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IN THE CIRCUIT COURT OF DU PAGE COUNTY
FOR THE EIGHTEENTH JUDICIAL CIRCUIT OF ILLINOIS

BOARD OF EDUCATION OF
WINFIELD SCHOOL DISTRICT 34,

Plaintiff,

BOARD OF EDUCATION OF
COMMUNITY HIGH SCHOOL
DISTRICT 94,

Plaintiff-Intervenor

V S .

VILLAGE OF WINFIELD,

Defendant.

NO. 21 CH 454
(emergency
motion)

REPORT OF PROCEEDINGS had
taken at the hearing of the above-entitled cause,
before the **HONORABLE BRYAN S. CHAPMAN**, Judge of
said Court, recorded on the DuPage County
computer-based digital recording system, DuPage
County, Illinois, transcribed by Lisa Marie
Novak, commencing on the 21st day of March A.D.
2024.

LISA MARIE NOVAK, OFFICIAL COURT REPORTER

CERT. # 084-004296

1 PRESENT:

2 HODGES, LOIZZI, EISENHAMMER, RODICK & KOHN
3 LLP, by
4 MR. JASON T. MANNING and
5 MS. KATHERINE A. LAROSA,

6 appeared on behalf of the
7 Plaintiff, Board of Education of
8 Winfield School District 34;

9 PETRARCA, GLEASON, BOYLE & IZZO, LLC, by
10 MR. JAMES DOUGHERTY,

11 appeared on behalf of the
12 Plaintiff-Intervenor, Board of
13 Education of Community High School
14 District 94;

15 ROBBINS SCHWARTZ, by
16 MR. DAVID J. FREEMAN and
17 MR. NEAL SMITH,

18 appeared on behalf of the Village of
19 Winfield.
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21
22
23
24

1 THE COURT: Line ten, 21 CH 454, School
2 District of Winfield, Board of Directors -- or
3 Board of Education vs. The Village of Winfield.

4 MR. SMITH: Good morning, your Honor. Neal
5 Smith for the Village of Winfield.

6 THE COURT: Good morning.

7 MR. FREEMAN: Your Honor, David Freeman on
8 behalf of the Village as well. But, Judge, must
9 as a practical matter, this is going to be an
10 argument, I believe, on a TRO. We're more than
11 happy to go first, but I don't know if you want
12 to take anybody who has real --

13 THE COURT: Martha just called you first.
14 I didn't say you were going to argue right now.

15 MR. FREEMAN: Oh, okay. My apologies.
16 David Freeman on behalf of the Village.

17 MR. MANNING: Good morning, your Honor.
18 Jason Manning on behalf of the Plaintiff, Board
19 of Education District 34.

20 MS. LAROSA: Good morning, your Honor.
21 Katherine LaRosa also on behalf of Plaintiff,
22 District 34.

23 MR. DOUGHERTY: And good morning, your
24 Honor. Jim Dougherty on behalf of District 94.

1 THE COURT: All right. The Court is ready
2 to hear argument on this; however, I will push
3 this to the end of the call.

4 MR. MANNING: Thank you.

5 MR. DOUGHERTY: Thank you.

6 MR. FREEMAN: Thank you, your Honor.

7 MS. LAROSA: Thank you, Judge.

8 MR. SMITH: Thank you.

9 (WHEREUPON, other court
10 business was conducted
11 after which the following
12 further proceedings were
13 had herein:)

14 THE CLERK: 21 CH 454, School District of
15 Winfield 34, Board of Education, Village of
16 Winfield.

17 MR. SMITH: Good morning again, your Honor.
18 Neal Smith for the Village of Winfield.

19 MR. FREEMAN: Good morning again, your
20 Honor. David Freeman on behalf of the Village
21 as well.

22 MR. MANNING: Good morning, your Honor.
23 Jason Manning on behalf of the Plaintiff, School
24 District 34.

1 MS. LAROSA: Good morning, Judge.

2 Katherine LaRosa on behalf of School District
3 34.

4 MR. DOUGHERTY: And good morning, your
5 Honor. Jim Dougherty on behalf of District 94.

6 THE COURT: All right. Very good. This
7 comes on for Plaintiff, Winfield School District
8 34's motion for a TRO and preliminary injunction
9 in connection with a March 21st village meeting
10 today with respect to a proposed vote on an
11 allocation of TIF funds to a proposed bakery
12 going to the first floor of the CDH building
13 south of Jewel is what I believe.

14 All right. Counsel, I've had a chance
15 to read the motion, review many of these
16 exhibits. I'll give you a chance to go ahead
17 and address the Court at this time. I may have
18 some questions. Counsel, I'll certainly give
19 you a chance to respond. Keeping in mind --

20 MR. MANNING: Thank you.

21 THE COURT: Keeping in mind, I think that
22 everyone here knows this. Obviously a TRO is
23 based on the pleadings alone, and this is not an
24 evidentiary hearing.

1 MR. MANNING: Sure. Thank you, your Honor.
2 Just at the outset, I think what you've captured
3 as the issue is exactly right. The agenda was
4 posted. I learned of it on Monday that this
5 action was coming up this evening. We properly
6 filed. We reached out to try and see if we
7 could avoid motion practice. That was
8 unsuccessful.

9 So at the -- One of the arguments I
10 expect the Village will make -- I want to
11 address this at the outset -- is that they -- I
12 expect them to argue that this is legislative
13 action beyond the purview of your Honor's review
14 in a court of equity. And that's simply not the
15 case pursuant to Ziller vs. Rossi, which we cite
16 in our motion, a Second District Appellate Court
17 case, where the Court addressed the same
18 argument raised by a Township arguing very
19 similar facts. Agenda came out. Plaintiffs
20 came in to challenge board action that was
21 upcoming. And the trial court and the Appellate
22 Court both rejected that argument because the
23 challenge in that case, as here, is tied back to
24 the original legislative action, the ordinances

1 that created TIF 2 back in 2021. What we're
2 seeking to enjoin is further action implementing
3 or enforcing those ordinances, which is what
4 that action on the Board's agenda tonight would
5 do.

6 THE COURT: I'll let the Village address
7 that, if they wish. But legislative action is
8 enjoined routinely by courts. Not to say it's
9 not extraordinary; but as a general rule, the
10 Court doesn't need a ton of argument on that.

11 MR. MANNING: Sure. I just wanted to
12 clarify that. We exchanged a couple of e-mails
13 on it. I wanted that addressed at the outset.
14 In terms of the four elements in favor of a TRO,
15 likelihood of success or -- Let me start here,
16 ascertainable -- legal ascertainable right in
17 need of protection. I think there's no doubt
18 that a school district as a taxing body is
19 clearly impacted by the expenditure of property
20 tax dollars that would have otherwise flowed to
21 the school district, but for the creation of the
22 TIF, which is exactly what's at dispute here.

23 The TIF dollars that the Village is
24 seeking to approve expenditure tomorrow night

1 are directly at dispute in this case. It's the
2 lawsuit that we filed seeking to dissolve the
3 TIF.

4 With respect to likelihood of success
5 on the merits, there are a number of
6 different -- a number of different issues that
7 we raise in the pleading, but the primary one
8 I'll focus on is the but-for test.

9 THE COURT: Well, counsel, when I read your
10 motion, the -- what I didn't see in the
11 likelihood of success on the merits is the
12 standard for a likelihood of success on the
13 merits in a TRO context, which is simply a fair
14 question -- a fair question of success.

15 This -- this read almost like a merits
16 brief. And, again, the Court will not resolve
17 the merits of an issue on a TRO. So there will
18 be no advisory opinion here on the but-for test.
19 I can assure you that.

20 MR. MANNING: Understood. And to the
21 extent it came across that way --

22 THE COURT: I'm not saying you haven't
23 satisfied the fair question issue.

24 MR. MANNING: Yeah, and --

1 THE COURT: But it did give me pause to say
2 why -- you know, we've got three and a half
3 pages deep on the but-for test here, and I think
4 the question is simply is there a fair
5 question --

6 MR. MANNING: Sure.

7 THE COURT: -- in which there's a
8 reasonable likelihood your client may proceed on
9 the merits.

10 MR. MANNING: Sure. And just to be clear,
11 I thought we -- We did cite on page 8 of our
12 motion --

13 THE COURT: Let me see.

14 MR. MANNING: -- that the party must raise
15 a fair question as to each element. It's the
16 very end of the legal standard.

17 THE COURT: I suppose that's technically
18 right.

19 MR. MANNING: And I apologize if that was
20 confusing or didn't come through as clear as we
21 wished it would have.

22 THE COURT: Well, yeah. I mean, the reason
23 I raise it is because as I'm reading this, I'm
24 trying to figure out what -- what is the --

1 Because I've down countless TROs.

2 MR. MANNING: Sure.

3 THE COURT: Merits type briefing on
4 something like that where we're coming back in a
5 month on (f)(3) deposition scheduling strikes
6 the Court as -- It just struck me as
7 interesting, so I wanted to address that.

8 MR. MANNING: Sure. And we just -- First
9 of all, we put this together very quickly in an
10 effort to get before you, your Honor. And we
11 wanted to be sure you understood how we believe
12 we've been -- we've established a fair question
13 as to a likelihood of success on the but-for
14 test. Most of that is set out in our complaint.
15 But, you know, it's undisputed at this point
16 that over \$80 million was committed by CDH well
17 in advance of --

18 THE COURT: Right.

19 MR. MANNING: -- the creation of TIF 2.
20 They own well over the majority of the parcels
21 in the TIF 2 area.

22 THE COURT: I want to jump right to the
23 heart of where I think the dispute here is. Why
24 is there no legal -- Why is there no adequate

1 remedy at law?

2 MR. MANNING: Sure. And that's a very good
3 question, and the simple answer is this is a
4 lawsuit for declaratory and injunctive relief.
5 There is no claim for money damages --

6 THE COURT: But let's think about that.

7 MR. MANNING: -- at the end.

8 THE COURT: If -- If -- If this Court found
9 that a TRO was appropriate -- If the Court found
10 that there's no adequate remedy at law based
11 solely on what the complaint seeks, that would
12 incentivize Plaintiffs to seek only equitable
13 relief where otherwise money damages might
14 satisfy in order to obtain injunctive relief
15 where it otherwise wouldn't -- wouldn't lie.

16 So, in other words, whether your
17 complaint seeks it or not strikes the Court as
18 that can't be the test.

19 MR. MANNING: Sure. And that was just the
20 first part of my argument on that point.

21 THE COURT: Okay.

22 MR. MANNING: That is not the exclusive
23 argument.

24 THE COURT: Well, you led with it.

1 MR. MANNING: I understand. But I think it
2 is important because these types of cases, there
3 really isn't a cause of action to seek money
4 damages. What we have at issue here are
5 property tax dollars that are collected on an
6 annual basis that would normally flow through
7 pro rata to all entitled taxing districts,
8 school districts, park districts, et cetera.

9 And when a TIF is created, there's
10 incremental or increased taxes that are
11 collected after the base here as values go up.
12 Instead of going pro rata to the taxing
13 districts, they get funneled to the district and
14 to a specific TIF fund account to be held. And
15 what we have here is a very specific fund of
16 dollars, annual property tax revenues, that
17 can't be recollected if we win in this case and
18 the Village has spent those monies. We can't go
19 back out and recollect the money from the
20 taxpayers who are paying those taxes. And
21 there's -- We've looked at the TIF Act, the
22 Property Tax Code, and done plenty of research
23 to try to figure out if there would be some
24 cause of action if at the end of this case the

1 Village had spent all this money, is there a
2 mechanism to get that money back? There isn't.
3 There's nothing in the TIF Act.

4 THE COURT: Let's talk about that for a
5 second. The dollar amount -- In this TR0 the
6 dollar amount the Village -- Based on the
7 allegations in the TR0, motion for TR0, the
8 Village is on the brink of approving \$100,000 of
9 tax increment financing for a bakery that signed
10 a lease in the CDH office building.

11 So we have a finite dollar amount at
12 issue here. And I want to make sure I
13 understand it. It's the District's position
14 that if it were to prevail on the underlying
15 merits here and the Court finds that the TIF
16 ordinance of TIF 2 is invalid, that there's no
17 remedy at law that would allow them to recoup
18 that \$100,000 from the -- from the Village?

19 MR. MANNING: That is our position. I --
20 We don't have a -- It's not a contract dispute,
21 and I have a contractual entitlement --

22 THE COURT: There's no equitable claim?

23 MR. MANNING: Not that I'm aware of.
24 Unjust enrichment is a quasi contractual claim.

1 THE COURT: All right. So now let's ask --
2 Let's see what -- what the Village thinks.

3 MR. SMITH: Well, my position would be the
4 statute also doesn't provide for return of the
5 money if it's currently in the TIF fund. So if
6 their position -- if they're waiving any kind of
7 claim for money damage -- and I don't think they
8 are -- I think their motion is saying we want
9 damages. We want the fund, the TIF fund,
10 preserved so that we can bring it back to us.
11 They want damages. This is about damages.

12 THE COURT: Hold on. I just want -- I want
13 my question kind of addressed here.

14 MR. SMITH: Okay.

15 THE COURT: If the Court were to find -- if
16 the Court were to deny the TRO today and the
17 Village were to go ahead and approve the TIF
18 financing and the Court later on determines that
19 TIF 2 is invalid, is it your position that they
20 would have no remedy for the TIF financing?

21 MR. SMITH: This is -- this is a chancery
22 court that has broad equitable powers. I think
23 it's a tool in your toolbox to make them whole.
24 I mean, damages is what they seek; and I think

1 that a court of equity has that power.

2 THE COURT: Well, instead of saying damages
3 what they seek, I just -- I think we're going to
4 get lost in the weeds there. They're not going
5 to agree with that.

6 MR. SMITH: To answer your -- Yeah.

7 THE COURT: That's not what we're here for.

8 MR. SMITH: To answer your question, I
9 think this is a court of equity. And I've seen
10 it before, and I think they have that power
11 to --

12 THE COURT: Would you agree that your
13 client --

14 MR. SMITH: -- fashion the remedy.

15 THE COURT: -- would potentially be liable
16 for that money if the Court were to -- A lot of
17 times when parties say, hey, Judge, we deny the
18 TRO -- we think you should deny the TRO because
19 there's an adequate remedy at law; and if we
20 lose on the underlying case, they would -- they
21 would have that remedy, is the Village willing
22 to go that far?

23 MR. SMITH: It would be wrong. I think
24 that we would vigorously oppose that; however,

1 we think it's a tool in your toolbox to order
2 that remedy. So it's available for a remedy.
3 That's the standard of a TR0, is there an
4 available remedy. And the answer is, yes,
5 there's an available remedy. This is a court of
6 equity. That money is there. We're going to
7 oppose it.

8 THE COURT: So I've got the Village on the
9 record saying, yeah, look, if it's invalid, this
10 Court has the authority to order the Village to
11 reimburse the \$100,000.

12 MR. MANNING: I just want to be clear
13 because I thought I heard them -- Although
14 they're saying that on one hand, they're saying
15 they would oppose that remedy as well. And I
16 have not -- I'm not sure what that remedy looks
17 like. I mean, is it an injunction ordering them
18 to pay any money they've spent?

19 THE COURT: A mandatory injunction?

20 MR. MANNING: Reimburse all money you've
21 spent out of the TIF fund.

22 THE COURT: Restitution.

23 MR. MANNING: The other problem that we
24 have with this is that we're not the only taxing

1 body impacted. It's all other taxing bodies.
2 We've got two school districts in. There are
3 other taxing bodies who have not intervened in
4 this case, who, if this TIF district is declared
5 illegal, we'd also be entitled to pro rata
6 distribution. And there's got to be a mechanism
7 for unwinding that. The County Collector can do
8 that. The County Treasurer can do that. If the
9 TIF is dissolved and the money goes back, it
10 would be distributed pro rata to all parties.

11 It seems to me that the only remedy to
12 ensure that everybody's protected until this
13 case is decided on the merits, is to enjoin the
14 expenditure of those funds until we know whether
15 it's legal or illegal. If it is illegal, which
16 we contend it is, then there's a mechanism to
17 work with the County to ensure the funds that
18 are in that TIF fund go back to the County and
19 are distributed out the way they were supposed
20 to be in the first place. I know of no other
21 way to do that, especially with some of the
22 other parties not even before the Court.

23 MR. SMITH: Counsel's here saying there's
24 no statutory way for you to give the money back,

1 but counsel -- but counsel is here saying the
2 money in the TIF fund, the Village's TIF fund,
3 needs to be preserved so that it can be given
4 back. But there's no statutory procedure for
5 that either. So counsel on the one hand is
6 saying there's no statutory procedure for us to
7 get money back if you spend \$100,000, but
8 they're asking for a TIF fund to be preserved so
9 they can get that money back. But there's no
10 procedure for that either. That's why they're
11 wrong. I mean, this is a court of equity. The
12 Court has powers to do both.

13 THE COURT: Why don't we -- why don't we
14 work through the prongs of a TR0. And I want to
15 see where -- I think there may be some issues,
16 some prongs, that the Village wouldn't highly
17 dispute, ascertainable right. But adequate
18 remedy at law, irreparable harm, likelihood of
19 success, why don't you address each of those.

20 MR. SMITH: So on the likelihood of success
21 on the merits and the ascertainable right, we're
22 talking about a legislative enactment here.
23 Again, the legislative enactment from 2021 that
24 this Court must presume is valid. I mean,

1 legislation is presumed valid unless they meet a
2 high -- a very high threshold that the Village's
3 action is arbitrary. And so do they have a
4 clear and ascertainable right? Do they have a
5 likelihood of success on the merits? No. No.
6 They're challenging legislation. They're trying
7 to do the thing that requires the highest burden
8 of proof there is, and that is beat back and say
9 that the Village's action was arbitrary.

10 THE COURT: I think it's important for the
11 Village to address the Court's concern about
12 whether or not there's an adequate remedy at law
13 here. And counsel's point is well-taken when he
14 says I hear on the one hand that while the Court
15 can do whatever it wants, so, yes, there is; but
16 we would vehemently oppose the Court doing that.
17 Is there any -- is there a way for the Village
18 to speak with clarity on the position of is --
19 should this fail because there is an adequate
20 remedy at law, or do you essentially agree that,
21 you know, for other reasons it should fail, but
22 there is no adequate remedy at law?

23 MR. SMITH: Well, that goes -- that goes
24 back to the points we've been going back and

1 forth on already, is that this is a -- this is
2 about damages. This is about money. And courts
3 don't enjoin, don't enter Injunctions when money
4 is available when the amount of damages is
5 clearly ascertainable. There's going to be a
6 precise accounting on this. The Village has to
7 report it to the Illinois Controller's Office.
8 There's going to be a precise reporting about
9 every single penny that is spent and given to
10 the bakery, as they -- as they claim the funds
11 under the agreement.

12 We are going to know precisely the
13 amount that is given to the bakery. And so
14 there's -- So that's one of the things.
15 Sometimes courts enter an injunction when that
16 is unknowable or likely to be unknowable. That
17 is precisely knowable in this case.

18 THE COURT: When you say that, why don't
19 you just be clear again about what you believe
20 is precisely knowable with respect to how the
21 funds are used with the bakery.

22 MR. SMITH: The amount that is given to the
23 bakery --

24 THE COURT: No.

1 MR. SMITH: The amount under the contract
2 that will be given to the bakery is precisely
3 knowable. The bakery will make requests to the
4 Village.

5 THE COURT: All right.

6 MR. SMITH: They'll say here's a TIF
7 reimbursable expense for --

8 THE COURT: So there's a pod -- there's a
9 pod up to 100k.

10 MR. SMITH: Right.

11 THE COURT: They'll build the place out
12 seeking reimbursement --

13 MR. SMITH: Yeah. Yeah. They -- Yeah. I
14 mean, there's -- an exhibit to the agreement is
15 what they can ask for, TIF eligible expenses.

16 THE COURT: Right.

17 MR. SMITH: For instance, commercial
18 plumbing. They'll submit -- they will submit a
19 reimbursement request to the Village. The
20 Village will issue a payment to them and will
21 know to the penny the amount that is.

22 THE COURT: And --

23 MR. SMITH: After that, we'll have to
24 report it to the Illinois Controller's --

1 THE COURT: Is it the Village's position
2 that there is no issue of how that money in the
3 event the Court were to find TIF 2 to be
4 invalid, how that money would need to be
5 allocated to the various taxing bodies? There
6 would be no issue in determining that?

7 MR. SMITH: I -- I -- If -- I don't -- I'm
8 not sure I'm following the question. Is it --
9 Do you mean do we go back to the County Clerk,
10 for instance, for them to distribute the money?

11 THE COURT: Well, District 34 is in here
12 saying, hey, wait a minute. That's money that
13 belongs to taxing bodies because, again, it's
14 their broader view that a TIF is unnecessary to
15 develop this area of property. Therefore,
16 you're depriving various taxing bodies of tax
17 revenue that it would otherwise receive, but for
18 this TIF.

19 Let's assume the Court, just for the
20 sake of the argument, were to find that TIF --
21 you know, at some point way down the road, that
22 TIF 2 is invalid, but the Court denied this TRO
23 because it found there's an adequate remedy of
24 law, it's all money. Is it the Village's

1 position that it could adequately disburse, once
2 it's recouped or put that money back into
3 whatever bucket the taxing bodies would normally
4 draw from, could the Village adequately -- or
5 accurately -- that's a better way to phrase
6 it -- disburse that money to the various taxing
7 bodies in an amount they would normally have
8 received? Does that make sense?

9 MR. SMITH: It does. And I think the
10 answer to that is the Court has the equitable
11 authority to do that. The Court could order a
12 remedy. The Court has the inherent authority to
13 order a remedy like that.

14 THE COURT: Let me ask you. This is just a
15 question. Is -- is the money earmarked for the
16 TIF right now being held in a way that is
17 technically -- you know, depriving these various
18 taxing bodies of tax revenue? Because what I'm
19 wondering is -- What I'm asking about now in the
20 event this thing gets undone later down the
21 road, isn't that ultimately going to -- is that
22 ultimately going to have to happen no matter
23 what if the Court finds it invalid? Let's say
24 the Court grants your motion and then turns

1 around and finds it invalid, are we going to
2 have to go through this step of trying to figure
3 out how much each taxing body would have
4 received from this bucket no matter what?

5 MR. MANNING: We will, and --

6 THE COURT: Okay.

7 MR. MANNING: -- there's a mechanism for
8 doing that. We'd have to go back to the County.
9 They're the ones that are in charge.

10 THE COURT: Okay. So that's what we would
11 do here. Let's say the Court denied the TR0,
12 found it invalid down the road, we would go back
13 to the County. The bucket of the money would
14 have to be replenished by the Village, and we'd
15 go back to the County, right?

16 MR. MANNING: I expect that that is what
17 would have to happen. I think that the problem
18 is is once those property tax dollars are gone,
19 there's no -- there's no guarantee of when, if
20 ever, those funds ever come back to the Village.
21 The Village isn't just -- not a private
22 corporation. They're funded through property
23 tax revenue just like every other taxing body.
24 And if, God forbid, we end up with a million

1 plus dollars, how long -- These taxing bodies
2 are being deprived already. But the harm then
3 is they will continue to be deprived of that
4 money until the Village can come up with
5 whatever dollar amount that is, \$100,000, 500,
6 one million, plus for how long. And there are
7 cases where courts have certainly entered
8 injunctions where there's a discrete specific
9 sum of money, which is exactly what we have here
10 that is at dispute and courts have enjoined it.
11 It's not just -- Just because money's involved
12 doesn't mean an injunction cannot issue.

13 THE COURT: I understand that.

14 MR. MANNING: We cited one of those cases
15 in our brief, the All Seasons Excavating Company
16 case. There's others I can cite for you as
17 well. So it isn't simply because it's money, we
18 can't enjoin the disbursement of the funds,
19 whereas here we've got a -- It's not -- a
20 specific fund of property tax dollars that is
21 finite. It's knowable. It can be preserved and
22 should be preserved in our view in order to
23 ensure that all the taxing bodies, including the
24 school districts, are able to access those funds

1 as quickly as possible once -- if we're correct
2 and prevail on a ruling on the merits.

3 MR. SMITH: And counsel is asking you to
4 eliminate every single uncertainty, to eliminate
5 any kind of heartburn that they may have; and
6 that's not what an injunctive remedy like a TRO
7 is for. There's an adequate remedy at law.
8 This is just a classic case of money. If
9 anybody else came in and said enjoin the
10 expenditure of money, that's not what it's for.
11 It's not -- You're not here to eliminate every
12 single litigation uncertainty and to eliminate
13 their nervousness. I think it's misplaced; but
14 that's not the job of a TRO, especially when
15 there's an adequate remedy at law, money, a
16 mechanism for this Court to replenish that fund
17 and the County to redistribute the money.

18 THE COURT: All right. The Court's
19 considered the arguments, as well as the motion
20 and exhibits. The Court will go through the
21 four factors quickly. Well, I shouldn't say
22 quickly, but will do its best to succinctly
23 address each of the four factors here.

24 I'm going to take the four factors as

1 they appear in Movants' brief. First, one of
2 the factors is that the Defendants -- that the
3 Movants here seeking the TR0, Plaintiffs in this
4 case, are likely to succeed on the merits of
5 their claim. The test in the context of a TR0
6 is that a party must raise a fair question as to
7 each element required to obtain the relief, a
8 fair question as to success on the merits. It's
9 not particularly high barred. The Court finds
10 in this case the District is likely to succeed
11 on the merits. The Court also finds that the
12 District has a clear, ascertainable right in
13 need of protection because they have raised a
14 fair question about the existence of the right;
15 and the argument is that the Plaintiff -- that
16 the Court should maintain the status quo.

17 However, when we turn to irreparable
18 injury, adequate remedy at law, often times
19 courts will consider those arguments kind of in
20 conjunction with each other. And here, the
21 Court finds that there is an adequate remedy at
22 law. The amounts in controversy are \$100,000 --
23 up to \$100,000, not necessarily more than that,
24 but not necessarily up to that. The Court finds

1 that if they, the Village, issues TIF funding to
2 the bakery and it turns out TIF 2 is held to be
3 invalid, there's an adequate remedy at law for
4 the taxing bodies, including District 34, to
5 seek relief in a court of competent jurisdiction
6 for those monies that should not have been spent
7 and should have been properly distributed to the
8 taxing bodies as originally planned.

9 In that regard the Court finds that
10 there is no significant or meaningful
11 irreparable injury because the taxing bodies can
12 be compensated by money later on down the road
13 if at all appropriate. That does not mean --
14 and counsel's entirely correct -- that whenever
15 money is at issue or whenever there's a dollar
16 amount in question, an injunction can never
17 issue. That's not the case. But in this case
18 we have specific facts. The Village has
19 indicated that this Court absolutely can issue
20 an order requiring a village to repay that
21 money. The Court does not find that the lack of
22 a claim for money damages in the complaint
23 precludes an adequate remedy at law, nor does
24 the Court find that the villages are -- that the

1 taxing bodies are limited to proceed only under
2 the TIF Act against the villages, if it turns
3 out that they believe they are entitled to money
4 damages as a result of an improper distribution
5 or allocation of funds due to an invalid TIF.

6 So for those reasons -- And let me
7 just add, the balance of public interest, public
8 harm, the Court finds it to be somewhat neutral
9 here because Illinois courts do not favor
10 injunctions which prohibit public bodies from
11 functioning. That does not mean that public
12 bodies cannot do certain -- engage in certain
13 acts or pass legislation that is subject to
14 injunctive relief. That happens.

15 The Court is also mindful of the fact
16 that school districts, among other taxing
17 bodies, do suffer public harm when tax dollars
18 are not allocated to them that should be.
19 Nevertheless, the Court finds that the public
20 harm or public interest prong of this really is
21 kind of neutral here on this one. And so
22 because the Court finds that there is an
23 adequate remedy at law based on what is pled
24 before the Court, the Court will deny the TRO.

1 So, counsel, if you could prepare an
2 order to that effect. Thank you, both.

3 MR. MANNING: Yes, your Honor.

4 MR. SMITH: Thank you.

5 THE COURT: Thank you for your brief.

6 MR. MANNING: I'll prepare it.

7 THE COURT: Thank you both.

8 MR. FREEMAN: Thank you, your Honor.

9 MR. DOUGHERTY: Thank you.

10 MS. LAROSA: Thank you, Judge.

11 (WHICH were all of the
12 proceedings had at the
13 hearing of the above-
14 entitled cause, this date
15 and time aforesaid.)

1 STATE OF ILLINOIS)
2 COUNTY OF DU PAGE) SS:
3

4 I, LISA M. NOVAK, hereby certify
5 that I am a Certified Shorthand Official Court
6 Reporter assigned to transcribe the
7 computer-based digital recording of proceedings
8 had of the above-entitled cause, Administrative
9 Order No. 99-12, and Local Rule 1.01(d). I
10 further certify that the foregoing, consisting of
11 Pages 1 to 31, inclusive, is a true and accurate
12 transcript hereinabove set forth.

13 *Lisa Novak*
14 -----

15 Official Court Reporter
16 Eighteenth Judicial Circuit of Illinois
17 DuPage County
18 Certificate # 84-4296
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