

Illinois Appellate Court Rejects School Districts' Challenge To Formation Of TIF District

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In a recent [decision](#), the Illinois Appellate Court found in favor of the Village of Winfield (the "Village") when two local school districts challenged the Village's formation of a tax increment financing ("TIF") district. The School Districts argued that the Village did not meet the requirements of the Tax Increment Allocation Redevelopment Act ("TIF Act") and the Village was not allowed to 'de-TIF/re-TIF' a portion of its downtown in forming a TIF district.

In November 2021, the Village passed three ordinances related to establishing a new TIF district. Notably, each of the parcels in the new TIF district had been included in another, larger TIF district formed in 2004 and that was scheduled to expire in 2027. The Village removed each parcel from the first TIF district before creating the new TIF district. While all the parcels used to form the new TIF district were originally located in the first TIF district, not all parcels from the first TIF district were included in the second TIF district.

The School Districts filed suit against the Village, arguing that the Village's creation of the TIF district was not consistent with the TIF Act. The School Districts and the Village later filed cross-motions for summary judgment. The School Districts argued that the Village did not meet the requirements of the TIF Act because 1) it did not satisfy the "but-for-test," 2) the parcels did not meet the TIF Act's contiguity and substantial benefit requirements, 3) insufficient eligibility factors existed to designate the TIF district as a conservation area, and 4) the Village impermissibly extended the 23-year term of parcels in one TIF district by de-TIFing and then re-TIFing them in the new TIF districts. In its defense, the Village argued that creation of the TIF district satisfied five eligibility factors, which was more than the three factors necessary to be designated a conservation area under the TIF Act.

The Circuit Court granted the Village's motion for summary judgment and denied the School Districts' motion, finding that the Village met all of the TIF Act's requirements to form the TIF district.

Upon review, the Appellate Court upheld the lower court's ruling. As part of the but-for test's requirement under the Act, the Village was required to find that the property had not been subject to growth and development and would not reasonably be anticipated to be developed without the adoption of the redevelopment plan. The Appellate Court found, in relevant part, that a development agreement entered into between the Village and a local hospital, which was entered into by the Village with the intention of creating the TIF district, indicated that the TIF district was necessary for development in the area to occur. The Appellate Court found that this satisfied the but-for test.

Regarding the contiguity requirement, the School Districts argued that inclusion of several parcels in the second TIF district were only included for the purpose of achieving contiguity, and that they should not have been included because they would not substantially benefit from the formation of the TIF district. The School District further argued that the TIF Act required every single parcel to substantially benefit from the TIF District. The Appellate Court disagreed, finding that the TIF Act only requires that the property as a whole benefit.

The Appellate Court then turned to the School Districts' argument regarding conservation area eligibility factors, where the School Districts asserted that the parcels did not satisfy three or more eligibility factors necessary to designate them as a conservation area. The Village ultimately concluded that five out of thirteen factors listed under the Act applied to the parcels. The Appellate Court disagreed with the School Districts and found that the Village properly found at least three factors applied, of which there were no issues of material fact that would prevent the lower court from siding with the Village.

Lastly, the Appellate Court upheld the lower court's ruling when it found the Village could remove parcels from the first TIF district, which was set to expire in 7 years, and include them in the second TIF district, thereby giving those parcels an additional 23 years of TIF treatment. The School Districts argued that the life of a TIF district is 23 years, and the Village's creation of the new TIF district with the same parcels impermissibly extended the life on the TIF district. The Appellate Court found that the TIF Act did not expressly prohibit parcels from being included in a TIF district if they were once already included in another, and that upon formation of the new TIF, the base property value calculations were reset, which creates new tax revenues and defeated the School Districts' arguments that the Village's creation of a new TIF district was an extension of the first TIF district.

The practice of 'de-TIF and re-TIF' has become widespread with municipalities establishing TIF districts, running them for up to 23 years, and then creating a new TIF district with some or all of the parcels formerly in the original TIF district. The Appellate Court endorsed the practice in this opinion in the context of the Village having met all the requirements to create a new TIF district.