

TAX INCREMENT FINANCING APPLICATIONS

**FINANCING FOR OPERATION & MAINTENANCE OF PUBLIC
FACILITIES RELATED TO TRANSIT-ORIENTED DEVELOPMENT**

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1.0 Introduction

The Maryland Department of Transportation (MDOT) asked STV Incorporated to examine precedents relative to tax increment financing (TIF) and the use of TIF funds for the operation and maintenance of public facilities related to transit-oriented development (TOD). MDOT is considering a proposal to modify Maryland's TIF enabling legislation in order to accomplish this change.

A typical example of the use of TIF for operations and maintenance is the following scenario.

- The state (or a local government) owns a surface parking lot adjacent to a MARC, MTA Metro or light rail station.
- A redevelopment plan calls for joint development with structured parking replacing the surface parking lot, thus facilitating higher density transit-oriented development.
- The TIF funds (generated by the private development) assist the financing of the capital costs of the structured parking.
- The operations and maintenance costs of the garage cannot be supported by operating revenues of the parking garage because of the need to provide discounted or free parking (which serves the objective of encouraging use of transit).
- The TIF revenues, under this proposed new authority, could be used to pay for the shortfall.

In 2009 the Maryland General Assembly adopted legislation (SB 274) which allowed localities to fund "operation and maintenance of infrastructure improvements located in or supporting a transit-oriented development" through a special assessment district mechanism. MDOT is considering parallel language for tax increment financing districts.

2.0 Maryland Precedent

Maryland's TIF enabling legislation specifically allows Prince George's County to use TIF funds for maintaining and marketing a TIF-funded convention facility. Prince George's County may use TIF proceeds as follows:



i. “for convention, conference, or visitors’ centers;
ii. to *maintain* infrastructure improvements and convention, conference, or visitors’ centers;
iii. to *market* development district facilities and other improvements”¹ (*Emphasis added*)
The inclusion of “marketing” expenses is an indication that the General Assembly recognized that certain kinds of operating costs related to TIF-funded public facilities may need to be funded through the TIF mechanism.

3.0 State Precedents

3.1 State Precedents Specific to Transit and TOD

Maine. A recently adopted amendment to the Maine statute expands the list of “eligible uses of funds,” which now include:

“Costs, both within and outside of the transit-oriented development district, of adding to the municipality's existing transit system or creating a new transit service, including but not limited to *salaries, fuel and maintenance.*”² (*Emphasis added*)

Maine thus allows both maintenance and certain kinds of operating costs (fuel and salaries) provided that the costs relate to expanding the municipality’s transit system.

Texas. The state adopted specific authority for transit and TOD TIF projects and specifically identified the costs of operating and maintaining property in the zone as an eligible use of funds, as follows:

Sec. 311.01005. “Costs Associated With Transportation or Transit Projects...

b) This section does not affect the power of the board of directors of a reinvestment zone or the governing body of the municipality that creates a reinvestment zone to enter into an agreement under Section 311.010(b) to dedicate, pledge, or otherwise provide for the use of revenue in the tax increment fund to pay the costs of acquiring, constructing,

¹ Article - Economic Development - §12–207(b)(1)

² 124th Maine State Legislature, SP0511, LR 346, Sec. 20. 30-A MRSA §5225, sub-§1, ¶E, see:

[http://www.cdfa.net/cdfa/cdfaweb.nsf/fbaad5956b2928b086256efa005c5f78/bf5f6cf3each7131862575d10066df55/\\$FILE/mainetif.pdf](http://www.cdfa.net/cdfa/cdfaweb.nsf/fbaad5956b2928b086256efa005c5f78/bf5f6cf3each7131862575d10066df55/$FILE/mainetif.pdf)



operating, or maintaining property located in the zone or to acquire or reimburse acquisition costs of real property outside the zone for right-of-way or easements necessary to construct public rights-of-way or infrastructure that benefits the zone.”³ (Emphasis added)

3.2 States that Specifically Allow Certain Operating Costs

Georgia. The state-enabling legislation defines eligible uses of funds very broadly within the definition of “redevelopment costs,” and then adds that costs “may” include “imputed administration costs.”

“ ‘Redevelopment costs’ means any expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred to achieve the redevelopment of a redevelopment area or any portion thereof designated by a redevelopment plan or any expenditures made to carry out or exercise any powers granted by this chapter. Without limiting the generality of the foregoing, redevelopment costs *may* include any one or more of the following....:

(D). *Imputed administrative costs, including reasonable charges for the time spent by public employees in connection with the implementation of a redevelopment plan.”⁴ (Emphasis added)*

It might be noted that Atlanta is very aggressively using TIF (or Tax Allocation Districts, TADs) to support TOD projects related to the “Beltline” extension of the metro. As much as \$1.7 billion in TAD funding is planned to provide public improvements, parks, brownfields remediation, and affordable housing along the 6,500-acre Beltline project.

New Jersey. The state-enabling legislation defines eligible costs within the definition of “Project cost” and specifically includes operating expenses during planning and implementation of a project:

"Project cost" means the cost of the plan or project in all or any part of the district and of all and any property, rights, easements, privileges, agreements and franchises deemed by

³ Texas Tax Increment Financing Act, Tax Code, Title 3. Local Taxation, Subtitle B. Special Property Tax Provisions Chapter 311. Tax Increment Financing Act, see: [http://www.cdfa.net/cdfa/cdfaweb.nsf/pages/txtifstatute.html/\\$file/Texas_TIF_Statute.pdf](http://www.cdfa.net/cdfa/cdfaweb.nsf/pages/txtifstatute.html/$file/Texas_TIF_Statute.pdf)

⁴ See: [http://www.cdfa.net/cdfa/cdfaweb.nsf/pages/gatadstatute.html/\\$file/Georgia_TAD_Statute.pdf](http://www.cdfa.net/cdfa/cdfaweb.nsf/pages/gatadstatute.html/$file/Georgia_TAD_Statute.pdf)



the district agent to be necessary or useful and convenient therefore or in connection therewith, including interest or discount on bonds; cost of issuance of bonds; engineering and inspection costs; legal expenses; costs of financial and other professional estimates and advice; organization, *administrative, operating and other expenses of the district agent prior to and during the planning and implementation of a development, plan or project*, including such provision as the district agent may determine for the payment, or security for payment, of principal or interest on bonds during or after the implementation of any development, plan or project.”⁵ (*Emphasis added*)

Pennsylvania. The state statute is similarly broad with respect to allowable expenses, and “project costs” specifically include administrative costs of the municipality or authority:

" 'PROJECT COSTS'. Any expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred which are listed in a project plan as costs of public works or improvements or residential, commercial or industrial development or revitalization within a tax increment district, plus any costs incidental thereto. Project costs include, but are not limited to...:

(5) *Administrative costs, including reasonable charges for the time spent by employees of a municipality or an authority in connection with the implementation of a project plan.*”⁶ (*Emphasis added*)

Florida. Florida defines eligible expenses through the definition of uses of the “Redevelopment trust funds,” and specifically includes administrative expenses necessary or incidental to plan implementation:

“Redevelopment trust fund.—...

(6) Moneys in the redevelopment trust fund may be expended from time to time for undertakings of a community redevelopment agency which are directly related to

⁵ New Jersey Revenue Allocation District Financing Act, Title 52. State Government, Departments And Officers Subtitle 3. Executive And Administrative Departments, Chapter 27d. Department Of Community Affairs Article 9. Department Of Community Affairs Act, § 52:27d-461. Definitions Relative To Revenue Allocation District Financing Act. See: http://www.njleg.state.nj.us/2000/bills/pl01/310_.htm

⁶ Pennsylvania Tax Increment Financing Act, Pennsylvania Statutes, Title 53. Municipal And Quasi-Municipal Corporations, Part I. General Municipal Law, Chapter 24d. Tax Increment Financing Act, § 6930.3. Definitions. See: [http://www.cdfa.net/cdfa/cdfaweb.nsf/fbaad5956b2928b086256efa005c5f78/4c583b7eb12575f78625713f007d5519/\\$FILE/Pennsylvania%20TIF%20Statute.pdf](http://www.cdfa.net/cdfa/cdfaweb.nsf/fbaad5956b2928b086256efa005c5f78/4c583b7eb12575f78625713f007d5519/$FILE/Pennsylvania%20TIF%20Statute.pdf)



financing or refinancing of redevelopment in a community redevelopment area pursuant to an approved community redevelopment plan for the following purposes, including, but not limited to:

(a). *Administrative and overhead expenses necessary or incidental to the implementation of a community redevelopment plan adopted by the agency.*⁷
(*Emphasis added*)

3.3 States that Specifically Allow Certain Maintenance Costs

Only a few states specifically mention “maintenance” in their TIF enabling legislation; however, that probably does not mean that maintenance activities are precluded in the states where it is not specified. Maintenance could easily come under a more general provision for “improvements to real property” or “improvements to public facilities” or under an authorization to “repair” property.

Indiana. The state-enabling legislation allows maintenance costs for properties that have been acquired:

“Powers of commission -

Sec. 12.2. (a) The redevelopment commission may do the following:...

(7). *Repair and maintain structures* acquired for redevelopment purposes.”⁸
(*Emphasis added*)

Indiana also allows “maintenance and repair” of public facilities in “Certified Technology Parks,” which have separate TIF authority with added powers to include 100 percent of certain state revenues dedicated to the TIF.⁹

⁷ Florida Community Redevelopment Act, Title 11. County Organization and Intergovernmental Relations, Chapter 163. Intergovernmental Programs; Part Iii. Community Redevelopment, section 163.387. See [http://www.cdfa.net/cdfa/cdfaweb.nsf/fbaad5956b2928b086256efa005c5f78/2c41f48c8c168f648625713f00608aa0/\\$FILE/Florida%20TIF%20Statute.pdf](http://www.cdfa.net/cdfa/cdfaweb.nsf/fbaad5956b2928b086256efa005c5f78/2c41f48c8c168f648625713f00608aa0/$FILE/Florida%20TIF%20Statute.pdf)

⁸ Indiana Tax Increment Allocation Redevelopment Act, Chapter 36 local Government Indiana Code, Article 14. Planning and Development, Division 74.4. Tax Increment Allocation Redevelopment Act, section 36-7-14-12.2. See: [http://www.cdfa.net/cdfa/cdfaweb.nsf/pages/intifstatute.html/\\$file/Indiana_TIF_Statute.pdf](http://www.cdfa.net/cdfa/cdfaweb.nsf/pages/intifstatute.html/$file/Indiana_TIF_Statute.pdf)

⁹ See: <http://www.in.gov/sboa/files/ctb1202.pdf>



Rhode Island. The State’s enabling legislation makes specific reference to “repair” as an eligible expense:

(7) “To clear and improve property acquired by it pursuant to the project plan, and construct public facilities on it, or contract for the construction, development, redevelopment, rehabilitation, remodeling, alteration, or *repair of the property*,”¹⁰
(*Emphasis added*)

Ohio and Pennsylvania have similar language to Rhode Island, specifying that repair of property is an eligible expense.

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¹⁰ Rhode Island, Tax Increment Financing Act, Title 45. Towns and Cities, Chapter 33.2. Tax Increment Financing §§ 45-33.2-5. Authorization To Undertake Projects – Powers. See:
[http://www.cdfa.net/cdfa/cdfaweb.nsf/pages/ohitifstatute.html/\\$file/Ohio_TIF_Statute.pdf](http://www.cdfa.net/cdfa/cdfaweb.nsf/pages/ohitifstatute.html/$file/Ohio_TIF_Statute.pdf)