

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION
EXTRAORDINARY REMEDIES SECTION

not 1-3-

OAK PARK ELEMENTARY SCHOOL)
DISTRICT No. 97,)
)
Plaintiff,)
)
v.)
)
VILLAGE OF OAK PARK,)
)
Defendant,)
)
EDWARD J. ROSEWELL, Treasurer)
of Cook County, Illinois,)
)
Defendant.)

No. 84 L 51363

FIRST AMENDED COMPLAINT
AT LAW FOR DECLARATORY
JUDGMENT AND RELATED RELIEF

Plaintiff, Oak Park Elementary School District No. 97, states its complaint for declaratory judgment and related relief against defendant Village of Oak Park and defendant Edward J. Rosewell, Treasurer of Cook County, Illinois, as follows:

PARTIES AND BACKGROUND

1. Plaintiff Oak Park Elementary School District No. 97 (the "School District") is a school district in Oak Park, Illinois. Plaintiff possesses statutory authority to levy taxes upon the real property and improvements thereon situated within its designated jurisdiction. Plaintiff's

"tax base" consists of the equalized assessed value of the real property and improvements thereon situated within its designated jurisdiction. Plaintiff derives a substantial portion of its revenues from the taxation of real property in Oak Park, Illinois.

2. Defendant Village of Oak Park (the "Village") is an Illinois municipal corporation. The Village possesses statutory authority to levy taxes upon the real property and improvements thereon situated within its boundaries.

3. Defendant Edward J. Rosewell is the Treasurer and Collector of Cook County, Illinois. He is responsible for the diversion of funds pursuant to the Real Property Tax Increment Allocation Redevelopment Act (Ill. Rev. Stat. 1973, Ch. 24, pars. 11-74.4-1 through 11-74.4-11) (the "Act") in Cook County, Illinois.

4. On December 12, 1983, the Village passed three ordinances, Oak Park Village Ordinance Numbers 1983-0-91, 1983-0-92 and 1983-0-93. Copies of these ordinances are attached to this Amended Complaint as Exhibits A, B and C.

A. Ordinance 1983-0-92 (Exhibit B) purports to designate an area within Oak Park (hereafter the "TIF District") as a "redevelopment project area." A description of the TIF District is attached to this Amended Complaint as Exhibit D. The TIF District lies wholly within the taxing jurisdiction of the plaintiff School Board.

B. Ordinance 1983-0-91 (Exhibit A) purports to adopt and approve a "tax increment redevelopment plan and project" affecting the aforementioned TIF District.

C. Ordinance 1983-0-93 (Exhibit C) purports to adopt a tax increment allocation financing plan (the "TIF plan" or "TIF proposal") affecting the aforementioned TIF District. The TIF proposal was purportedly enacted pursuant to the provisions of the Act. A copy of the Act is appended to this Amended Complaint as Exhibit E.

5. Under the TIF Plan, all property tax revenues which are attributable to increases in the equalized assessed value of TIF property recorded after 1982 will be diverted to the Village of Oak Park from the taxing bodies (including plaintiff School District) which would receive the funds in the absence of a TIF Plan.

6. If the proposed TIF Plan remains in effect, plaintiff will lose substantial property tax revenues that it would have received but for the adoption of the TIF Plan.

A. Plaintiff derives its property tax revenues for certain functions (hereinafter "general operations") from four tax funds, each of which has a maximum rate limit imposed by statute or referendum. The four funds are (1) the education fund, which has a maximum rate limit of \$2.42 per \$100 of equalized assessed value; (2) the operations, building and maintenance fund,

which has a maximum rate limit of \$0.35 per \$100 of equalized assessed value, (3) the transportation fund, which has a maximum rate of \$0.12 per \$100 of equalized assessed value and (4) the working cash fund, which has a maximum rate of \$0.05 per \$100 of equalized assessed value. Based on its anticipated revenue needs, plaintiff projects that it will, for the foreseeable future, (and whether or not the TIF Plan remains in effect) always request from the County Clerk the maximum possible property tax revenues which plaintiff is entitled to receive from each of these funds. For all practical purposes, therefore, plaintiff's future property tax revenues for general operations will be equal to plaintiff's maximum possible property tax revenues from the four funds.

B. In the absence of a TIF Plan, plaintiff's maximum property tax revenues from the four funds would be calculated in the following manner: each year, plaintiff's aggregate maximum tax rate of \$2.94 per \$100 of equalized assessed value would be applied against the current equalized assessed value of real property in plaintiff's taxing district.

C. Under the TIF Plan, however, plaintiff's maximum property tax revenues would be calculated in a substantially different manner. Plaintiff's aggregate maximum tax rate of \$2.94 per \$100 of equalized assessed

value would be applied against (i) the current equalized assessed value of real property in plaintiff's taxing district outside the TIF District and (ii) the equalized assessed value of real property in the TIF District in 1982 (unless the current equalized assessed value of real property in the TIF District is less than the 1982 figure, in which case the lesser amount would be used.)

Thus, under the TIF Plan, plaintiff's tax revenues from the TIF District could not exceed plaintiff's aggregate maximum tax rate of \$2.94 per \$100 of equalized assessed value applied against the 1982 equalized assessed value of TIF property.

D. Plaintiff believes that its property tax revenues would be greater under the normal method of calculation (set forth in B above) than its revenues would be under the TIF method of calculation (set forth in C above above).

(i) Plaintiff projects that, whether or not the TIF Plan remains in effect, the equalized assessed value of real property in the TIF District will increase from its 1982 level. The equalized assessed value of real property in the TIF District increased by 57.5% between 1978 and 1982. Plaintiff believes that the equalized assessed value of TIF Property would continue to increase even if the TIF Plan were not adopted.

(ii) Under the normal method of calculation (set forth in B above), this projected increase would yield plaintiff ever increasing property tax revenues from the TIF District. Plaintiff's property tax revenues from the TIF District would increase because a constant (plaintiff's tax rate) would be multiplied by an ever increasing variable (the current equalized assessed value of real property in the TIF District) yielding an ever increasing product (plaintiff's property tax revenues from the TIF District).

(iii) Under the TIF method of calculation, however, (set forth in C above) plaintiff's property tax revenues from the TIF District would, at best, quickly plateau and thereafter remain frozen. Plaintiff's property tax revenues from the TIF District would remain frozen because a constant (plaintiff's tax rate) would be multiplied by another constant (the equalized assessed value of real property in the TIF District in 1982) yielding a constant product (plaintiff's property tax revenues from the TIF District).

(iv) Thus, under the TIF Plan, plaintiff would lose the increased property tax revenues from the TIF District attributable to the projected increases in the equalized assessed value of real

property in the TIF District. (These increased property tax revenues shall be referred to hereafter as "TIF revenues" or "TIF proceeds"). Under the TIF Plan, these TIF revenues would be diverted from plaintiff School District to defendant Village of Oak Park.

E. In order for the plaintiff to make up for these lost TIF revenues and generate the same level of revenue it would have received had the TIF proposal not been enacted, plaintiff would have to tax at a higher rate than that it otherwise would have charged. But, as noted above, plaintiff may not levy taxes at a rate in excess of \$2.94 per \$100 of equalized assessed value for general operations. Plaintiff already taxes at, or very near, its maximum rate for general operations and plans to tax at the maximum rate for general operations in the future even in the absence of the TIF proposal. Plaintiff thus will not be able to raise its tax rate sufficiently to make up for the shortfall in revenue caused by the diversion of the TIF proceeds to the Village.

7. Because of the diversion of TIF revenues set forth above, plaintiff estimates that the adoption of the TIF Plan will cause it to lose substantial revenues during the period 1984-2004.

Loss of those revenues will cause the plaintiff to suffer irreparable harm, for its needs will soon exceed its revenues, compelling plaintiff to cut back or eliminate physical plan improvements, to refrain from adding new services, and to be unable to offer adequate salary and benefits to attract and retain quality teachers and administrators. The inevitable result will be to threaten the quality of education which plaintiff will be able to offer the children of Oak Park, to injure the reputation of plaintiff and to make the Village of Oak Park a less attractive place to live.

STATUTORY VIOLATIONS

8. The TIF Plan adopted by the Village of Oak Park represents an impermissible attempt by the Village to capture incremental property tax revenues rightfully belonging to the School District.

The theory of TIF financing, authorized by the Act, is that municipalities should be allowed to capture, in order to finance redevelopment projects, those incremental property tax revenues which are attributable to the redevelopment projects and which would not exist but for the redevelopment projects. The General Assembly reasoned that other taxing bodies in the redevelopment area could not complain about the diversion of incremental tax revenues in such circumstances because the diverted funds would not exist in the absence of the redevelopment plan.

In the instant matter, however, the Village of Oak Park is trying to impose a TIF Plan on an area that is already subject to growth and development through private investment and for which continued growth may be reasonably anticipated in the absence of a TIF Plan. The Village is thereby seeking - in violation of the purpose and intent of the Act - to capture for itself incremental property tax revenues which are not attributable to the proposed redevelopment projects and which would exist in the absence of the redevelopment plan.

9. The TIF proposal and the implementing ordinances referred to above also violate specific provisions of the Act. Section 3(f) of the Act provides that:

"No redevelopment plan shall be adopted by a municipality without findings that (i) the redevelopment project area on the whole has not been subject to growth and development through investment by private enterprise and would not reasonably be anticipated to be developed without the adoption of the redevelopment plan. . . ."

The Village purported to make the necessary findings required above in Ordinance 1983-0-91 (Exhibit A), but the Village's findings were based on false, incorrect, misleading and distorted data, and were therefore arbitrary, capricious, erroneous and without substantial support in the record as a whole. The factual conditions necessary to support the findings do not in fact exist.

10. The proposed TIF District on the whole has been subject to growth and development through private enterprise

and would reasonably be anticipated to be developed without the adoption of the redevelopment plan. In fact, during the period 1978-1982, the equalized assessed value of real property in the TIF District increased at a rate of 57.5% - a significantly higher rate of increase than there was in the remainder of Oak Park.

11. The Village of Oak Park based its contrary and inaccurate findings concerning growth and development in the TIF District in part on a statistical report issued and publically distributed by the Village Manager in November of 1983. At that time the TIF District and Plan were being studied and considered by the Village Trustees, and public hearings on the proposal were being held. (A copy of the Village Manager's Report was attached as an exhibit to the Village's motion to dismiss plaintiff's original complaint.)

The Village Manager's Report contained comparative assessed valuation data which were grossly inaccurate and materially misleading.

A. For example, the Village Manager's data contained aggregate assessed valuation figures for the TIF District and for the remainder of Oak Park for each quadrennial assessment since 1970 (i.e., 1970, 1974, 1978 and 1982). Each of those figures was incorrect.

B. The Village Manager's data showed quadrennial-to-quadrennial changes in the assessed values, and compared the changes within the TIF District with those

in the rest of Oak Park. The Village Manager's data falsely represented that the 1978-82 percentage increase in assessed value within the TIF District was about 50% less than that in the rest of Oak Park. In reality, during that period the percentage increase in assessed values within the TIF District was more than 50% greater than that in the rest of Oak Park.

Those false data and misleading comparisons contributed to the discussions occurring at those public hearings, and to the Village Trustees' approval of the TIF District and Plan. Therefore, that approval of the TIF District and Plan was improper and invalid.

The Village Manager intended that that data promote the eventual approval of the TIF District and Plan. Moreover, he knew or should have known that that data was false and misleading.

12. The Village Manager's report was inaccurate and misleading in other respects as well. For example, the report notes a decline in the assessed value of real property in the TIF District from 1970 to 1982. The report fails to note, however, that in 1970 commercial real property was assessed in Cook County at 100% of original cost less depreciation, whereas in 1982 commercial real property was assessed in Cook County at 40% of fair market value. If those two assessments are normalized (i.e., if the reported 1982 assessment is multiplied by 2.5 to reflect a comparable

Commercial prop. is assessed
in 2006 @ a lower rate
(26% vs 33%)

100% valuation) the data establishes that the assessed value of the TIF property actually increased from 1970 to 1982 rather than decreased.

13. The TIF proposal and implementing ordinances violate the Act in other respects as well. Section 4(a) of the Act provides that the:

"redevelopment project area . . . shall include only those contiguous parcels of real property and improvements thereon substantially benefited by the proposed redevelopment project improvements."

Despite this statutory requirement, the Village included in the TIF District many parcels of real property and improvements thereon which will not be substantially benefited by the proposed redevelopment project improvements. For example, it is apparent that the residential property located at 921-23 Lake Street (parcel number 16-07-128007) was included solely to maintain the contiguous nature of the District, without regard for whether this property would be "substantially benefited by the proposed redevelopment project improvements."

14. The TIF District is also overbroad in that it includes high-growth areas of Oak Park (i) which have traditionally been regarded as separate from the rest of the TIF District, (ii) which have been subject, on the whole, to growth and development through private investment, and (iii) for which continued growth may be reasonably anticipated, without the adoption of the redevelopment plan. For example, the eastern-most portion of the TIF District (beginning at

Oak Park Avenue) has traditionally been regarded as separate from the Oak Park Mall (the western-most portion of the TIF District). The eastern-most portion has also been a high-growth area. From 1978 to 1982, the equalized assessed value of real property in the eastern-most portion of the TIF District increased at a rate of 65.9% - a rate of increase significantly higher than that experienced by the remainder of Oak Park. Inclusion of this and other high-growth areas within the TIF District represents an impermissible attempt by the Village to capture incremental tax revenues rightfully belonging to the School District.

REMEDY

15. Representatives of the School District have explained to representatives of the Village that the proposed TIF District is illegal and harmful to the School District, but the Village has persisted in its desire to implement its TIF plan.

16. There exists an actual controversy between the parties concerning the legality of the TIF plan, which this Court is requested to adjudicate pursuant to § 2-701 of the Illinois Code of Civil Procedure.

17. On information and belief, the Village plans to sell bonds secured in part by the TIF proceeds.

WHEREFORE, plaintiff respectfully prays that this Honorable Court:

- (1) Enter a declaratory judgment, finding and determining that the TIF proposal is invalid and contrary to the Real Property Tax Increment Allocation Redevelopment Act.
- (2) Order and enjoin the Village of Oak Park from implementing the TIF proposal.
- (3) Order and enjoin the Village of Oak Park from issuing bonds pursuant to the TIF proposal.
- (4) Order and enjoin the Village of Oak Park from issuing bonds secured directly or indirectly in whole or in part by TIF proceeds.
- (5) Order and enjoin defendant Rosewell from diverting TIF proceeds from Oak Park Elementary School District No. 97 to the Village of Oak Park.
- (6) Order and enjoin defendant Rosewell to continue to disburse property tax revenues to the Oak Park Elementary School District No. 97 as if there were no TIF plan.
- (7) Order and enjoin the Village from awarding construction contracts or accepting bids with respect to redevelopment projects in the TIF District where the contracts are to be paid, directly or indirectly, from TIF proceeds or from the proceeds of bonds secured, directly or indirectly, in whole or in part, by TIF proceeds.

(8) Enter such other further relief as may be necessary
and appropriate.

Respectfully submitted,

OAK PARK ELEMENTARY
SCHOOL DISTRICT NO. 97,
Plaintiff

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