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Under the current tax incremental law (Wis. Stat. § 66.1105), a city or village may create a Tax Incremental District ("TID") to assist new development or redevelopment (related to blighted areas or areas in need of rehabilitation).

A TID can be of significant benefit to not only the creating municipality and its overlying taxing jurisdictions but also to landowners and developers looking for infrastructure support or financial assistance to develop land within the community or redevelop or revitalize existing developments within the community.

The creation of a TID and its management are principally controlled by statutory provisions. The TID statute is oriented toward standards and procedures for the creation and management of the TID and provides numerous key definitions which are essential for proper implementation of the other statutory provisions. However, for all of the interested parties to fully realize the benefits of a TID, contractual rights and obligations must be established between the city or village and the affected or interested landowners or developers. These contractual arrangements can take the form of development agreements, loan agreements, conditional grant agreements, deed restrictions and other agreements expressing various rights and obligations of the respective parties necessary to assist in the realization of the anticipated benefits which support the creation of the TID.

### **Procedural Overview**

A TID may be created if at least 50% of the land area to be included in the TID is blighted, in need of rehabilitation, suitable for industrial sites or qualifies for a mixed-use development (some combination of industrial, commercial or residential uses). Before a city or village may create a TID, public hearings on the proposed TID within specified time frames must be held. A proposed project plan for the TID must be developed and the boundaries for the proposed district must be established.

Generally the Plan Commission will conduct the public hearings and prepare the proposed project plan and district boundaries. Once these items have been completed and approved by the Plan Commission, they are referred to the city common council or village board for consideration and approval.

The project plan, at a minimum, will address the following items:

1. The kind, number and location of all proposed public works or improvements within the district and outside the district;
2. An economic feasibility study;
3. A detailed list of the estimated project costs, including grants and incentives, if applicable;
4. A description of the methods of financing the project costs;
5. The time when the project costs will be incurred;
6. A map showing existing uses and conditions of the land within the district;
7. A map showing proposed improvements and uses in the district;
8. A description of any proposed changes to zoning ordinances, the master plan, building codes and city ordinances;
9. A list of estimated non-project costs associated with the district;
10. A statement of the proposed method for the relocation of any persons displaced by the work within the district; and
11. An indication of how the creation of the district promotes the orderly development of the city or village.

Before a TID may be created, the city or village must establish a Joint Review Board for the review and approval of the actions taken by the common council or village board for the proposed creation of the TID. The Joint Review Board is made up of representatives of the overlying taxing jurisdictions of the proposed TID, plus a representative of the city or village and a member-at-large from the community. The overlying taxing jurisdictions generally involved are the county, the school district and the technical college district.

The Joint Review Board must act on the resolutions delivered to it for the creation of the district by the city or village within certain statutory time frames. If the Joint Review Board fails to approve the TID, the TID cannot be created.

After all of the city or village approvals are obtained and the Joint Review Board approval is obtained, the municipality makes certain filings with the Wisconsin Department of Revenue (the "Department") which facilitate the Department's calculations of the tax increment base value of the TID which is the equalized value of all taxable property within the TID at the time of its creation. If the development in the TID increases the value of the property in the TID above the base value, a value increment is created and used to pay the project costs and the related debt service obligations.

The tax increment is used by the municipality until the TID terminates. TIDs are required to terminate once all the project costs are paid back. The maximum term for blighted and rehabilitation TIDs is 27 years and for industrial or mixed-use TIDs, 20 years. Some extensions of up to 3 years are permitted. Municipal expenditures, with the exception of debt service payments, must be completed no later than 5 years prior to the initial maximum term of the TID.

The overlying taxing jurisdictions do not receive any of the tax increment during the life of the TID; however, they do continue to receive their portions of the taxes attributable to the tax increment base value at the time the TID is created.

The use of the tax increment is what enables the municipality to provide the incentive for the private development which ultimately increases the tax base for the benefit of all taxing authorities. This postponement of the enjoyment of the tax increment by the overlying taxing jurisdictions is justified, to some extent, by one of the findings of the Joint Review Board. The Joint Review Board, to approve the TID, must conclude that the development expected in the TID would not occur without the use of the tax incremental financing concept.

### **Planning Considerations for the Creation of the TID**

Proponents of a TID, whether within the city, the village or the private sector, in addition to considering the various statutory requirements must also focus on the following items which significantly contribute to the likelihood of successfully establishing a TID:

1. There must be a realistic estimate of the anticipated added tax base that would be created within the district and the tax increment that would result from that increased tax base. This requires careful analysis of the private sector development that will likely occur and the ability of the municipality to force that development through contractual arrangements.
2. The scope of the infrastructure work must be established, as well as the associated costs for such work.
3. Other municipal costs must be taken into consideration including, but not limited to, administrative staff costs, consultant expenses, bond issuance expenses, loans and grants (if applicable).
4. Consideration must be given to the amount of the financial contribution which will be made by the landowners or developers to facilitate the anticipated increase in the tax base within the district.
5. A municipality may wish to consider the use of a pre-planning expense agreement with a developer to offset some of its pre-planning expenses in the event the TID is not created or an acceptable development agreement is not entered into between the municipality and the developer.
6. Realistic time lines need to be established for the creation of the TID, as well as the negotiation and finalization of any required agreements between the municipality and the developer to facilitate both the public and private sector work within the TID.
7. Phasing of the proposed development should be considered to minimize premature expenditures which are not offset by reasonably concurrent tax increment to satisfy debt service requirements.
8. Consideration must be given to the life of the TID and its impact on the overlying taxing authorities. While the statute establishes, in most cases, the maximum life of a TID at 20 or 27 years, many municipalities and overlying taxing authorities will insist on a shorter life span for the TID to enable the overlying taxing authorities to more quickly realize the benefits of the increased tax base.

### **Conclusion**

If used correctly, both the public sector and the private sector can significantly benefit from the use of a TID. Successful TIDs involve high levels of cooperation between the municipalities creating the TID and the landowners and developers who provide the added tax base. Being aware of the statutory requirements and procedural process applicable to the creation of a TID and understanding the financial interests of all of the interested parties, both in the public sector and in the private sector, will greatly facilitate the likelihood that a proposed TID will actually be approved, and once approved, will actually deliver the benefits anticipated by all of the parties.

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