TIF 101, S.191, S.283

February 4, 2020

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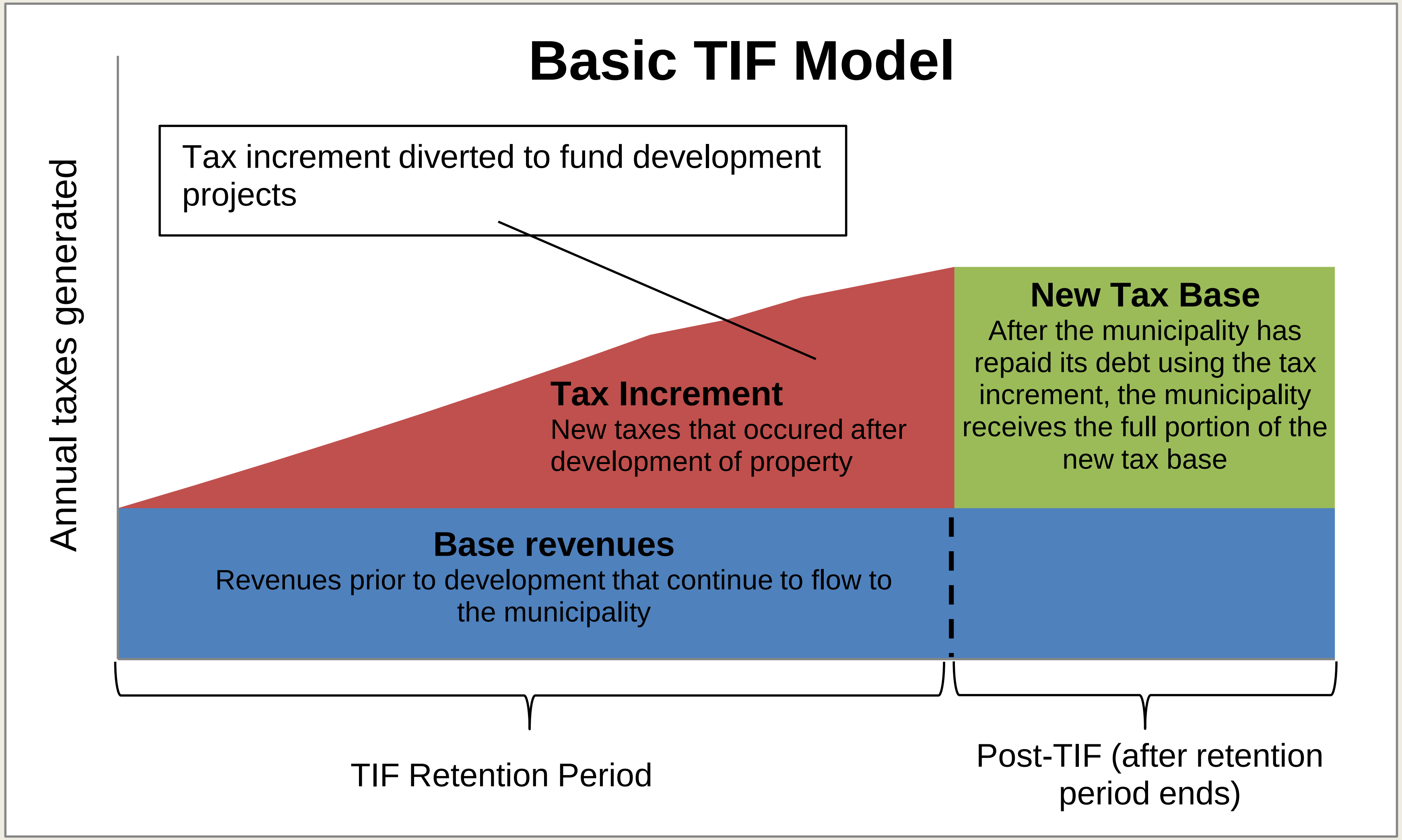
What is TIF?

- Used by municipalities and states to finance economic development by diverting a portion of the growth in future property tax revenues
- Steps to a TIF:
  - *1) Municipality seeks to improve a geographic area (downtown plot , blighted land, brownfield) by investing in new infrastructure (sidewalks, parking, streetlights, sewer)*
  - *2) These improvements stimulate private development of the area.*
  - *3) Municipality finances these infrastructure improvements with borrowed funds.*
  - *4) Municipality pays back the borrowing using a portion of the increased tax revenues as result of improvements to the area*

What is TIF?



Basic TIF Model
Annual taxes generated
Tax increment diverted to fund development projects
Tax Increment
New taxes that occured after development of property
New Tax Base
After the municipality has repaid its debt using the tax increment, the municipality receives the full portion of the new tax base
Base revenues
Revenues prior to development that continue to flow to the municipality
TIF Retention Period
Post-TIF (after retention period ends)

Pre-2006 Vermont TIF Landscape

- TIF authorized in statute in 1985
- Prior to 1998, TIF districts in VT were municipal constructs
  - *All incremental tax revenues were municipal property taxes*
  - *No state involvement, other than establishing ability for towns to create*
- Act 60 of 1997 established a statewide property tax
  - *Allows TIF districts to capture two types of tax increment:*
    - Statewide Education Property Tax
    - Municipal Property Tax

Pre-2006 TIF Districts: Legislative History

- TIF districts created under the TIF enabling legislation (Act 87, 1985):
  - *Burlington (Waterfront) TIF district authorized in 1996 (City voted to expand in 1997)*
  - *Newport TIF district authorized in March 1997*
- Changes in education financing to statewide property tax (Act 60, 1997)
  - *Grandfathers Burlington (waterfront) and Newport TIF districts to allow for use of the new State education property tax increment*
- VEPC authorized to approve additional TIFs as part of the Economic Advancement Tax Incentive Program (job creation) (Act 71, 1998):
  - *Milton (North/South) TIF district approved under this authority*
- Winooski TIF district created through special legislation (Act 159, 2000)

Post-2006 Vermont TIF Landscape

- In 2006, the Legislature set out the VEPC approval process and framework for new TIF districts.
  - *Establishes a percentage split for incremental statewide property tax revenues of 75% TIF district, 25% state*
  - *Establishes location criteria: TIF must be in two of the following:*
    - *High density or compact area, approved downtown center, or an economically distressed area*
  - *Establishes specific project criteria for a TIF district to be established.*
  - *TIF districts could not retain more than 20 years of statewide tax property tax revenue from first debt.*

Post-2006 TIF Districts and Authorities

<u>TIF districts created prior to VEPC approval process</u>:

- *Burlington (Waterfront);*
- *Newport;*
- *Milton (North/South); and*
- *Winooski*

<u>TIF districts subject to VEPC approval process</u>:

- *Milton (Town Core);*
- *Burlington (Downtown);*
- *Colchester;*
- *Hartford;*
- *St. Albans; and*
- *Barre*

Post-2006 TIF Districts: Legislative History

- TIF District Caps
  - *Act 184, 2006: Caps districts at 10, with no more than 1 per town for a five-year period, ending June 30, 2011.*
  - *Act 190, 2008: Caps districts at 6, with no more than 1 per town for a five-year period ending June 30, 2013.*
  - *Act 80, 2013:*
    - Prohibits any additional districts other than Burlington (Downtown), Burlington (Waterfront), Milton (North/South), Newport, Winooski, Colchester, Hartford, St. Albans, Barre, and Milton (Town Core); and
    - Allows for a South Burlington TIF if approval granted by December 31, 2013.
  - *Act 69, 2017: Caps districts at 6 more for the entire State and no more than 2 per county (11 active, 4 up for grabs).*

Post-2006 TIF Districts: Legislative History

- Tax Increment:
  - *Act 134, 2016: Extends period for Burlington to retain increment (municipal and education).*
  - *Act 69, 2017: Requires municipalities to dedicate at least 85% of their municipal increment, and sets up a 70% TIF district/30% state split of education property tax increment revenues.*
- Debt Incurrence:
  - *Act 190, 2008: Amends when debt can be incurred and retroactively approved type of debt used for Burlington.*
  - *Act 54, 2009: Reopened Burlington (Waterfront) for debt purposes, and changed requirements for Milton (Town Core) to incur debt.*
  - *Act 80, 2013: Burlington (Waterfront) permitted to incur debt for an additional five years, beginning January 1, 2015.*
  - *Act 134, 2016: Extends the time period that certain parcels in the Burlington (Waterfront) district can incur debt.*

Key terms in Vermont TIF world

- Improvements: installation, new construction, or reconstruction of infrastructure that will serve a public purpose and fulfill the purpose of tax increment financing districts.
  - TIF Rule (2015) includes installation, new construction or reconstruction of municipal capital assets in the definition.
  - Includes things like utilities, transportation, civic facilities (parks, trails, playgrounds, libraries, city offices),
  - Also includes property and land acquisition, property demolition and improvements, environmental remediation.
- DOES NOT INCLUDE:
  - Municipal operating costs, public transportation operating costs, annual maintenance expenditures, repair costs, purchase of vehicles, interior furnishings, other expenditures for non-capital assets.
- More generally: what a municipality can use bond proceeds for.

Key terms in Vermont TIF world

- Related Costs: expenses incurred and paid by the municipality, exclusive of the actual cost of constructing and financing improvements, that are directly related to the creation and implementation of the tax increment financing district.
  - Includes any reimbursements advanced by the municipality for these purposes.
  - Also includes municipal expenses such as departmental and personnel costs of administering the district
  - Per TIF Rule (2015), also includes:
    - Costs of plans, studies, reports related the district
    - Costs of notifying the public of district plans
    - Soft costs such as consulting, design, architects, engineering, accounting, legal, project management and other professional services
    - The costs of audits by the State Auditor and the annual municipal audits
- DOES NOT INCLUDE:
  - Costs of direct improvements such as construction, financing, debt costs
  - Any costs incurred by private entities undertaking development
  - Municipal operating costs
  - Capitalized interest or the funding of reserves.

"Improvements" vs "Related Costs"

Bond proceeds →

Improvements
- Public infrastructure
- Transportation improvements
- Land acquisition
- Prepayment of related costs
- Reserves funds?

Tax increment →

Related Costs
- Principal and interest on bonds
- Any reimbursements made from other municipal funds
- Administration of the TIF district
- Professional services used in creation of district
- Audits

Funding of Reserves

- The cash-flow issue with TIF
  - *1) Municipality takes out bonds to construct new infrastructure*
  - *2) Infrastructure takes years to build <u>and private development comes after the infrastructure is built.</u>*
  - 3) No increment (sometimes negative increment) is generated during these years
- **<u>The problem</u>: how does a district pay principal and interest on the outstanding debt and related costs when no increment exists/is not sufficient?**
  - This issue exists with every TIF district in the country
- **Right now, the municipality has two options:**
  - Pay it out of existing resources
    - For related costs like TIF district plans/applications, this could be the only option
  - Raise property taxes to make the payments

Funding of Reserves in S.191

- State Auditor identified the funding of a reserve fund using bond proceeds in St. Albans. That reserve was used to pay debt service on using that same debt.
  - *AG office said this was not an allowable use of bond proceeds because a debt reserve was not a "improvement"*
- S.191 codifies this practice in statute.
  - *Funding of debt service reserve using bond proceeds for up to six years after a TIF district is created.*

Pros and Cons of Debt Reserves

Pros

- Solves the cash flow issue particularly in towns with limited financial resources and taxpayers unwilling to support any tax (even if small) increase
- This is currently a practice happening in Vermont TIF districts. What happens if you disallow it?

Cons

- If many districts do this, a non-trivial amount of debt is not being used on investment in TIF districts.
- TIF district plans were approved by VEPC and voters based on a certain promised amount of investment using debt.
- Takes pressure off towns to start building as soon as possible. Could incentivize towns to create districts when they aren't ready.
- Removes risk to the municipality.
- Makes it easier for financially weaker towns to have TIF districts.
- Using debt to pay for outstanding debt can increase interest costs because more debt is incurred

Improvements, Related Costs, and Funding of Reserves

24 V.S.A. § 1751(3)

(3) "Improvement" shall include, apart from its ordinary signification:

(A) The acquiring of land for municipal purposes, the construction of, extension of, additions to, or remodeling of buildings or other improvements thereto, also furnishings, equipment, or apparatus to be used for or in connection with any existing or new improvement, work, department, or other corporate purpose, and also shall include the purchase or acquisition of other capital assets, including licenses and permits, in connection with any existing or new improvement benefiting the municipal corporation, and all costs incurred by the municipality in connection with the construction or acquisition of the improvement and the financing thereof, including capitalized interest, underwriters discount, **the funding of reserves**, and the payment of contributions to establish eligibility and participation with respect to loans made from any State revolving fund, to the extent such payment is consistent with federal law.

* * *

2006 Acts and Resolves No. 184, Sec. 2a

(Amending 24 V.S.A. § 1891)

(6) "Related costs" means expenses, exclusive of the actual cost of constructing and financing improvements, **as defined in subdivision 1751(3) of this title**, that are directly related to creation of the tax increment financing district and reimbursement of sums previously advanced by the municipality for those purposes, and attaining the purposes and goals for which the tax increment financing district was created, as approved by the Vermont economic progress council. **As used in this subdivision, related costs are "improvements" as defined in subdivision 1751(3) of this title.**

2007 Acts and Resolves No. 190, Sec. 54

(Amending 24 V.S.A. § 1891)

(6) "Related costs" means expenses, exclusive of the actual cost of constructing and financing improvements~~, as defined in subdivision 1751(3) of this title,~~ that are directly related to creation of the tax increment financing district and reimbursement of sums previously advanced by the municipality for those purposes, and attaining the purposes and goals for which the tax increment financing district was created, as approved by the Vermont economic progress council. ~~As used in this subdivision, related costs are "improvements" as defined in subdivision 1751(3) of this title.~~

Bond Anticipation Notes (BAN)

- What is a BAN?
  - Typically, it is a short-term debt instrument is less than a year in maturity.
  - A municipality will use BAN when they want to finance a long-term project using a longer term bond but there is a delay in getting the money.
    - The issuance of the long-term bonds may not be possible before the launch of the project because of legal, regulatory or compliance issues, so they use BAN to get the projected started.
  - Once the municipality receives the proceeds for the longer-term bond, they retire the BAN.
  - Often used as a means of kick-starting funding efforts for new projects.

BAN, TIF and S.191

- TIF districts in Vermont must incur debt within 5 years of creation. If not, the district dissolves. Districts can receive an extension up to 5 years.
- TIF districts can retain tax increment 20 years after the incurrence of the first debt.
- TIF statute does not make any reference to the use of BAN for TIF districts.
- Outstanding questions:
  - *Does BAN count as an debt incurrence? Or is the larger bond "start the clock?"*
  - *What happens if a municipality uses a BAN in year ten but the larger bond is issued in year 11? Did it follow statute?*
- S.191 clarifies this to say that BAN can only be used within the first five years.

TIF District Boundaries and S.191

- Under current TIF rule, <u>any</u> change to TIF boundaries must go through a Substantial Change request through VEPC.
- S.191 clarifies two parts:
  - *Any parcel within a district shall be wholly within the boundaries of the district*
    - Even if the boundary bisects a parcel, the entirety of the parcel is located in the district and wholly included in the Original Taxable Value and calculations of increment
  - *No adjustments to a boundary are permitted after the approval of the TIF district.*
- Some municipalities have testified that they intentionally draw their boundaries small with the understanding that they could extend their boundaries in the future.

Calculating Tax Increment and S.191

- S.191 clarifies two potential issues that arise for municipalities when calculating the total tax increment:
  - *What happens if a parcel(s) in a district is also subject to a tax stabilization agreement?*
    - S.191 clarifies that the increment shall be calculated as the difference between the current value of the parcel minus the assessed value of the parcel on the grand list, not the stabilized value
  - *What happens if the value of a parcel(s) decreases instead of increases?*
    - This happens often in TIF districts when existing buildings are torn down and replaced with new private development.
    - S.191 clarifies that if the value of property decreases, the municipality is responsible for paying the tax due on the Original Taxable Value, not the decreased value.

S.283: Town of Hartford

- TIF districts have until 5 years after creation to retain debt. They can also ask VEPC for a 5 year extension
  - Therefore, up to 10 years to accumulate debt
- Hartford TIF district was created in 2011 so it has until 2021 to incur debt
- As of January 2020:
  - Total debt approved by voters: $9.2 million
  - Total debt incurred: $3.0 million
- Total debt to be incurred by 2021: $9.2 million
  - $6.2 million will be incurred between 2019 and 2021
- **Total anticipated debt at application: $12.9 million**
  - **This means $3.7 million in projects will not have financing by 2021.**
  - Hartford is asking for 3 more years to incur debt so it can incur debt for remaining projects

S.283: Town of Hartford

- Considerations for Legislators:
  - If S.283 does not pass, would Hartford change development plans?
  - TIF district carve-outs in statute create/perpetuate precedents
  - Creating districts when development is not ready
  - Does extending the debt window beyond 10 years takes pressure of municipality to start building?
  - Extending debt incurring to 2023 means Hartford has only 11 years to retain increment for debt service.