**Attachment 1**

# *Recommendations on Tax Increment Financing (TIF)* For Consultations with the Ministry of Finance

**October, 11, 2005**

## 1.0 Definition

Tax increment financing, for the purposes of the proposed Ontario legislation, refers to the use of incremental property taxes to help finance the cost of a range of projects that may include capital infrastructure or redevelopment activities. When a property is enhanced through the new infrastructure or redevelopment activity, it is anticipated that the value of the property will increase with a corresponding increase in realty taxes above a pre-determined baseline. This increment in realty tax would normally be shared proportionately by the municipality(ies) and the school boards. However, with tax increment financing, some or all of this additional tax increment revenue will be redirected to support the specified infrastructure or redevelopment activity.

## 2.0 Issue

Many rapidly growing urban centres in Ontario, such as York Region, are facing infrastructure funding gaps in areas such as transit and rapid transit, roads, water and sewer. To help address this funding gap, changes to Provincial legislation such as the *Development Charges Act* are required as well as the creation of new innovative financing tools. Tools such as TIFs would assist municipalities in financing the infrastructure and redevelopment necessary to meet both the provincial and municipal planning strategies.

## 3.0 Similar Legislation in Ontario

Tax increment financing as practiced in the United States does not exist in Ontario. The Province provides legislation that addresses some of the intended objectives of TIF in the US. However, the need for TIF in Ontario extends beyond the provisions of the existing legislation. Neither Section 28 of the *Planning Act* nor Section 365.1 of the *Municipal Act, 2001* enables York Region to project finance the infrastructure nor redevelopment needed to meet its planning objectives.

**Section 28 of the *Planning Act*** allows municipalities to provide a **grant or loan** for a Community Improvement Plan (CIP). In the publication, “Municipal Financial Tools for Planning and Development” (MMAH 2003, p. 9), the Province illustrates the use of a tax increment *equivalent* (emphasis added*)* grant (TIEG) as a methodology for calculating a grant or loan. The TIEG approach is only one of many methodologies that could be employed to calculate the grant; on that basis and for the sake of clarity it would be preferable not to refer to a Section 28 grant or loan as tax increment financing.

**Section 365.1 of the *Municipal Act, 2001*** allows municipalites to offer **tax relief** to developers to recover the remediation cost of brownfield properties. Again, the tax relief is not dependent on the calculation of incremental taxes and therefore for clarity this tax relief should not be referred to as TIF.

## 4.0 Examples of TIF

The City of Calgary is the first Canadian jurisdiction to approve the use of TIF to redevelop the Rivers district in central Calgary. In April 2005, the city council approved the use of TIF to finance the revitalization project. This project includes the very recent participation of the Province of Alberta by foregoing the education tax component. The intent of the city is to borrow the required funds for specific upfront infrastructure improvements and then repay the debt from incremental tax revenues arising from the TIF district.

The City of Portland, Oregon has become an oft-cited example of a series of successful TIF projects. Portland is of interest to York Region, not only because of the successes achieved, but also because transit improvement represents a large part of the overall TIF project. The Downtown Waterfront Urban Renewal was commenced in 1974 and now has over 30 years of history. The assessed value of the land in the TIF district has increased at an average 10.4% annually for a total increase of approximately $1.2 billion. The TIF district generates approximately $27 million of total annual tax uplift, only a portion of which is retained for the TIF project. At the same time, public investment has leveraged significant private sector investment.

## 5.0 Recommendations

### Key Recommendations:

**RECOMMENDATION 1:**
***York Region requests that the Province enact legislation to enable tax increment financing in Ontario no later than the spring of 2006.***

Discussion:
The need for infrastructure capital financing, particularly for rapid transit infrastructure, is immediate. Delay in moving forward with TIF financing may mean not achieving planning objectives while increasing the cost of the future work required.

**RECOMMENDATION 2:**
***Only municipalities should be able to initiate a TIF project and establish a TIF authority.***

Discussion:
In the US there is a range of legislation that allows private developers, development agencies and even individuals to initiate a TIF proposal. Where a non-municipal TIF authority could issue debt and/or requisition the tax increment, the municipal government lost taxing control of a portion of its tax base. Since municipalities are the taxing authorities, the initiation of a TIF project should rest with municipal government. Municipalities are also in the best position to ensure that TIF proposals are consistent with municipal planning objectives and standards.

**RECOMMENDATION 3:**

***2a.*** ***All levels of municipalities and the Province, through its contribution of the education portion of the property taxes, should have the option to participate in a TIF project.***

***2b.*** ***Notwithstanding, participation of a lower-tier municipality within a TIF district should be automatic for all TIF projects initiated by an upper-tier municipality.***

***2c.*** ***Notwithstanding, participation of the Province should be automatic if the type of project is prescribed by the governing provincial legislation. For any uses beyond those prescribed in the legislation, participation by the Province should be voluntary.***

Discussion:
2b. When the Region initiates a TIF project, the expectation would be that the lower-tier municipalities in which the TIF district resides would automatically participate with the Region and the Province. The participation of the regional partners is consistent with the current practice of many tax relief programs in Ontario that are initiated by the upper-tier governments. In some current programs, the Province contributes the education portion by default, while in others it participates on a case-by-case basis.

2c. Considering the labour-intensity of performing the eligibility and feasibility studies (EFSs) on proposed TIF business plans, it is recommended that all projects that are approved by municipal TIF authorizing bodies as eligible in accordance with the uses specified in the provincial legislation, and for which provincial participation is sought, be approved automatically by the Province.

Any TIF project proposals that fall outside of the prescribed uses be considered on a case-by-case basis which will serve both purposes of providing the Province with the ability to verify the integrity of the intent of TIF, as well tailoring the necessary assistance to the proposed uses, the circumstances of different municipalities and their diverse needs.

**RECOMMENDATION 4:**
***The purpose and powers of the "municipal business corporations" should be expanded to enable it to serve as a TIF authority.***

Discussion:
The establishment of TIF authorities is popular in US since it allows independent financing of capital assets. It is recommended that the Province modify the current legislation to empower municipalities to establish TIF authorities, through either expanding the powers of municipal corporations under current legislation or by providing new enabling legislation.

**RECOMMENDATION 5:**
***Projects eligible for TIF should include capital infrastructure and community redevelopment projects.***

Discussion:
The original application of TIF in the US has been expanded from blighted areas to include growth and sprawl-related infrastructure improvements and developments, community revitalization projects, historic and conservation projects, and socio-economic programs. It is not proposed that this same breadth be incorporated in Ontario legislation; in fact, the application of TIF to what we would consider inappropriate projects is to the detriment of the TIF process. Rather, TIF should be considered for those types of projects that meet the Provincial and municipal planning objectives.

The projects contemplated for TIF would surpass the provisions of the existing legislations concerning Brownfields under s. 365.1 of the *Municipal Act*, *2001* and Community Improvement Plans (CIPs) under s. 28 of the *Planning Act*. It is important that municipalities have the flexibility to adapt a TIF project to their unique circumstances while operating within an agreed-upon set of broader objectives.

**RECOMMENDATION 6:**
***Once a TIF is established, the TIF commitment from the Province should be "grandfathered" from any subsequent legislative changes that may reduce the revenue stream to the TIF.***

Discussion:
States have revised TIF related legislation to reduce the state tax component of the TIF revenue, which resulted in negative impacts on some TIF projects. A "grandfathering" policy serves to ensure a TIF project receives the funding that was committed in a predetermined time frame, and to minimize the financial risk that a project may encounter. Such a commitment is an important safeguard feature to attract development/redevelopment projects.

**RECOMMENDATION 7:**
***Municipalities should have the flexibility to utilize the financing methods most appropriate to the project and to the municipality.***
Discussion:
There have been two main financing methods utilized in the US for TIF projects: Direct Appropriations (“Pay-as-you-go”: revenues are spent as earned or used to repay developer investment) and Long-term Financing (“Pay-as-you-use” where incremental revenue is used to repay debt). Small projects may be best served by the former and large projects by the latter. It is important that municipalities have the flexibility to apply whichever mode is most suitable.

## Further Recommendations

Typically, most US jurisdictions have adopted six phases to represent the stages of a TIF project. The phases consist of Initiation, Formulation, Adoption, Implementation, Evaluation, and Termination. Standardization into these six phases would not only help the Province to streamline preliminary TIF evaluations, but also enhance accountability during a TIF project and at the conclusion of a TIF project.

The six phases have been employed to assist in relating the following recommendations to the stage of the TIF process.

### 1. Initiation

**RECOMMENDATION 8:**
***The “but for” clause should be a required statutory finding, to be utilized as a key eligibility criterion. Eligibility should not be granted unless a project is made possible or is significantly accelerated by the application of the TIF. A TIF authorizing governmental body, like a municipal council, should be responsible for the approval of the “but for” finding.***

Discussion:
The “but for” clause means that the specific objectives of the TIF project would not be achieved *but for* the public financing from TIF, or that the achievement of the objectives would be considerably delayed. Current practice in US requires the "but for" test to be conducted as part of the TIF project approval process, although the level of the details and requirements can range from a detailed quantitative evidence to a simple general review. If this test is not passed, TIF use would be reconsidered.

### 2. Formulation

**RECOMMENDATION 9:**
***A TIF district should be defined to include only those areas of a municipality that are expected to have a direct benefit from the TIF project.***

Discussion:
An effective and transparent TIF district should capture those properties within its boundaries that will benefit from the TIF project; it should not encumber revenues from properties that will receive little or marginal benefit from the project.

**RECOMMENDATION 10:**
***A TIF project should provide new benefits to a municipality and not shift economic activity from one part of a municipality or region to the TIF district, except when the activity is in accordance with the municipal long-term plans.***

Discussion:
Competing TIF districts became an observed phenomenon in the US, often referred to as "beggar thy neighbour", leading to inefficient and ineffective use of TIFs. One jurisdiction within a larger municipality would use TIF for commercial purposes to draw development away from a neighbouring jurisdiction.

A TIF project should not result in diverting development that would have occurred elsewhere in the jurisdiction to within the TIF zone *unless this meets with specific planning objectives such as intensification*. The potential impact of TIF is minimal (if not negative) when there is no net gain to the larger municipality or jurisdiction.

**RECOMMENDATION 11:**
***A TIF business plan should be prepared for all proposed TIF projects. The TIF business plan should include (but not be limited to) the following:***

- ***(a)*** *a project goals and objectives;*
- ***(b)*** *a "but for" finding;*
- ***(c)*** *project boundaries;*
- ***(d)*** *project timelines;*
- ***(e)*** *a project eligibility study;*
- ***(f)*** *a project feasibility study with financial projections through to the termination of the project, tax base and revenue increment limits, tax increment parameters (such as caps on uplift);*
- ***(g)*** *a risk analysis;*
- ***(h)*** *debt financing policies;*
- ***(i)*** *public disclosure and evaluation commitments.*

Discussion:
The majority of states in the US require a TIF business plan (redevelopment plan) to be provided at the initiation and formulation stages of the TIF process, on which basis final approval of a TIF project is granted.

**RECOMMENDATION 12:**
***The duration of a TIF project term should be set at a maximum of 40 years.***

Discussion:
Most infrastructure projects that are large scale will require a longer financing term that can potentially span between 20 to 40 years. For example, in Texas, the average duration of a TIF project is approximately 24 years, with most TIF projects ranging from 10 to 40 years in term, and a small number even exceeding 40 years. Based on a cross-jurisdictional US study, the average term for a TIF project is about 25 years.

## 3. Adoption

**RECOMMENDATION 13:**

***13a. Municipalities initiating a TIF project proposal for approval should conduct public consultations prior to commencing a TIF project. The consultation process should involve all of the affected overlapping taxing jurisdictions, TIF project financing partners and the interested public.***

***13b. Subsequent to public consultation, the approval of a TIF project by Regional Council is without appeal.***

Discussion:
13a. As a TIF project will involve the spending of public money, the processes from the initiation phase through to the termination of the project should be open and transparent to enhance accountability. The following is presented for discussion purposes as a brief example of a consultation process:

***1.*** *Before approving and implementing a TIF project, the TIF authorizing governmental body should:*

   ***(a)*** *hold at least one public meeting;*

   ***(b)*** *give at least 30 days notice of the public meeting or meetings; and*

   ***(c)*** *ensure that copies of the proposed TIF authorizing by-law, with the business plan study attached, are made available to the public at least 30 days before the meeting or, if there is more than one meeting, before the first meeting;*

***2.*** *Any person who attends a meeting under this section may make representations relating to the proposed by-law and the business case study.*

***3.*** *After the public meeting or meetings have been held, the TIF authorizing governmental body may adopt the TIF business case and pass the TIF authorizing by-law.*

***4.*** *If a proposed TIF authorizing by-law or the TIF business plan is changed following a meeting under this section, the TIF authorizing governmental body* *may elect to hold further meetings or may elect to not hold further meetings and the decision is final.*

13b. The onus is on the Region to determine the eligibility of projects and to ensure the proper conduct of the TIF process. The public disclosure and consultation process is anticipated to be a non-binding communication process after which Council is charged with the responsibility of continuing or terminating the process.

**RECOMMENDATION 14:**
***The legislation should explicitly set out the timelines that should be followed by all stakeholders throughout the TIF process, from initiation through to termination.***

Discussion:
Legislation should specify these timelines to ensure that no stakeholders prolong the process. Delay may increase costs and reduce the potential revenues from a TIF project. The approval process could take 90 days from initial approval at Council, through public consultation, to Council approval to proceed. This timeline presumes that the business plan has been prepared prior to initial approval and that the commercial contracts will be negotiated subsequent to the approval to proceed.

**RECOMMENDATION 15:**
***TIF legislation should also address provisions and the necessary procedures regarding any intervening amendments to the TIF contract/agreement that would be allowed during the life-cycle of a TIF project, subsequent to the initial TIF business plan approval. The provisions to be addressed should concentrate on the allowable amendments that would be possible for the purposes of risk mitigation or project expansion.***

Discussion:
Across the US, various flexibilities are built into the governing TIF statutes which address exemptions to the binding TIF contracts/agreements made at the time of TIF project business plans approval. These exemptions allow for amendments to the initially approved TIF authorizing agreements to provide either risk mitigation or project expansion measures.

## 4. Implementation

**RECOMMENDATION 16:**
***TIF legislation should allow municipalities or TIF Authorities to direct any tax revenues exceeding the amount required for the funding of eligible TIF project expenditures, to the any of the following, or a combination thereof:***

***(a)*** *flow-through to the original taxing jurisdictions;*
***(b)*** *early repayment of TIF debt;*
***(c)*** *an approved expansion of the TIF project.*

Discussion:

The TIF laws of a large number of US states prescribe a requirement for any excess tax revenues, over and above the amount required for the financing of eligible TIF project expenditures, to be directed back to the taxing bodies partnering in a TIF initiative. However, options should be considered to allow a level of flexibility to safeguard against any potential changes to the projected market conditions or project shortfalls, pr provide the possibility of retiring a TIF debt ahead of schedule due to higher than projected tax revenues.

**RECOMMENDATION 17:**
***Municipalities should be given the power to guarantee debt issued by a TIF Authority.***

Discussion:
Debt issued by a TIF Authority without the "full faith and credit" of the municipality may attract a particularly large risk premium in the interest rate required for the debt. A municipal guarantee could reduce the risk premium.

**RECOMMENDATION 18:**
***A TIF Authority should be allowed to pledge TIF related assets, owned by the TIF authority, in support of TIF debt.***

Discussion:
Unsecured TIF debt will attract a higher interest cost to the issuer. The ability to pledge certain types of assets specific to the TIF project could reduce the interest cost of the debt.

**RECOMMENDATION 19:**
***TIF authorities should be allowed to use Credit Enhancement Agreements (CEAs) to improve the creditworthiness of the TIF debt.***

Discussion:
A TIF Authority, without the guarantee of a municipality or asset security for a debt issue, may require a credit enhancement feature to bring the interest cost of TIF debt to a satisfactory level.

**RECOMMENDATION 20:**
***Once a TIF district has been established, no other TIF project may be exercised against the committed revenues.***

Discussion:
The ability to issue and repay TIF debt would be predicated on revenue projections at the time of the redevelopment plan and debt issue. Artificial erosion of the revenue base would increase the cost of the debt and possibly compromise the credit worthiness of the venture as well as investor confidence.

## 5. Evaluation

**RECOMMENDATION 21:**
***A clear and effective system of monitoring and reporting should be in place in order to assure for proper accountability of all parties involved in a TIF project.***

Discussion:
It is important that TIF projects be monitored to assure effective transparency and accountability to the overlapping taxing jurisdictions and the public within TIF districts. An annual evaluation with streamlined reporting procedures can serve to communicate the TIF objectives and processes, ensure TIF authorities are accountable, and minimize potential for overuse and abuse of TIF.

## 6. Termination

**RECOMMENDATION 22:**
***The termination options should be specified in the TIF business plan. Termination of a TIF project could be determined to occur at the time of any of the three options:***

***(a)*** when the project's predetermined time mandate elapses;
***(b)*** when the objectives of the TIF project are achieved, or
***(c)*** when the TIF debt has been repaid or retired.

***At the time of termination, the revenue stream should revert to the appropriate taxing authorities.***

Discussion:
The intent of TIF is to provide resources to an area or project eligible for TIF in accordance with the governing legislation, only for the time period necessary to facilitate the completion of the TIF project's objectives. Time limitations are designed to mitigate potential overuse of this infrastructure and development financing tool. All TIF enabling statutes specify a maximum period of time within which the objectives of the TIF district must be satisfied. Some enabling statutes allow for TIF districts to last until the development goals are achieved or the TIF debt is retired, or until the governing authority, by ordinance or resolution, dissolves the TIF district.

A TIF project, including the diversion of taxes for the financing of development costs/debt, should terminate either when a project's mandate elapses, the objectives are meat, or the project's debt is retired. All issues around the termination of TIF districts in the case of unforeseen economic factors affecting the project's completion, or in the case of potential developer default, should be addressed and measures should be enacted in legislation.

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