INTERIM REPORT SUMMARIZING SIGNIFICANT CHANGES IN TAX INCREMENT FINANCE POLICY IN WISCONSIN

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INTRODUCTION

The combination of the slowdown in development brought about by the construction downturn combined with the "popping of the real estate bubble" has created two competing challenges for tax increment financing (TIF). First, as happens in reaction to recessions, competition for development projects becomes a serious reality for communities throughout Wisconsin and the nation. This is not uncommon for a public policy program borne out of the recession of 1974. In the context of the current slowdown, as communities compete more keenly for the few promising projects on the horizon, their reliance on TIF becomes more acute. At the same time, prospects for appreciation in real estate prices (central to the repayment potential) has been limited due to the "popping of the real estate bubble." This places pressure on governing authorities (the Wisconsin State Legislature and governor, in this instance) to create policies that allow for both situations. Specifically, lawmakers have an incentive to allow for broader use of the TIF as a tool to promote economic development, but they also are forced to consider the possibility that at least some TIFs may be rendered ineffective in terms of generating an increment sufficient to pay down debt incurred in a timely fashion.

Tax increment finance (sometimes referred to as tax increment districts or TID in Wisconsin) has been a process of evolution. Our focus in this report is to chronicle the key changes in TIF policy. For a more general discussion of the general history and use of tax increment finance in Wisconsin, see Kashian, Merriman, and Skidmore (2006). The first tax increment district (TID) laws were initially designed to promote development in areas that were considered "blighted." Over time, it was discovered that the stated outcomes were not in line with the advocates' (and opponents') expectations, and gradual changes have been implemented. However, while new limitations regarding the conditions under which TID can be used have been introduced, so have expansions. As a result, the evolution of the TIF use is a series of "restrictions and expansions" that on net has evolved into an expanded program. This report examines how Wisconsin's TIF laws have been modified since 1974 in response to crisis and opportunity.

DESCRIPTION OF PROCEDURES

When created in 1974 (in response to a national recession), TIF design and implementation in Wisconsin was predicated on the "but for" condition. To justify the use of TIF, the municipal development authority was legally required to demonstrate that the development would not occur but for the TIF district. The nature of that clause has allowed for an expansion in the use of TIF.

The initial program was limited in scope in that no more than five percent of the municipality's equalized value can be in the TIF. In this original legislation, towns and counties were not allowed to develop TIDs. In addition, while municipal authorities were required to notify other affected taxing authorities, these other authorities had no say in the process. A number of other issues regarding the scope and use of TIF that remained vague were corrected/clarified in subsequent legislation over the next few years. While the stated intention of the initial TIF legislation, as it was introduced, was to provide an additional means of redeveloping areas that were primarily urban in character, the end result was often development on the urban fringe.

Following the creation of the TIF process, minor and major changes have been enacted every few years for the past 45 years. As this report shows, the changes varied between those that limited use and those that expanded use. In the long run, the net impact was an overall expansion of TIF use. In the early years, the initial changes were technical in nature and clarified operational issues. For example, in 1977 a minor change was made in which the "Tax Increment Base" was clarified to be equalized value as determined by Wisconsin's Department of Revenue. As with this change, there was a law change that clarified how TIF would affect equalized value and state financial assistance to communities (equalized value was clarified to be based on the lower value, thus helping those communities). In 1979, legislation was passed clarifying a list of infrastructure expenditures that would be considered a part of project costs within the TIF funding mechanism. A more significant change occurred in 1979, when the state allowed that amendments to the original TID five or more years after the district creation would require recalculation of the increment base (this was also clarified in 1983). This was legislation that limited the TIDs' ability to expand since the inclusion of new amendments would increase the TID base value to the more recent level.

In 1981, the legislature limited the inclusion of project costs for the TID to only those costs that were directly related to the TID. For example, if a sewer extension benefited a non-TID neighborhood, that portion of the costs could not be funded through the tax increment created by the TID. This is an example of a tightening of TID regulations. In 1981, the legislature also clarified the continuous property requirements; any given tax increment district must be contiguous. The legislature allowed that a rail corridor or a highway could be included in the TID – however, rail or highway corridors must have the taxable real estate on one side or the other to be included in the TID. In a strong statement, the 1981 legislature banned the use of TID on inland lake protection and rehabilitation programs.

There were additional ways the state limited the use of TID. First, it increased the percentage of TID land that must meet one of the three criteria for TID creation (blighted, in need of rehabilitation or conservation work, or suitable for industrial development) from 25 to 50 percent. Second, it required that land suitable for industrial development be zoned industrially and remain so throughout the duration of the TID. Finally, it limited the amount of vacant land allowed in a TID, stipulating that no more than 25 percent of TID land may have stood vacant over the seven years prior to TID creation.

In an attempt to include the school boards, the vocational technical college boards and the county boards into the discussion of TID, in 1983 the legislature required that the Department of Revenue inform these bodies of the fiscal impact of TID on their short-term tax revenue. Shortly after, this low level of participation and control was greatly expanded. Later that same year, the legislature created the Joint Review Board that included one member from each of the school board, the county board, the VTAE board, the city council (or village board), and the public to approve or deny new TIDs. This inclusion of the other affected taxable bodies was a major change in TID policy. The determination of who would represent these bodies was left up to the affected taxable body. This act also created a rubric for approving or denying the TID. It is the local board that is charged with the responsibility of determining whether a proposed district meets the "but for" test. While the legislation requiring participation by the affected local jurisdictions created some additional oversight and limitations of how TID was to be used, the same legislation expanded its use. Specifically, the expenditure window for the TID was extended from five years to seven years (with some minor exceptions for earlier changes).

Also, in 1983 the legislature allowed cities and villages to issue tax incremental bonds to fund projects. This offered the advantage of municipal bond funding to the districts. While the current law requires that a TID not include more than 25 percent of its land in property that stood vacant for more than seven years, special consideration was offered to an expanse of land in the City of Milwaukee (the Park East Freeway land) that stood idle for decades.

In TID-limiting moves, legislation was passed in 1985 clarifying that wetlands cannot be used as an area to complete the contiguous area of the TID. It also expanded the reporting requirements from the TID to Wisconsin's Department of Revenue. An additional measure offered TID advantages to larger cities that provided greater expenditure abilities to First Class Cities as opposed to other Wisconsin municipalities. In 1987, the issue of the applicability of this looser expenditure standard was clarified to apply only to the city of Milwaukee (as opposed to the city of Madison). In 1985, small cities in small counties were allowed to use TIF to expand infrastructure outside of the TID. This limitation was lifted for cities with populations

less than 50,000 people in counties of less than 100,000 located on a major river.

In 1989, following a trend of modifying TID rules specifically for certain communities, the legislature passed a focused amendment that said: No expenditure may be made later than seven years after the tax incremental district was created, if the tax incremental district was created after January 1, 1984, and before January 1, 1986, and is located in a village incorporated in 1910 that has a population of more than 5,000 and less than 6,000 according to the 1980 federal census. This legislation applied to the village of Kimberly. The impact of these specific exceptions resulted in an overall expansion of the TID program in the ensuing years.

Subsequent to this minor expansion for small communities, 1989 witnessed a dramatic expansion of TID as the state offered these benefits to all municipalities. In an attempt to build in some uniformity of expenditure, the state passed legislation that allowed for a uniform seven-year expenditure period. In addition, while the old payback period of the debt was limited to 15 years following the last expenditure (in effect limiting the life of the TIF to 20 years), this debt repayment period was extended to 16 years. In conjunction with the seven-year expenditure period, this expanded the life span of the TID to 23 years (seven years of debt and additional 16 years of repayment). In an expansionary measure, the State expanded the percentage of a city that may be contained within the TID. Rather than the original limit of five percent, the state adjusted the rules such that the equalized value of equalized taxable property of the district plus all existing districts does not exceed seven percent of the total equalized value of taxable property within the city.

In an attempt to promote environmental remediation, legislation was modified in 1993 to expenditures on the removal or containment of, or the restoration of soil or groundwater affected by, environmental pollution. In 1995, the legislature allowed for modifications in the district's boundaries by adding territory to the district that is contiguous to the district and that is served by public works or improvements that were created as part of the district's project plan. Expenditures for project costs that are incurred because of an amendment to a project plan to which this subdivision applies may be made for not more than three years after the date on which the local legislative body adopts a resolution amending the project plan. Thus, expenditures on TID that occurred prior to the area's inclusion in the TID can be backed into the TID.

Noting that the state of Wisconsin extended the practical life of the TID to 23 years in 1989 by addition (the time of expenditure plus the time of debt repayment), the legislature clarified the entire life of a TID to 27 years for existing TID but only 23 years for new TID (created after September 30, 1995). The 27-year TID life was allowed by extending the term of expenditure from seven years to 10 years.

In 2003 there were a series of dramatic changes to the TID, both expansionary and restrictive. One important change increased from seven percent to 12 percent the ratio of equalized value of equalized taxable property of the district plus all existing districts to the total equalized value of taxable property within the city. In effect, this more than doubled the amount of value originally allowed for in the 1975 legislation. In addition, when one considers that the value of the land placed in the TID is poised for appreciation, it is highly likely that two to three years after the creation of the TID, this ratio will rise to over 12 percent.

In a move to restrict the incidence of municipalities annexing town land for use in a TID, communities were not allowed to include any annexed territory that was not within the boundaries of the city on January 1, 2004, unless at least three years have elapsed since the territory was annexed by the city. This provision is waived if there is a cooperative plan boundary agreement between the township and the city. Unless this agreement exists, or the city and town enter into another kind of agreement relating to the annexation, the city may include territory that was not within the boundaries of the city on January 1, 2004, if the city pledges to pay the town an amount equal to the property taxes levied on the territory by the town at the time of the annexation for each of the next five years. The legislation also allowed for TID that focused on mixed-use development. In addition, the municipalities are required to categorize their new TIDs into one of the following categories: blighted district, conservation or rehabilitation district, industrial district, or mixed-use district. Beginning October 1, 2004, towns were allowed to establish tax increment financing districts. The TID mechanism is essentially the same as for villages and cities with several limitations. Town TID districts have only five years to make expenditures and the maximum life is 11 years after the last expenditure, or 16 years, whichever comes first. Permitted project types are agricultural projects, forestry projects, manufacturing projects (that must relate to agricultural and forestry projects), and limited tourism. Residential and retail development related to the permissible project types may also be eligible.

This creation of mixed-use development (in 2003) altered the current law, where industrial-use TIDs can encapsulate nearly all kinds of growth but are required to keep at least 50 percent of the land zoned as industrial and are not allowed to use TIF to fund any improvements not related to "industrial development." Creating mixed-use TIDs allows municipalities to use TIF to fund the development of residential and retail businesses. However, these TIDs have a maximum life of 20 years rather than the standard 23 years for other TIDs.

The 1983-1984 legislature also allowed municipalities to amend TID project plans up to four times throughout the duration of TID life, rather than the one opportunity during the first seven years allowed under current law. TIDs

are allowed to make project expenditures up to five years prior to the district's termination, rather than only seven years after its initiation. For TIDs created to remedy urban blight or for environmental remediation, maximum TID life is increased from 23 to 27 years.

Other small changes also occurred. For example, in response to the growth of consolidated school districts that do not follow municipal boundaries, the provision for school board representation was modified to reflect multiple school districts. In addition, in 2003, the legislature passed specific legislation to extend the life of TID in Kenosha and Sheboygan. Finally, in selecting their representatives for the Joint Review Boards, the underlying tax districts are required to appoint high-ranking officials of those districts.

There was also a further attempt to place formal standards around the creation and modification of TID. For mixed use development created or amended on, or after, October 1, 2004, the application for certification of the original or amended tax incremental base must state the percentage of territory within the TID that the municipality estimates will be devoted to retail business at the end of the TID expenditure period. That estimate needs to be at least 35 percent. As of 2005, the TID will not be certified if the lands proposed for newly-platted residential use exceed 35 percent of the real property within the district; or tax increments received by the municipality are used to subsidize residential development and the costs violate the mixed development guidelines (often infrastructure costs).

While there was some activity in TID legislation in 2005, it was directed and specific to a few cases. The only statewide legislation allowed a city to create a new TID and eliminate or alter an existing TID at the same time. The basic requirement demanded that the net result did not exceed the 12 percent rule. In 2005, the legislature passed specific legislation that only applied to the city of Monroe. This legislation stated that: "With respect to a tax incremental district that has been created by a 4th class city incorporated in 1882 that is located in the Pecatonica River watershed, the recipient tax incremental district has been created before October 1, 1996, and the donor tax incremental district has been created before October 1, 2003." This legislation allowed the city of Monroe to allocate monies raised by one of the TIDs to another (less successful) TID. In addition, the legislature passed acts absolving the city of Kimberly from its technical failure to publish the required notices prior to its enactment and allowed the city of Kenosha additional latitude in its expenditure of TID monies. In 2007, similar action was taken with the Village of Edgar, which had missed a deadline on TID #3; the City of Rhinelander, which had missed filing deadlines; and a Joint Board of Review meeting, which had missed a public hearing notice deadline in the City of Altoona.

As cities attempt to maximize the amount of valuation placed in TIDs, calculation errors have begun to appear. As a result, legislation passed in 2007 exempting the City of Beloit and the Village of Union Grove from these technical errors in their 12 percent calculations (in 2009, similar legislation was passed exempting the Village of Elmwood). In a more substantive move, the state legislature required the creation of a temporary joint review board if the TID wished to incur project costs outside of the TID boundaries. Just as these temporary joint review boards are required to convene when the board wishes to amend the plan (they can be amended up to four times as of 2003), this change brings conformity into the plan: the original joint board of review may not have anticipated spending outside of the original TID. However, a final specific act passed in 2007 changed the nature of the limitation on TID amendments: For the Village of Pleasant Prairie, the maximum number of amendments was increased from four to six on TID #2.

In 2009, with the recession building and the real estate bubble popping, two ominous signs of legislation appeared. Both Sheboygan and Waukesha were allowed through legislation to extend the term of their TIDs. Given that the expenditure life of an existing TID is 22 years, the legislature allowed these two communities to extend the expenditure period for specific TIDs to 26 years. In concert, since the expenditure period of the TID is five years after the termination of the expenditure period, the life of the TID became 31 years (rather than the original 27 years). This legislation served as a precursor to the idea that distressed real estate may exist with a TID, thus reducing the increment available to liquidate the debt. This is critical, since the very nature of TID is predicated on the idea that the real estate within the TID should appreciate, thus creating a revenue stream sufficient to pay off the debt. In response to the declining real estate values, the legislature passed a general outline on distressed TIDs. In this legislation was a definition of the distressed TID. This is primarily a TID that has existed for seven years and has witnessed a minimum of a 25 percent decline in real estate values from its highest point inside the TID. In the event this occurs, the life of the TID can be extended to 40 years. However, the ability to expend TID monies is severely limited.

In 2011, Wisconsin Assembly Bill 179 was enacted. This law allows two or more cities to jointly establish a TIF district, or a multi-jurisdictional tax increment district (MJTID) given that this district is contiguous over the two municipalities' borders. This law creates the opportunity for a community that is at its maximum legal limit for TID (normally 12 percent of assessed value) to join forces with a community that has excess assessment capacity. As this report has noted, this law continues the

expansion of TIF. In this case, it moves the boundaries of TID beyond the municipalities' borders, without the inclusion of the county.

In 2013, the vast majority of Acts passed in regards to TIF were that of expanding the authority of individual towns and cities to create TIDs (ACT 50 and 51), lengthen the time in which individual participants can allocate tax increments and expenditures for project costs (ACT 2, 32, and 90), and the allocating of positive tax increments from one TID to the next (ACT 284). Wisconsin Act 299 refines the definition of project costs by removing the cost of constructing or expanding parking structures.

As far as ranging impactful laws, Wisconsin Act 183 states that the temporary joint review board must vote on and approve any redetermination of the tax incremental district in recently annexed territory as well as allows for the allocation of positive tax increments generated by one TID to an envirnmental remediation TID that has been created within the same city or village. This act also allows for property tax exemptions for biogas or synthetic gas energy systems and property.

TYPES OF TIF DISTRICTS

As a result of the evolution of legislation, some observations can be made regarding these changes. The most general statement is that it has expanded gradually. When initiated, TID was a program designed around municipalities and limited to 20 years and five percent of the equalized value of the community. Today it can extend upwards to 40 years and comprise 12 percent of the value of a community. In its original format, it was limited to a "but for" proposition and the idea that expenditures would be limited to the TID area. Today, it is commonly used on the city's fringe and can build infrastructure outside of the TID. However, in its original format, school boards and county government had little input into the process; today it must approve such actions.

The TIF law that exists in 2010 requires a local legislative body to declare a single type for each TIF district as part of the resolution creating the TIF district. The four types of districts are Blighted District, Rehabilitation or Conservation District, Industrial District, and Mixed-use District. The declaration is based on the type of land that makes up at least 50 percent of the area in the district, or which of the four is predominant with regard to the area in the district.

1 Wisconsin Statutes 66.1105

Blighted District: The TIF Law provides two specific meanings for the designation of a blighted TIF district:

> 1 -- An "area in which the structures, buildings or improvements contribute to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime and are detrimental to the public health, safety, morals or welfare, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation or open spaces, high density population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes."[1]
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> 2 -- An "area which is predominantly open and which consists primarily of an abandoned highway corridor, or that consists of land upon which buildings or structures have been demolished and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community."[2] Statutes specifically exclude predominantly open land area developed for agricultural purposes from a "blighted area" definition.

Rehabilitation or Conservation District: Rehabilitation or conservation districts are similar to blighted districts. The statute defines "rehabilitation or conservation work" as the restoration and removal of blighted, deteriorated or deteriorating areas. This includes the acquisition of real property and demolition, removal or rehabilitation of buildings and improvements on the property where necessary to eliminate unhealthful, unsanitary or unsafe conditions, lessen density, reduce traffic hazards, eliminate obsolete or other uses detrimental to the public welfare, to otherwise remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities.[3]

Mixed-use District: In mixed-use development, a minimum of 50 percent of the TID must be suitable for at least two of the three possible uses: industrial, commercial or residential. However, the newly platted residential portion of this TID is limited to no more than 35 percent of the TID area.

Industrial District: An industrial TIF district is a district suited for an industrial site. The area has to be zoned as industrial and has to remain zoned as such for the life of the district. However, it is the only type of TID that can have more than 25 percent vacant land after seven years of the TID's creation.

2 Wisconsin Statutes 66.1105

3 Wisconsin Statutes 66.1105

Town Districts: Beginning in 2004, towns were allowed to establish tax increment districts. The TID mechanism is essentially the same as for villages and cities with several limitations. First, town TIDs have only five years to make expenditures and the maximum life is 11 years after the last expenditure. As a result, they have the shortest maximum lifespan (16 years). The second difference is that the equalized value ratio cannot exceed seven percent at the initiation of the TID. The final difference is that the town can amend the boundary of the TID and expand the size of the TID once during the first five years.

Environmental Remediation District: In 1997, the state of Wisconsin expanded access to TID by creating ER TID. The purpose of this TID is to recover the costs of environmental pollution remediation. The expenditure and lifespan regulations on these TIDs are different than the usual TID. Expenditures are limited to costs directly associated with environmental remediation. The lifespan is shorter; the maximum life of the ER TID is only 16 years and the expenditure period is limited to the first five years.[4]

For reference, we include Table 1, which summarizes key legislation that pertains to tax increment finance in Wisconsin. In addition, Table 2 provides a summary of the key features of tax increment finance as it is used in Wisconsin.

4 Wisconsin Statutes 66.1105

SUMMARY

As stated in the beginning of this report, the history of TID in Wisconsin is expansionary in nature. Despite efforts to rein in abuses, these limitations have been overwhelmed by expansions. A process that initially applied to municipalities now extends to townships and counties. A policy that was limited to five percent of a municipality's equalized value can now cover an initial level of up to 12 percent. Finally, a program that anticipated repayment and reintegration of the tax base within 20 years can now extend out to 40 years.

It appears that these expansions were often the product of specific extension. Generally, we observed a pattern of a narrow extension of use that might apply to a specific municipality for a unique project (e.g., the Park East Freeway land in Milwaukee) later be applied to the entire state. We also observe changes being implemented in the wake of unforeseen events such as the collapse of the real estate bubble. It is fair to say that specific exceptions were initially introduced were ultimately expanded to all participants and became the rule. If there ever was an issue of a "slippery slope," it appears that TID in Wisconsin is an excellent example.

TABLE 1 | STATE OF WISCONSIN TAX INCREMENT LAWS CREATED

1975	CH 105	CH 199	CH 311						
1977	CH 29	CH 418							
1979	CH 221	CH 343	CH 361						
1981	CH 20	CH 317							
1983	ACT 27	ACT 31	ACT 207	ACT 320	ACT 405	ACT 538			
1985	ACT 29	ACT 39	ACT 285						
1987	ACT 27	ACT 186	ACT 395						
1989	ACT 31	ACT 336							
1993	ACT 293	ACT 337	ACT 399						
1995	ACT 27	ACT 201	ACT 225	ACT 227	ACT 335				
1997	ACT 3	ACT 27	ACT 237	ACT 252					
1999	ACT 9	ACT 150							
2001	ACT 5	ACT 11	ACT 104						
2003	ACT 34	ACT 46	ACT 126	ACT 127	ACT 194	ACT 320	ACT 326		
2005	ACT 6	ACT 13	ACT 46	ACT 328	ACT 331	ACT 385			
2007	ACT 2	ACT 10	ACT 21	ACT 41	ACT 57	ACT 73			
2009	ACT 5		ACT 28	ACT 66	ACT 176	ACT 176	ACT 310	ACT 312	
2011	ACT 12	ACT 32	ACT 40	ACT 41	ACT 77				
2013	ACT 2	ACT 32	ACT 50	ACT 51	ACT 90	ACT 183	ACT 193	ACT 284	ACT 299

http://www.revenue.wi.gov/pubs/slf/tif/tiflaw.pdf

TABLE 2 | STATE OF WISCONSIN TAX INCREMENT EXPENDITURE GUIDE[1]

	Creation Date	Expenditure Period	Maximum Life before extensions	Extension Allowed	Maximum life if Extension granted
Existing TIF District	Before 10/1/95	22 years	27 years	No	27 years
Blighted or Rehabilitation	9/30/95-10/1/04	22 years	27 years	4 years	31 years
	After 10/1/04	22 years	27 years	3 years	30 years
Industrial or Mixed-Use	After 10/1/04	18 years	23 years	No	23 years
	After 1997	15 years	20 years	3 years	23 years
Town TIF District		5 years	16 years	No	11 years after last expenditure or 16 years maximum
ER TIF		15 years	16 years	No	16 years

1 http://www.revenue.wi.gov/pubs/slf/tif/tiflaw.pdf

REFERENCES

Kashian, R., D. Merriman and M. Skidmore June 2006 "Do Wisconsin Tax Increment Finance Districts Stimulate Growth in Real Estate Values? Do They Contribute to Sprawl? Interim Report Summarizing the History and Purpose of Tax Increment Finance Policy in Wisconsin submitted to the Lincoln Institute for Land Policy, Cambridge, Mass.

The basic text of the laws were retrieved from the State of Wisconsin's Legislative website:
http://legis.wisconsin.gov/rsb/wislawarc.htm

The overall picture of TID and the summary of the laws and the TIF Expenditure Table was retrieved from the State of Wisconsin's Department of Revenue website:
http://www.revenue.wi.gov/pubs/slf/tif/erlaw.pdf;
http://www.revenue.wi.gov/pubs/slf/tif/tiflaw.pdf;
http://www.revenue.wi.gov/pubs/slf/tif/tif-trix.pdf.