

IOWA'S AGRIBUSINESS IN A TIF

*Christopher M. Nydle**

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I. INTRODUCTION

In the current commercial and industrial environment, many communities face harsh challenges in developing new as well as retaining existing agribusinesses. “In the economic development world, the difference between success and failure often hinges on detail and good planning.”¹ Tax Increment Financing (TIF), while not new, is a tool that is increasingly used by local governments to confront these challenges and provide the detail and good planning to spur economic development in their community.² It has the potential to create the needed incentives for agribusinesses to locate, relocate, or expand in a community utilizing TIF. TIF is a development tool that should be considered by any local government that is serious about improving the economic outlook of its community.

* J.D. Candidate, Drake University Law School, 2010.

1. Tory Brecht, *7 Districts Bring Diversified Development*, QUAD-CITY TIMES, Sept. 16, 2005, Bettendorf News at 6, available at http://www.qctimes.com/news/local/bettendorf/article_161d439e-a915-5145-b20c-cf0dd8772290.html.

2. See Larry Marks, *The Evolving Use of TIF*, 18 DEV. STRATEGIES REV. 4, 4 (2005), available at http://www.development-strategies.com/pdfs_07/DSIRReviewSummer05.pdf.

This Note will begin with a general overview of TIF and explain how it works. Next, it will discuss the original purpose of TIF as a tool to combat blight in urban areas and the shifting trend away from that original purpose. This Note will then briefly discuss the TIF statutes contained in the Urban Renewal Law in Iowa and the ways in which Iowa communities have already used TIF in developing and retaining businesses. Finally, the use of TIF by the City of Des Moines concerning agribusiness will be examined. TIF has the ability to be a key tool for a local government in a rural community in developing agribusiness by paving the way for new development, as well as providing incentives for current businesses to remain in a community or expand its operations.

II. A TIF PRIMER

A. *The Evolution of TIF*

TIF was first used in California during the 1950s.³ Commonplace usage of TIF did not occur until there was an expansion of federalism throughout the 1970s, 80s, and 90s, resulting in reduced federal funding for local governments carrying out redevelopment projects.⁴ TIF is now the most popular form of public finance for local economic development projects.⁵ While nearly every state has laws enabling TIF use, its heaviest use remains in California and throughout the Midwestern states.⁶ The authority to use TIF is primarily vested in municipalities, however many states have also extended TIF authority to other bodies such as county government, development authorities, and housing authorities.⁷

B. *How TIF Works*

A TIF project begins when a local government designates a specific area under the control of that government as a TIF district.⁸ Strict contract require-

3. *Id.*

4. *Id.*

5. Alan Woolever, *Tax Increment Financing, Government Grants, and Developer Tax Consequences: An Analysis of Statutes, Regulations, Case Law and Related Policy Considerations*, 40 URB. LAW. 299, 301 (2008).

6. Marks, *supra* note 2, at 5 (stating that Arizona is the only state that does not have some form of TIF available to local government).

7. *Id.*

8. See Alyson Tomme, Note, *Tax Increment Financing: Public Use or Private Abuse?*, 90 MINN. L. REV. 213, 216 (2005). For a more in-depth discussion of how TIF planning

ments govern the manner in which TIF funds are to be utilized in most TIF projects.⁹ Upon creating and adopting a TIF district and project, the local government then freezes the property tax base of the TIF district.¹⁰ The year in which the TIF is enacted is referred to as the base year, with the value of the assessed property contained in the TIF district during the base year creating the base assessed value.¹¹ During the life of the TIF district, all property tax revenues collected in excess of the base assessed value, called the incremental revenue, are collected by the local government that enacted the TIF.¹² This diversion of the incremental revenue typically lasts around fifteen years, but can continue as long as thirty or forty years.¹³ The governing body enacting the TIF uses the incremental revenue to finance development “either by the issuance of TIF bonds (by the city or TIF Commission) or on a pay-as-you-go basis, where the developer is initially responsible for providing all the funding for the [development] project and later is reimbursed from [the incremental revenue]”.¹⁴ A TIF bond is also commonly referred to as an Urban Renewal Revenue Bond, which is “sold to finance an Urban Renewal Project, that will be repaid solely and only from the incremental [revenue] generated by the [TIF District].”¹⁵

TIF has emerged as the leading method for local governments to finance economic development.¹⁶ An assumption accompanying every TIF project is that the improvements made with TIF funds will incent new development.¹⁷ The new development projects then create an increase in property tax revenue, thereby providing the funds to extinguish the debt incurred.¹⁸ Additionally, “all the taxing bodies within the TIF district ultimately benefit from the development project

and implementation occurs, see also J. Drew Klacik & Samuel Nunn, *A Primer on Tax Increment Financing*, in *TAX INCREMENT FINANCING AND ECONOMIC DEVELOPMENT: USES, STRUCTURES AND IMPACT* 15, 18-19 (Craig L. Johnson & Joyce Y. Man eds., 2001) (describing the seven step-process used in Elgin, Illinois).

9. Woolever, *supra* note 5, at 328.

10. Tomme, *supra* note 8, at 214.

11. Klacik & Nunn, *supra* note 8, at 20.

12. *Id.* at 21.

13. Institute for Local Self-Reliance, New Rules Project, *TIF Reform*, <http://www.newrules.org/retail/rules/tif-reform> (last visited Oct. 25, 2009).

14. Woolever, *supra* note 5, at 301-02.

15. Mark Cory, ABC's of Iowa Urban Renewal: A Practical Guide for Cities and Counties 8 (2006), <http://ahlerslaw.com/Resources/Resources.htm>.

16. Woolever, *supra* note 5, at 301.

17. Klacik & Nunn, *supra* note 8, at 15.

18. *Id.*

in the district¹⁹ as they ideally will see a large increase in property tax revenues at the expiration of the TIF project.²⁰

Ideally, TIF projects are self-financing in that local governments do not have to increase the tax rate or institute any new taxes.²¹ This means that the development occurs tax-free to the taxpayers of the community, save for those who see increases in their property value as a result of the project.²² It also does not require any direct public investment²³ and is therefore a locally controlled funding option. By maintaining local control, TIF is able to circumvent some of the bureaucratic delays and reporting that may be required if funding is obtained from another government source.²⁴ An additional advantage of TIF is that it allows a local government to “avoid referendum-style voter approval campaigns for the issuance of bonded debt.”²⁵

C. Addressing the Criticisms of TIF

One concern created by the TIF process is that a local government is not the only recipient of the revenues created by property taxes.²⁶ Property taxes are generally apportioned among several taxing bodies, typically including the municipality, county and local school district. A common criticism of this process is that it diverts funds from the local school district.²⁷ This is not entirely accurate as the school district continues to receive the same share of property tax revenue that it did in the Base Year when the Base Assessed Value was established.²⁸ A few states have answered this concern by exempting school districts from those

19. Joyce Y. Man, *Introduction to TAX INCREMENT FINANCING AND ECONOMIC DEVELOPMENT: USES, STRUCTURES, AND IMPACTS* 1, 5 (Craig L. Johnson & Joyce Y. Man eds., 2001).

20. Robert G. Lehnen & Carlyn E. Johnson, *The Impact of Tax Increment Financing on School Districts: An Indiana Case Study*, in *TAX INCREMENT FINANCING AND ECONOMIC DEVELOPMENT: USES, STRUCTURES, AND IMPACT* 137, 141 (Craig L. Johnson & Joyce Y. Man eds., 2001).

21. Tomme, *supra* note 8, at 216.

22. Klacik & Nunn, *supra* note 8, at 16.

23. Man, *supra* note 19, at 3.

24. Klacik & Nunn, *supra* note 8, at 16.

25. *Id.*

26. Man, *supra* note 19, at 5 (explaining that the local government enacting the TIF receives the increased revenue from property taxes over other entities entitled to a portion of the property tax revenue).

27. *Id.*

28. Klacik & Nunn, *supra* note 8, at 22.

taxing bodies whose portion of the tax base is frozen.²⁹ Such exceptions would allow school districts in those states to begin recouping the benefits of the TIF project immediately. This practice could, however, result in the other taxing bodies, whose portion is still frozen for the life of the TIF district, to wait even longer to see a benefit as it will take longer for the local government creating the TIF to recapture the funds needed to extinguish the debt it incurred in carrying out the TIF project.

Another concern is that TIF generally collects the resulting increment in property taxes. However, some states allow the local government creating the TIF district to collect a “set percentage of the incremental increase in all local taxes, such as sales, utility, and earning taxes.”³⁰ Additionally, if the Incremental Revenue collected by the local government that enacted the TIF is unable to raise enough money to cover the cost of the project, the local government may have the authority to create special assessments on property within the TIF district, or be faced with the decision to pay the debt from its own government coffers.³¹

The basic concept of TIF is straightforward, but local governments have often paired it with the use of condemnation. This practice is frequently referred to as eminent domain, which can complicate the process by giving power to private entities in creating the TIF projects and creates much of the criticism that TIF receives.³² The most frequent criticism of TIF comes in the form of “private property may only be taken for public use and with just compensation.”³³ It follows then, that a local government must prove an appropriate public use before using its power of condemnation in a TIF district.³⁴ What qualifies as a public use was recently expanded significantly by the United States Supreme Court’s decision in *Kelo v. City of New London*.³⁵ The Court in *Kelo* held that the furtherance of an economic development plan was sufficient to satisfy the public use requirement.³⁶

29. *Id.* at 25 (explaining that Florida, California, Illinois, and Wisconsin exclude school district revenues from the TIF increment).

30. Woolever, *supra* note 5, at 302.

31. *Id.*

32. Tomme, *supra* note 8, at 215.

33. *Id.*

34. *Id.*

35. *Id.*; *Kelo v. City of New London*, 545 U.S. 469 (2005).

36. *Kelo*, 545 U.S. at 484-85 (indicating the offered plan was “public use” under the Takings Clause).

The original function of TIF was to create an incentive for developers to build in struggling urban areas,³⁷ which gives rise to another criticism of TIF in that the shifting trend is toward local governments using TIF as a development tool to create “sprawling development in well-to-do suburbs”³⁸ A few examples of this criticism in Iowa are explored later in this Note.

“[T]he problems underscored by critics of TIF . . . are not terribly severe, particularly when considered in the context of the overall fiscal environment of modern local administration.”³⁹ A small number of empirical studies yield conflicting results as to TIF’s effectiveness in creating economic development; however a number of positive results were produced.⁴⁰ TIF may result in an increased “number of small business start-ups and stimulate growth in state personal income and state private employment.”⁴¹ “[P]ublic investment on infrastructure . . . has a positive effect on land values”⁴² TIF has the potential to reduce the costs associated with production by private firms and increase business profits, possibly creating an influential effect on a business’ location, relocation or expansion.⁴³ “TIF programs have a statistically significant positive effect on local employment.”⁴⁴ The effects of TIF are often felt beyond the borders of the TIF district, increasing property values both within the district and the surrounding communities.⁴⁵ “TIF-adopting cities experience greater property value increases than non TIF-adopting cities.”⁴⁶ And finally, when compared with industrial development bonds, commercial property tax abatements, and the establishment of a downtown development authority, only TIF has a “positive effect on real retail sales.”⁴⁷

37. Institute for Local Self-Reliance, *supra* note 13.

38. *Id.*

39. Klacik & Nunn, *supra* note 8, at 27.

40. See Joyce Y. Man, *Effects of Tax Increment Financing on Economic Development*, in *TAX INCREMENT FINANCING AND ECONOMIC DEVELOPMENT: USES, STRUCTURES, AND IMPACT* 101, 101-05 (Craig L. Johnson & Joyce Y. Man eds., 2001).

41. *Id.* at 102.

42. *Id.*

43. *Id.* at 102-03.

44. *Id.* at 104.

45. *Id.*

46. *Id.* at 103.

47. *Id.* at 104.

III. TIF LAW IN IOWA

TIF in Iowa is authorized by Iowa's Urban Renewal Law.⁴⁸ It was first enacted in 1957 and has seen several amendments and expansions.⁴⁹ The Urban Renewal Law empowers cities, counties, and community colleges to utilize TIF.⁵⁰ TIF districts in Iowa are contained within larger areas that have been designated as Urban Renewal Areas.⁵¹ Urban Renewal Areas are the "geographic area . . . that has been designated as an appropriate area for urban renewal projects."⁵² Public hearings are only required in Iowa for the initial approval of an urban renewal plan and are not required for each TIF project that occurs under the plan.⁵³ A TIF district created by an Iowa municipality can extend as far as two miles beyond the city's limits.⁵⁴ Property located within such a TIF district also does not need to be contiguous.⁵⁵

In Iowa, TIF was initially enacted for the purpose of combating slum and blight conditions, however, in the 1980s, the legislature expanded the Urban Renewal Law to allow TIF to be used for economic development.⁵⁶ Certain types of farms are allowed within TIF districts created for economic development.⁵⁷ TIF is now seen in Iowa as an "equalizer that allows Iowa to compete with the 44 other states that also use TIF to entice economic development" and is even thought of as "a prerequisite for encouraging businesses to grow in Iowa."⁵⁸

48. See IOWA CODE § 403 (2009).

49. IOWA LEGISLATIVE FISCAL BUREAU, CITY TAX INCREMENT FINANCING 1 (April 14, 2003), available at <http://www.legis.state.ia.us/lsadocs/IssReview/2003/IRJWR002.pdf> [hereinafter CITY TAX INCREMENT FINANCING].

50. IOWA LEAGUE OF CITIES, TAX INCREMENT FINANCING BASICS 1, available at <http://www.iowaleague.org/downloads/Legislative/2006/TIFBrochure.pdf> (last visited Oct. 25, 2009).

51. CORY, *supra* note 15, at 9.

52. *Id.* at 7.

53. ALYSSA TALANKER ET AL., GOOD JOBS FIRST, STRAYING FROM GOOD INTENTIONS: HOW STATES ARE WEAKENING ENTERPRISE ZONE AND TAX INCREMENT FINANCING PROGRAMS 15 (2003), available at <http://www.goodjobsfirst.org/pdf/straying.pdf>.

54. *Id.* at 14.

55. *Id.*

56. IOWA LEAGUE OF CITIES, *supra* note 50, at 2.

57. TALANKER, *supra* note 53, at 15.

58. IOWA LEAGUE OF CITIES, *supra* note 50, at 2, 4.

The Urban Renewal Law in Iowa has been codified in Chapter 403 of the Iowa Code.⁵⁹ The Declaration of Policy contained in the Urban Renewal Law provides:

[I]t is . . . necessary to assist and retain local industries and commercial enterprises to strengthen and revitalize the economy of this state and its municipalities; that accordingly it is necessary to provide means and methods for the encouragement and assistance of industrial and commercial enterprises in locating, purchasing, constructing, reconstructing, modernizing, improving, maintaining, repairing, furnishing, equipping, and expanding in this state and its municipalities[;] . . . that accordingly it is necessary to authorize local governing bodies to designate areas of a municipality as economic development areas for commercial and industrial enterprises . . . and that it is also necessary to encourage the location and expansion of commercial enterprises to more conveniently provide needed services and facilities of the commercial enterprises to municipalities and the residents of the municipalities.⁶⁰

The Iowa Supreme Court has interpreted this section of the Urban Renewal Law to allow for economic development area regardless of any findings of slum or blight.⁶¹ Additionally, the purpose of preventing unemployment does not require any findings of present unemployment concerns within the urban renewal area.⁶²

Urban Renewal Areas must meet the requirements of Chapter 403 of the Iowa Code, which recognizes five types of Urban Renewal Areas.⁶³ The category relevant to the development of agribusiness is “Economic Development – Commercial/Industrial Area,” which is an “area where a city or county wants to create or retain jobs and income and strengthen the economy by promoting the development of new business and industry or by retaining existing business and industry.”⁶⁴ A TIF district is created within an Urban Renewal Area and often, but not always, encompasses the entire Urban Renewal Area.⁶⁵ An Urban Renewal Area may also contain several smaller TIF districts.⁶⁶ The Incremental Revenue collected by a local government from a TIF district, or the TIF Reimbursement,⁶⁷ can only be used for projects that qualify as Urban Renewal Projects under Chap-

59. CITY TAX INCREMENT FINANCING, *supra* note 49, at 1.

60. IOWA CODE § 403.2(3) (2009).

61. *McMurray v. City Council of West Des Moines*, 642 N.W.2d 273, 279 (Iowa 2002).

62. *Id.*

63. *CORY*, *supra* note 15, at 8.

64. *Id.* at 9.

65. *Id.*

66. *Id.*

67. *Id.* at 7.

ter 403.⁶⁸ “[T]he type[s] of incentives that can be offered to a developer are not dictated by law.”⁶⁹ A city or county may choose a number of ways to incent a developer to choose their Urban Renewal Area to develop their project.⁷⁰

TIF districts that are established solely for economic development and contain no slum or blighted areas are limited to a duration of twenty years.⁷¹ If a governing body, however, is able to establish findings of blight, the length of a TIF district is not time constrained.⁷² The majority of TIF used in Iowa today, however, occurs for economic development purposes and is therefore limited to a twenty year time limit.⁷³ A report from the Iowa Legislative Fiscal Bureau shows that during the 2003 Fiscal Year, 336 of Iowa’s 950 cities received Incremental Revenue from TIF districts.⁷⁴ Additionally, twenty-six Iowa counties had active TIF districts during the 2003 Fiscal Year.⁷⁵ Examples of TIF being used throughout the State of Iowa show that TIF has been an effective tool in creating new economic development, as well as certain municipalities being able to retain businesses that may have otherwise left their community without the incentives offered through TIF.⁷⁶

As mentioned above, the criticism that TIF hurts school districts by withholding property tax revenues has been partly remedied in Iowa in two ways. “Schools are reimbursed by the state for losses to the uniform school levy revenues generated by the increment” and municipalities are required to return to schools “any physical plant and equipment levies (PPEL) generated in the increment . . . that are not needed to meet cities’ debt obligations.”⁷⁷

68. *Id.* at 10; IOWA CODE §§ 403.6, 403.12 (2009).

69. CORY, *supra* note 15, at 26.

70. *Id.* (providing that a city or county “could make a grant, make a forgivable loan, make a loan that is expected to be paid back, agree to rebate tax increments . . . build [p]ublic [i]mprovements, acquire and assemble land for development, take responsibility for clean up of contamination, provide services and amenities that help with the recruitment and retention of employees, provide training programs and many other activities”).

71. CITY TAX INCREMENT FINANCING, *supra* note 49, at 1.

72. *Id.*

73. IOWA LEAGUE OF CITIES, *supra* note 51, at 2.

74. CITY TAX INCREMENT FINANCING, *supra* note 49, at 1.

75. IOWA LEGISLATIVE FISCAL BUREAU, COUNTY TAX INCREMENT FINANCING 1 (April 9, 2003), available at <http://www.legis.state.ia.us/lsadocs/IssReview/2003/IRJWR001.pdf> [hereinafter COUNTY TAX INCREMENT FINANCING].

76. See IOWA LEAGUE OF CITIES, *supra* note 50, at 3 (providing a list of select municipalities utilizing TIF).

77. *Id.* at 2; see also TALANKER *supra* note 53, at 15 (stating that the State of Iowa was expected to pay \$28 million to schools to “offset school tax revenues lost to TIF projects”).

IV. TIF USE IN IOWA

Examples of TIF being used throughout the State of Iowa show that TIF has been an effective tool in creating new economic development as well as certain municipalities being able to retain businesses that may have otherwise left their community without the incentives offered through TIF.⁷⁸

During 2008, Black Hawk County saw the value of taxable property contained in TIF districts increase \$36 million from 2007.⁷⁹ The primary city in Black Hawk County, Waterloo, saw the value of its property contained in TIF districts increase by \$9 million.⁸⁰ Additionally, Waterloo has seen an increase in its general operating fund of approximately \$18 million, which was released from an industrial TIF district.⁸¹

Waterloo used TIF in 2006 to purchase two vacant buildings to assist expansion of Crystal Distribution Services, Inc. (Crystal), a storage and distribution corporation.⁸² City officials felt that the “incentives were necessary to spur more development in the depressed . . . area.”⁸³ The Incremental Revenue created by the TIF would allow the city to be paid back for the purchase and demolition of the vacant buildings.⁸⁴ The development agreement created between the city and Crystal would allow for Crystal to double the size of their warehouse.⁸⁵

78. See IOWA LEAGUE OF CITIES *supra* note 50 at 2; *contra* DAVID SWENSON & LIESL EATHINGTON, IOWA STATE UNIV. DEP'T OF ECON., *DO TAX INCREMENT FINANCE DISTRICTS IN IOWA SPUR REGIONAL ECONOMIC AND DEMOGRAPHIC GROWTH?* (June, 2002), *available at* http://www.econ.iastate.edu/research/webpapers/paper_4094_N0138.pdf (Although this report sheds doubt on the effectiveness of TIF in Iowa, an important limitation of this study is that it operates under the assumption that all TIF districts created after the legislature amended the statute allowing for TIF districts to be created for economic development purposes were in fact created for that reason rather than for reasons of urban renewal or improvement of blighted areas. The report also focused on what they call “nonfarm” jobs and therefore does not take into account any increases in employment in agribusiness).

79. Tim Jamison, *County Tax Base Up 4.4%*, WATERLOO-CEDAR FALLS COURIER, Jan. 4, 2009, at A1, *available at* 2009 WLNR 161437.

80. *Id.*

81. *Id.* (The smaller community of Dunkerton, also located in Black Hawk County, has seen an increase of approximately \$2.5 million released into its general operating fund from TIF districts, increasing its operating fund by nearly 10%).

82. Tim Jamison, *\$3 Million Plan for Rath Site Crystallizing*, WATERLOO-CEDAR FALLS COURIER, Feb. 7, 2006, at A1, *available at* 2006 WLNR 2138695 [hereinafter *\$3 Million Plan for Rath Site Crystallizing*].

83. *Id.*

84. *Id.*

85. *Id.*

Officials in Polk City have approved a seven-year development agreement for a forty-two acre business park.⁸⁶ The city has adopted a TIF district to cover the cost of improved infrastructure for the area.⁸⁷ Estimates for the infrastructure improvements are around \$450,000.⁸⁸ In addition to the business park, the City plans to develop the area with “amenities such as a recreation center and soccer fields with multipurpose uses.”⁸⁹ The infrastructure and recreational enhancements brought to the area will also benefit the school district, which will be receiving a donation of forty acres from the development agreement.⁹⁰ City officials anticipate the project will stabilize the tax base for the area and bring in new jobs.⁹¹

The City of Bettendorf devised a strategy in which it divided the city into nine different development areas, with each district marketed toward specific types of business.⁹² As of 2005, six of the nine areas were contained in TIF districts.⁹³ The city is using incentives such as TIF, to help control the types of business that develop in an area and to attract the class of business it believes will best expand its economy.⁹⁴ In 1993, Bettendorf adopted a \$3 million TIF district to improve infrastructure in an area known as the Riverside Development Park.⁹⁵ By 2001, the city had a total value of about \$13 million with an additional \$7 million expected upon completion of two additional buildings within the Riverside Development Park.⁹⁶ From 1996 to 2005, Bettendorf exceeded its goal for economic growth by 130 percent, generating \$300 million in taxable, economic growth.⁹⁷ In 2006, Bettendorf officials approved a 227 acre development project

86. MaryBeth Foster, *Polk City Considers Big Creek Project*, DES MOINES REG., Jan. 29, 2009, available at <http://m.dmregister.com/news.jsp?key=395695>.

87. *Id.*; PolkCity.org, *Ground Breaking for Big Creek Technology Campus*, Oct. 8, 2009, <http://polkcity.org/index.php/2009/10/ground-breaking-for-big-creek-technology-campus/> (last visited Nov. 8, 2009).

88. Foster, *supra* note 86.

89. *Id.*

90. *Id.*

91. PolkCity.org, *supra* note 87 (construction began on the Polk City project in October 2009).

92. Brecht, *supra* note 1.

93. *Id.*

94. *Id.*

95. Dawn Neuses, *TIF: Q-C Business and Civic Leaders Sing Praises of 'Vital Tool'*, QUAD-CITY TIMES, Feb. 19, 2001, QCBizNet Magazine at 1, available at http://www.qctimes.com/business/article_56b8e80f-0ff9-5b79-a134-bc8f7be080c1.html.

96. *Id.*

97. John Willard, *We Have Been Extremely Pleased in What Is Happening*, QUAD CITY TIMES, Sept. 16, 2005, Bettendorf News Page at 11, available at <http://www.qctimes.com/news/>

that would target high-tech industry.⁹⁸ As a part of this development agreement, the city agreed to provide infrastructure improvements at an estimated cost of \$1.7 million, an amount that would be generated through the use of TIF.⁹⁹ The infrastructure improvements taken on by the city include such projects as “removal of crushed concrete from a leftover construction project, the demolition of existing structures such as an old gas station and farm buildings, the clearing of the land, extension of water service and sewer improvements.”¹⁰⁰

While TIF has been an effective tool for many local governments in Iowa, there are examples of challenges to the appropriateness of its use in select situations. In 2006, the City of Maquoketa adopted a TIF district that placed an under-construction Wal-Mart within the bounds of the district.¹⁰¹ Wal-Mart did not request the TIF be enacted and was already making improvements to the existing infrastructure of the area.¹⁰² The City enacted the TIF district without having any projects in mind and established the TIF district merely for future use.¹⁰³ This would allow the City to collect all of the increased property taxes for the TIF district.¹⁰⁴ Understandably, the school district and county complained about this practice as it essentially eliminated any increase in revenue from property taxes that they would have seen from the work being done by Wal-Mart without the City having any plans for the use of the Incremental Revenue.¹⁰⁵

The City of West Des Moines adopted a \$60 million TIF district to fund the creation of the Jordan Creek Town Center.¹⁰⁶ Jordan Creek Town Center was developed on what was previously 200 acres of farmland.¹⁰⁷ The project included

local/bettendorf/article_b14a5a54-2058-5d40-88e4-3e5a4699b962.html.

98. Wayne Ma, *Bettendorf OKs Project Industrial Park*, QUAD CITY TIMES, Jan. 31, 2006, at A3, available at http://www.qctimes.com/news/local/article_355aacff-0747-57fc-8a96-f11c86437cd4.html.

99. *Id.*

100. *Id.*

101. Sheri Melvold, *Maquoketa Schools, County Oppose TIF for Wal-Mart*, QUAD CITY TIMES, July 23, 2006, at A9, available at http://www.qctimes.com/news/local/article_188d282a-a1aa-5ffe-9753-bf2a71e2a51a.html.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. Institute for Local Self-Reliance, *supra* note 13.

107. Melissa Levy, *Iowa Builds a Big Reason to Stay Home: Jordan Creek in West Des Moines, One of The Nation's Rare New Enclosed Malls, Offers More Competition to Minnesota Retailers*, STAR TRIBUNE, Sept. 19, 2004, at 1D, available at 2004 WLNR 17606630.

a “two-level enclosed mall that serves as its centerpiece.”¹⁰⁸ The creation of the Jordan Creek Town Center was challenged as an inappropriate use of public funds; however, the Iowa Supreme Court held that it was a valid use.¹⁰⁹ While Jordan Creek Town Center had its opponents, it is credited with increasing taxable sales in its county by 78 percent during its first nine months of operation.¹¹⁰ Considering the combination of its effectiveness in increasing the economic picture and fitting in the realm of public use, the Jordan Creek Town Center project seems an appropriate use of TIF despite the arguments from critics.

While the examples explored above may not all be directly related to agribusiness, the benefits obtained by the local government utilizing TIF are easily transferable to any community, rural or urban, that is looking for ways to develop or retain agribusiness in its community.

V. THE DES MOINES AGRIMERGENT TECHNOLOGY PARK

1,300 jobs were lost in 1996 when a beef processing facility in Des Moines closed.¹¹¹ The closing left the former processing site with “deteriorated structures, vacant lots, and environmental contamination. . . .”¹¹² The surrounding area additionally suffered from “high poverty levels, and unemployment rates.”¹¹³

The City of Des Moines responded in January of 1998 by adopting an Urban Renewal Plan and creating a TIF district for the area.¹¹⁴ The TIF district is in an area that is known as a Brownfield.¹¹⁵ “Brownfields are abandoned, idled or underused industrial and commercial properties where expansion or redevelopment is complicated by real or perceived contamination.”¹¹⁶ Des Moines has been selected as a Brownfields Showcase Community by The Brownfields National Partnership for “put[ting] together an impressive coalition of public and

108. *Id.*

109. *See* McMurray v. City Council of West Des Moines, 642 N.W.2d 273 (Iowa 2002).

110. NationMaster Encyclopedia, *Jordan Creek Town Center*, <http://www.nationmaster.com/encyclopedia/Jordan-Creek-Town-Center> (last visited Oct. 25, 2009).

111. James L. Pray, *Brownfields: Using State and Federal Programs to Develop Contaminated Real Estate* 18, [http://www.iowabar.org/cleindex2002.nsf/1c367cb2d294cfac86256c8e0015eb8b/549598fbc147a62c86256cdf006babc9/\\$FILE/Microsoft%20Word%20-%20Pray%20outline.pdf](http://www.iowabar.org/cleindex2002.nsf/1c367cb2d294cfac86256c8e0015eb8b/549598fbc147a62c86256cdf006babc9/$FILE/Microsoft%20Word%20-%20Pray%20outline.pdf) (last visited Oct. 25, 2009).

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.* at 2.

private entities focusing its brownfields redevelopment efforts on creating residential, commercial, industrial and recreational developments in the Agribusiness Park¹¹⁷ The Tax Base that was frozen at the creation of the TIF district was approximately \$48 million.¹¹⁸ As of October of 2008, the TIF district has seen an “additional \$35 million in new tax base generated.”¹¹⁹

Located within the TIF district is the Des Moines Agrimergent Technology Park (ATP).¹²⁰ The ATP is located on approximately 1,100 acres in the southeast region of the city.¹²¹ It is “designed to offer agribusinesses and related industries a unique environment in which to develop remarkable inter-industry linkages and to capitalize on the area’s competitive agribusiness advantages.”¹²²

When the ATP was first proposed in 2001, the assessed value of the area was \$12.7 million.¹²³ The city’s estimates are that upon completion that new development within the ATP will “create approximately \$420.4 million in additional tax base . . . ,” 6,500 new jobs, and the sale of land within the ATP will generate about \$32 million.¹²⁴

At proposal, the anchor businesses of the ATP were Diamond Animal Health, Cargill, and Helena Chemical, with potential target anchors to be added, including Pioneer Hi-Bred and Kemin.¹²⁵ Diamond Animal Health manufactures biological products for its parent company, Heska,¹²⁶ who develop solutions that impact the quality of pet care.¹²⁷ “Cargill is an international producer and marketer of food, agricultural, financial and industrial products and services.”¹²⁸ Hele-

117. EPA, *Brownfields Showcase Community Fact Sheet*, October 2000, http://epa.gov/brownfields/success/showcase/sc_desmoine.htm.

118. Letter from Michael Ludwig, Planning Administrator, to City of Des Moines’ Mayor and City Council 3 (Oct. 27, 2008), https://www.dmgov.org/mayor_council/agendas/2008_as/102708/53a.pdf.

119. *Id.*

120. ELLY WALKOWIAK ET AL., *AGRIMERGENT TECHNOLOGY PARK 17* (2001), *available at* <http://www.dmoed.org/images/AgrimergentTechnologyPark.pdf>.

121. *Id.*

122. *Id.* at 1.

123. *Id.* at 2.

124. *Id.* (estimating that the development will “generate \$16.9 million annually to be reinvested to the community”).

125. *Id.* at 12.

126. Manta, Business Information, http://www.manta.com/coms2/dnbcompany_fxrqvq (last visited Oct. 25, 2009).

127. Heska Corp., About Us, <http://www.heska.com/company/aboutus.asp> (last visited Oct. 25, 2009).

128. Cargill, Inc., Our Company, <http://www.cargill.com/company/glance/index.jsp> (last visited Oct. 25, 2009).

na Chemical is a “[distributor] of crop protection and crop production inputs and services for agricultural, turf [and] ornamental, forestry, aquatics and vegetation management markets.”¹²⁹ Pioneer Hi-Bred “is the world’s leading developer and supplier of advanced plant genetics . . .”¹³⁰ Kemin is “[a] nutritional ingredient manufacturer.”¹³¹ The City of Des Moines identified each of these businesses as having expansion potential.¹³² Since the ATP is located within a TIF district, it will allow for the City to encourage the expansion of these businesses.

The city’s choice of location for the ATP was influenced by the fact that the area was already rich in infrastructure.¹³³ While the infrastructure in place created an attractive location, the city also recognized that additional infrastructure would be needed in certain areas within the ATP.¹³⁴ The anticipated costs to the city for developing the ATP were estimated at \$36.3 million, \$20 million of which would be spent on infrastructure.¹³⁵ The city projected that their development costs could be recovered within three years solely through the incremental revenue generated from the TIF district.¹³⁶

VI. FINAL THOUGHTS

One economist suggests that communities debating whether or not to utilize TIF should ask themselves two questions. “One: Are we getting something substantial as a result . . . that justifies this investment? Two: Is this shifting the cost to local government operation [unfair] to the remainder of the property holders?”¹³⁷ It is also important to remember that “TIF should be used to expand industries, bring jobs to the community in significant numbers, and promote those industries when they’re not inclined to locate in the region.”¹³⁸

129. Helena Chemical Co., About, <http://www.helenachemical.com/about/Pages/about.aspx> (last visited Oct. 25, 2009).

130. Pioneer Hi-Bred International, About Pioneer, <http://www.pioneer.com/web/site/portal/menuitem.63c907fefec691f7bc0c0a03d10093a0/> (last visited Oct. 25, 2009).

131. Kemin Industries, Inc., About Kemin, <http://kemin.com/about/> (last visited Oct. 25, 2009).

132. WALKOWIAK *supra* note 119, at 17.

133. *Id.*

134. *Id.* at 30.

135. *Id.* at 31.

136. *Id.* at 35.

137. Magdalene Biesanz, *Tax Increment Financing: A Burden or a Bonus for Le Mars?*, LE MARS DAILY SENTINEL, Oct. 3, 2008, at 1 (explaining Iowa State University economist David Swenson’s cautions regarding TIF overuse).

138. *Id.*

One way to help prevent TIF abuse is for the local governing body enacting the TIF to require specific performance guarantees by any developer, or other recipient of TIF funds, who is requesting a rebate of taxes paid.¹³⁹ If the development doesn't meet the performance levels dictated, the city gets its money returned.¹⁴⁰ For example, when the City of Waterloo purchased two vacant buildings with TIF funds, they included a performance requirement that Crystal Distribution Services, Inc. begin construction by 2010 or be forced to reimburse the City for its acquisition and demolition costs.¹⁴¹

In an economic development environment that faces ever increasing challenges, TIF can be a vital tool for a local government in its pursuit of attracting new, and retaining existing, agribusiness. A local government should be sure to take caution in its use of TIF to make sure it meets the requirements imposed by Iowa law as well as considering its impact on the community.

139. *Id.*

140. *Id.*

141. *\$3 Million Plan for Rath Site Crystallizing, supra* note 82.