

## **LETTER TO THE COMMUNITY Revised March 21, 2016**

On February 26, 2015, the Village of Lakemoor Board of Trustees passed ordinances establishing two tax increment financing districts (also known as "TIF districts"). One of the TIF districts is located on the northwest corner of the intersection of Route 12 and Route 120 (the "North TIF District"). The second TIF district is located on the southwest corner of the same intersection (the "South TIF District"). On February 27, 2015, the Board of Education of the Wauconda Community Unit School District No. 118 (the "School District") filed a lawsuit in the Circuit Court of Lake County asking the court to declare that the South TIF District does not meet the statutory requirements for a TIF district and to order the Village of Lakemoor to dissolve the South TIF District. On June 4, 2015, Wauconda Township (the "Township") and the Wauconda Area Public Library District (the "Library District") joined the lawsuit as additional plaintiffs seeking the same relief. The School District, Township, and Library District (collectively "the Districts") took this action because the South TIF District does not meet the legal requirements for creation of a TIF district and will wrongly divert millions of dollars in property taxes from the Districts and other local governments to pay for improvements that are properly the responsibility of the Village of Lakemoor and the developers who build there. Because TIF districts are a complicated subject about which most people have little knowledge, we are writing in order to explain the reasons for our opposition to the South TIF District.

### **Property Taxes and New Construction**

In order to understand the issues involved in this situation, we have to step back and first consider property taxes and how new development affects local governments. Most local governments depend heavily on property taxes to fund their operations. For example, the School District receives over 70% of its annual revenue from local property taxes. The amount of money that a local government can receive in property taxes is limited by the "Tax Cap," the Illinois statute that limits the amount of money that most local governments can receive in property taxes each year. Under the Tax Cap, the amount that a local government can receive in property taxes each year is limited to the amount that it received the previous year, increased by the annual increase in the consumer price index (CPI), but in no event by more than five percent. The CPI in the Chicago Metropolitan Area has been increasing in recent years, on average, by only about 1 percent each year. In 2015 it did not increase at all. That means that each local government cannot, in general, receive any more money in property tax revenue than it did the year before.

The most significant exception to the strict limits imposed by the Tax Cap is the exception for new construction. If a new building is built on land that was previously vacant (which includes land that was used for farming), the Tax Cap allows local governments to receive the taxes generated by the increase in assessed valuation resulting from the new building in addition to the taxes they are generally allowed to receive under the Tax Cap. This is true whether the new building is a single family home, an apartment building, a store, or a factory. For this reason, major construction projects can produce significant new revenue for the school district, the library district, the township, and other local governments. And those new taxes continue every year and become a part of the tax base of the district. An overall increase to the tax base of taxing bodies results in the real potential for property tax relief for all. However, if a

TIF is in place, the base does not increase for the taxing bodies, thus there is no potential for property tax relief.

### **TIF Districts as a Tool for Economic Development**

Some areas are in such terrible condition that private developers are unwilling to risk their capital by building in those areas unless they receive some public financial assistance to do so. A village can create a TIF district, if the area qualifies, to provide such financial assistance. When a TIF district is created, the equalized assessed valuations (EAV) of all the properties in the TIF district are frozen for purposes of providing revenue to the local governments. The local governments will continue to receive property taxes from the properties within the TIF district based upon the frozen EAVs for the life of the TIF district (usually 23 years). If new development takes place within the TIF District, and if that new construction results in increases in the EAV of the property within the TIF district, new property taxes are generated by applying the tax rates of the taxing bodies to that “incremental EAV.” However, those “incremental taxes” don’t go to the school district, library district, township, and other local governments. Those incremental taxes instead go into a “TIF Fund” at the Village and the Village has the ability to use those funds to pay for many of the costs of the development. Sometimes those funds are paid directly to the developer to reimburse the developer for some of the expenses the developer has incurred. Sometimes, the village itself uses the funds to pay for infrastructure improvements in the area.

Because the effect of a TIF district is to divert property taxes from school districts, library districts, townships and other local governments to the village for use in the redevelopment process, the legislature has been careful to limit their use to situations that truly deserve such extraordinary measures. In order to create a TIF district, two tests must be met.

First, the village must determine that the area to be included in the TIF district is either a “blighted area” or a “conservation area.” Vacant land can only qualify as a “blighted area.” Vacant land can qualify as “blighted” if, among other things, it consists of unused quarries, mines, rail yards, or rail tracks, or if it is subject to “chronic flooding.”

Second, the village must determine that the area under consideration would not reasonably be anticipated to be developed without creation and use of the TIF district. In other words, but for creation and use of the TIF district to redirect tax dollars to help pay for the development, the area would not be developed. This second test is often referred to as the “But For Test.” To summarize these two tests: The area under consideration must be in bad shape and won’t be improved unless a TIF district is created.

The genius of the “But For Test” is this: If it is truly met, then no harm will be done to the school district, library district, township and other local governments. If it is not truly met, then a TIF district will deprive the local governments of taxes to which they are entitled. As discussed above, the effect of a TIF district is to redirect “incremental taxes” created by redevelopment away from the school district and other local governments to be used to help pay for that redevelopment. If there would be no redevelopment in the absence of the TIF district,

then there would be no increase in EAV, no incremental taxes would be generated, and the school district and other local governments would receive no additional revenue. Under those circumstances, local governments would have nothing to lose. If, on the other hand, the area would have redeveloped even without use of a TIF district, then the school district and other local governments would have received the benefit of those incremental taxes. In that case, creation of the TIF district deprives the local governments of tax revenue they would have received when the land was developed without a TIF district.. This is why it is so important to make a correct determination as to whether the But For Test is met when considering whether to create a TIF district.

### **The South TIF District**

The southwest corner of Route 12 and Route 120 has been considered for commercial development for many years. As a large piece of farmland at the intersection of 2 major roads carrying high levels of traffic to and from many communities, it is a prime location for such development. The 2010 Census shows that Lakemoor and Volo were two of the fastest growing communities in the State of Illinois between 2000 and 2010. The rapid growth in population in the area is all that was needed to make this land attractive for commercial development.

The best evidence of this is the fact that Inland Real Estate Corporation, one of the largest developers in the country, bought this land several years ago in order to develop it for commercial purposes. As recently as January 2015, Inland's website advertised this property as "one of the most important intersections in Lake County with over 50,000 vehicles." It also recited that there are "over 40 planned residential projects within a 5 mile radius totaling nearly 13,000 units approved or in the entitlement process." The evidence is clear. This property is destined for commercial development.

Tax increment financing is a powerful tool for economic development because it allows a municipality to use future property taxes that would otherwise go to the schools, libraries, and other local governments to pay for the costs of the development. But tax increment financing can only be used when the area is blighted and when there would not be any development without the use of a TIF district. When these conditions are satisfied, everyone benefits because if there would not be any development without the use of TIF, then there wouldn't be an increase in EAV and therefore wouldn't be any incremental property taxes to lose. So the schools, libraries, and other local governments wouldn't be hurt. But when TIF is used in a place where there would be development even without the use of TIF, the schools and other local governments lose a lot. They lose all of the incremental taxes that they would have received over 23 years.

In this case, the evidence is that commercial development will occur on this property with or without a TIF district. Inland Real Estate Corporation bought this property and considers it "one of the most important intersections in Lake County." Recently we learned that Woodman's is interested in acquiring and building on this property. Would they like a TIF district? Probably. Because then the cost to Woodman's would be far less. It would be less because much of the cost would be paid for with money that should be going to the schools, libraries, and other local governments.

It is also not clear that this land is “blighted,” as that term is defined in the TIF Act. The eligibility report commissioned by the Village concludes that this property qualifies for TIF status because it is subject to “chronic flooding.” But the land on the southwest corner of Route 12 and Route 120 has been farmed continuously for decades. And on several occasions, the Illinois Appellate Court has recognized that an ongoing farming operation is evidence that land is not subject to chronic flooding.

In conclusion, there is good reason to believe that the South TIF District is not subject to chronic flooding, does not qualify as blighted, and will be developed for commercial purposes even without a TIF district. As a result, the School District, Library District, and Township believe that this land does not qualify for TIF status and that if the South TIF District is allowed to remain in place, it will have a severe adverse financial impact on the School District, the Library District, the Township, and other local governments. It could also cause the property taxes of other property owners in the area to be higher.

Wauconda Community Unit School District 118 Board of Education  
Wauconda Area Library District Board of Library Trustees  
Wauconda Township Board of Trustees