5.1 The "but for" Test

For Tax Incremental Financing (TIF) to benefit municipalities as it is supposed to, developments that get TIF assistance must meet a standard called the "but for" test. The name comes from the expression, "The development would not occur *but for* the use of TIF." To say this means that the proposed development would not happen if the financial support available from TIF was not used. This could be true for many reasons. For example, new development may not happen in a certain area because there are not enough streets, sidewalks, sewer lines or other pieces of physical infrastructure. After using TIF to provide these improvements, the development becomes desirable and will go ahead. This section includes a discussion of who makes the "but for" finding, what it means to make that finding, and why that finding is so important for TIF to work properly.

Making the "but for" Finding

It is important for all local officials to understand, accept, and be able to defend the "but for" finding. When the Plan Commission is considering developments, they should ask about the need for public assistance, and how that help will affect the projected profits for the developer. The Town or Village Board or City Council should also examine these facts. They need to support the "but for" finding, and understand it well enough to defend that finding to skeptics.

TIF Law requires the Joint Review Board (JRB) to make the "but for" finding in the resolution that they adopt approving the creation resolution (for more details on the creation process see Chapter 2, and for the JRB see Chapter 3). This is actually one of three findings they must make in that resolution. In the TIF Law, s. 66.1105 (4m)(c) lists the three criteria upon which the JRB must base its decision, the first of which is "[w]hether the development expected in the [TID] would occur without the use of [TIF]". Two other criteria are included in that paragraph, and together with "but for" they form the basis for TIF to work.

> **Please note:** The JRB is empowered to receive planning documents, and even hold additional public hearings if needed.

Members of the JRB should give great care and thought to this finding. The significance of this finding to TIF is discussed below, but as representatives of taxing jurisdictions it is important for JRB members to understand what the "but for" finding means. When JRB members agree to make that finding it means that they have seen or heard evidence that convinces them of the vital need for TIF assistance to make this development a reality. By making the finding, they are sacrificing some amount of tax revenue for many years into the future. If TIF assistance is not needed to make a development happen, the JRB members should not agree to make the "but for" finding. They must make their findings within the established timeline, but the findings of the JRB are very important and they should be taken seriously.

> **Please note:** JRB members should not be afraid to ask tough questions and get documentation to backup claims related to this finding.

What the "but for" Finding Means

Let's imagine a JRB meeting where a developer is addressing the members and he says, "There is no way we can make this development happen without funding assistance through TIF." Sounds like the "but for" standard has been met. But what does that statement mean? It can mean many different things in different scenarios, but quite often it is a matter of profitability. When a development is considered, there is usually substantial risk involved for the developer. As a reward for taking the risk, a developer will expect a certain level of return on the project, called profit. Even if a profit is expected from a project, the return may not be large enough to make the risk worth taking for that developer.

TIF can alter the profit picture by shifting some of the costs of the development from the developer to the taxpayer. In an urban redevelopment setting, for example, a site may require environmental clean-up, which can be quite costly. If a municipality will clean up the site, and pay for it with TIF, the cost is not borne by the developer and his potential profit will rise. In the example used above, the cost of installing improvements like roads, sewer lines, curbs and gutters, or sidewalks can be taken on by the municipality, using TIF. That means that the property owner or site developer will not have to bear those costs, and as a result the forecast return on the project will be greater.

Why would a municipality want to take on expenses and risks in order to increase the profits of a private developer? Well, the basis of TIF is that there may be some projects that the municipality finds desirable, but that aren't profitable enough for private developers to take on. By accepting increased risk, and paying for physical investment in the short-run, the municipality will benefit from an increased tax base and more jobs, which help the local economy in the long-run. The balance between the near-term risks and the long-run benefits must be evaluated to determine if a TIF project is worthwhile. The JRB has to make a finding on that matter, in addition to the "but for" finding.

Why the "but for" Finding is Important

When creating a TID, the JRB must make a finding that the development would not happen but for the assistance of TIF. This is important because that finding is critical to ensuring that the TIF tool works as intended.

Let's examine a few scenarios:

1. First, a developer wants to put up a strip mall on some vacant parcels near a freeway interchange, but she requests TIF assistance to pay for roads and the sewer line connections. The TIF funding is denied, but the development proceeds anyway. The roads and sewer lines are paid for by the developer, along with the cost of constructing the building, advertising the space, and putting up signage. The increase in property value resulting from the site improvements goes onto the tax roll, and the tax payments from the development go into the general fund, increasing collections.

2. Next, let's imagine that same scenario, but after the TIF assistance is denied the developer decides not to proceed with the project. The parcels are not developed

by anyone and remain vacant. The small tax revenue from the vacant parcels continues to go to the general fund as they had before.

3. Finally, let's imagine this same developer with the strip mall on vacant parcels. This time, after hearing the proposal from the developer, the local governing body negotiates with the developer, and agrees to finance some of the desired projects. The request for TIF assistance is approved because the developer shows how the public funding of some infrastructure will make the project profitable. The municipality writes up a project plan and goes through creating the TIF. The value of the vacant land will be the base value of the TID, and once the infrastructure goes in, the construction of the mall is completed. This large increase in value constitutes the value increment, and the tax revenue from that value goes into the TIF fund to pay for the roads and sewer lines.

In our first scenario the tax base of the municipality is growing due to private investment. This is the way growth usually happens, and as a result of growth the tax burden can be distributed over more property value. In the second scenario the development doesn't happen because the project isn't profitable. The tax base doesn't grow, no new jobs are created, and the tax burden stays about the same. In the last scenario, where TIF is used, the development happens, but it costs the municipal taxpayers money (for the infrastructure improvements) to make it happen. In the end the tax base grows, but at the cost of higher tax burdens during the TID life. But this doesn't mean that TIF increases taxes!

If a proposed development will happen without TIF, then TIF should not be used because it would cost taxpayers more than it should for the growth that results. But, if TIF can be used to encourage a development that wouldn't otherwise happen, the tax base can be increased, thereby limiting the growing tax burden. The "but for" test is critical to this distinction; that is what makes it so important. Finding "but for" means that the JRB believes that the development will not happen without some assistance. They are endorsing the use of tax dollars to help bring growth that otherwise would not occur. A large tax base helps keep everyone's tax bills down, so growth is key. By helping to encourage growth, TIF can be a useful tool to grow the tax base while controlling increasing tax burdens.