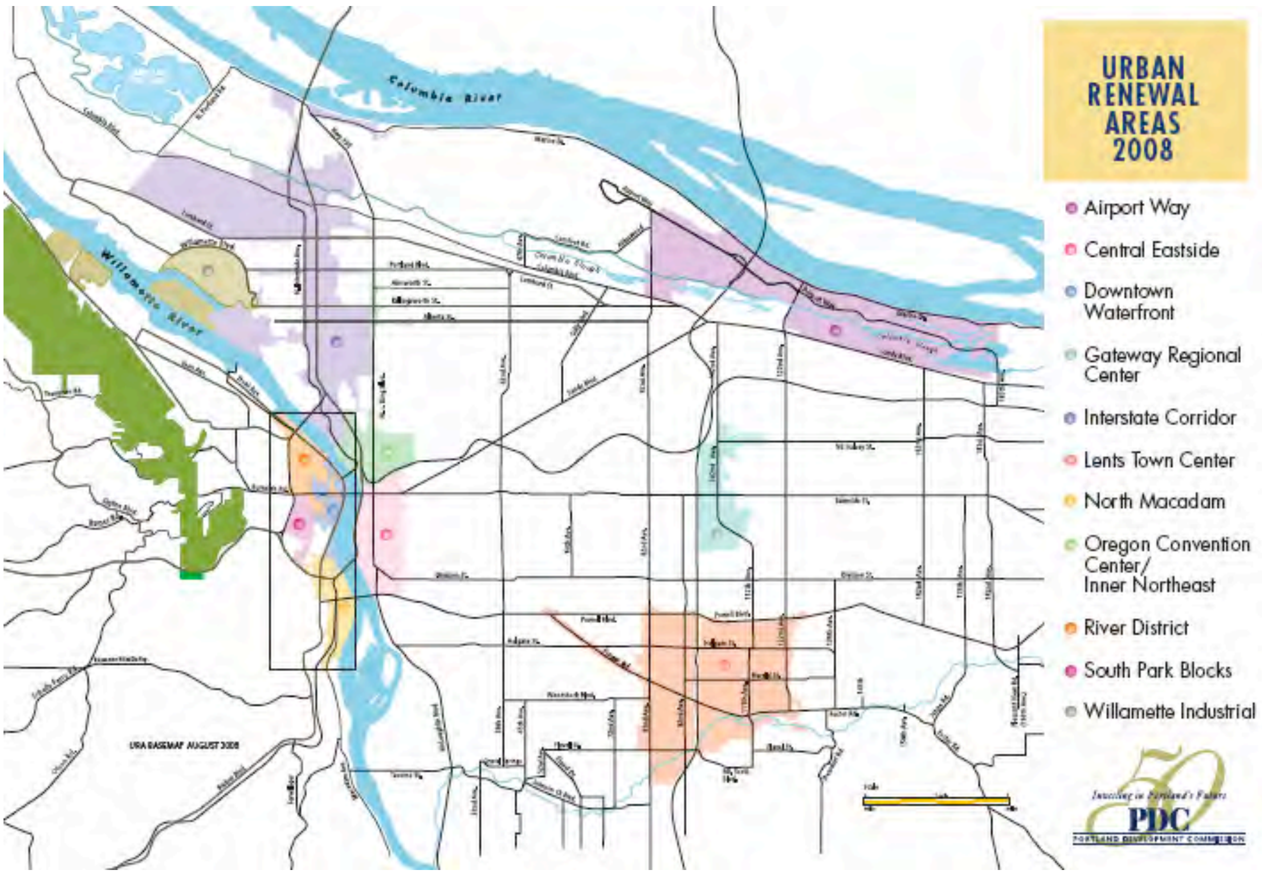
Tax Increment Financing:
Comparing Approaches in Northwest States

Read Stapleton, Senior Planner, BergerABAM – Vancouver, WA



Over the last 40 years, tax increment financing (TIF) has been a popular tool for local governments to use to implement urban redevelopment projects without tapping into local general fund coffers. The use of TIF has expanded and contracted over the years due to a number of national and local factors. Initially, TIF was a means to secure local matching funds for federal grants available for urban redevelopment projects. As federal funding to urban renewal agencies became less available and shifted to local cities in the form of block grants in the 1970s, the popularity of TIF grew as it became a larger and more critical piece of the redevelopment financing pie. Comparing the approaches that Oregon, Washington and Idaho have taken with respect to tax increment financing sheds light on major public policy issues with respect to its use.

Using TIF requires a local government, typically under the authority of a redevelopment authority or commission, to define a decaying or blighted district where redevelopment is desired. The authority then forms a district with a limited lifespan, typically 20 years, and issues debt to finance capital projects in the district that will encourage redevelopment and leverage private investment. Capital projects within a TIF district are constructed with debt that is paid off by the increased property taxes of the district after the district is formed.

Establishing the available tax increment to fund such projects first requires a determination of the existing tax base of the district. Once the existing tax base is determined, the authority must estimate the local tax revenue growth that would occur in the district as a result of the implementation of targeted capital improvements.

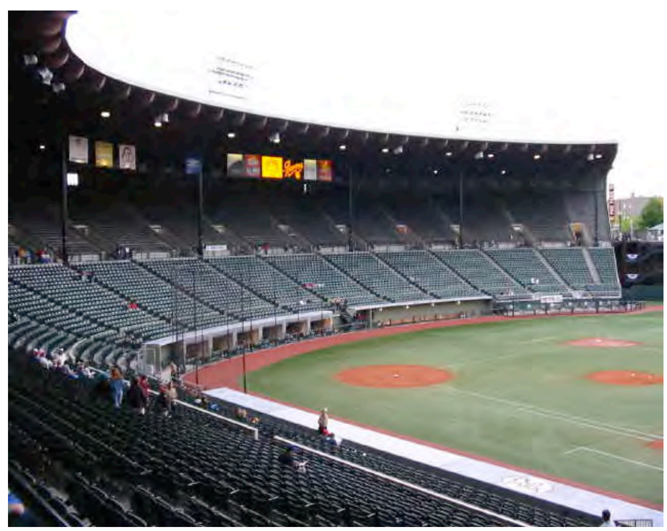
Critical to this determination, both from a legal perspective (as it is a legal requirement in many states) and from a political perspective, is the 'but-for' determination, which is the authority's determination that the anticipated tax revenue growth in the district would not happen, 'but-for' the implementation of the planned capital projects funded via TIF. Satisfying this 'but-for' condition is critical because it addresses concerns that the payment of TIF project debt will come from a new source of revenue rather than revenues that would have been created without the district, which would siphon funds that otherwise would have flowed to the general fund.

Tax Allocation Financing

A common misconception with TIF is that property owners within the district get special tax breaks that allow them to pay lower taxes than those outside. Actually, every owner within the TIF district pays full property taxes based on the total fair market value assessments of each property at the same tax rates that apply throughout the jurisdiction. But the taxes based on the incremental value over the base assessment are simply allocated to the TIF district for use within the district.

Therefore, tax increment financing is really *tax allocation financing* with the increase in property taxes received as a result of the improvements used as bootstrap financing for infrastructure improvements within the district that enable new development projects to be built. When the district is dissolved at the end of its authorized life, the full tax revenues from both the base assessed value and incremental assessed values revert to the general fund and benefit other jurisdictions entitled to tax that property. These include counties and school districts.

Impacts to other taxing districts are a key issue with TIF and one that has caused significant division in the Pacific Northwest and elsewhere. In Portland, this issue was highlighted recently at the Portland City Council hearing on the proposal to fund improvements to PGE Park to accommodate a new major league soccer franchise proposed by Shortstop, LLC (Shortstop), a group headed by Merritt Paulson, owner of the Portland Timbers and Beavers. Before the City Council was a non-binding resolution setting the terms of an agreement with Shortstop to finance improvements to PGE Park for major league soccer as well as finance a new Tripe-A baseball stadium for the Portland Beavers.



At the hearing, Ted Wheeler, chair of the Multnomah County Commission, testified that early analysis of the various funding strategies considered by a citizen's task force were flawed because they did not fully consider the impacts to social services and County-administered programs that would be caused by establishing a new urban renewal district around PGE Park. This renewal district was being considered as a means to generate $15 million of the funds necessary to improve PGE Park for professional soccer. Wheeler argued that one of the guiding principles of the task force, ensuring that the City's general fund would not be impacted, should also have included impacts to the County general fund and school funding.

At the heart of Wheeler's concern was his contention that a new urban renewal district at PGE Park would not meet the true 'but for' test and that future tax revenues from the district would not be 'new' tax revenues. Wheeler raised concerns that the PGE area is not truly blighted and that the growth in assessed value (AV) that might occur after improvements to the stadium likely would occur without the stadium. Therefore, he argued, the creation of a TIF district at PGE Park would siphon tax revenues that should be directed to the County's general fund. With an existing $45-million deficit in the county budget and another $20 million in budget cuts anticipated, Wheeler argued that a financing mechanism for the stadium must be revenue neutral to the County and schools. Public debate about Wheeler's contentions appears to have led the City to leave the adoption of a new urban renewal area (URA) for PGE Park improvements off the table in the stadium financing resolution.

TIF in Oregon

Following California's 1952 lead, Oregon adopted TIF enabling legislation in 1960. Oregon's adoption of TIF provided a way to generate local revenues that could be used to match federal loans and grants for urban redevelopment as authorized by the Federal Housing Act of 1949.[1] Since Oregon's adoption of TIF legislation, the state's use of TIF has been widespread. In Portland, 17 major redevelopment projects have been funded through urban renewal dollars and TIF since 1958.[2] Included on this list are such iconic projects as the South Auditorium renewal area, Pioneer Courthouse Square, Pioneer Place, RiverPlace, the River District (Pearl) and South Waterfront.

Oregon statutes and legal framework for TIF include various limitations and restrictions that affect the size and scope of the district. When deciding the feasibility of the urban renewal area, two critical evaluation steps must be resolved.

1. *Determine the available assessed value and land area within the city that can be placed in an urban renewal plan area;*

ORS 457.420 limits TIF districts in municipalities with a population greater than 50,000 to a maximum 15% of the total assessed value (AV) and 15% of the total land area of that municipality. Municipalities with a population of less than 50,000 may not adopt urban renewal plan areas that exceed 25% of the total AV and 25% of the land area of that municipality. These limitations are significant for cities such as Portland. As noted in Table 1,

[1] Tashman Johnson LLC, Urban Renewal in Oregon, History, Case Studies, Policy Issues, and Latest Developments, 2002

[2] Craig Wollner, John Provo, Julie Schablisky, Brief History of Urban Renewal in Portland, Oregon, p. 1

the City of Portland is close to the maximum area permitted within urban renewal plan areas with current plan areas that occupy 14.07% of the total land area in the city.

Table 1: Current PDC Urban Renewal Areas

Urban Renewal Area	Maximum Indebtedness	Indebtedness Issued as of 06/30/08	Indebtedness Remaining	Last Date to Issue Debt	Acres Included in Plan Area
Airport Way	$72,638,268	$72,638,268	$0	May, 2011	2,726
Central East Side	$104,979,000	$58,929,592	$46,049,408	August, 2018	692
Downtown Waterfront	$165,000,000	$165,000,000	$0	April, 2008	279
Gateway Regional Center	$164,240,000	$16,460,051	$147,779,949	June, 2022	659
Interstate Corridor	$335,000,000	$68,068,575	$266,931,425	June, 2021	3,769
Lents Town Center*	$75,000,000	$45,912,251	$29,087,749	June, 2020	2,707
North Macadam	$288,562,000	$70,583,661	$217,978,339	June, 2020	402
Oregon Convention Center	$167,511,000	$102,633,326	$64,877,674	June, 2013	593
River District*	$224,780,350	$132,593,966	$92,186,384	June, 2021	309
South Park Blocks	$143,619,000	$72,319,542	$71,299,458	July, 2008	161
Willamette Industrial	$200,000,000	$440,000	$199,560,000	December, 2024	758
Total	$1,941,329,618	$805,579,232	$1,135,750,386		13,055
				Total acres in the City of Portland	92,773
				Percentage of acres in Urban Renewal Areas (Maximum allowed = 15%)	14.07%
				Citywide Acreage Remaining	862.79
				Total Assessed Value in City of Portland (less Excess Value, Used and Not Used)	$38,454,566,429
				Percentage of Frozen Value in Urban Renewal Plan Areas (Max. Allowed = 15%)	10.60%

Source: Tax Supervising and Conservation Commission (TSCC) Annual Report 2008-2009

2. *Determine the maximum indebtedness of the plan area.*

For a municipality to adopt a TIF district, Oregon law (ORS 457.190) requires that the municipality first determine the maximum indebtedness of the plan district. The maximum indebtedness is the maximum amount of debt principal permitted within the district and is calculated by determining anticipated future incremental increases in assessed valuation within it.

Implications of Property Tax Limitation Measures

Over the last 20 years, complications with TIF have arisen from multiple property tax limitation measures. The first, Measure 5, passed in 1990 gradually limited property tax assessment rates over a 5-year period to 1.5% of assessed valuation per year. The measure imposed a rate limit of $10 per $1,000 assessed value for general governmental districts and a rate limit of $5 per $1,000 assessed value for school districts.

Property tax collections in Oregon were further scaled back in 1996, when voters approved Measure 47 which restricted property tax collections by resetting property taxes on personal property in 1997-1998 to 90% of the property tax assessment in 1996, and then permitted annual increases of no more than 3% in the assessed property values from that point forward, with some exceptions for new construction.

In 1997 the Oregon legislature rewrote Measure 47 as Measure 50 in an attempt to clarify that Measure 47 would be a limitation on the amount that assessed valuation could increase. Measure 50 also revised the urban renewal statutes to require local municipalities to adopt a special levy ordinance to ensure the repayment of outstanding debt obligations associated with existing urban renewal areas (ORS 457.435). This provision gave municipalities three different options for addressing anticipated urban renewal area budget shortfalls. The City of Portland complied with this state requirement and adopted an ordinance that established a special property tax levy to help repay the increment gap in existing urban renewal districts where potential revenue shortfalls were anticipated.

Measures 5 and 50 changed the rules of the game for TIF in Oregon and have forced cities to very carefully assess the revenue generation potential of a district before moving past the feasibility stage of plan development. Because new development establishes new assessed values for a property, there can be a tremendous property tax upside for urban renewal districts that are significantly underdeveloped, such as the North Macadam Urban Renewal Plan area (subsequently called the South Waterfront area) in Portland. However, using that same example, the city is taking a much more significant risk that market conditions will be able to sustain substantial development in this relatively small district (402-acres) to repay the $288.5 million of indebtedness established for the plan area.

Interstate Corridor Urban Renewal Area Major Projects 2008/09

By way of contrast, larger urban renewal areas such as the Interstate Corridor Urban Renewal Plan Area in northeast and north Portland, carry much less inherent risk. This is due to the fact that the plan area encompasses 3,769 acres already developed, and in an area that has seen substantial real market property value appreciation since the approval of Measure 50. Because Measure 50 has suppressed assessed valuation in the Interstate corridor well below real market values for the last 12 years, there is a minimum appreciation of approximately 3% per year that can be assumed in the district before factoring in new construction. However, the fact that the district is so large makes it difficult to assert that a significant causal connection exists between the projects built within the district and the increase in property values of other properties in the district. Thus, the 'but for' case becomes more difficult to prove in a situation such as the North Interstate Urban Renewal Area.

In the case of South Waterfront, the Portland Development Commission (PDC) was savvy to the risks associated with the North Macadam Urban Renewal Area and established an extensive development agreement with private developers in the district and Oregon Health Sciences University (OHSU) to hedge its risk. The South Waterfront development agreement established obligations of all development interests in the plan area and PDC. This development agreement included binding commitments of the private development interests to commit resources and provide personal guarantees to add value to the district according to a defined schedule.[3] If the assessment value appreciation schedule is not achieved, then the private development interests are responsible for paying the PDC the amount of the revenue shortfall from the district.[4] The gap obligation schedule required \$2.6 million by fiscal year 2008-2009 and \$4.3 million for fiscal year 2009-2010. The actual tax revenue increment that has been achieved to date is \$5.1 million, so the district is currently well ahead of the increment revenue schedule.[5] However, this gap is likely to narrow quickly when in fiscal year 2010-2011 the private development interests are required to meet a \$7.4M TIF revenue budget for the district.

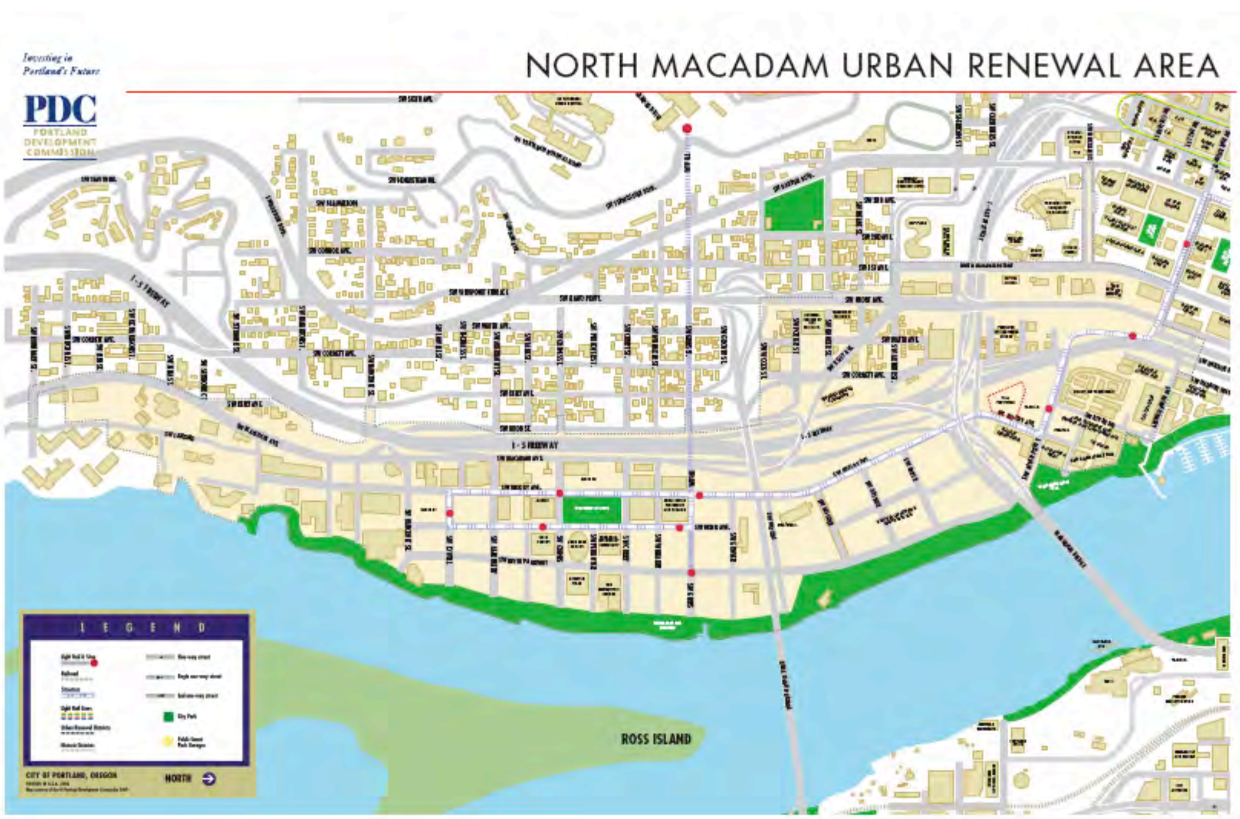


Exhibit V

Gap Obligation Calculation Schedule

DA Section 18.2

North Macadam URA		FY05/06 Actual/ Obligation/ Baseline	FY06/07 Fcast/ Obligation	FY07-08 Fcast/ Obligation	FY08-09 Fcast/ Obligation	FY09-10 Fcast/ Obligation	FY10-11 Fcast/ Obligation	FY11-12 Fcast/ Obligation	FY12-13 Fcast/ Obligation	FY13-14 Fcast/ Obligation	FY14-15 Fcast/ Obligation	FY15-16 Fcast/ Obligation	FY16-17 Fcast/ Obligation	FY17-18 Fcast/ Obligation	FY18-19 Fcast/ Obligation	FY19-20 Fcast/ Obligation
Obligation from previous agreement (Exhibit V & V-1)																
Condo Project # 1&2 (Block 30E & 30W Gap Obligations transferred to Block 30 (R543808) Meriwether)	Tax Bill FY05/06 Actual, Future Years' Forecast	13,356	13,612	1,432,979	1,637,055	1,677,981	1,719,931	1,762,930	1,807,002	1,852,178	1,898,482	1,945,945	1,994,593	2,044,458	2,095,569	2,147,958
Condo Project #3 (Block 27E plus Exhibit V-1 Gap Obligations transferred to Block 35 (R562914) John Ross)	Tax Bill FY05/06 Actual, Future Years' Forecast	6,678	6,806	6,932	540,992	618,758	634,227	650,083	666,335	682,993	700,068	717,570	735,509	753,896	772,744	792,063
Apartment Project #1 (Block 27W Gap Obligations transferred to Block 39 (R129240 & R129241))	Tax Bill FY05/06 Actual, Future Years' Forecast	6,458	6,581	6,704	6,872	7,044	7,220	7,400	7,585	7,775	7,969	8,168	8,373	8,582	287,021	294,196
	Total - Original Exhibit V	**26,492**	**26,998**	**1,446,615**	**2,184,919**	**2,303,783**	**2,361,378**	**2,420,412**	**2,480,922**	**2,542,945**	**2,606,519**	**2,671,682**	**2,738,474**	**2,806,936**	**3,155,334**	**3,234,217**
Condo Project #3 (Block 27E plus Exhibit V-1 Gap Obligations transferred to Block 35 (R562914) John Ross)	**Total--Exhibit V-1**	0	0	0	447,660	447,660	447,660	447,660	447,660	447,660	447,660	447,660	447,660	447,660	447,660	447,660
Increase in Obligation for Amendment #8																
Condo Project #4 - Block 34 (R562913) Atwater Place Condo was transferred with a Gap Obligation to be determined later	Tax Bill FY05/06 Actual, Future Years' Forecast	17,142	17,656	18,186	18,731	1,589,816	1,637,510	1,686,635	1,737,234	1,789,352	1,843,032	1,898,323	1,955,273	2,013,931	2,074,349	2,136,579
Condo Project #5 - Block 38 (R562915) was transferred with a Gap Obligation to be determined later	Tax Bill FY05/06 Actual, Future Years' Forecast	18,979	19,549	20,135	20,739	21,362	1,645,483	1,694,847	1,745,693	1,798,063	1,852,005	1,907,566	1,964,792	2,023,736	2,084,448	2,146,982
Condo Project #6 - expected to be Block 46 (R129293 & R129344)	Tax Bill FY05/06 Actual, Future Years' Forecast	11,285	11,623	11,972	12,331	12,701	1,426,541	1,469,338	1,513,418	1,558,820	1,605,585	1,653,753	1,703,365	1,754,466	1,807,100	1,861,313
	Total	**73,898**	**75,826**	**1,496,908**	**2,684,381**	**4,375,322**	**7,518,572**	**7,718,892**	**7,924,927**	**8,136,840**	**8,354,801**	**8,576,983**	**8,809,564**	**9,046,729**	**9,568,891**	**9,826,751**
	Less: Baseline		(73,898)	(73,898)	(73,898)	(73,898)	(73,898)	(73,898)	(73,898)	(73,898)	(73,898)	(73,898)	(73,898)	(73,898)	(73,898)	(73,898)
	Target Tax Increment Revenue		1,928	1,423,010	2,610,483	4,301,423	7,444,674	7,644,994	7,851,029	8,062,942	8,280,903	8,505,085	8,735,666	8,972,831	9,494,993	9,752,853

Completion RMV by Project (referred to in Section 18.2.8.1)

Condo Project # 1&2 (Block 30 Gap Obligation)	125,341,619
Condo Project #3 (Block 35 Gap Obligation)	77,656,670
Apartment Project #1 (Block 39 Gap Obligation)	17,281,221
Condo Project #4 (Block 34 Gap Obligation)	146,318,125
Condo Project #5 (Block 38 Gap Obligation)	151,406,475
Condo Project #6	131,015,400
	649,019,510

In June 2008, the Portland City Council approved an ordinance that would amend the boundaries, expand the indebtedness, and extend the duration of the River District URA, a

360-acre area that includes Portland's Pearl District in downtown Portland. These amendments included spending $19 million from the River District to build an elementary school and community center 15 miles away in the David Douglas School District, located east of I-205 in outer southeast Portland. A group of former Portland Development Commission members and staff, including a former PDC chairman, organized as Friends of Urban Renewal (FOUR), filed a lawsuit challenging the decision. In January 2009, the State Board of Land Use Appeals (LUBA) ruled on the central legal question of whether establishing a satellite district violated the state's urban renewal law. LUBA found that it was "permissible under ORS chapter 457 to create an urban renewal area and then later add geographically noncontiguous areas to that urban renewal area."

LUBA agreed with the City's description of the proposed school site as blighted and disagreed with the critics' argument that the City wasn't allowed to pay for construction of a public school. But the board agreed with FOUR that the City failed to show how a new school in the David Douglas School District would benefit other properties in the River District in downtown Portland. LUBA opined that:

> *"While the social justice concerns that presumably underlie the city's position are entirely laudable, the record does not include substantial evidence — evidence a reasonable person would rely on — demonstrating that the proposed public school/community facility 'serves or benefits' any part of the central city portion of the urban renewal area."*

As a result, LUBA remanded the proposed expansion back to City Council for further work. The LUBA ruling has put several major redevelopment projects that were included in the River District amendments on hold. Even if the Council amends the ordinance and reauthorizes the satellite expansion of the district, a letter from FOUR to the City Council outlines potential grounds for challenging it again and the group remains in a standoff with Council. FOUR's June 17, 2009 letter[6] charges that the City's plan fails to demonstrate that the River District remains blighted, that many of the proposed projects do not address blight, and that in some instances projects are addressed only by generic categories and lack specificity (i.e. "Other Public Improvements" or "Other Affordable Housing"). The FOUR letter holds open the possibility of a further appeal of a council amendment which could take several months to resolve and could potentially result in a ruling that the River District is no longer blighted, meaning that the maximum indebtedness of the district could not be increased to permit additional debt issuance and additional projects.

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[6] http://www.portlandtribune.com/documents/efiles/City%20Council%20letter.pdf
"Our objections to the Amended Plan, as stated in the attached document, are summarized as follows:

1. The report on the Amended Plan does not demonstrate that the River District as a whole is blighted. It highlights instances of blight, but the Report shows that major, important areas are no longer blighted. The notion of the River District being blighted belies the fact that the District has been substantially completed. A person on the street, who knows the Area, would be incredulous--even after reading the Report—that the Area is still blighted after 10 years of successful effort.

2. Many of the urban renewal projects proposed do not address conditions of blight.
For example, while affordable housing is an important objective city-wide, the lack of affordable housing is not a condition of blight. The streetcar projects authorized in the Amended Plan do not respond to a condition of blight such as inadequate transit service. While job creation is a major objective for the city and the region, the major expenditure for economic development in the Area are not tied to conditions of blight in the Area.

3. Major projects with very high costs are described so vaguely that citizens really have no way to know what they are paying for. The projects below are given virtually no descriptions:
• "Other Public Improvements," at a projected cost of $12,775,702
• "Other Affordable Housing," at a projected cost of $50,219,627,
• "Other Commercial Redevelopment/Revitalization," at a projected cost of $37,775,702 and
• "Other Economic Development," at a projected cost of $44,025,702"

Washington

Concern over the impacts of TIF on taxing districts and schools has also had a substantial impact on the application of TIF north of the Columbia River in Washington, where a dispute in 1993 ultimately ended in a legal battle that invalidated the state's TIF enabling legislation. The Washington State Supreme Court ruled in *Spokane v. Leonard* (1995) that the 1982 Community Redevelopment Financing Act (CRFA) violated constitutional protections of school financing.[7]

The public project behind *Spokane v. Leonard* was a plan by the City of Spokane to improve a seven square block area surrounding Bernard Street in downtown Spokane. In 1993, the City adopted ordinances to initiate street improvements including curbs, gutters, storm drainage, sidewalks, street lighting, and street trees, all totaling $850,000. In July of that year, a property owner in the newly formed apportionment district, Margaret Leonard, objected to the City's plan and filed a declaratory action against the City. Two months later, Spokane County, a taxing district that would have seen revenues diverted, intervened in the lawsuit to argue against the constitutionality of the CRFA. After nearly 2 years of working its way through the courts, in July 1995, a trial court ruled that the CRFA violated article IX, section 2 of the Washington State constitution, which states that:

> *"The legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established. <u>But the entire revenue derived from the common school fund and the state tax for common schools shall be exclusively applied to the support of common schools."</u>*

Since the *Spokane v. Leonard* decision, the Washington state legislature has delicately danced around the school finance issue with a rewrite of the CRFA in 2001, and then again with the drafting of subsequent enabling legislation for other forms of TIF programs. The most recent of these programs, the Local Infrastructure Financing Tool (LIFT) program, adopted in 2006, and the Local Revitalization Finance (LRF) program adopted this past April, are still in their

[7] Jeffrey C. Nave, Foster Pepper & Shefelman PLLC, Tax Increment Financing Resurrected, Municipal & Public Finance News, July 2001, p. 1

infancies and the success of these programs is still being measured. However, both programs have been carefully structured to not require mandatory participation of the school district or other taxing districts to avoid conflicts similar to those expressed by Ted Wheeler at Portland City Council.

The LIFT program was designed as a pilot program that required local municipalities to apply to a state Community Economic Revitalization Board (CERB) for approval of a revenue development area proposal. The CERB board reviewed applications annually. While the LIFT program followed the same basic premise of conventional TIF programs, it was different in a number of ways.

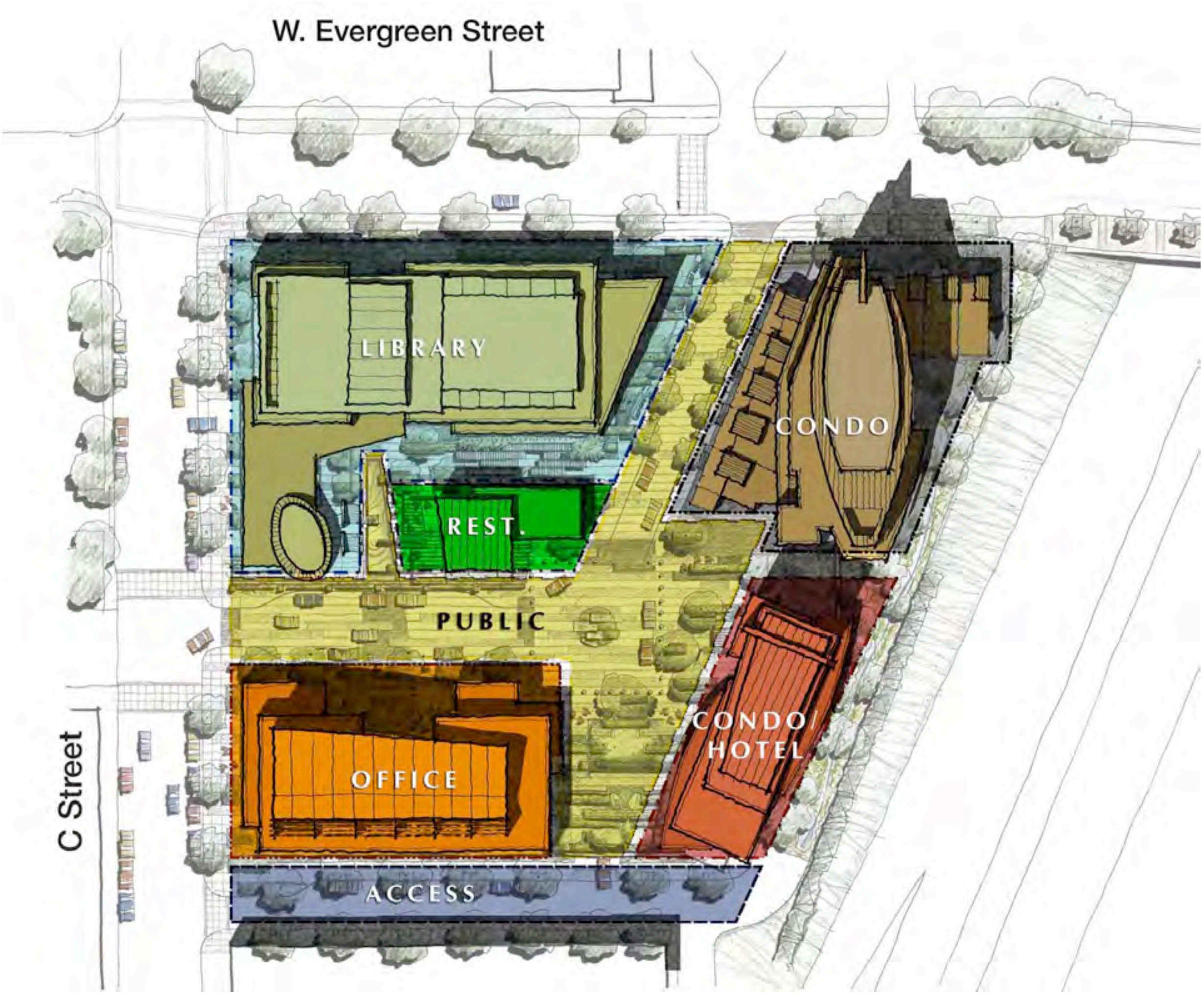
1. The LIFT legislation was a pilot program and did not give independent authority to local jurisdictions to adopt TIF districts. Rather, an application to establish a revenue development had to be submitted to the state Community Economic Revitalization Board (CERB) that reviewed and approved a limited number of applications annually in a competitive process.

2. A component of the application to the CERB board required verification that third party taxing districts would agree to participate in the district. An agreement to participate from a third party taxing district was a commitment that the district would agree to cede 75% of its share of incremental property tax revenues generated over and above the base revenues generated at the time of the revenue development area formation. Schools were excluded from this equation, so the primary taxing district whose authorization was required was the county. Such taxing districts were allowed to set a limit on the total amount they cede to the revenue development area, as a condition of their participation. This provision placed an especially high burden of proof on the 'but-for' test requiring the sponsoring jurisdiction to make a strong case that the proposed project is critical to revitalization and that incremental tax revenues would truly be a direct result of the funded capital projects.

3. The legislation permits the local municipality to establish a sales and use tax that is taken from the state's share of the sales and use taxes generated within the revenue development area. This sales and use tax is essentially a fractional rebate, for lack of a better term, on the 6.5% state share of the sales tax (local levies generally bring the total sales tax to just over 8%). The rebate on the state sales tax is then returned to the local jurisdiction quarterly for repayment of debt issued for public improvements in the district. This sales and use tax provision includes the sales and use tax on private construction costs, which can be significant.

4. The LIFT legislation caps the amount of annual state sales tax that can be returned to the LIFT districts annually at $5 million. This total annual sum is to be divided among all of the projects statewide granted LIFT approval by the CERB board.

One project that was approved by the CERB to receive up to $500,000 in annual sales and use tax rebates is a redevelopment project in downtown Vancouver called Riverwest. Riverwest is mixed-use project planned on a former car dealership site by Killian Pacific, a Portland-Vancouver real estate developer, and by the Fort Vancouver Regional Library District. The project is planned to consist of a new civic plaza, 200 multi-family residential units, 100,000 square feet of office space, 17,000 square feet of retail space, a 112-room hotel, and a 700-space underground parking garage.[8]



Because the car dealership was no longer operating at the time the revenue development area ordinance was adopted by the City of Vancouver, there were no current sales and use taxes being generated from the site, thus making the new sales tax increment easy to determine. For the project, all sales and use taxes generated from the revenue development area will be subject to the 0.3% tax that is returned to the City of Vancouver from the state. Tentative private construction costs for the project are approximately $200 million. Therefore, the sales and use tax rebate on construction costs alone would be approximately $600,000 (0.003 x $200,000,000). While it is not anticipated that the full $600,000 would be generated in single fiscal year, if it were, the excess $100,000 (above the $500,000 annual maximum increment) could be rolled forward to the following year. This represents a substantial sum to collect at the onset of a project, a time when most TIF districts struggle to generate substantial incremental tax increases.

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[8] City of Vancouver Website; Accessed on March 30, 2009 at: http://www.cityofvancouver.us/econdev.asp?menuid=10464&submenuID=10525&projectID=26994

The LIFT financing for the project is intended to construct the $15 million parking garage that is proposed with the project. The adopting ordinance for the LIFT district identifies a 25-year period for the lifespan of the district. Future incremental tax revenues from the Riverwest project will include incremental property tax revenues ceded by the Fort Vancouver Regional Library District, Clark County, and the Port of Vancouver, all of whom agreed to participate in the district.[9]

From LIFT to LRF

In April of this year, the Washington State legislature adopted Senate Bill 5045, an update to the LIFT program. With SB 5045, the legislature abandoned the LIFT moniker and labeled the new program Local Revitalization Financing (LRF). The new LRF program is very similar to the LIFT program in that it permits a local jurisdiction to issue debt repaid by incremental revenues from sales tax and property tax increments recovered within a revitalization area. However, rather than applying to the CERB board for approval through a competitive process, the LRF legislation now permits local jurisdictions to submit applications for LRF programs, to be accepted on a first-come first-serve basis up to the maximum allowable cap per year. Whereas the LIFT program required review and approval by the CERB board, the LRF program requires applicants to submit applications to the state Department of Revenue (DOR) for review and approval. SB 5045 specifically approved seven demonstration projects across the state to implement LRF areas totaling $2.25M annually. These approved projects included the Vancouver Columbia Waterfront redevelopment project, a

[9] Steve Burdick, Killian Pacific, March 30, 2009 Interview.

35-acre mixed use redevelopment proposed by Gramor Development and a group of local investors on the former Boise-Cascade paper manufacturing facility in downtown Vancouver.

In addition to the $2.25 million annual funding that was allocated to the seven demonstration projects, SB 5045 authorized an additional $2.5 million of LRF funding per year, with a maximum annual allocation per project of $500,000. The DOR will begin accepting applications for LRF programs for non-demonstration projects beginning September 1, 2009.

Idaho

Compared to its neighbors to the west, Idaho's TIF program has faced fewer obstacles in the way of property tax limitation measures, litigation attacking constitutionality and the intervention of political interests. The state's legislation also permits private developers to participate directly in the recovery of established incremental property tax revenues if designated improvements are privately funded, a significant development enticement not found in Oregon or Washington. Some basic facets of the Idaho program and Idaho tax structure make the state's revenue allocation program a much more straightforward and arguably more market flexible program than than in either in Oregon or Washington.

First, Idaho did not experience the wave of property tax limitation measures that swept Oregon in the 1990s. Therefore, municipalities with adopted revenue allocation areas have not had to contend with anticipated budget shortfalls due to changes in the property tax collection methods. As a result, it has not been necessary for the state to develop various alternative levies and other mechanisms to ensure that urban renewal areas have the capacity to repay their debt obligations.

Second, revenue allocation areas can be adopted both within an urban renewal plan area and also within something called a 'competitively disadvantaged border community area'. Unlike an urban renewal plan area, which can only be adopted upon a finding of blight within the proposed plan area, a competitively disadvantaged border community area can be established in a county or city location that is at least 40 acres and is within 25 miles of a state or international border. In order to adopt a competitively disadvantaged border community area, the municipality must find that the proposed revenue allocation area is otherwise disadvantaged for economic development because of disparities in sales tax, income tax, property tax, population, or geography. This provision has been used to adopt plan districts in border communities such as Moscow, Post Falls and Coeur D'Alene, where these communities compete with Washington cities, primarily in the greater Spokane area.


Artist's Rendering - Tullamore Master Planned Development in the East Post Falls, ID URA

Lastly, Idaho's revenue allocation provisions allow for private development interests to be repaid directly from the increment funds generated in the district if the developer completes designated capital projects identified in the plan. This program feature provides significant benefit to the urban renewal agencies and local municipalities because it provides the option of taking the finance risk out of the hands of the local urban renewal agency if a developer is willing to finance improvements privately. It is a significant upside to developers who, knowing they can recapture particular capital expenditures towards public infrastructure with incremental property tax revenues, may be more likely to move forward with the project and more likely to secure advantageous financing than would otherwise be the case. The particulars of how the private developer is repaid, including whether or not revenue allocation reimbursements cover costs of financing, are typically handled in a development agreement or owner participation agreement between the urban renewal agency and the developer.[10]

While the Idaho program remains the least altered urban renewal program in the Northwest, it has not been impervious to public criticism or legal challenge. There are currently two legal challenges in the Idaho courts regarding urban renewal plans in the cities of Rexburg and Nampa where revenue allocation areas were proposed to build a $6.3 million public swimming pool and a $68 million police station and library, respectively. The primary contention of the appellants in these challenges is that the urban renewal agency is essentially an alter ego of the city and should not be allowed to issue long-term debt without a two-thirds vote of the city, which is otherwise required of municipalities by the Idaho constitution.[11] This issue had been previously settled by a 1972 Idaho Supreme Court Case titled *Boise Redevelopment Agency (BRA) v. Yick Kong Corp.* [94 Idaho 876, 499 P.2d 575 (1972)], which found that the urban renewal agency was a unique entity from the authorizing municipality and that debt issued by the urban renewal agency is not subject to two-thirds voter approval as is required of municipalities.[12] As a consequence, the cases in Rexburg and Nampa are being monitored closely by urban renewal agencies across Idaho as they could significantly hamstring the political process of implementing revenue allocation areas in the future.

[10] Ryan Armbruster, Elam & Burke Attorneys at Law, Interview, March 24, 2009
[11] Boise Weekly, Cities in Disguise, August 27, 2008, Accessed on March 29, 2009: http://www.boiseweekly.com/gyrobase/Content?oid=316825
[12] Ryan Armbruster, Elam & Burke Attorneys at Law, Interview March 24, 2009

Conclusion

In spite of the numerous structural differences that exist between the TIF programs in the Northwest, current day efforts to thwart these programs have many common threads. In the Nampa and Rexberg, Idaho court cases, there is an underlying concern of the appellants that these projects are public service projects designed to benefit the greater community and are not truly economic development projects that benefit the URA. This argument draws a close parallel to one of the contested issues raised in the River District debate by the FOUR group, who argued that construction of the planned elementary school lacked a nexus to the economic development of the remainder of the district.

Additionally, TIF opponents commonly cite concerns that tax revenues grown out of a TIF district may not truly be a result of improvements planned for the district. Washington State was so keenly aware of this concern (thanks to the *Spokane v. Leonard* decision) that it even wrote an opt-out clause to its current enabling legislation to permit taxing districts to opt out of participation in the district. This is somewhat ironic, because TIF district plans by design should meet the 'but for' test as a prerequisite for formation. However, the lure of using TIF to finance various pet projects has enticed many URA authorities to pursue projects that test the boundaries of urban renewal. Examples of this include the creation of a satellite district to build a new school 15 miles away or the construction of sports stadiums with marginal economic impact. As municipalities such as Portland continue to push the envelope of urban renewal to include such projects, one can expect challenges to continue from development interests, counties, school districts, and other taxing jurisdictions with a substantial stake in the process.