12-31-15

EXPECTED RETURN ANALYSIS
Of Woodstock D200 litigation against alleged invalid Lakewood tif

Woodstock D200 Board has one objection to filing a lawsuit challenging the legality of the Lakewood tif: they don't want to spend $200,000 legal fees.
This is an emotionally driven objection, not based upon a cogent expected return analysis.
To analyze rationally one must model predictable outcomes and assign rational odds of the occurrence of those events.

The board is failing to weigh the cost of litigation against the cost of NOT litigating. The board has control over the spending of the legal fees, so they are emotionally driven to not incur that expense. And the board has no control over the development plans of Lakewood tif, so are inclined to 'hope for the best', and refuse to incorporate the predictable 300 low income housing units and 400 luxury units apt to be built in the tif into decision-making. (All tif students will be no-pays, as all tif property tax revenue will flow to Lakewood manager rather than school district).

Lakewood tif is going to cost Woodstock D200 taxpayer tens of millions of dollars over its 23-35 year lifespan in unreimbursed costs which would not be incurred 'but-for' the existence of the Lakewood tif. The costs will be a direct transfer to benefit of the management of Lakewood; Woodstock taxpayers are being forced by the tif mechanism to pay these costs so that Lakewood citizens (and citizens in Lakewood's school districts) don't have to.
Additionally, Woodstock D200 is ceding any hope of commercial property tax revenues from development of this area for the next 23-35 years.

Woodstock D200 board seems to be striving to ignore advice of counsel to litigate this improper tif, in that Chairwoman insists on negotiating with Lakewood. She has not responded to public inquiries as to what could possibly be negotiated, given the tif statute's strict limitations on PILOT's tif's are *allowed* to pay school districts.

If the Woodstock D200 school board refuses to perform its own expected return analysis before deciding this issue-- with such a large amount of taxpayers' money at stake-- taxpayers may rationally conclude that something other than logic and something other than emotion must be the primary motivating factor.

IN THE CATEGORY OF COST BURDENS PLACED ON WOODSTOCK D200 BY LAKEWOOD TIF

1. **The cost inflicted by tif on Woodstock D200 taxpayers (if D200 does nothing) due to tif low income housing is reasonably expected to be $600,000 annually in the very near term.**
(Evidence-based assumption: Lakewood made no mention of high density residential in initial Redevelopment Plan and since has passed ordinance to develop 100 low income housing units in tif. There seems to be no legal means to enforce Lakewood's verbal intent, at present, to seek age restricted senior housing which would produce no students. Low income housing developers seem to have access to more, higher, and easier- to- obtain grants and loans under favorable terms than do assisted living centers).

Let's assign probability of 50% that this event will occur, and will occur within 2 years. (Leaving 50% probability it will not happen at all).

2. **The cost inflicted by tif on Woodstock D200 taxpayers (if D200 does nothing) is reasonably expected to grow to $1,200,000 annually in the near term (another 100 units of low income housing are added to keep Lakewood AHA compliant during their further expansion).**
(Evidence-based assumption: Lakewood has already announced plans for 240 Turnberry luxury condominiums; 240 more luxury units necessitate 24 more low income housing units. It is irresponsible to

assume that Lakewood would not continue to aggressively develop in a way which serves Lakewood's compliance needs related to Illinois Affordable Housing Act).

Let's assign probability of 50% that this event will occur, and will occur within 6 years, 10%probability NO additional low income housing will be built in the next 6 years, and 40% chance that only 50 more low income housing will be built.

3. **The cost inflicted by tif on Woodstock D200 taxpayers (if D200 does nothing) for luxury residential development of the interior acreage of the tif will be $2 million per year.** (Evidence-based assumption: the tif is 600 acres in area, and the vague, on-the-come redevelopment plan presented by Lakewood allows Lakewood to install the most profitable (to Lakewood) projects. 400 luxury units on 400-500 interior acres is not unreasonable).

Let's assign probability of 50% that this event will occur, and within 6 years, 10% probability NO luxury housing will be built in the tif ever, and 40% chance that only 100 (rather than 400) luxury housing units will be built.

4. **Soft costs of new students created by tif**: civil liability, unfunded pension liability, future unfunded mandates raising the annual cost per pupil far beyond inflation, and fair share of debt load due to excess capacity (school buildings) depreciation. All of these future risks, and debt load encumbrances (far in excess of legal limits), are supposed to be shared by all the taxpayers in the school district. This will not be the case with tif properties. Let's assume annual $500 per student for civil liability and unfunded pension liability, unshared debt encumbrance and impact of additional stress on property tax rate.

(Evidence-based assumption that the taxpayer cost per pupil (levy/enrollment) will in the next 35 years rise so far above inflation that debt must be incurred and/or extruded, so taxpayers have greater liability than reflected in annual taxpayer cost-per-pupil (that cost is presently $9000):
this has actually happened in the past decade, (expenditures up 55% vs. 25% inflation; property tax rate has doubled to 8.2% of EAV (2.7% of total home value)) and there is no rational expectation the trend will not continue. Accrued unpaid interest has built up taxpayer debt load to encumber over 6% of total home value. (Statutory debt limit is 4.6% of total home value). The school debt will encumber only homes outside the tif. No-pay enrollment will impede opportunities to consolidate and save ops&maintenance and personnel costs. Whatever proportion tif comprises of D200 EAV, D200 tax rates will need to rise that much more to accommodate siphoning off the tif percentage for Lakewood’s sole benefit (example:If tif represents 10% of EAV, D200 will need to tax 111% in order to obtain 100%).

Let's assign probability as assigned above to occurrences of 100 or 200 low income housing and 400 or 100 luxury housing units.

<u>IN THE CATEGORY OF SURRENDERED POSSIBLE TAX REVENUES ON 3 MILES OF STATE ROAD FRONTAGE AND ANOTHER 400 ACRE INTERIOR AREA OF LAKEWOOD TIF</u>

1. **The expected tax revenues to be generated by commercial development are around $4 million annually.** D200 is set to lose out on ~65% of that, with other County taxing bodies losing out on the other ~35%.
(Evidence-based assumption: 3 miles of heavily trafficked State Route frontage (Rte. 47 and Rte. 176) may be compared to 1 1/2 miles of Randall Rd. frontage (county Line to Algonquin, west side), which recently was $29 million EAV. Lakewood original Redevelopment Plan projected $33 million EAV).

Let's assign 25% probability this full EAV will be achieved within 6 years, 25% probability of half that EAV, 40% probability of a quarter of that EAV, and 10% probability that NO substantive development will occur on Rte 47 or Rte 176 road frontage within 6 years.

2. The expected tax revenues generated by luxury residential development of the interior acreage of the tif are at least as much as the EAV for commercial development; assume another $4 million annually. ((400 homes at $300,000)/3=EAV). D200 is set to lose out on 65% of that, with other County taxing bodies losing out on the other 35%.
(Evidence-based assumption: the tif is 600 acres in area and the vague, on-the-come redevelopment plan presented by Lakewood allows Lakewood to install the most profitable (to Lakewood) projects. Big incentive: the more residential, the higher the tax rate is apt to go in D200. Lakewood tif manager gets a windfall profit from higher tax RATES in Woodstock D200).

Let's assign 25% probability this full EAV will be achieved within 6 years, 25% probability of half that EAV, 40% probability of a quarter of that EAV, and 10% probability that NO substantive luxury residential development will occur on tif within 6 years.

(*1.& 2. Describing likelihood of build out if Lakewood owns a square mile tif. If the tif is indeed invalid, we must assume the projected annual property tax revenues will be less likely, and occur further out in time. Let's assume probability of 10% of the revenues projected in 1.&2. above.*
Further, while $300,000 homes may pay nearly the amount needed to 'breakeven' with students' cost per D200, low income units will produce students at a $7000 shortfall to D200 levied costs.)

<u>**IN THE CATEGORY OF POSSIBLE PILOT PAYMENTS FROM LAKEWOOD**</u>

1. PILOT risk: If Woodstock D200 agrees to accept PILOT's from Lakewood, Lakewood will insist on a waiver from D200 which will serve to abrogate citizens' rights to litigate this suit as well. This may engender a lawsuit by citizens for official misconduct, and the board would incur cost for legal defense of board members (until and unless discovery reveals factors which make individual board members liable for their own defense).

   Let's assign a 10% probability of official misconduct lawsuit, with $20,000 in legal fees for D200 as a result. Assign 50% probability the waiver adversely affects citizens' rights to sue Lakewood tif, 10 % probability citizens would sue Lakewood tif, and if so have a 5% probability of success.

2. PILOT risk: The waiver which D200 is forced to sign to receive PILOT's from Lakewood may damage the ability for D200 and/or citizens to seek detachment-annexation of tif property out of D200 and into Crystal Lake school districts which educate all Lakewood children and receive all Lakewood property tax dollars.
   Let's assign a 50%probability the waiver adversely affects citizens' rights to seek detachment-annexation of tif area into the Crystal Lake schools which serve Lakewood and receive all Lakewood property tax revenue. 100% chance that in failed lawsuit, citizens will seek detachment-annexation, and 20% chance of prevailing.

3. PILOT reward: maximum PILOT possible $1025 per student in low income housing units, $3416 per student in luxury homes.
   Evidence-based logic: If Woodstock D200 board and Lakewood managers collude to reinterpret tif law with some tortured contract enabling Lakewood to 'make Woodstock D200 whole', the contract will be overturned when Lakewood citizens or tif developers or tif bondholders sue to break the unorthodox agreement. There are scores of PILOT lawsuits with current owners of property suing for, and winning, property taxes dating back decades.
   Probabilities can be assigned independently of exceeding these maximums without risk of clawback + legal fees at a later date.

FACTORS AFFECTING SUCCESS AND COST OF LAWSUIT

1. In most recent ISBE published data 2013, D200 spent $155,000 on legal fees, in one year, without explanation as to the benefit to D200 taxpayers. In light of that it is illogical to protest $200,000 in fees spent on a case in self defense of millions of dollars of annual cost and lost tax revenue. Also, D200 has already incurred part of the legal cost, for research and drafting complaint published in 12-15-15 agenda packet.

2. Lakewood will also be spending legal fees, and in defense of a despicable tax grab gimmick brought to bear by a wealthy golf course community on an impoverished neighboring town (Woodstock has half the household income, income per capita, and half the home values of Lakewood. Woodstock median income households (half the population) must pay over 10% of household income in property taxes). This lawsuit has at least the publicity appeal of the Oakwood Hills power plant incursion.

3. Lakewood wants to place low income housing in tif, away from Lakewood East, it is written in their July 28th ordinance. Lakewood can accomplish its compliance with the Illinois Affordable Housing Act without a tif, by simply issuing vanilla bonds and requiring its own citizens to pay for them…or place the mandated low income housing within Lakewood East whereby the low income development would affect Lakewood citizens' school district. The point is: aggressive litigation of tif by Lakewood requires an objective expected return analysis by Lakewood: *spend money to defend an unpopular and distasteful quest to offload responsibility and financial obligations, or spend the legal fee money on laying pipe.*

4. Other County plaintiffs, who currently lack the political will to join the suit, may join D200 (and help defray legal fees) when the case gets wider media coverage.

5. The Lakewood tif is invalid by statutory language in 3 or 4 ways. It is cheaper to press a suit on arguments of written law opposed to common law, if you win in the first round on merits.

FACTORS AFFECTING ASSUMPTIONS

1. Evidence-based assumption that Lakewood will aggressively develop residential: Lakewood financial incentive is that the higher the property tax rate, the more money Lakewood manager will receive with rights to gift developers she favors. The more no-pay students in Woodstock D200, the higher the tax levy will need to be and the more downward pressure on home values thus lower EAV. Higher numerator and/or lower denominator create higher property tax RATES.
When Woodstock D200 tax rate doubles again, as it has in the past decade, Lakewood managers will receive an additional $4.9 million PER YEAR due to a tax crisis they have helped engender.

2. January 2015: Lakewood Manager insisted that she would pursue no substantive residential development in this tif. This assertion was proven factually inaccurate by the July 28, 2015 resolution by Lakewood to place 100 low income housing units in the tif. Lakewood managers' assertions of 'good intentions' have no credibility. Lakewood managers have no way to legally enforce 'good intentions' in the future.

3. Tif Statute is strict and unambiguous about limiting PILOT's. If Woodstock D200 and Lakewood mangers collude with some tortured legal contract enabling Lakewood to 'make Woodstock D200 whole', the contract will be overturned when Lakewood citizens or tif developers or tif bondholders sue to break the unorthodox agreement.
Evidence-based logic: There are scores of PILOT lawsuits with current owners of property suing for and winning property taxes dating back decades based upon improper PILOTs. In that case D200 will be incurring legal bills in the future to avoid repaying invalid PILOTs, with interest.

4. Assumptions of cost to Woodstock taxpayers here are conservative in projecting a 23 year tif lifespan. 35 years is as likely or more likely.

Evidence-based logic: recent example of major effort made in Springfield for 'local benefit' was by Althoff for the narrow benefit of MCCD insiders, enabling MCCD issue of non-referendum bonds to the great detriment of McHenry County taxpayers. In that case a great deal of objective factual data was presented by citizens and ignored by a Springfield politician.

6. PILOT maximums assumptions do not incorporate any likelihood for Lakewood to exceed the stated maximums. If Lakewood has a novel plan to 'make D200 whole' (with ironclad recourse available to D200 if the plan is challenged by tif bondholders in ten or twenty years), the PILOT reward might offset more of the costs to D200 taxpayers.

7. Assumed: .61 students per new housing unit. $9000 per year cost to taxpayers per D200 student (levy/enrollment). 3% inflation rate on present value calculations (due to teacher raises exceeding that rate) when pricing annual costs beginning 2-6 years out. Offsetting present value of future annual costs with inflation. 23 year term of tif (example: 17 years of annual payments if development projected to be 6 years out). No taxes other than property tax addressed. $1025 PILOTs reflect $90,000 per low income housing unit value, $3416 per $300,000 luxury housing unit. 13% tax rate on EAV. If lawsuit filed, $300,000 legal fees over 2-3 years. If lawsuit, assumption that 'luxury' residential fully offsets $9000 annual cost/student; while 100% probability of 100 low income housing units create $7000 shortfall per student annually beginning 2 years out.

CALCULATE EXPECTED RETURN

1. COST BURDENS PLACED ON D200 BY LAKEWOOD TIF must be quantified according to various probabilities.
2. SURRENDERED POSSIBLE TAX REVENUES TO D200 must be quantified according to various probabilities.
3. PILOT PAYMENTS BY LAKEWOOD AND ASSOCIATED RISKS must be quantified according to various probabilities.
4. FACTORS AFFECTING COST OF LAWSUIT must be quantified according to various probabilities.
5. EXPECTED RETURN CALCULATED by multiplying probability of success by quantified loss dollar amounts.
6. COMPARE EXPECTED RETURN OF FILING SUIT WITH THE EXPECTED RETURN OF NOT FILING SUIT.

Present Value Calculations:

COST BURDENS PLACED ON D200 BY LAKEWOOD TIF

1.1. $5,655,560

1.2. $5,979,637

1.3. $18,451,453

1.4. $1,537,621

TOTAL $31,624,271

SURRENDERED POSSIBLE TAX REVENUES TO D200

2.1. 0.10($17,582,981)= $1,758,298

2.2. 0.10($17,582,981) =$1,758,298

TOTAL $3,516,596

PILOT PAYMENTS BY LAKEWOOD AND ASSOCIATED RISKS

3.1. $2000+ $3,162,400

3.2. $3,162,400
TOTAL RISK: $6,326,800

3.3. 1. ($579700) 2. ($437800) 3. ($175100) 4. ($5,836,100) 5. ($1,167,200)
TOTAL REWARD: ($8,196,000)

SCENARIOS:

1. EXPECTED RETURN TO D200 TAXPAYERS IF NO LAWSUIT, NO PILOT:
   LOSS OF $35,140,867

2. EXPECTED RETURN TO D200 TAXPAYERS IF NO LAWSUIT, PILOT:
   LOSS OF $33,271,667

3. EXPECTED RETURN TO D200 TAXPAYERS IF D200 FILES SUIT:
   LOSS OF $6,459,507 *

***Includes Cost to D200 of $7000 per each of 60 low income housing students for 20 years**

CONCLUSION: Costs to Woodstock D200 taxpayers are over $27 million MORE contrasting filing suit (objecting to invalid tif) with NOT filing suit.

Given that cost risk assumption, then one can calculate a 'breakeven' for legal fee expenditure (in addition to the $300,000 legal fee assumption baked into the numbers above already). If there is a 50% chance of winning suit, then legal fee breakeven would be half of $27 million. If there is a 10% chance of winning then legal fee breakeven would be $2.7 million, 1% chance of winning =an additional $270,000.

SCHOOL BOARD MEMBERS: Please create your own present value estimation addressing the presumptions included herein before voting on this litigation.