

In reviewing the establishment or expansion of a TID the Joint Review Board has several criteria to consider.

- Whether the development expected in the TID would occur without the use of TIF (commonly referred to as the 'but for test').
- Whether the economic benefits, as measured by increased employment, business and personal income and property value, are sufficient to compensate for the cost of the improvements.
- Whether the benefits of the proposed plan outweigh the costs, in taxes on the value increment, to the overlying tax districts.

The expansion of TID 32 does not meet these criteria and is inappropriate for the following reasons:

1. The TID expansion will not pay for itself.
2. The proposed Edgewater development is not a sufficient generator. In fact it would take over 25 years of tax increment from the Edgewater just to pay for the \$16 million dollar subsidy let alone any of the public infrastructure improvements.
3. Taxpayers are better off financially to have the existing TID 32 close in 2015 than to approve this amendment to expand the TID. It will take until at least 2030 to recoup the funds they will forgo and break even by not closing the TID in 2015.
4. The ratios of private development support to public infrastructure improvements are totally reversed compared to the original TID.
5. The City review of the Edgewater TIF application was inadequate.
6. The cost of the TIF supported improvements is not substantiated.
7. The projected assess value of the new Edgewater hotel seems unrealistic.
8. Approval of the TIF required numerous exceptions to Madison's TIF policy.

1. The TID expansion will not pay for itself:

There will not be enough tax increment generated in the newly added portion of the TID to pay for the items in the amended TID project Plan. The economics of this TID addition are all based on the annual \$3 million tax revenue increment being created within the existing TID, the bulk of which is from the University Square project. By itself this addition to the TID could not financially stand on its own. In effect this TID

expansion is taking tax revenue from one private development to subsidize another private development.

2. The Edgewater development is not a sufficient generator:

With the projected incremental revenue from the proposed Edgewater expansion it will take 25 years for this revenue to pay back the costs of the \$16 million dollar grant to a luxury hotel and million dollar plus condominiums. It takes this long without providing any support for the other public infrastructure improvements in the TID plan.

Using the current mil rate and the applicant's estimate of the assessed value of the completed project then subtracting the current tax revenue for the property the proposal will generate just over \$800,000 per year in new property tax revenue. $((.0205704 \times 44,800,000 = 921,553) - 109,693 = 811,860)$

With financing costs the total cost of the grant is \$20.4 million. This leads to a payback time of over 25 years. $(20,400,000 / 811,860 = 25.1)$

The staff report projects that the expanded TID will have \$152,000,000 of incremental growth in the tax base by 2030, \$44,800,000 is from the Edgewater the 70% balance is from normal appreciation of the existing properties. There is no projection that the Edgewater development will stimulate additional development growth.

3. Taxpayers are financially better off closing the TID in 2015:

If the TID is not expanded City staff indicate that the current TID will close in 2015. The incremental tax revenue currently being generated by the TID is \$3 million per year. The expanded TID is projected to close in 2019.

The 4 additional years of keeping the TID open costs taxpayers a total of \$12 million. We are being asked to forgo this revenue to provide a subsidy to the Edgewater hotel and condominiums. The rationale for this subsidy is that the new project will generate additional tax revenues in years to come which will continue to benefit the taxing entities.

It will take 15 years of the additional tax payments from the Edgewater to cover the \$12 million that taxpayers are being asked to forgo. $(12,000,000 / 811,860 = 14.8)$ In

other words it will not be until 2030 that the taxpayers will break even on what they could have beginning in 2015 if the TID is not expanded.

That's 20 years out into the future before there are any possible property tax benefits to supporting the Edgewater proposal. It seems quite reasonable to expect that without the TID expansion that somewhere in this 20 year time frame the Edgewater and the adjacent property will be developed. This would provide additional tax revenues without the TID expansion and quite likely without TIF support.

There is no reasonable long term benefit to the taxpayers of expanding the TID.

4. The ratio of private subsidy to public infrastructure is inappropriate:

The existing TID program provides \$3 million of support for private development and \$19 million for public infrastructure. The proposed addition to the TID has almost the exact opposite characteristics. There is \$16 million in private subsidy and \$3 million for public infrastructure.

TIDs typically have much higher levels of support for public infrastructure than for private development. A basic premise of tax incremental financing is that public support for private development can create revenue to allow improvements to the public infrastructure. In this case the TID almost exclusively supports luxury hotel rooms and condominiums.

5. City Review of the Edgewater TIF Application

The project plans approved by the City include condominiums on the top two floors of the new hotel tower. When City of Madison Staff analyzed the TIF application they chose to review a project with all hotel rooms and no condominiums. They assumed that all floors of the new hotel tower would be hotel rooms even though that is not what the applicant has proposed to build.

The rationale that staff has provided for not analyzing the project as proposed is that in the current market condominiums are not viable. So they decided that the project should be all hotel rooms. Simply put the staff completed an analysis but not an analysis of the project as approved.

The proposal includes condos. The TIF application review is only for a hotel proposal. Are we even analyzing the right proposal?

The applicant has always insisted that the top two floors of the hotel tower will be condos. In fact they have stated that selling condos will provide significant additional revenue for the project. Yet the TIF application speaks only to a hotel proposal. If condos provide additional revenue do they even need the TIF subsidy?

When staff has analyzed other proposals all costs were included then non TIF supported costs separated. Why was that not done with this proposal?

Staff has stated that they believe a hotel proposal is safer than condos. Actually they have gone on to say that they believe that condos will not sell and the project would fail if it includes condos. Yet the economic analysis continues to be for solely a hotel project even though the applicant continues to include condos in the proposal. Where is the Staff addressing their concern about project failure given inclusion of condos?

Staff has indicated that the hotel project is a more conservative analysis. But if it's not what's being built how can that be a safer way to analyze a proposal? With condos, if they sell, Staff says there will be increased tax increment so there would be more funds to pay back the TIF loan. But what if they don't sell? With fewer rooms the value of the hotel will be reduced which in turn will reduce the tax increment. How is the safety of the public investment served when the economic analysis is not of the project being proposed?

6. The cost of the TIF supported improvements is not substantiated:

The applicant provided a set of projected construction costs for the Public Access Component (PAC) prepared by their contractor. The City hired a consultant to review these construction costs to confirm that they were reasonable.

However, there is no evidence to suggest that staff or the consultant made any assessment as to whether the items for which the applicant has requested TIF funding were actually valid or appropriate. Even a cursory look at the items proposed for TIF payment reveals that many are unrelated to the PAC.

The TIF application simply provides a cost of \$17.7 million for the PAC without any description or breakdown of what is included. Staff has allocated \$2.7 million of the soft costs to the PAC. The total PAC costs are \$20.4 million or 22.5% of the total project costs.

So what do we get in return for the TIF contribution? The TIF application provides no details of what is included in the \$17.7 million. Staff has accepted the applicant's assertion that these costs are all for legitimate aspects of the PAC without any analysis.

The only details on what the applicant believes should be paid for by the City comes in the form of the report from JSD Professional Services. This is the engineering firm hired by the City to assess the construction costs presented by the applicant for the PAC. The applicant's construction firm provided JSD with a breakdown of the costs for the PAC. JSD then developed a probable cost of construction for each of these components. Neither JSD nor Staff made any assessment of whether or not the components that the applicant has included in the PAC are truly legitimate.

Furthermore the JSD report, based on costs provided by the applicant, only considers a portion of proposed PAC costs. The last page of the report lists six elements. The total

TIF Request for these six elements totals \$15.9 million. This is significantly below the total PAC request in the TIF application of \$17.7 million. There is no explanation on what the remaining \$1.8 million is used for.

In fact there are many items included in the applicant's PAC costs which provide no public benefit or are costs that would be incurred by building the new hotel even if there were no public access. These items range from the simple to the more bizarre.

- Demolition of the existing public stairway to the lake \$50,000

The new hotel tower is proposed to be built on top of this stairway which is what requires the demolition. To maintain the public access under the '65 ordinance a new stairway will need to be built.

- Demolition and Remediation of the curvilinear features of the 1940's hotel. \$150,000

The applicant has proposed exterior changes to the entry of the 1940's hotel but this provides no public access benefit.

- Relocating the 1940's building elevator to provide ADA access to the lake. \$600,000

The scope of the proposed remodeling of the building will require that the building meet all current accessibility codes regardless of any City required public access. There is no public access component in the 1940's building requiring an elevator.

- Demolition of the existing dock and construction of a new dock. \$400,000

First the dock is not included in the map of the PAC as part of the public space. Furthermore this is a dock that the DNR has indicated is illegal and does not meet the State requirements for a dock.

- Changes to the site utilities. \$450,000

These changes to the electrical service, water lines, storm sewer and sanitary sewer are all required for construction of the new hotel and are required regardless of any public access.

- Street reconstruction to provide a private drive to the new parking garage. \$200,000

Constructing a new hotel will require additional parking. National Guardian Life is using a large portion of the new parking ramp. This is a cost for a private drive to that parking providing nothing for the PAC.

- Construction of the Auto court and drive to the front entry of the hotel. This drive also provides the required fire equipment access for the buildings in the development. \$1,750,000

A driveway to drop off hotel guests at the front door is surely required as part of the hotel construction as is the fire department access. This is not required for public access.

- Drive connection between the existing parking and the new parking garage. \$800,000

Since the entry to the new hotel tower will block access to the existing parking a new connector is required if the parking is to be utilized. Again this is not required for public access.

- Changes to the hotel tower due to the shifting of the guest room floors to the east. \$800,000

These are design changes which do not impact the PAC.

- Replacing the existing concrete path along the lakefront \$450,000

This is the public access along the lake provided for in the 1965 ordinance providing the public right of way for construction of the current hotel. One of the conditions of that agreement is the requirement that all costs for construction and continuing maintenance for this walkway are the responsibility of the hotel owner. Yet the TIF request is asking the public to pay for it yet again.

These costs unrelated to the PAC total \$5,200,000. Add to this the \$1.8 million in unidentified costs and the proportional amount of the soft costs the total non PAC related cost is \$7,400,000. Or seen another way 42% of the cost of the items for which the applicant is seeking TIF assistance are not part of the Public Access Component.

Costs to construct the plaza:

The costs associated with construction of the plaza include demolition of a portion of the 1970's building, structural enhancements of the existing structure and construction and landscaping of the plaza itself. The total cost for this work is \$6,550,000. Add in the proportional share of the soft costs and this cost becomes \$7,550,000. This is a "public" plaza that can be closed to the public at any time by the hotel operator for "general events" any day of the year. At least 75% of the plaza is subject to this closure condition which will exclude the public. What portion of the plaza is solely for the benefit of the public? If there were no requirement for public access what would the design for this space be? Would the 1970's building simply be left in tact outside the front door to the new hotel?

The Staff TIF report of May 6 speaks to this issue:

“Arguably, the Developer would not construct the Project without the PAC as it would no longer offer the lakefront amenity to qualify it as a full service hotel with numerous amenities.”

The plaza and in fact all of the PAC is a very significant benefit to the hotel. Without the plaza and the lakefront access there is little reason to believe that this proposal would be brought forward at all. So just what portion of this \$7.55 million to construct the plaza is it reasonable for TIF funding to support to provide “public access”?

The developer said as much at the May 17 City Council meeting when he stated “We can’t operate the hotel if we don’t build the public access component.”

7. The projected assess value of the new Edgewater hotels seems unrealistic.

Tax assessments for hotel properties are typically base on the revenue generated by the hotel. On a per room basis the projected assessment for the Edgewater is several times that of other downtown hotels or other luxury hotels in Wisconsin.

	<u>Assessment</u>	<u>Rooms</u>	<u>Assessment /Room</u>
Edgewater proposed	44,800,000	190	235,789
Mansion Hill Inn	1,050,000	10	100,500
The Concourse	18,224,900	356	51,194
Inn on the Park	4,276,700	212	20,173
Hilton Monona Terrace	20,407,800	240	85,033
Campus Inn	2,975,700	74	40,212
Double Tree	<u>4,913,000</u>	<u>163</u>	<u>30,141</u>
	51,848,100	1,055	49,145
The Pfister, Milwaukee	32,700,000	307	106,515
American Club, Kohler	23,048,700	240	96,036
The existing Edgewater	4,909,100	107	45,879

8. Approval of the TIF required numerous exceptions to Madison’s TIF policy.

The current TIF policy was adopted about a year ago on March 9, 2009. This is the first significant TIF application to come along since these policies were adopted. And with this application come serious exceptions to this policy.

Policy 4.1 (8) 50% rule. No more than 50% of the tax increment can be used to pay back the TIF loan. As the Staff report notes under this rule the proposal will only generate sufficient increment to justify a \$3.3 million TIF loan. Even with 100% of the tax increment the proposal would only qualify for 41% of the requested \$16 million.

Policy 4.1 (10) Self supporting rule. This rule prohibits using tax increment from one property to supplement another project. On its own the Edgewater proposal would payback less than half of the TIF loan after 20 years when the City's financing costs are included in the calculations. The only way this TIF loan gets repaid is the excess increment being generated by the University Square building. This TID will close within 5 years without the Edgewater. Closing the TID will provide other taxing entities, such as the school district, with their fair share of the tax increment. Should these entities forgo this tax revenue to support a luxury hotel?

Policy 4.1 (12) Personal Guaranty. This policy requires that a principal of the applicant personally guarantee in the full amount of the loan that all of the conditions of the development agreement will be met. Personal guarantees are a common requirement of financial transactions with LLC's which often have little or no assets of their own. As Staff as said "this provides a warm body" with responsibility. Apparently the developer has simply balked at this rule and proposed to provide a personal guaranty at only 6% of the value of the TIF loan. Where's that gushing confidence in the proposal we see during presentations when it comes time to actually make a commitment?

Policy 4.1 (15) Equity participation. This provision provides that the developer can make a reasonable return on their investment but if that return is higher than projected the City shares in the excess profits. The developer has proposed to "prepay" this equity by providing the City with a Conservation Easement. This easement states that the developer will construct the PAC, operate and maintain the PAC and provide the public with some limited use of the PAC. This is the same easement required in the 1965 ordinance and is exactly what we are supposedly paying for with the \$16 million. And now the developer is paying us back with an easement to the PAC we just paid to construct! Clever.