond debt. In these cases, local governments lose money.

This occasional bad outcome is to be expected, as the purpose of TIF is really to take the risk out of a risky development project. If all of the projects were sure winners, developers would not need incentives to pursue them. Furthermore, if the project otherwise serves the public interest, it may be worth the loss; although TIF would be a sort of backhanded way to fund a public project if it were not expected eventually to pay for itself. Such a project would more properly be paid for through the normal budgeting process.

OTHER ISSUES

TIF can be, and often is, used in conjunction with eminent domain. Some property condemnations have been controversial, especially if they are then turned over to private developers. This is a separate issue and is not considered in this report.

Some states require that TIF be used to achieve a public purpose, and the question of whether or not individual TIF projects do so often arises. Tennessee law does not include this requirement.

IMPROVING TIF

Even those who criticize TIF do not suggest doing away with it entirely. Instead, a set of suggestions have emerged from TIF detractors that would improve the programs.

- Define “blight” more narrowly.
- Require a reasonable showing that TIF revenues will pay development costs.
- Increase public involvement.
- Increase communication and partnerships between the TIF authority and any affected tax districts.
- Where portions of property tax revenues are earmarked for certain services (often education), exempt that portion of new revenues from TIF capture.
- Provide aid for residents and business owners who are priced out of their own neighborhoods as a result of development.
- Require annual reports from TIF districts.
- Adjust base revenue amounts annually to reflect inflation and broad increases in property values.
- Cap the amount of assessed value that can be captured by a TIF district.

APPENDIX: TENNESSEE SALES TAX "TIF" PROGRAMS

Working under the same principle as property tax TIF, Tennessee has two programs that provide special sales tax distributions to cities making investments in tourist-related industries. These programs are available to governments rather than to private business, and they use sales tax disbursements rather than property tax deferments, but they are similar in intent and so deserve a brief description here.

MUNICIPAL SPORTS AUTHORITIES

TCA § 67-6-103(d)(1)(A) provides special sales tax benefits for municipal sports authorities that have secured a major league baseball, football, basketball or hockey team, or a minor league baseball team that is affiliated with a major league team and is at Class AA level or higher for which the city has built a stadium. Subsection (C) added municipal sports authorities that have constructed facilities costing more than $40 million for a motor speedway event (and that have actually attracted such an event). Such municipalities receive the 6% portion of the state sales tax (prior to its last increase), minus any portions earmarked for education, collected on ticket sales to the sports franchise's games, concessions sold on the premises, parking fees, and franchise merchandise sales within the county. This sales tax benefit must go to the sports authority and be used to retire debt on the facility. The benefit lasts for no more than thirty years.

Subsection (B) makes an exception the case of NFL teams, so that distributions for NFL teams go to the state general fund rather than the municipality. The NFL exception to the special earmarking was written in response to an agreement between Nashville and the State of Tennessee for construction of the Titans' stadium in Nashville. The Tennessee Department of Revenue reports that amounts disbursed to cities in fiscal year 2006 under this program total $9,043,084.

TOURIST DEVELOPMENT ZONES

TCA § 7-88-106 assigns certain sales tax disbursements to cities with public use facilities in approved "tourist development zones" as part of the Convention Center and Tourism Development Financing Act of 1998. This is a complicated law with several caveats, but it allows a municipality with a zone that the state Department of Finance and Administration has agreed would be benefited by a public use facility to receive new sales tax revenues from within that zone after the facility is built. The revenues must be used to repay debt on the facility, and the municipality can receive the extra revenues for no more than thirty years. The municipality receives only those revenues that are in excess of the "base tax revenues." Base tax revenues are the sales tax revenues generated inside the tourist development zone prior to the opening of the public facility. The base tax revenues are adjusted every year to reflect the percentage change in sales tax revenues for the county as a whole. The Tennessee Department of Revenue reports that revenues disbursed under the program in fiscal year 2006 include: $427,823 to Chattanooga; $319,835 to Sevierville; and $7,084,764 to Memphis. Knoxville has an approved development zone but has not yet completed the public use facilities.

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