

TAX INCREMENT FINANCING FOR BLIGHTED AREAS

This memorandum was requested to review the background on 2003 Senate Bill No. 2165 and the question of whether tax increment financing (TIF) could be used for development of agricultural land into residential or commercial property.

BACKGROUND

According to a September 2000 article in *Economic Development Digest* (National Association of Development Organizations Research Foundation Publication), the TIF concept began in the 1940s and was originally conceived to provide an alternative method of public financing for development of blighted and substandard areas. However, TIF programs in a number of states were expanded to finance a wider range of projects even in "nondistressed" areas. This expanded use was met with criticism and legislative action in several states. For example, 1999 Illinois legislation clarified the definition of blighted area; required multigovernmental review boards for TIF projects; prohibited TIF development of projects, such as golf courses and municipal buildings; and required TIF programs that focus on residential housing to reimburse school districts for added costs resulting from TIF development of an area.

Creation of a TIF district "freezes" property valuations in that district for any political subdivision except the city. Even city general property tax levies apply only against "frozen" valuations of TIF district properties, and only the TIF district special fund levy applies against the full valuation of TIF district properties. A pool of money from existing funds or issuance of bonds is created to finance improvements within the TIF district. As property valuation from development within the TIF district increases, the amount of valuation exceeding the "frozen" valuation is subject to taxation only by the city for TIF district purposes, and the tax revenues from this valuation are segregated in a special fund to repay the bonds or other financing for the TIF project. Other taxing districts, such as a school district, continue to collect property taxes on property in the TIF district, but only up to the amount of the "frozen" valuation of the property.

It appears that some cities across the country have used TIF financing as an alternative to levying special assessments to pay for street, sewer, and water projects. The apparent concern of school districts with this approach is that the school district will receive the same property tax revenue from the property for many years while facing increased costs to provide services for additional students.

North Dakota law on TIF financing was first enacted in 1973 and is contained in North Dakota Century Code Chapter 40-58, which is the chapter on urban renewal. The TIF law was amended in 1989 to

make this vehicle available to develop industrial or commercial property as a result of an interim study by the Jobs Development Commission.

Section 40-58-20 requires approval of a development or renewal plan for a development or renewal area. Under Section 40-58-01.1, "development or renewal area" is defined as "industrial or commercial property, a slum or blighted area, or a combination of these properties or areas that the local governing body designates as appropriate for a development or renewal project." Section 40-58-01.1 also defines "blighted area" as an "area other than a slum area which by reason of the presence of a substantial number of slums, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, . . . unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of these factors, substantially impairs or arrests the sound growth of a municipality, . . . and is a menace to the public health, safety, morals, or welfare in its present condition and use." Whether these conditions exist in the area in question appears to be a question of fact that must be answered by the city governing body.

2003 SENATE BILL NO. 2165

In 2001 the City of Fargo designated a TIF district for development of land bordered by Interstate Highway 94, Interstate Highway 29, 45th Street, and 32nd Avenue South. The property in question is located in the City of Fargo but within the West Fargo School District. West Fargo School District officials were unhappy with the decision of the City of Fargo (see attached *The Forum* newspaper article ([Appendix A](#))). The reason for their frustration was that development of the property in question would generate no new property tax revenue for the West Fargo School District, but the additional residential property would increase the number of students to be educated by the West Fargo School District.

The property in question in Fargo was predominately open land area previously used only for agricultural purposes. The Fargo City Commission apparently concluded that open land could be considered a "blighted area" under the TIF financing laws. The decision of the Fargo City Commission led to introduction of 2003 Senate Bill No. 2165 ([Appendix B](#)) to amend the definition of "blighted area" in Section 40-58-01.1 to add language stating that "blighted area" does not include predominately open land area that has been developed only for

agricultural purposes. The bill also would have required establishment of a joint review board to review city creation of a development or renewal area. The joint review board would have consisted of one representative from the governing body of each city, county, school district, and other political subdivision with taxing authority over the property in question. The bill failed to pass.

The question of whether "blighted area" for purposes of TIF can be considered to include agricultural property appears to be a matter of opinion.

Governing bodies and city attorneys in some cities in the country have taken a very expansive view of what kind of property may constitute a TIF district. Other city governing bodies and attorneys have taken a more narrow view of what constitutes a blighted area. The North Dakota Legislative Assembly had an opportunity in 2003 to exclude open land used for agricultural purposes from TIF district development but did not enact the legislation.

ATTACH:2