

Wisconsin Institute for Law & Liberty: Two Eau Claire TIF cases dismissed

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The News: Courts dismissed two separate challenges to Eau Claire TIF (tax incremental finance) districts this week, showing an unwillingness to hold cities to the strict requirements state statutes place on their creation. Voters With Facts, a local grassroots organization, and many individual taxpayers had brought the challenges seeking to rein in the dramatic proliferation of such districts in the city. Those districts result in higher taxes for everybody throughout the city, county, and school districts, and create a slush fund for projects that would normally be questioned, e.g., the offering of developer subsidies or the funding of fiscally imprudent ventures.

What is Tax Incremental Financing? Tax Incremental Financing, or TIF, is an extraordinary financing tool intended to allow cities to revitalize areas that otherwise aren't being developed. Municipalities designate a TIF district to entice new development, then capture the increase in property tax revenue to pay for infrastructure or other improvements in the district. But state law places strict conditions on the creation of a TIF district, including a "but for" test, meaning a municipality must show that development in the district would not occur "but for" the TIF district, and (for some TIFs) a showing that the district is more than 50% blighted.

The Lawsuits:

TID #12: In Eau Claire's TIF District 12, a \$14 million mixed use residence hall located at 222 E. Water St. was planned, constructed, and occupied before the creation of the TIF in September 2017. Yet the city claimed that that building (as well as other developments the same developer already had planned) would not exist if the city didn't create the TIF district. This violates the statutory "but for" test.

On Wednesday, a court dismissed the TID #12 challenge, ruling that the plaintiffs failed to bring the case within a six-month window. But no court had ever previously held that such challenges had to be brought so quickly, and that requirement makes it impossible to comply with state law that requires plaintiffs to file notices of claims with cities and wait until the claim is disallowed, a process that can take up to eight months.

TIDs #8 & #10: In 2014, Eau Claire created TID #10 and amended TID #8 for the third time to support a private development and contribute to the Confluence Art Center in downtown Eau Claire. The taxpayer plaintiffs took that case all the way to the Wisconsin Supreme Court in 2018, which limited the type of challenges they could bring and sent the case back to circuit court. The plaintiffs raise a variety of challenges to the blight and but for findings in both districts.

On Friday, the court dismissed this challenge as well. The court ruled that the city could rely on the self-interested claims of the developer (who said he would not develop prime real estate without a subsidy) to satisfy the but for test. On the question of blight, the court criticized the city for failing to lay out clearly what parts of one district were blighted, but concluded in the end that a finding all the way back in 2002 was sufficient evidence that the property was still blighted in 2014. But that sort of "once blighted, always blighted" reasoning defies logic and ignores that the entire purpose of the districts is to eliminate that same blight.

The Quote: WILL Deputy Counsel and Litigation Manager Tom Kamenick said, "We're disappointed with both of these courts' rulings. The first places plaintiffs in an impossible position where they lose if they don't comply with the notice of claim statute and they lose if they do because six months have already gone by. The second lets cities use the extraordinary financing mechanism of tax incremental financing without really ensuring that the statutory requirements are met. We're exploring all our options at the moment, including appealing the cases."