

To: Vermont Economic Progress Council Members
From: Brett Long, Deputy Commissioner, Department of Economic Development
Date: July 25, 2018
Subject: Review of Montpelier TIF District Application

Following is a summary of the review conducted in-house for the Montpelier TIF District Application and additional topics that need to be further addressed based on the criteria for review:

A. Purpose

Per 24 VSA §1893, the purpose of a TIF District is:

"...to provide revenues for improvements that serve the district and related costs, which will stimulate development or redevelopment within the district, provide for employment opportunities, improve and broaden the tax base, or enhance the general economic vitality of the municipality, the region, or the state."

Determination to be made:

Will the District generate incremental revenues sufficient to finance public infrastructure that serves the District and which stimulates real property development that will add jobs, broaden the tax base, or enhance the general economic vitality of the municipality, region, or state?

The Montpelier TIF Plan and application, as presented, appears to meet the statutory purpose of a TIF District: Provide revenues for improvements that serve the District, which will stimulate development, provide employment opportunities, improve and broaden the tax base or enhance the general economic vitality of the municipality, region, or state.

B. But For

Per 32 VSA §5404a(h)(1), the Council must find:

"...that the infrastructure improvements proposed to serve the tax increment financing district and the proposed development in the district would not have occurred as proposed in the application, or would have occurred in a significantly different and less desirable manner than as proposed in the application, but for the proposed utilization of the incremental tax revenues."

The review shall take into account:

(i) the amount of additional time, if any, needed to complete the proposed development within the tax increment district and the amount of additional cost that might be incurred if the project were to proceed without education property tax increment financing;

(ii) how the proposed development components and size would differ, if at all, including, if applicable to the development, in the number of units of affordable housing, as defined in 24 V.S.A. § 4303, without education property tax increment financing; and

(iii) (I) the amount of additional revenue expected to be generated as a result of the proposed development;

(II) the percentage of that revenue that shall be paid to the education fund Education Fund;
(III) the percentage that shall be paid to the municipality; and
(IV) the percentage of the revenue paid to the municipality that shall be used to pay financing incurred for development of the tax increment financing district.”

Determination to be made:

This determination is very similar to the VEGI But For. One of the major differences, however, is that the But For determination is two-fold: The Council must determine:

- Whether the infrastructure development would occur without the utilization of the incremental property tax revenues; and
- Whether the real property development would occur without the infrastructure development.

Both findings can also be met if the development would occur in a significantly different and less desirable manner.

A positive But For determination means that the state is getting infrastructure and development, and more importantly, the resulting incremental revenues, which would not have occurred without the ability of the applicant to utilize incremental property tax revenue.

Regarding the public infrastructure affordability absent TIF, Montpelier cites its current bond debt and relatively high municipal property tax burden. Regarding the role of infrastructure in private sector investment, the City notes that private sector development has been almost non-existent for many years.

The Montpelier TIF Plan and application, as presented, appear to meet the But For requirement. The City provided revised budgetary tables which have been analyzed and are summarized in the memo from Ken Jones. The City also provided a detailed But For Narrative and copies of letters from developers and stakeholders.

C. Nexus and Proportionality

VSA 24 §1897

“The legislative body may pledge and appropriate in equal proportion any part or all of the state and municipal tax increments received from properties contained within the tax increment financing district for the financing for improvements and for related costs in the same proportion by which the infrastructure or related costs directly serve the district at the time of approval of the project financing by the council, and in the case of infrastructure essential to the development of the district that does not reasonably lend itself to a proportionality formula, the council shall apply a rough proportionality and rational nexus test...”

Determination to be made (Nexus):

Nexus can be viewed from several perspectives:

First, from the infrastructure perspective: What areas within the TIF District are being served by which proposed infrastructure projects? If there is infrastructure proposed that does not serve the TIF District or would not have anything to do with causing the development to occur, the Council should question whether it be financed, in any proportion, by TIF revenues.

Second, from the TIF area perspective: Are there areas (parcels) included in the TIF District that apparently are not being served by any of the infrastructure projects? Or are there areas that are already developed to their full market potential? If so, the Council asked why those areas are included in the TIF District.

Finally, from the development perspective: Are there private development projects that are expected to occur regardless of the infrastructure improvements? If so, there may be an issue with the But For and the Council should ask whether there is truly any nexus between the infrastructure and the development project if the project is already developed or started.

Montpelier provides narrative evidence, studies, and information in the data workbook describing the relationships between the infrastructure and real property developments. There appears to be nexus between the proposed infrastructure and the projected private sector developments and with the overall goals of the TIF District.

None of the infrastructure is being built to service other municipalities. Most of the other proposed infrastructure projects are directly linked to the development and redevelopment of properties for commercial and residential uses.

There is one exception. The proposed improvements to the intersection of Barre and Main will serve other parts of the City outside the District.

Determination to be made (Proportionality):

What proportion of proposed infrastructure costs can be financed with TIF revenue based on the portion that serves the TIF District? Remember that the proportionality you are determining is what proportion *serves* the TIF District, regardless of the non-TIF revenue that might be available to the municipality. The proportionality determined by the Council is the maximum level of total project cost that can be financed with TIF revenue.

Montpelier has proposed that all infrastructure improvement be approved with 100% proportionality.

Refer to Ken Jones' memo for further analysis of proportionality. To summarize, it is fair to assign 100% of the value of most of the infrastructure improvements. One project that may be less than 100% is the intersection of Main and Barre Street as there are adjacent properties that are not in the TIF District and these properties could receive significant impact from TIF-supported improvements. Montpelier plans to pursue non-TIF revenues for this part of the proposal and VTrans acknowledges that such applications for funds are appropriate.

D. Process Criteria:

24 VSA §1892

“(a) Upon a finding that such action will serve the public purposes of this subchapter, the legislative body of any municipality may create within its jurisdiction, special district or districts to be known as tax increment financing districts. They shall describe the district by its boundaries and the properties therein and shall show the district boundary on a plan entitled “Proposed Tax Increment Financing District (municipal name), Vermont.” The legislative body shall hold one or more public hearings, after public notice, on the proposed plan.

(b) When adopted by the act of the legislative body of that municipality, the plan shall be recorded with the municipal clerk and lister or assessor.”

And...

32 VSA §5404a(h)(2)

“Process requirements. Determine that each application meets all of the following four requirements:

(A) The municipality held public hearings and established a tax increment financing district in accordance with 24 V.S.A. §§ 1891-1900.

(B) The municipality has developed a tax increment financing district plan, including: a project description; a development financing plan; a pro forma projection of expected costs; a projection of revenues; a statement and demonstration that the project would not proceed without the allocation of a tax increment; evidence that the municipality is actively seeking or has obtained other sources of funding and investment; and a development schedule that includes a list, a cost estimate, and a schedule for public improvements and projected private development to occur as a result of the improvements.

(C) The municipality has approved or pledged the utilization of incremental municipal tax revenues for purposes of the district in the same proportion as the utilization of education property tax revenues approved by the Vermont economic progress council for the tax increment financing district.

(D) The proposed infrastructure improvements and the projected development or redevelopment are compatible with approved municipal and regional development plans, and the project has clear local and regional significance for employment, housing, and transportation improvements.”

Determination to be Made:

Were statutory steps taken by municipality to create a TIF Plan and a TIF District, including public input? Are all required elements included in the TIF Plan? Does the TIF Plan adhere to the local and regional plans? Did the municipality propose an appropriate share of municipal increment and shall the requested level of education property tax increment be approved?

Montpelier provided narratives and documentation regarding the Process Criteria of their original application. It appears that all process requirements for creating a TIF Plan and TIF District were met at that time. Montpelier will be presenting proposed changes to their TIF District Financial Plan to City Council on August 22. These changes include an updated data

workbook to include a greater contingency for the Taylor Street project, an increase in project size and cost for the parking garage, and a potential district boundary change in the area of 14 Main Street.¹ It is expected that they will move forth following the public notice process criteria and submit corresponding documentation of this with their revised Financial Plan.

As part of Montpelier's original TIF application, the Central Vermont Regional Planning Commission (CVRPC) stated that TIF District is compatible with the 2016 Regional Plan, but "may not completely align with the Future Land Use Map." VEPC staff requested clarification on this matter. In a letter dated July 11, 2018, the CVRPC advised that the misalignment is in reference to the Sabin's field area. They stated that the "pattern and form of development for these planning areas do not correspond to that imagined for the TIF district." CVRPC anticipates that this area will be revisited during the next revision of the Regional Plan beginning in 2019 to "de-conflict the Region's goals, policies, and Future Land Use Map."

E. Location Criteria:

32 VSA §5404a(h)(3)

"(3) Location criteria. Determine that each application meets at least two of the following three criteria:

(A) The development is:

(i) compact;

(ii) high density; or

(iii) located in or near existing industrial areas.

(B) The proposed district is within an approved growth center, designated downtown, designated village center, or new town center, or neighborhood development area.

(C) The development will occur in an area that is economically distressed, which for the purposes of this subdivision means that the municipality in which the area is located has at least one of the following:

(i) a median family income that is not more than 80 percent of the statewide median family income as reported by the Vermont Department of Taxes for the most recent year for which data are available;

(ii) an annual average unemployment rate that is at least one percent greater than the latest annual average statewide unemployment rate as reported by the Vermont Department of Labor; or

¹ The memo from White & Burke dated July 13, 2018, Montpelier has indicated that they will not seek to include 14 Main Street (the redemption center property) in their TIF District. Clarification is needed, due to the purchase of this property, whether this property has become contiguous with any surrounding properties also owned by the City and that are within the TIF District. If so, this would require adjusting the TIF District boundary.

(iii) a median sales price for residential properties under six acres that is not more than 80 percent of the statewide median sales price for residential properties under six acres as reported by the Vermont Department of Taxes."

Determination to be made:

Does the TIF District meet two of the three statutory location criteria?

Montpelier is addressing Location Criteria A and B.

At this time, it is not clear if Montpelier has satisfactorily meet the requirements for Location Criteria A. Most of the proposed private sector development is in the Urban Center and Riverfront zoning districts and meets the general meaning of "compact and high density." However, the Vermont College of Fine Arts and Sabin's Pasture parcels are zoned for much less density. Clarification is needed as to whether the infrastructure investments that support these two developments will be restricted to areas that have dense development. For example, if there should be development in the "upper pasture" portions of Sabin's Pasture that is not of high density, then TIF supported infrastructure (water, sewer, stormwater, transportation, etc.) is not appropriate. Council should evaluate whether high density development in a portion of a parcel is sufficient to meet this criteria.

It appears that Montpelier has satisfied the requirements for Location Criteria B. The TIF District is mostly within the Designated Downtown under 24 VSA §2793 and is entirely within the Montpelier Designated Growth Center approved under 24 VSA §2793c.

F. Project Criteria:

32 VSA §5404a(h)(4)

"Project criteria. Determine that the proposed development within a tax incentive financing district will accomplish at least three of the following five criteria:

(A) The development within the tax increment financing district clearly requires substantial public investment over and above the normal municipal operating or bonded debt expenditures.

(B) The development includes new or rehabilitated affordable housing as defined in 24 VSA §4303.

(C) The project will affect the mitigation and redevelopment of a brownfield located within the district. For the purposes of this section, "brownfield" means an area in which a hazardous substance, pollutant, or contaminant is or may be present, and that situation is likely to complicate the expansion, development, redevelopment, or reuse of the property.

(D) The development will include at least one entirely new business or business operation or expansion of an existing business within the district, and this business will provide new, quality, full-time jobs that meet or exceed the prevailing wage for the region as reported by the department of labor.

(E) The development will enhance transportation by creating improved traffic patterns and flow or creating or improving public transportation systems."

Montpelier is addressing Project Criteria A (Need), B (Affordable Housing), and E (Transportation Enhancements).

Project Criteria A: *“The development within the tax increment financing district clearly requires substantial public investment over and above the normal municipal operating or bonded debt expenditures.”*

Determination to be made:

Does the proposed infrastructure development within the TIF District clearly require substantial public investment over and above the normal budget of the municipality or the normal bonded debt service of the municipality?

Refer to Ken Jones’ memo for analysis of Project Criterion A: Need. To summarize, Ken Jones notes that “As a result of reviewing the statements of need and the current capacity of taxpayers to shoulder greater capital costs, it is fair to conclude that Montpelier has a need for TIF to raise revenues for infrastructure projects that will spur private sector economic development activities.”

Project Criteria B: *(B) The development includes new or rehabilitated affordable housing as defined in 24 VSA §4303.*

Determination to be made:

Will the real property development result in the new construction or rehabilitation of affordable housing as defined by 24 VSA 4303?

As a result of the City’s Economic Development Strategic Plan, Montpelier has set a goal of 150 new housing units by 2021, to include affordable housing for young singles and others. The Christ Church project would help meet this goal by adding 30 affordable housing units in the downtown core. Additional market-rate and mixed income housing is expected to be developed on property owned by the Vermont College of Fine Arts and at Sabin’s pasture.

Project Criteria E: *“The development will enhance transportation by creating improved traffic patterns and flow or creating or improving public transportation systems.”*

Determination to be made:

Will the public infrastructure projects and the overall TIF development create improved traffic patterns and flow or create improved public transportation systems?

Montpelier states that “transportation enhancements are a critical component of the City’s TIF application and proposal, in large part due to the lack of robust new and expanded housing and economic growth linked to Montpelier’s aging and in some cases dangerous transportation infrastructure.”

The location of the proposed parking garage in close proximity to the City's ADA accessible recreation path. When this recreation path is complete, it will connect from the eastern side of the City at Junction Road to the western side at Gallison Hill. The combination of the parking garage and the recreation path will improve and expand ADA accessible pedestrian and bicycle access from one end of the City to the other.

The proposed parking garage is also located adjacent to the new Transit Center, Montpelier's public bus station that will provide service within the City, as well as connecting to Burlington, St. Johnsbury, White River Junction and other parts of the State. Since the garage is centrally located in Montpelier's core downtown, it enables walkability to businesses, restaurants, shops, the grocery store, and more.

Improvements to the hazardous and heavily used "T" intersection at Barre and Main Street are proposed as a necessary infrastructure project within the TIF District. As housing and other private development projects proceed along Barre Street, the need to correct this intersection is even more apparent in order to accommodate the increased traffic burden. Montpelier is currently undertaking a study, results anticipated in November, which is intended to recommend improvements to this intersection and will include vehicular, pedestrian, and bicycle enhancements through that intersection and down Barre Street.

G. Market and Fiscal Viability: While not a criterion directly required in statute for the application to meet, determining if the TIF District is fiscally viable and has market viability is an implied and prudent task for VEPC to undertake.

Determination to be made:

Does the TIF Plan have fiscal viability? That is, will the proposed private sector development generate sufficient tax revenues to cover the costs of infrastructure? Does the TIF Plan have market viability? That is, what is the likelihood that the proposed development/redevelopment will occur at the scope and on the timeline presented, thereby generating sufficient incremental revenue during the retention period?

Refer to Ken Jones' memo for detail on his analysis on market and fiscal viability. As noted in his summary, "...the application provides significant support for the assumptions that the redevelopment of the parcels within the TIF district will result in increases in property value that support the repayment of bond debt. Of course, the assumptions are subject to changes in national, state and regional conditions." Jones also notes that the "application provides information to support the fiscal viability of the proposed projects."

H. Financial Plan:

24 VSA §1894(d)

"(d) Approval of tax increment financing plan. The Vermont Economic Progress Council shall approve a municipality's tax increment financing plan prior to a public vote to pledge the credit

of that municipality under subsection (h) of this section. The tax increment financing plan shall include all information related to the proposed financing necessary for approval by the Council and to assure its viability and consistency with the tax increment financing district plan approved by the Council pursuant to 32 V.S.A. § 5404a(h). The tax increment financing plan may be submitted to and approved by the Council concurrently with the tax increment financing district plan. If no indebtedness is incurred within five years after the creation of the district, the municipality may submit an updated executive summary of the tax increment financing district plan and an updated tax increment financing plan to the Council to obtain approval for a five-year extension of the period to incur indebtedness; provided, however, that the updated plan is submitted prior to the five-year termination date of the district. The Council shall review the updated tax increment financing plan to determine whether the plan has continued viability and consistency with the approved tax increment financing plan. Upon approval of the updated tax increment financing plan, the Council shall grant an extension of the period to incur indebtedness of no more than five years. The submission of an updated tax increment financing plan as provided in this subsection shall operate as a stay of the termination of the district until the Council has determined whether to approve the plan.

Determination to be made:

Is the TIF Financing Plan viable and consistent with the TIF Plan?

Refer to the reviews made by the Agency of Transportation (VTrans), Agency of Natural Resources (ANR), and Ken Jones. VTrans found the unit costs for the estimates to be reasonably consistent with the data they had available. VTrans did note that that estimate for the Barre/Main Street Intersection was not sufficient if they City intends to construct a roundabout. Montpelier indicated in the July 13 memo from White & Burke, that a study will commence this fall which will provide options for improvement to this area. The Agency of Natural Resources suggested an increase in contingency for the Taylor Street water project, which Montpelier has reflected in their revised data workbook to be presented to City Council on August 22.