2026 IL App (3d) 250182

Opinion filed February 4, 2026

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2026

THE BOARD OF EDUCATION OF WINFIELD SCHOOL DISTRICT 34 and THE BOARD OF EDUCATION OF COMMUNITY HIGH SCHOOL DISTRICT 94, Plaintiffs-Appellants, v. THE VILLAGE OF WINFIELD, Defendant-Appellee.	Appeal from the Circuit Court of the 18th Judicial Circuit, Du Page County, Illinois, Appeal No. 3-25-0182 Circuit No. 21-CH-454 Honorable Bryan S. Chapman and Honorable Bonnie M. Wheaton, Judges, Presiding.

JUSTICE BERTANI delivered the judgment of the court, with opinion.
Justices Peterson and Anderson concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiffs, the Board of Education of Winfield School District 34 and the Board of Education of Community High School District 94 (collectively, the Districts), appeal the Du Page County circuit court's order granting summary judgment to defendant, the Village of Winfield (Village). On appeal, they argue that the Village did not meet the requirements of the Tax Increment Allocation Redevelopment Act (TIF Act) (65 ILCS 5/11-74.4-1 to 11-74.4-12 (West

2020)) because it did not satisfy the "but-for test," the parcels did not meet the TIF Act's contiguity and substantial benefit requirements, insufficient eligibility factors exist to designate the tax increment financing (TIF) district as a conservation area, and the Village impermissibly extended parcels in one TIF district by transferring them to this district. We affirm.

¶ 2 I. BACKGROUND

¶ 3 The following facts can be deduced from discovery documents and depositions and are summarized in the parties' motions for summary judgment.

¶ 4 The Village passed three ordinances on November 18, 2021, related to establishing a new TIF district (TIF 2). TIF 2 included 51 parcels totaling 24 acres, all located within the Districts' tax boundaries. Each of the parcels in TIF 2 had been included in another, larger TIF district (TIF 1) formed in 2004 and scheduled to expire in 2027. The Village removed each parcel from TIF 1 before creating TIF 2, a process referred to as de-TIF/re-TIF. While all the parcels used to form TIF 2 were originally located in TIF 1, not all parcels from TIF 1 were included in TIF 2.

¶ 5 The ordinance forming TIF 2 made the requisite findings under the TIF Act, including that the parcels qualified as a conservation area, that the "but-for test" was satisfied, and that parcels in the proposed TIF district were contiguous. See *id.* § 11-74.4-3(b), (d), (n)(J)(1). In addition to the TIF 2 ordinance, the Village adopted a redevelopment plan and eligibility report prepared by its TIF consultant, Kane, McKenna, & Associates, which supported those findings. The report concluded that the following five eligibility factors were met: (1) lack of community planning, (2) deleterious land use/layout, (3) declining/lagging equalized assessed value (EAV), (4) deterioration, and (5) obsolescence. The TIF Act only requires a finding that three eligibility factors are met to qualify as a conservation area. See *id.*

¶ 6 The eligibility report concluded the first factor of lack of community planning was present because five of the existing structures were built prior to the Village's first Town Center subarea plan in 1985, the parcels were small and would require planning assistance to accommodate new development standards, and the area was characterized by an inadequate street layout. The finding that the area had deleterious land use and layout was based on the presence of older, single family residential buildings among commercial buildings. The report included numerical calculations that are not disputed in this appeal in support of its finding that the area experienced a declining or lagging EAV compared to other parcels. The eligibility report documented deterioration including defects in door entries, windows, and gutters and lack of maintenance on building surfaces. It further found deterioration in surface improvements such as cracking and crumbling surfaces, potholes, and depressions causing water retention. The obsolescence finding was based upon its conclusion that existing structures had become ill-suited for their original use.

¶ 7 Central Du Page Hospital (CDH) owns 34 of the 51 parcels in TIF 2. Fourteen of the other parcels are owned by governmental entities, including the Village, the Forest Preserve District of Du Page County, the Winfield Fire Protection District, and the Regional Transit Authority. A bank, convenience store, coffee shop, and restaurant are also located in TIF 2. Nine parcels are improved with a "structure," while 11 create a strip of landscaped greens.

¶ 8 The Village and CDH executed a development agreement related to CDH's property on September 3, 2020, and amended it on October 12, 2021. The Village originally drafted the ordinance creating TIF 2 in 2020, at the time the development agreement was executed, but its passage was delayed for various reasons. CDH was to develop several of its parcels within TIF 2 pursuant to the development agreement. Its principal objective was to increase parking for CDH facilities by constructing a four-story parking deck and a surface-level parking lot. CDH agreed

that it would not request or receive TIF revenues or property tax exemptions for its property, with the exception being the second and third floors of a mixed-use office building it intended to use as medical offices. The remaining floors were to be leased for nonmedical commercial use. Construction began on the parking deck with first floor retail space and the three-story mixed-use building prior to the adoption of the TIF ordinances. A bakery is set to open in one of the retail spaces but has indicated it needs TIF funds to move forward. Similarly, a construction company is under contract with CDH to purchase 1.7 acres conditioned upon TIF incentives.

¶ 9 The Districts filed the underlying action against the Village contending that its findings were erroneous and that the parcels did not create a valid TIF district. They also argued that TIF 2 was invalid because the Village impermissibly removed parcels from TIF 1 to place them in TIF 2, thereby circumventing the TIF Act's 23-year limit on the existence of a TIF district.

¶ 10 Shortly after commencement of the suit, the Village filed a motion for partial summary judgment seeking a finding that the de-TIF/re-TIF process of removing parcels from one TIF district and enrolling them in another is not prohibited by the TIF Act. The court agreed and granted partial summary judgment.

¶ 11 Both parties filed cross-motions for summary judgment after engaging in discovery, including the deposition of Gary Becker, the Districts' retained expert. First, the Districts argued that TIF 2 failed the required "but-for test" largely due to CDH's involvement and ownership of a majority of the property. Specifically, they argued the undertaking of construction of the parking garage and mixed-use office building by CDH prior to the enactment of TIF 2 negated any conclusion that the area suffered from a lack of private investment, no growth and development, and would not be improved but for TIF 2. Additionally, the redevelopment plan contained only conclusory statements and lacked evidentiary content to support the determination that the "but-

for test" was satisfied. The Districts also alleged that the parcels did not properly meet the statutory contiguity requirement and did not satisfy three or more eligibility factors necessary to designate them as a conservation area.

¶ 12 In contrast, the Village argued that TIF 2 satisfied five eligibility factors, a number in excess of the three factors necessary to be designated a conservation area under the TIF Act. It further argued that its conclusion that the "but-for test" had been met created a presumption of validity that the Districts failed to rebut by the required clear and convincing evidence.

¶ 13 The circuit court granted the Village's motion for summary judgment and denied the Districts' motion. It found no genuine issues of material fact existed, and the Village was entitled to judgment as a matter of law because it met all the TIF Act's requirements to form a TIF district.

¶ 14 The court explained that the "but-for test" required a finding that, absent the implementation of the TIF district, the area was not subject to investment by private enterprise and would not reasonably be anticipated to be developed. It found that there was no genuine issue of fact and that the Village satisfied the "but-for test." In doing so, the court concluded that the TIF 2 ordinance must be considered in tandem with CDH's development agreement and that the agreement anticipated a TIF would follow. As such, the commencement of construction by CDH prior to the enactment of TIF 2 did not negate a "but-for" finding. The court also concluded TIF 2 in conjunction with the development agreement satisfied the Act's requirement that the proposed development increase both the assessed value and tax revenue of the TIF district.

¶ 15 The court also found no genuine issue of fact existed regarding the contiguity and substantial benefit requirement. It stated that neither party disputed that if all 51 parcels were included in the TIF district, the contiguity requirement was met. However, the Districts argued that the 11 parcels of landscaped greens did not substantially benefit from TIF 2 and should not be

included, and contiguity did not exist if they were excluded. The Districts also argued that every parcel must substantially benefit from their inclusion in TIF 2 and the landscaped greens did not benefit. The circuit court found otherwise. Specifically, it found that "[t]he TIF Act provides a 'statutory requirement that a proposed improvement shall substantially benefit the TIF district' " and that every parcel need not substantially benefit. Noting that the Districts' expert reached the same conclusion, the court found TIF 2 and the development it contemplated satisfied the substantial benefit requirement of the TIF Act.

¶ 16 The court next examined each of the eligibility factors the Village found present among the parcels to designate TIF 2 as a conservation area and determined that there were no genuine issues of material fact with regard to three of the five factors. Given only three factors were necessary to designate the area as a conservation area, it ruled that the parcels in TIF 2 properly received that designation.

¶ 17 The court first considered the lack of community planning factor, finding that five of the nine existing structures were built prior to the approval of the first Town Center plan, several parcels were of inadequate size and shape to support modern development, and inadequate street layout existed throughout the area. It found Becker's deposition testimony that argued traffic congestion was not caused by the inadequate street layout was insufficient to rebut the Village's finding because Becker lacked the requisite qualifications to voice that opinion because he was not a traffic engineer and did not conduct a traffic study to support his conclusion. Becker instead focused on the development agreement, which the Districts argued demonstrated community planning without the need for a TIF district. The court found that the development agreement did not demonstrate community planning occurring prior to the formation of TIF 2 because the agreement, although adopted by the Village prior to the enactment of TIF 2, "was entered into in

conjunction with the implementation of TIF 2." It further found that "without implementation of TIF 2 the Village would not have entered into the Development Agreement, eliminating any proposed community planning relied upon by the School Districts and Mr. Becker." Thus, the Districts failed to establish sufficient evidence to create a genuine issue of material fact with regard to the lack of community planning factor.

¶ 18 The court also found no issues of material fact concerning whether the EAV within TIF 2 was declining or lagging behind general EAVs for the Village. Becker found that the EAV was lagging, but for reasons other than that determined by the Village. The court found that even if reasons other than blighted conditions contributed to the lagging EAV in TIF 2, they did not have any bearing on the overall finding of a lagging EAV. The end result remained—a lagging EAV.

¶ 19 The court next determined there was no genuine issue of material fact that the parcels within TIF 2 demonstrated deterioration. Becker's testimony in his deposition was that "there was some deterioration documented" that would resolve with the future CDH redevelopment. The court found the assertion that CDH redevelopment would address the admitted deterioration immaterial and concluded that the TIF 2 redevelopment plan adopted by the Village identified sufficient deterioration that Becker did not dispute. Thus, the Districts failed to overcome this factor.

¶ 20 Finally, the court found that there were genuine issues of material fact regarding the obsolescence and layout factors. However, given that only three factors were required to establish a conservation area, the Village established sufficient findings via the three factors noted above, which entitled it to summary judgment.

¶ 21 The Districts appeal.

¶ 22 II. ANALYSIS

¶ 23 This matter comes before us following a decision on the parties' motions for summary judgment. The circuit court's objective when ruling on a motion for summary judgment is not to try any questions of fact that may exist but to determine whether any genuine issues of material fact are present that would preclude the entry of judgment as a matter of law. *Land v. Board of Education of Chicago*, 202 Ill. 2d 414, 421 (2002). A motion for summary judgment should be granted only when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2024). A genuine issue of material fact exists when there is conflict regarding the facts or reasonable minds may differ when drawing inferences from undisputed facts. *Wortel v. Somerset Industries, Inc.*, 331 Ill. App. 3d 895, 899 (2002). In ruling on such a motion, the circuit court must "construe all evidentiary material strictly against the movant and liberally in favor of the nonmovant." *Tolve v. Ogden Chrysler Plymouth, Inc.*, 324 Ill. App. 3d 485, 489 (2001). Our review of an order granting summary judgment is *de novo*. *Rice v. Board of Trustees of Adams County*, 326 Ill. App. 3d 1120, 1122 (2002).

¶ 24 The circuit court in this instance was required to interpret various provisions of the TIF Act and determine whether opinion testimony of the parties' retained experts resulted in a genuine issue of material fact. The circuit court is in the best position to resolve any conflict in the testimony of the parties' expert witnesses. *City of Marseilles v. Radke*, 307 Ill. App. 3d 972, 977 (1999). Moreover, an expert's opinion is only as valid as the basis and reasons for that opinion. *Wilson v. Bell Fuels, Inc.*, 214 Ill. App. 3d 868, 875 (1991). "When there is no factual support for an expert's conclusions, their conclusions alone do not create a question of fact." *Id.* at 875-76.

¶ 25 The purpose of the TIF Act is to "provide municipalities with the means to eradicate blighted conditions by developing or redeveloping areas so as to prevent the further deterioration of the tax bases of these areas and to remove the threat to the health, safety, morals, and welfare of the public that blighted conditions present." *Board of Education, Pleasantdale School District No. 107 v. Village of Burr Ridge*, 341 Ill. App. 3d 1004, 1010 (2003) (citing 65 ILCS 5/11-74.4-2(a), (b), (c) (West 1994)). It allows a municipality to collect real property tax increment revenues from local taxing districts such as school, park, sanitary, and fire districts located within the TIF district and divert these revenues to fund TIF-related development projects or other ancillary expenses within the TIF district. 65 ILCS 5/11-74.4-2(a), (c), 11-74.4-3(t) (West 2020); *People ex rel. City of Canton v. Crouch*, 79 Ill. 2d 356, 369 (1980); *Henry County Board v. Village of Orion*, 278 Ill. App. 3d 1058, 1060 (1996). In essence, the creation of a TIF district freezes the EAV of the included properties for the other taxing bodies as of the date of inception for up to 23 years. 65 ILCS 5/11-74.4-3.5(a) (West 2020). The municipality then collects those incremental real estate taxes exceeding the base level of the EAV and redirects them to the redevelopment contemplated in the TIF district. *Id.* §§ 11-74.4-2(a), (c), 11-74.4-3(t); *Pleasantdale*, 341 Ill. App. 3d at 1010-11. To be eligible for TIF funds, a municipality must first establish that the proposed redevelopment area meets the statutory criteria for designation as a "blighted area," a "conservation area," or a combination thereof, classified as an "industrial park conservation area." 65 ILCS 5/11-74.4-3(a)-(d), (n) (West 2020). In the present case, the Village found that the subject property was eligible as a conservation area. The Districts contest that finding.

¶ 26 When a municipality approves the findings that the property is a conservation area in an ordinance, a presumption arises that those findings were valid. *Geisler v. City of Wood River*, 383

Ill. App. 3d 828, 850 (2008). It is the objectors' burden to overcome that presumption of validity by clear and convincing evidence. *Id.*

¶ 27 Our role in evaluating whether the circuit court erred in finding in the Village's favor is to first determine whether any material issues of genuine fact exist. See *Pleasantdale*, 341 Ill. App. 3d at 1012. If any do exist, the grant of summary judgment was improper. See *id.* If no issues of material fact exist, we next decide whether the court's determination that the Village was entitled to judgment was correct. See *id.* To make this determination, we consider whether, based on the facts not in dispute, the Districts presented sufficient evidence to rebut the presumption that the Village's findings that the property was in a conservation area were valid.

¶ 28 We address each of the Districts' arguments in turn.

¶ 29 A. The But-For Test

¶ 30 First, the Districts posit that the circuit court improperly interpreted the but-for test. The TIF Act requires the Village to find that the property has not been subject to growth and development through private enterprises and "would not reasonably be anticipated to be developed without the adoption of the redevelopment plan." 65 ILCS 5/11-74.4-3(n)(J)(1) (West 2020). This is commonly referred to as the "but-for test." *Pleasantdale*, 341 Ill. App. 3d at 1019. The Districts contend that the parcels had private development interest without the need for financial assistance from TIF 2 and thus fails the but-for test. The Districts point to the development agreement with CDH executed 14 months prior to the creation of TIF 2. CDH, which owns 34 of the 51 TIF 2 parcels, committed over $80 million in private funds to develop several improvements. The Village issued at least 12 permits for CDH to demolish and construct various improvements on its properties in the 14 months that elapsed between the adoption of the development agreement and

TIF 2. The Districts argue those improvements should be considered growth and development through private enterprise that negate a "but-for" finding.

¶ 31 The circuit court found that, absent the CDH development agreement, the parking and medical offices did not impact TIF eligibility because "both structures can obtain a property tax exemption such that development would not increase the tax basis of the property without alternative agreement." However, the Districts argue the court did not account for the mixed-use portion of the improvements that would be ineligible for tax exemption and engaged in speculation that any of the improvements would qualify for exemption. They conclude TIF 2 was not necessary to achieve redevelopment in the area given the mixed use, retail development by CDH. The Village counters that no improvements other than parking facilities had been contemplated. Without both the development agreement and the creation of TIF 2, it was reasonable for the Village board to determine there would be no growth in that area, and the board was justified in finding that the but-for test had been met.

¶ 32 The Districts also argue that the court incorrectly found a "combined implementation" of the CDH development agreement and TIF 2 to meet the but-for test. Specifically, the court found that " 'but-for' the combined implementation of the Development Agreement and TIF 2, there would be no growth and development through private investment that would increase the value and tax basis of the parcels that support the parking structure and three-story mixed-use building." The Districts argue the TIF Act does not contemplate that a temporally distant development plan and TIF ordinance can be subject to "combined implementation" in order to satisfy the "but-for test." See 65 ILCS 5/11-74.4-3(n)(J)(1) (West 2020). Further, the development agreement is not expressly conditioned upon the adoption of TIF 2 indicating "combined implementation" was not contemplated when the agreement was negotiated.

¶ 33 The circuit court found, and we agree, that the Village did not form TIF 2 after execution of the development agreement by coincidence; rather, the development agreement was underpinned by TIF 2—one would not have happened without the other. The development agreement does acknowledge the existence of TIF 1 and allows the Village to "seek to extend the duration of the existing TIF District or any portion thereof in a manner solely with the discretion of the Village and as authorized by the TIF Act, including the 'de-TIF—re-TIF process.' " Accordingly, the reason why growth and development occur in a potential TIF district is relevant to the but-for inquiry. The circuit court did not create a new statutory requirement in its finding that there was a combined implementation. It merely commented on the fact that TIF 2 and the development agreement work together in tandem and neither would occur without the other.

¶ 34 The Districts orally argued that *Pleasantdale* stands for the principle that the municipality could not, by its own action or inaction, orchestrate the need for TIF districts. 341 Ill. App. 3d at 1019. However, that is not the holding in *Pleasantdale*. That court found the but-for test had not been met where a private developer proposed a townhome development and movie theater prior to the creation of the TIF district but was rejected by the municipality following resident opposition. *Id.* The court explained that, even though the projects did not go forward, they were evidence that there was interest in private development without the need for a TIF district. *Id.* The interest in development in the absence of TIF benefits allowed for the conclusion that the but-for test had not been met. *Id.* at 1020.

¶ 35 The case before us presents no issue that the Village rejected private development. The instant matter and *Pleasantdale* are similar in that there are properties in TIF 2 developed prior to its creation, which the Districts argue indicates private development interest in the absence of TIF 2. However, they are distinguishable in that all the parcels in TIF 2 were previously located in

TIF 1. The fact that the parcels were located in TIF 1 when the development agreement was executed and that the development agreement was created with the intention of creating TIF 2 indicate that a TIF district was necessary for the development to occur. This satisfies the but-for test.

¶ 36 The Districts also contended in oral argument that the parcels owned by governmental entities defeat the but-for test because they would not attract private interest. Aside from not raising this argument in their opening brief (Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) ("Points not argued are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.")), we find this argument meritless, as we generally do not look at each parcel separately but at the "subject property" as a whole. See, *e.g.*, *Pleasantdale*, 341 Ill. App. 3d at 1019; *Malec v. City of Belleville*, 407 Ill. App. 3d 610, 630 (2011). Moreover, nothing would prohibit the sale of any such property to a private developer at a later date.

¶ 37 Next, the Districts argue the Village failed to include evidence in the redevelopment plan that the but-for test was satisfied. They assert the eligibility report contained only conclusory statements without sufficient evidentiary foundation. However, the redevelopment plan did reference the failure of private sector development without additional help in this area in its recitation of the history of growth in the area. Moreover, as also explained in the redevelopment plan, each parcel included in TIF 2 was located in TIF 1 prior to its inclusion here, again indicating that government incentives were necessary to attract private investment.

¶ 38 Finally, the Districts argue that the Village created TIF 2 solely for the purpose of obtaining funds to build a new village hall. They assert that the underlying goal is inconsistent with the purpose of TIF creation—to facilitate development in an area where assistance is necessary. However, the Districts do not provide any authority to indicate that a secondary benefit for the

Village negates the creation of a TIF district. We therefore find this argument without merit. See Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020); see also *Velocity Investments, LLC v. Alston*, 397 Ill. App. 3d 296, 297 (2010) (the failure to clearly define issues and support argument with relevant authority results in forfeiture of the argument).

¶ 39 B. Contiguity

¶ 40 Next, the Districts argue that the court improperly interpreted the TIF Act's requirement that the parcels are all contiguous and will substantially benefit from the redevelopment plan to be included in TIF 2. It is undisputed that the 51 parcels, if properly included, satisfy the contiguity requirement. However, the Districts argue that the contiguity requirement fails because 11 parcels were included solely for the purpose of achieving that contiguity and those parcels should not be included because they will not substantially benefit from the TIF district.

¶ 41 The first point raised is that the 11 parcels of landscaped greens do not substantially benefit from being in TIF 2 and should not be included in TIF 2, thus destroying contiguity. The Districts direct us to Becker's testimony that the evidence showed that the only reason those 11 parcels were included was to create contiguity with the other desired parcels and that they will not substantially benefit from their inclusion in TIF 2. Becker opined that the parcels were vacant, had no blight factors present, had no projects planned, and were generally not suitable for new development. The Village's consultant also testified that he did not analyze whether the 11 parcels would substantially benefit from the creation of TIF 2. Thus, the Districts argue, the eligibility study did not adequately document any factors present in those parcels to include them, again obviating contiguity.

¶ 42 The circuit court found sufficient evidence to support the validity of TIF 2 even if only 40 of the 51 parcels would substantially benefit from its creation. However, the Districts contend that

the TIF Act requires *every* parcel to substantially benefit from the creation of the TIF district in order to be included. They assert the statute requires that each and every parcel must substantially benefit. The Village disagrees.

¶ 43 The TIF Act provides: "No redevelopment project area shall be designated unless a plan and project are approved prior to the designation of such area and such area shall include only those contiguous parcels of real property and improvements thereon substantially benefited by the proposed redevelopment project improvements." 65 ILCS 5/11-74.4-4(a) (West 2020). According to the Village, this means that a substantial benefit is that a proposed improvement must substantially benefit from the TIF district as a whole, not every parcel located in the district.

¶ 44 "Our primary goal when interpreting the language of a statute is to ascertain and give effect to the intent of the legislature." *Maksym v. Board of Election Commissioners of Chicago*, 242 Ill. 2d 303, 318 (2011). "The plain language of a statute is the best indication of the legislature's intent." *Id.* Further, "[w]here the statutory language is clear and unambiguous, we will enforce it as written and will not read into it exceptions, conditions, or limitations that the legislature did not express." *Id.* A plain reading of the statute here indicates that the property must be contiguous and that the improvements substantially benefit from the redevelopment. 65 ILCS 5/11-74.4-4(a) (West 2020).

¶ 45 The circuit court found that the statute did not require that every single parcel in TIF 2 substantially benefit and pointed out that the Districts' own expert testified that he did not believe every parcel must receive a substantial benefit from the creation of a TIF district. We agree with this interpretation. The statute only requires that the current improvements must substantially benefit. See *id.* Further, it does not state that each and every parcel benefits; it merely requires that the property as a whole must benefit. See *id.* The improvements on the 11 parcels at issue that can

substantially benefit include roadways, water and sewer systems, stormwater management and facilities, public parking facilities, and basic improvements to streetscape, including traffic signage, landscaping, lighting, and other open spaces. Thus, the court did not err in finding that these were substantial improvements for all parcels.

¶ 46 C. Conservation Area and Vacant Land

¶ 47 Next, the Districts challenge the Village's findings related to the eligibility factors designating a proposed TIF district as a conservation area. The Districts contend that 42 of the 51 parcels are vacant and should not be considered in a conservation area designation. They argue that the improvements specified under the TIF Act for such a designation must be structures and the parcels may not be vacant. The Village argues that the Districts' argument regarding vacant land was not pled in the circuit court and is therefore waived on appeal. Even if the issue was not waived, however, the Village maintains the argument is still meritless.

¶ 48 In creating a TIF district, the municipality must first establish that the proposed area is either a blighted or conservation area. See *id.* § 11-74.4-3. In the case of a designated blighted area determination, the TIF Act provides distinct criteria that must be met depending upon whether the parcel is improved with structures or is vacant land. See *id.* § 11-74.4-3(a). However, there is no such distinction for conservation areas. See *id.* § 11-74.4-3(b). The statute merely requires the area be an "improved area." *Id.* Nothing in the statute nor in precedent case law requires that every parcel included in a TIF district be improved with a structure. A simple reading of the statute indicates that distinguishing vacant land from improved areas concerns blighted areas only, not conservation areas. See *id.* § 11-74.4-3(a).

¶ 49 We will not read criteria into the statute when none exist; thus, we will not consider specific concerns for vacant land that are not articulated in the TIF Act. *In re Jarquan B.*, 2017 IL 121483,

¶ 33. Further, the TIF Act later provides that surface improvements may be considered in determining whether property evidences deterioration. 65 ILCS 5/11-74.4-3(a)(1)(C) (West 2020). Indeed, the Districts' brief addresses surface improvements and argues whether there was sufficient evidence to show deterioration in those improvements, a position in conflict with the suggestion here that improvements must mean building structures. Thus, the circuit court did not err when finding that vacant parcels may be included in a conservation area.

¶ 50 D. Conservation Area Eligibility Factors

¶ 51 The Districts also disagree with the Village's findings regarding the five eligibility factors the Village determined supported the designation of the parcels as a conservation area. They argue that there are genuine issues of material fact concerning the eligibility factors that make summary judgment improper.

¶ 52 In order for the parcels to be considered in a conservation area, the area must be detrimental to the public safety, health, morals, or welfare and may become blighted in three of the following ways: (1) dilapidation; (2) obsolescence; (3) deterioration; (4) presences of structures below minimum code standards; (5) illegal use of individual structures; (6) excessive vacancies; (7) lack of ventilation, light, or sanitary facilities; (8) inadequate utilities; (9) excessive land coverage and overcrowding of structures; (10) deleterious land use or layout; (11) lack of community planning; (12) remediation costs from the Illinois or United States Environmental Protection Agency; and (13) the total EAV of the proposed project has declined for three of the last five years. *Id.* § 11-74.4-3(b). When a municipality approves findings that designate areas as blighted or conservation areas, a presumption exists that the Village's findings were valid. *Geisler*, 383 Ill. App. 3d at 850. The Districts were required to provide clear and convincing evidence to rebut that presumption. *Id.*

¶ 53 The Village found that the following factors were present to create a conservation area: (1) lack of community planning, (2) deterioration, (3) declining EAV, (4) obsolescence, and (5) deleterious land use or layout. The circuit court agreed with the Districts that genuine issues of material fact were present for obsolescence and deleterious layout. However, it concluded TIF 2 was nonetheless properly considered a conservation area given that the TIF Act requires that only 3 of a potential 13 eligibility factors are required for such a finding. The Districts now challenge two of the remaining factors.

¶ 54 First, the Districts argue that an issue of fact remains regarding the lack of community planning factor. To establish lack of community planning, the Village must find "[t]he proposed redevelopment project area was developed prior to or without the benefit or guidance of a community plan." 65 ILCS 5/11-74.4-3(b)(11) (West 2020). For this, the court relied on the eligibility report's findings regarding the age of structures, the size and shape of the parcels, traffic congestion, and inadequate street layout to find that no genuine issue of material fact existed. The Village based its conclusion on evidence that the majority of development that occurred in the area took place prior to "modern community planning techniques" in that buildings in the area were constructed before the adoption of the Village's original comprehensive plan in 1978.

¶ 55 The court found little merit to the Districts' argument that the development agreement precluded a finding that there was a lack of community planning. Rather, the court concluded that the development agreement was entered into with the idea and intention that the TIF district would be created and that the Village would not have entered into the development agreement without the TIF district. It noted that the development agreement was the only factor Becker relied upon to support his conclusion that there was no lack of community planning. Given its conclusion that

Becker's reliance on the development agreement was erroneous, the court found there was no genuine issue of material fact regarding this factor.

¶ 56 We see no error in the court's conclusion that there was no genuine issue of material fact. It is undisputed that the improvements in the TIF district were either developed prior to the implementation of any community plan or as a result of the development agreement, indicating that the current development would not have occurred without community development and guidelines. Thus, there is no error in finding that the development agreement does not negate this eligibility factor. The evidence clearly demonstrates that the development agreement was executed with the understanding that TIF 2 would follow. Further, the bakery and construction company showing interest in occupying the first floor of the new CDH office building each indicated they would not do so absent TIF 2 incentives. The undisputed evidence demonstrates that the development agreement and TIF 2 district created the community plan necessary to develop the parcels and that community planning was previously lacking.

¶ 57 The Districts also challenge the Village's determination that the district met the deterioration factor. They argue that the Village used superficial signs of disrepair that were insufficient to support its finding that the area was marked by deterioration. They also argue the alleged superficial disrepair identified by the Village in support of its deterioration finding would be remedied by the improvements contemplated in the CDH development agreement. The Village argues that the factor was satisfied based on damaged signage, excessive wear and tear to facades, entryways in poor maintenance, crumbling surface improvements, and potholes causing water retention. Moreover, the Districts' expert, Becker, testified that he could not rule out the presence of deterioration.

¶ 58 The TIF Act allows for a deterioration finding where there are "defects including, but not limited to, major defects in the secondary building components such as doors, windows, porches, gutters and downspouts, and fascia" and "[w]ith respect to surface improvements, *** the condition of roadways, alleys, curbs, gutters, sidewalks, off-street parking, and surface storage areas evidence deterioration, including, but not limited to, surface cracking, crumbling, potholes, depressions, loose paving material, and weeds protruding through paved surfaces." *Id.* § 11-74.4-3(a)(1)(C). In reaching its decision, the court partly relied upon Becker's testimony, specifically his statement that, while he had his doubts that the cracks in parking lots and sidewalks were sufficient to prove deterioration, he still found "some deterioration documented" in the eligibility report. As such, Becker's opinion was insufficient to contradict the Village's determination, and the court was correct in finding there was no question of material fact on the issue.

¶ 59 Becker's opinion supports the Village's deterioration findings. The defects enumerated by the Village in its eligibility report are the same defects included in the statutory definition of deterioration. See *id.* Becker's opinion is devoid of any reasoning why the deterioration he admits is present is insufficient to meet the statutory requirement. Expert opinion without providing a basis for that conclusion is not enough to create an issue of fact. *Wilson*, 214 Ill. App. 3d at 875-76.

¶ 60 Moreover, Becker does not dispute these deficiencies but instead believes these deficiencies are not "sufficient" to justify a deterioration finding. The TIF Act does not require evidence of deterioration to be any sort of severity before it meets this eligibility factor. The mere fact that deterioration exists is sufficient. It is undisputed that deterioration is present on the parcels at issue; the exact severity of the condition is irrelevant. Thus, this eligibility factor has been satisfied.

¶ 61 The Village was required to find that at least three of the eligibility factors had been met in order to designate an area as a conservation area eligible to receive TIF financing. Based on our analysis of the circuit court's decision, we find no issues of material fact exist regarding three factors. Accordingly, the Village made sufficient findings related to the relevant eligibility factors to properly designate the area as a conservation area.

¶ 62 E. Forming TIF 2 With TIF 1 Parcels

¶ 63 The last argument the Districts raise is that the court improperly granted summary judgment when it found that the Village could remove parcels from the existing TIF 1 district, set to expire in 7 years, and include them in the TIF 2 district, thereby giving those parcels an additional 23 years of TIF treatment. They argue that the life of a TIF district is 23 years, and creating a new TIF district with the same parcels created an impermissible extension on the life of the district. See *Village of Shiloh v. County of St. Clair*, 2023 IL App (5th) 220459, ¶ 26; 65 ILCS 5/11-74.4-3.5(a) (West 2020). The Village responds that the parcels were not directly transferred from one TIF district to another. Instead, the Village removed parcels in TIF 1 through separate action. At the point of removal, the parcels were no longer in a TIF district and therefore eligible to be placed in another.

¶ 64 The TIF Act requires that the estimated dates of completion for redevelopment projects must occur within 23 years of when the ordinance approving the project was adopted. 65 ILCS 5/11-74.4-3.5(a) (West 2020). A municipality may extend the life of the TIF district beyond the initial 23 years, by seeking approval from the state legislature, which has been granted some 293 times according to the current statute. See Pub. Act 104-322, § 5 (eff. Aug. 15, 2025) (amending 65 ILCS 5/11-74.4-3.5(c)). The Districts argue that removing parcels from TIF 1 to create TIF 2

improperly extended the life of TIF 1 and attempts to circumvent the requirement to request an extension from the legislature.

¶ 65 The TIF Act does not expressly prohibit parcels from being included in a TIF district if they were once already included in another one. While it clearly limits the duration of a TIF district from existing longer than 23 years unless extended by the legislature, TIF 1 has not been extended. See 65 ILCS 5/11-74.4-3.5(a) (West 2020). Some, not all, parcels were removed from TIF 1 and placed in TIF 2. TIF 1 still exists separate and apart from the parcels that are now in TIF 2. Thus, TIF 2 is an entirely new TIF district, not an improper extension of TIF 1.

¶ 66 This separation is further demonstrated by the fact that new EAVs were established for TIF 2 in place of the EAV established at the creation of TIF 1. At the time that a TIF district is created, the value of parcels in that district is assessed and set as the base level EAV. *Id.* § 11-74.4-8(a); *Crouch*, 79 Ill. 2d at 361. The taxes collected on the base level EAV are distributed to the taxing bodies that would normally receive those taxes. *Grassroots Collaborative v. City of Chicago*, 2020 IL App (1st) 192099, ¶ 6. The value of all real property within a TIF district is reassessed annually to determine the current EAV, and the portion of taxes attributed to the valuation over and above the base value is known as tax increment revenue. See *Crouch*, 79 Ill. 2d at 362. This revenue, which would likely be attributable to increases in property value resulting from redevelopment projects, is deposited into a separate fund. See 65 ILCS 5/11-74.4-8(b) (West 2020); *Crouch*, 79 Ill. 2d at 362. These taxes are then used to fund public projects and private developments within the TIF district. *Grassroots Collaborative*, 2020 IL App (1st) 192099, ¶ 6. The Village, instead of requesting an extension on TIF 1, removed some parcels from TIF 1 and placed them in a newly created one. The practical effect of this act is that the base values for EAV calculations were reset upon the creation of TIF 2 and the values from TIF 1 no longer apply to those parcels.

¶ 67 The Districts and other taxing bodies will thus receive tax revenues based on the EAV of the parcels as of the date of the creation of TIF 2, rather than the EAV established at TIF 1 in 2004. This court notes that this differs markedly from a legislative extension of an existing TIF district where the EAV established at inception would continue to apply for the period of legislative extension. Nothing in the statute prohibits a parcel from being placed in a TIF district after its removal from another district. It merely states that a district cannot last for more than 23 years absent legislative extension. See 65 ILCS 5/11-74.4-3.5(a) (West 2020). The Village's de-TIF/re-TIF action established a new EAV for the parcels and indicates that an entirely new TIF district was created, which does not create an improper extension under the statute.

¶ 68 III. CONCLUSION

¶ 69 The judgment of the circuit court of Du Page County is affirmed.

¶ 70 Affirmed.

Board of Education of Winfield School District 34 v. Village of Winfield,
2026 IL App (3d) 250182

Decision Under Review:	Appeal from the Circuit Court of Du Page County, No. 21-CH-454; the Hon. Bryan S. Chapman and the Hon. Bonnie M. Wheaton, Judges, presiding.
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