

# Saint Louis University Public Law Review

---

Volume 34  
Number 1 *United We Stand or United We Fall:  
The Reunification of St. Louis City and County  
(Volume XXXIV, No. 1)*

Article 8

---

2014

## Given a Hammer: Tax Increment Financing Abuse in the St. Louis Region

Joe Wilson  
*Better Together*, [joe@bettertogetherstl.com](mailto:joe@bettertogetherstl.com)

Follow this and additional works at: <https://scholarship.law.slu.edu/plr>



Part of the [Law Commons](#)

---

### Recommended Citation

Wilson, Joe (2014) "Given a Hammer: Tax Increment Financing Abuse in the St. Louis Region," *Saint Louis University Public Law Review*: Vol. 34 : No. 1 , Article 8.

Available at: <https://scholarship.law.slu.edu/plr/vol34/iss1/8>

This Article is brought to you for free and open access by Scholarship Commons. It has been accepted for inclusion in Saint Louis University Public Law Review by an authorized editor of Scholarship Commons. For more information, please contact [Susie Lee](#).

## GIVEN A HAMMER: TAX INCREMENT FINANCING ABUSE IN THE ST. LOUIS REGION

JOE WILSON

### I. INTRODUCTION

The St. Louis region is made up of 115 unique government entities: 90 municipalities, the St. Louis County government, the City of St. Louis government, and 23 fire protection districts.<sup>1</sup> Those 115 entities provide services for 1.3 million people at a cost of over \$2.3 billion per year.<sup>2</sup> The City of St. Louis, St. Louis County, and all the municipalities are fighting each other for the funding to keep their communities running. More than 40 communities get at least half of the taxes they collect from sales tax revenue.<sup>3</sup> Some get upwards of 70% and even 80% of their total taxes from sales tax alone.<sup>4</sup> Equally alarming, there are many communities whose total expenditures are equivalent, or nearly so, to the total sales tax revenues that they take in.<sup>5</sup> These communities are positioned so that even slight economic downturns pose severe problems for the delivery of municipal services.

Relying on retail to fuel the needs of local government is a risky venture, and many local governments will do whatever they can to gain an advantage because they feel compelled to compete against one another as the population of the region drops and economic development projects become scarcer.<sup>6</sup> The fight for sales tax revenue has led cities in the St. Louis region to do anything possible to draw in big-box stores with their high sales tax receipts. Tax abatements, municipal bonds, and a host of other economic development tools have been used by cities to push for all types of development.<sup>7</sup> Among these

---

1. BETTER TOGETHER, <http://www.bettertogetherstl.com/about> (last visited Oct. 21, 2014).

2. *Id.*

3. *Better Together CAFR Database*, BETTER TOGETHER (Feb. 2014), <http://www.bettertogetherstl.com/wp-content/uploads/2014/02/Better-Together-CAFR-Database-8.5x11.pdf>.

4. *Id.*

5. *Id.*

6. EAST-WEST GATEWAY COUNCIL OF GOV'TS, AN ASSESSMENT OF THE EFFECTIVENESS AND FISCAL IMPACTS OF THE USE OF LOCAL DEVELOPMENT INCENTIVES IN THE ST. LOUIS REGION: FINAL REPORT 64–65 (Jan. 2011), *available at* <http://www.ewgateway.org/pdf/files/library/dirr/TIFFinalRpt.pdf>.

7. DENNY COLEMAN, BRIAN MURPHY & BETTER TOGETHER, ECONOMIC DEVELOPMENT 7 (May 2014), *available at* <http://www.bettertogetherstl.com/wp-content/uploads/2014/05/>

development tools is tax increment financing, or TIF. TIFs have been used to promote, incentivize, and enable development across the region for a wide variety of excellent and much-needed projects.<sup>8</sup> However, they have also been used to subsidize the development of a variety of big-box stores and other retail options in a region that is rife with such options already.<sup>9</sup>

In the past twenty years, more than two billion public tax dollars have been diverted to developers as subsidies for private developments through tax increment financing across the St. Louis region.<sup>10</sup> Tax increment financing has been used as a weapon of economic development against neighboring municipalities in the region.<sup>11</sup> Every community's leadership sees it as their duty to promote economic development by whatever means necessary, and if the mayor next door is willing to take action, then each community must be prepared to do the same if they are to remain competitive.<sup>12</sup> Given a hammer, everything looks like a nail. Given a TIF, everything looks like blight.

Following the introduction, Part II of this article will set out to explain exactly how tax increment financing functions in the St. Louis region. Next, it will discuss the structural problems that TIF creates. In Part IV, this article will discuss the difficult situation local governments find themselves in while trying to encourage economic growth. Part V will discuss the types of projects that are subsidized using tax increment financing, highlighting both the bad and good developments. Finally, this article will explore what we can do to create a better future for the regional economy.

## II. TAX INCREMENT FINANCING IN MISSOURI: THE 100,000-FOOT VIEW

The creation and adoption of a TIF has several steps. First, a TIF commission must be established as prescribed in the TIF Act. Next, a redevelopment plan and cost-benefit analysis describing the economic impact of the TIF must be prepared. After the TIF commission is satisfied with the plan, it must hold a public meeting regarding the TIF plan. The TIF commission will then make a recommendation to the governing body of the municipality, which will either approve or disapprove the TIF.<sup>13</sup>

Once a TIF is adopted, the assessed value of real property in the redevelopment area is locked in for a set number of years at the level prior to

---

Better-Together-Economic-Development-Report-FULL-REPORT.pdf [hereinafter ECONOMIC DEVELOPMENT REPORT].

8. *Id.*

9. *Id.*

10. *Id.* at 1.

11. *Id.* at 12.

12. *Id.* at 1.

13. GILMORE & BELL, P.C., MISSOURI MUNICIPAL FINANCE GUIDE 27 (2012), available at <http://www.gilmorebell.com/MO%20Muni%20Finance%20Guide%20%28Apr%202012%29.pdf> [hereinafter MISSOURI MUNICIPAL FINANCE GUIDE].

construction of improvements. The property owner will pay property taxes at that locked-in level. As the property is improved, the assessed value of the property within the TIF district should increase above the base level.<sup>14</sup> Then, “applying the tax rate of all taxing districts with power in the redevelopment area to the increase in assessed valuation of the improved property over the base level” produces a “tax increment.”<sup>15</sup> TIF “allows for the capture of 100% of local incremental real property taxes and 50% of local incremental economic activity taxes (i.e., sales, utility, and earning taxes) generated within a redevelopment area.”<sup>16</sup> The tax increments, called “payments in lieu of taxes,” or “PILOTS,” are paid as if they were garden-variety property taxes by the property owner.<sup>17</sup> The PILOTS are transferred by the collecting agency to the treasurer of the municipality.<sup>18</sup> The money in this fund can be used to directly pay for redevelopment costs or to retire bonds or other obligations issued.<sup>19</sup>

The City of St. Louis and St. Louis County have their own unique compositional formulas that are required for their respective TIF commissions.<sup>20</sup> This commission is the group that calls the public hearings required for, and makes a final recommendation about, the implementation of the TIF.<sup>21</sup>

---

14. GILMORE & BELL, P.C., SUMMARY OF ECONOMIC DEVELOPMENT TOOLS 2 (2014), available at [http://www.gilmorebell.com/ED\\_Memo\\_7\\_28\\_14.pdf](http://www.gilmorebell.com/ED_Memo_7_28_14.pdf) [hereinafter SUMMARY OF ECONOMIC DEVELOPMENT TOOLS].

15. *Id.*

16. MISSOURI MUNICIPAL FINANCE GUIDE, *supra* note 13, at 27.

17. SUMMARY OF ECONOMIC DEVELOPMENT TOOLS, *supra* note 14, at 2.

18. *Id.*

19. *Id.*

20. *Id.* at 3.

21. *Id.*

COMPOSITION OF ST. LOUIS AREA TIF COMMISSIONS<sup>22</sup>

NUMBER OF MEMBERS APPOINTED BY:	ST. LOUIS COUNTY	CITY OF ST. LOUIS
CITY(IES)	3*	6
SCHOOL DISTRICTS	2	2
COUNTY	6	0
OTHER TAXING DISTRICTS	1	1
<i>TOTAL MEMBERS</i>	12	9

\* THESE MEMBERS ARE APPOINTED BY CITIES THAT HAVE TIF DISTRICTS IN THE COUNTY

The second step involves the designation of the redevelopment area, which requires classification of the TIF district as a “blighted area,”<sup>23</sup> a “conservation area,”<sup>24</sup> or an “economic development area.”<sup>25</sup> Once a project has been fit into one of the three categories described above, a redevelopment plan must be

22. *Id.*

23. SUMMARY OF ECONOMIC DEVELOPMENT TOOLS, *supra* note 14, at 3–4 (A “blighted area” is defined as an area which, by reason of the predominance of defective or inadequate street layout, unsanitary or unsafe conditions, deterioration of site improvements, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, morals, or welfare in its present condition and use).

24. *Id.* at 4 (A “conservation area” is defined as any improved area within the boundaries of a redevelopment area located within the territorial limits of a municipality in which 50% or more of the structures in the area have an age of thirty-five years or more. Such an area is not yet a blighted area but is detrimental to the public health, safety, morals, or welfare and may become a blighted area because of any one or more of the following factors: dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; abandonment; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; and lack of community planning).

25. *Id.* (An “economic development” area is defined as any area or portion of an area located within the territorial limits of a municipality, which does not meet the requirements of [a blighted area or conservation area], and in which the governing body of the municipality finds that redevelopment will not be solely used for development of commercial businesses which unfairly compete in the local economy and is in the public interest because it will: (1) discourage commerce, industry or manufacturing from moving their operations to another state; or (2) result in increased employment in the municipality; or (3) result in preservation or enhancement of the tax base of the municipality).

prepared. The TIF Act requires the following information to be included in the redevelopment plan:

1. The estimated redevelopment project costs
2. The anticipated source of funds to pay the costs
3. Evidence of commitments to finance the project costs
4. The anticipated type and term of the sources of funds to pay costs
5. The most recent equalized assessed valuation of the property within the redevelopment area that is to be subjected to PILOTS and economic activity taxes
6. An estimate of the equalized assessed valuation after redevelopment
7. The general use of the land in the redevelopment area<sup>26</sup>

Once the plan has been compiled, a public hearing about the adoption and implementation of the TIF plan must occur.<sup>27</sup> Notice of the hearing must be published and mailed to the taxing districts and property owners affected.<sup>28</sup> If a TIF commission for St. Louis County fails to take up the issue of the proposed redevelopment plan within thirty days after the public meeting, it will be deemed rejected by the commission.<sup>29</sup> After the public hearing, the TIF commission must vote on whether to recommend acceptance or denial of the proposed TIF district.<sup>30</sup> Once a recommendation has been made and approved, the municipality must adopt an ordinance for the TIF district.<sup>31</sup>

### III. UNDER THE MICROSCOPE

The previous section simplified the TIF process and glossed over many of the problems associated with TIF. These problems are both structural and interpretive. Regarding structure, the very people who are most affected by the TIF often have little say in the plan, despite the requirement of a public meeting. Further, the TIF commission lacks teeth to enforce its decisions, and the local government body charged with final approval of the TIF proposal is easily capable of overruling any determination made by the TIF commission or the general public. These structural problems are amplified by the interpretive challenges associated with TIF, which allow much broader use of TIF than originally intended. First, the term “blight” has mutated in meaning. Second, Missouri’s but-for test for TIF is an easily surmountable hurdle to acceptance. This section will explore these structural and interpretive problems in detail.

---

26. *Id.* at 5.

27. *Id.* at 6.

28. *Id.*

29. SUMMARY OF ECONOMIC DEVELOPMENT TOOLS, *supra* note 14, at 6.

30. *Id.*

31. *Id.*

The first of the structural problems relates to the effectiveness of the TIF commission. The commission bears the responsibility of calling and holding the public input meetings.<sup>32</sup> Those meetings are required by statute, and in theory, they provide an opportunity for public input about the use of tax increment financing in a community.<sup>33</sup> However, this is not the case. Public engagement has become a “rite of bureaucratized democracy that is probably equal parts valued and despised by everyone involved in its legally mandated production.”<sup>34</sup> Bill de Blasio, former New York City public advocate and current mayor, wrote that the Department of Education “treated [school closure hearings] as procedural hurdles in order to satisfy the letter of the law, rather than an opportunity to engage in a productive dialogue.”<sup>35</sup> Political scientists decry public comment meetings as “processes that lack clear goals and metrics for assessment that help generate impact.”<sup>36</sup> Truly troubling about the ineffectiveness of public meetings is that despite the number of meetings held, or the relative volume of the attendees of those meetings, the proposed plans may not see any change at all.<sup>37</sup> The plan approved at the end of the process may substantively be the same plan that was proposed at the beginning, no matter the amount of opposition offered.<sup>38</sup> Even if there is overwhelming opposition to the proposed TIF, there is no guarantee that public input will be respected or that plans will be adjusted in response.<sup>39</sup>

Also frustrating in the process is that the people who use public meetings as the forum for their voice to be heard are, more often than not, the poorest people in the community and the most affected by the proposed plan.<sup>40</sup> Poor Americans are less likely to be politically involved generally, but they are the most likely to engage locally in the form of meetings and rallies.<sup>41</sup> Poor Americans are more likely to attend public meetings about schools, streets, and the future of their community than they are to vote for the next president.<sup>42</sup> When people believe their input has an effect on their immediate communities, participation rates between economic groups even out.<sup>43</sup> However, those more

---

32. MO. REV. STAT. § 99.825 (2013).

33. *Id.*

34. Jake Blumgart, *Shouting to be Heard: The Case for Rethinking Public Engagement*, NEXT CITY, May 26, 2014, <http://nextcity.org/forefront/view/the-case-for-rethinking-public-engagement>.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. Blumgart, *supra* note 34.

41. *Id.*

42. *Id.*

43. *Id.*

affluent people with a desire to see change can provide support for candidates and issues in the form of money.<sup>44</sup> This is an avenue for action that the poor lack.<sup>45</sup> Establishing a TIF district in a poor neighborhood with an eye toward redevelopment bears the very real possibility that the poor living within the district will be forced to move elsewhere eventually, as rising real estate prices and rents push them out.<sup>46</sup> Even if the poor in a community attend public comment meetings, their opinions may not be reflected in the final decision made, despite the fact that they might be the most adversely affected by the plan or are more numerous than the supporters of the plan.<sup>47</sup>

The second of the structural problems is related to the final adoption of the TIF district by the municipality in which it will be located. In Missouri, a municipality is given the power to overrule a TIF commission's recommendation against the establishment of a TIF.<sup>48</sup> All that is required for a municipality to overrule the recommendation is a two-thirds vote of approval from the governing body, rather than a simple majority.<sup>49</sup> In this way, the TIF commission and public hearings are relegated to an advisory role.<sup>50</sup> Thus, while the ability of a municipality seeking a TIF to bypass a TIF commission's recommendation is troubling in and of itself, it is especially troubling because it is so easy for a municipal government to accomplish. There are 584 members of 92 governing bodies in the St. Louis region (St. Louis City, St. Louis County, and 90 municipalities in St. Louis County).<sup>51</sup> On average, a governing body is composed of six members, which means that on average a governing body need only garner one additional vote to override a nine- or twelve-person panel that is specifically charged with watching over interests larger than those of single county or municipality.<sup>52</sup>

While the structural problems associated with tax increment financing are significant, they are further aggravated by interpretive challenges. The first interpretive problem with tax increment financing is the use of the term "blight." Blight, as the American legal system understood it during the first half of the twentieth century, was a condition of substandard, unsafe, or unsanitary housing.<sup>53</sup> It made sense, then, to offer incentives to replace these

---

44. *Id.*

45. *Id.*

46. See Colin Gordon, *Blighting the Way: Urban Renewal, Economic Development, and the Elusive Definition of Blight*, 31 *FORDHAM URB. L.J.* 305, 311 (2004).

47. Blumgart, *supra* note 34.

48. *ECONOMIC DEVELOPMENT REPORT*, *supra* note 7, at 11.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. Gordon, *supra* note 46, at 308.



substandard housing conditions with safe and sanitary housing.<sup>54</sup> However, that meaning of blight has shifted. According to some legal scholars, “redevelopment policies originally intended to address unsafe or insufficient urban housing are now more routinely employed to subsidize the building of suburban shopping malls.”<sup>55</sup>

As the above scholars implied, blight has come to have a far more expansive meaning than it previously did. It has come to encompass not just housing, but any dilapidated or obsolescent buildings, buildings with discontinued industrial uses, unimproved vacant land, or any land that is not being properly utilized.<sup>56</sup> Again, legal scholars have explained that “in the scramble to TIF new retail developments in the St. Louis suburbs, . . . the designation of blight was typically sought after local development officials had reached a tentative agreement with a new anchor store.”<sup>57</sup> The creation of retail stores and places to capture sales tax revenue took precedence over replacement of older industrial facilities, substandard commercial projects, or low-rent housing.<sup>58</sup> As a result, slum clearance is no longer the primary meaning of blight.<sup>59</sup> It now means anything that a developer or city would want out of the way for something else.<sup>60</sup> Instead of encompassing something like a shanty with no electricity or plumbing, blight now grasps just about any structure that is not being used to its fullest potential.

The West County Center is perhaps one of the St. Louis region’s more glaring examples of TIF used to subsidize retail where a subsidy should not be necessary. A mall in Des Peres, Missouri was “blighted” because it was too small and had too few anchor stores.<sup>61</sup> This was no abandoned or underutilized mall in a dying suburb—it was in a well-heeled suburb. In fact, in 1997, the year of the TIF proposal, it was the second wealthiest suburb in the St. Louis region,<sup>62</sup> and the developers simply wanted a Nordstrom and a Lord & Taylor. The mall was declared blighted, though it had almost 100% occupancy and its annual sales topped out at \$100 million.<sup>63</sup> As a result of this characterization, a massive expansion of the West County Center was undertaken, using Des Peres residents’ money.<sup>64</sup>

---

54. *Id.* at 315.

55. *Id.* at 307.

56. *Id.* at 314.

57. *Id.* at 322.

58. *Id.* at 317, 322.

59. Gordon, *supra* note 46, at 317.

60. *Id.* at 318.

61. *Id.* at 307.

62. Josh Reinert, *Tax Increment Financing in Missouri: Is it Time for Blight and But-For to Go?*, 45 ST. LOUIS U. L.J. 1019, 1019 (2001).

63. *Id.* at 1021.

64. *Id.* at 1019.

The second interpretive problem is TIF's but-for test. In Missouri, a but-for test must be met prior to a TIF's approval.<sup>65</sup> Under this test, a governing body must find that the redevelopment area has not been subject to growth and development through private investment and is not reasonably anticipated to be developed "but for" the adoption of tax increment financing.<sup>66</sup> In order to fulfill this requirement, such a determination must be submitted via an affidavit by the proposed developer along with the redevelopment plan.<sup>67</sup> This test has, by many accounts including those of business and civic leaders, devolved into a requirement that is relatively easy to meet. Under this test, the developer must simply show that it would not undertake the development without the TIF, rather than show that the development would not be undertaken by anyone without the TIF.<sup>68</sup>

This is an important trend, because freezing the property tax revenue during the TIF can negatively impact the encompassing school district.<sup>69</sup> A non-TIF project could lead to increased revenues for the district.<sup>70</sup> However, freezing the property tax for the length of a TIF prevents the district from benefitting from increased revenue that would have been available if a non-TIF project had developed in the same period.<sup>71</sup> As it stands now, the municipality can override schools districts' opinions.<sup>72</sup>

Missouri municipalities need only "provide at least a modicum of evidence that the development would not occur without the subsidy," and if they do, "Missouri courts will not interfere with the municipality's determination that the but-for test is met."<sup>73</sup> In order to satisfy the but-for test, the municipality needs to simply deliver financial analysis of the project showing a gap between the expected costs and projected value.<sup>74</sup> For example, a municipality may show a pattern of unsuccessful redevelopment efforts as evidence that the but-for test is met.<sup>75</sup> Ultimately, the threshold necessary to shield a but-for determination from judicial scrutiny is very low.<sup>76</sup>

Missouri has created an economic development tool that is readily available and allows municipalities to chase sales tax revenue. When the lack of regional or state oversight is coupled with the fragmentation of the St. Louis

---

65. *Id.* at 1020.

66. *Id.*

67. SUMMARY OF ECONOMIC DEVELOPMENT TOOLS, *supra* note 14, at 5–6.

68. ECONOMIC DEVELOPMENT REPORT, *supra* note 7, at 12.

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. Reinert, *supra* note 62, at 1048.

74. *Id.*

75. *Id.*

76. *Id.*

region, a perfect storm is created for widespread use of an economic tool that provides benefits to an individual municipality at the expense of the neighboring municipalities and the region.<sup>77</sup> This is illustrated by a 2010 TIF, approved by the Bridgeton City Council, which provided \$7.2 million in tax increment financing for the creation of a Wal-Mart on St. Charles Rock Road.<sup>78</sup> This TIF was granted so that Wal-Mart could relocate an older store to a new site that was only two miles away and on the same road as the existing store.<sup>79</sup> The older Wal-Mart was located in two municipalities: 93% of the store was in Bridgeton, while 7% was in St. Ann.<sup>80</sup> When Wal-Mart announced it was seeking to move to another site with expanded space, Bridgeton stepped forward to retain the store and the sales tax revenue.<sup>81</sup> Municipal leadership warned that Wal-Mart would simply close the smaller store and relocate to another city if Bridgeton refused to offer a TIF, and the store would take \$1 million in annual sales tax with it.<sup>82</sup> This is not, as was the original intention of TIF, an example of growth for a region that was starving for growth. Instead, this was the shifting of sales tax revenues to whichever entity was willing to subsidize the most. The site of the original Wal-Mart remains undeveloped today<sup>83</sup>—an empty unused space 93% in Bridgeton and 7% in St. Ann, it is an albatross around the neck of both municipalities.

As these examples make apparent, there are ingrained structural and interpretive challenges with tax increment financing that are stymying true, meaningful growth. Change is desperately needed to improve development in the region.

#### IV. A PRISONER'S DILEMMA IN THE ST. LOUIS REGION

A prisoner's dilemma is a paradox in decision analysis in which two individuals acting in their own best interest pursue a course of action that does not result in the ideal outcome.<sup>84</sup> The typical prisoner's dilemma is set up in such a way that both parties choose to protect themselves at the expense of the

---

77. *Id.* at 1037–38.

78. Margaret Gillerman, *Walmart Store Gets Bridgeton's Approval*, ST. LOUIS POST-DISPATCH, July 8, 2010, [http://www.stltoday.com/news/local/metro/walmart-store-gets-bridgeton-s-approval/article\\_8d158273-5237-5e5d-b0d8-fc23c94dc3ff.html](http://www.stltoday.com/news/local/metro/walmart-store-gets-bridgeton-s-approval/article_8d158273-5237-5e5d-b0d8-fc23c94dc3ff.html).

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*; ECONOMIC DEVELOPMENT REPORT, *supra* note 7, at 12.

84. Xi Yang et al., *Understanding Cooperation in a Single-Trial Prisoner's Dilemma Game: Interactions Among Three Conditions*, 41 SOC. BEHAV. & PERSONALITY: INT'L J. 721, 721 (2013).

other participant.<sup>85</sup> As a result, following a purely logical thought process, both participants find themselves in a worse state than if they had cooperated with each other in the decision-making process.<sup>86</sup>

Evidence suggests that the use of TIF and other incentives provides a positive economic impact for the municipality utilizing the incentive while negatively impacting neighboring municipalities.<sup>87</sup> With that in mind, it is difficult to fault the individual municipalities or their mayors for utilizing TIF and other means to garner as large a portion of the sales tax and other revenues as possible. Individually, there is very little that a municipality can do to alter the prisoner's dilemma that has been created in pursuit of sales tax revenue.<sup>88</sup>

Municipal leaders are faced with the unattractive choice of placing a tax initiative on the ballot or reducing services if they choose not to participate in the pursuit of this additional revenue.<sup>89</sup> Rational self-interest urges the municipality to do what needs to be done to secure its own success, especially if the neighboring community is faced with the same situation and may choose an action that damages its neighbor.<sup>90</sup> Fragmentation leaves municipalities chasing sales taxes and gives national chains, big-box stores, and developers the ability to leverage regional insecurities against municipalities.<sup>91</sup>

A solution must be implemented at a regional or state level so that the competitive advantage of being the wealthiest market for hundreds of miles is restored in the St. Louis region, rather than placed in the hands of Wal-Mart and other big-box developers.

## V. WHAT DEVELOPMENTS ARE WE FUNDING?

### A. *Good TIF*

Not all uses of TIF are bad. Take, for example, the use of TIF in Pagedale. Pagedale is a relatively low-income community in North St. Louis County.<sup>92</sup> Chris Krehmeyer, Beyond Housing's president and chief executive, said in a

---

85. See Wayne Eastman, *How Coasean Bargaining Entails a Prisoner's Dilemma*, 72 Notre Dame L. Rev. 89, 91–92 (1996) (illustrating the typical prisoner's dilemma).

86. See *id.*

87. EAST-WEST GATEWAY COUNCIL OF GOV'TS, *supra* note 6, at iv.

88. ECONOMIC DEVELOPMENT REPORT, *supra* note 7, at 14.

89. *Id.*

90. *Id.* at 12.

91. *Id.* at 12, 14.

92. Christine Hoehner, *How can we create a neighborhood environment that has health, social and economic benefits?*, WASH. UNIV. IN ST. LOUIS INST. FOR PUB. HEALTH, <http://public.health.wustl.edu/people/Pages/Pagedale.aspx> (last visited Oct. 26, 2014); Lisa Brown, *One Year After Opening, Pagedale Bank Branch Fills Unmet Need*, ST. LOUIS POST-DISPATCH, Nov. 28, 2013, [http://www.stltoday.com/business/local/one-year-after-opening-pagedale-bank-branch-fills-unmet-need/article\\_2ce0f560-200f-58da-9965-16c74470aea5.html](http://www.stltoday.com/business/local/one-year-after-opening-pagedale-bank-branch-fills-unmet-need/article_2ce0f560-200f-58da-9965-16c74470aea5.html).

*St. Louis Post-Dispatch* article that rebuilding communities requires better health care, more jobs, good education and economic development, and decent housing.<sup>93</sup> Almost every one of those elements listed above was deficient in Pagedale. The area had seen very little development in recent decades.<sup>94</sup> As a result, Beyond Housing, a nonprofit working in the region, recognized the need for specific types of development to improve the quality of life for residents.<sup>95</sup> Beyond Housing made the effort to establish TIF in an area where almost no one else would invest time or money.<sup>96</sup> The TIF was about \$6.1 million.<sup>97</sup>

Beyond Housing and the Pagedale TIF might be able to get Pagedale out of the vicious cycle described above. While other, more traditional financing sources might balk at investing in one of the more dilapidated communities in the region, Pagedale was willing to try to reinvest in itself in a major way, with a developer who sees the value in working in the community.<sup>98</sup> A Save-A-Lot grocery store, a Midwest BankCentre branch, and Rosie Shields Manor (low-income senior apartments) went into the space developed by Beyond Housing first, and these developments have been transformative for the area.<sup>99</sup> The grocery store is one of the few places where fresh food can be purchased in Pagedale.<sup>100</sup> Midwest BankCentre is the first bank in the community.<sup>101</sup> There were doubts about how the bank would perform in Pagedale, but it has been outpacing expectations. Officials had done a six-year projection on the numbers of accounts, volume of loans, and deposits to expect at the location.<sup>102</sup> Two years into existence, the bank is performing at year-four projections.<sup>103</sup> Most of the bank's work comes in the form of low-cost checking accounts and home-improvement loans.<sup>104</sup> The value the bank adds to the community is great, but it manifests in small ways. Midwest BankCentre's presence in the community is actually allowing residents to improve the quality of the housing

---

93. Tim Bryant, *Beyond Housing Expands Pagedale Footprint*, ST. LOUIS POST-DISPATCH, July 19, 2013, [http://www.stltoday.com/business/local/beyond-housing-expands-pagedale-footprint/article\\_cb49a359-cc07-5b97-b010-6cc759913de9.html?print=true&cid=print](http://www.stltoday.com/business/local/beyond-housing-expands-pagedale-footprint/article_cb49a359-cc07-5b97-b010-6cc759913de9.html?print=true&cid=print).

94. See *Pagedale Determined*, BEYOND HOUSING, <http://www.beyondhousing.org/programs/241-community-building-initiative/community-engagement-efforts/pagedale-determined/> (last visited Oct. 2014).

95. Bryant, *supra* note 93.

96. ECONOMIC DEVELOPMENT REPORT, *supra* note 7, at 13.

97. Rick Desloge, *Save-A-Lot Will Anchor \$6 Million Beyond Housing Development*, ST. LOUIS BUS. J., Nov. 8, 2009, <http://www.bizjournals.com/stlouis/stories/2009/11/09/story9.html?s=print>.

98. See BEYOND HOUSING, *supra* note 94.

99. Bryant, *supra* note 93.

100. ECONOMIC DEVELOPMENT REPORT, *supra* note 7, at 13.

101. Bryant, *supra* note 93.

102. *Id.*

103. *Id.*

104. *Id.*

stock on their own through small loans.<sup>105</sup> This will help fuel higher assessed land values and, in turn, will funnel more money into education for the beleaguered Normandy School District,<sup>106</sup> which Pagedale resides within. Like the Save-A-Lot grocery store and Midwest BankCentre, Rosie Shields Manor has been breathing life into the struggling community. The senior apartments provide adequate housing for individuals on low or fixed incomes. These older residents, who once lived in more dilapidated housing, are safe and secure in their new apartments with staff to help those who, through age or infirmity, would have trouble living independently.

Krehmeyer describes his focus as broad, saying that “[y]ou have to focus on everything. The fabric of a place is never one thing.”<sup>107</sup> Focusing solely on the housing stock of the region would have produced homes that nobody in Pagedale could have afforded to rent or buy, and those who could rent or buy the homes did not want to live in Pagedale because there were few jobs and poor schools.<sup>108</sup> Focusing solely on bringing jobs to the region would have made it difficult to lure workers because of the low quality of housing stock and the absence of quality education.<sup>109</sup> Focusing solely on reviving the flagging St. Louis public education system would have been nearly impossible because the quality of school districts is intrinsically tied to the quality of the housing stock and the employment of the region.<sup>110</sup> Public education is funded by property taxes that are tied to the value of land, so homes with low assessed values provide less in tax revenues and may have trouble adequately supporting the school district.<sup>111</sup> This is a vicious cycle that drags communities down.<sup>112</sup> For any real chance at improvement, a municipality must break out of the cycle.

The use of TIF in Pagedale is just one example of the good that this particular public financing mechanism can do, but its uses are varied. TIF can

---

105. See BEYOND HOUSING, *supra* note 94.

106. BEYOND HOUSING, THE 24:1 INITIATIVE COMMUNITY PLAN 24 (2011), available at <http://www.beyondhousing.org/wordpress/wp-content/uploads/2012/08/24-1-Community-Plan-Final-7-18-11.pdf> [hereinafter THE 24:1 PLAN]. The Normandy School District, at the time of this report, was only “provisionally accredited.” *Id.* Since 2005, enrollment in the district has fallen by 11% while the total decreasing enrollment across the county was only 5%. *Id.* Only 36% of Normandy students even take the ACT, compared to 76% of students across Missouri. *Id.* Those who do take the exam score an average of 16.6 while the average among Missouri students is 21.6. *Id.*

107. Bryant, *supra* note 93.

108. See THE 24:1 PLAN, *supra* note 106, at 14, 22.

109. See BEYOND HOUSING, *supra* note 94.

110. See THE 24:1 PLAN, *supra* note 106, at 24.

111. MICHAEL LEACHMAN & CHRIS MAI, CTR. ON BUDGET & POLICY PRIORITIES, MOST STATES STILL FUNDING SCHOOLS LESS THAN BEFORE THE RECESSION 2 (2014), available at <http://www.cbpp.org/files/9-12-13sfp.pdf>.

112. *Id.* at 1–3.

be used to help fund projects that would have trouble getting off the ground because of location, as in Pagedale, or they can be used to help finance projects that are too large to be supported solely by traditional financing methods.

Another example of a successful use of TIF is the St. Louis Innovation District. The district is a very carefully orchestrated plan combining the influence and reach of multiple institutions in the St. Louis region like Saint Louis University and Washington University in St. Louis.<sup>113</sup> The TIF for this project is a whopping \$463.1 million but could prove to be the future of the St. Louis region. Innovation districts are popping up all over the country and focus on the random collisions that make innovation happen in industry.<sup>114</sup> Though they are still being defined, these new innovation districts have been characterized as having three features: “(1) a hyper-concentration of players in the innovation economy, from big industrial R&D labs to tiny start-ups; (2) the markers of so-called smart urbanism, like robust transit options, mixed-use real estate and walkability; and (3) a regular colliding of people with a range of talents and expertise.”<sup>115</sup> Further, “these districts are geographic areas where leading-edge anchor institutions and companies cluster and connect with start-ups, business incubators, and accelerators.”<sup>116</sup> A Brookings Institute report explains the value of these innovation districts by describing how they help metro regions move up the “value chain of global competitiveness by growing the firms, networks, and traded sectors that drive broad-based prosperity.”<sup>117</sup> Their value is also high because they address challenges in the business environment like sluggish growth, national austerity, and local fiscal challenges.<sup>118</sup>

The innovation district, called Cortex in the St. Louis region, is seeking to achieve all three of those markers listed above.<sup>119</sup> The innovation district is trying to lure young professionals who want to start new businesses with the goal that the professionals will call the region home for a very long time.<sup>120</sup> Cortex is also described in that report as of the “anchor plus” variety of

---

113. @4240, INNOVATION NEWS 1 (2014), available at [http://at4240.com/docs/default-source/pdfs/@4240\\_innovation\\_news\\_1.pdf](http://at4240.com/docs/default-source/pdfs/@4240_innovation_news_1.pdf).

114. Bruce Katz & Julie Wagner, *The Rise of Innovation Districts: A New Geography of Innovation in America*, BROOKINGS INST. 1 (May 2014), available at <http://www.brookings.edu/~media/Programs/metro/Images/Innovation/InnovationDistricts1.pdf>.

115. Nancy Scola, *The “Choreography of Collisions” That Makes Innovation Districts Tick*, NEXT CITY, June 9, 2014, <http://nextcity.org/daily/entry/brookings-institution-innovation-districts-report>.

116. Katz & Wagner, *supra* note 114.

117. *Id.* at 1–2.

118. *Id.* at 2.

119. Brian Feldt, *St. Louis’ Cortex Highlighted in Brookings Report on Innovation Districts*, ST. LOUIS BUS. J., June 9, 2014, <http://www.bizjournals.com/stlouis/blog/biznext/2014/06/st-louis-cortex-highlighted-in-brookings-report-on.html>.

120. Katz & Wagner, *supra* note 114, at 18.

innovation districts.<sup>121</sup> The anchor plus model is “primarily found in the downtowns and mid-towns of central cities” where “large scale mixed-use development is centered around major anchor institutions and a rich base of related firms, entrepreneurs and spin-off companies involved in the commercialization of innovation.”<sup>122</sup> Cortex is located between the two largest educational institutions and medical facilities in the region: Saint Louis University and Washington University in St. Louis.<sup>123</sup> This innovation district is seen, quite literally, as the future of business in the St. Louis region.<sup>124</sup>

The Brookings Institute report makes the case for the importance of innovation districts, stating first that “innovation districts further the ability of cities and metropolitan areas to grow jobs in ways that both align with disruptive forces in the economy and leverage their distinct economic position.”<sup>125</sup> That is, the creation of an innovation district does not hem a community into one field, nor is it only particularly useful for a single industry.<sup>126</sup> Clustering individuals, established companies, sprightly start-ups, and people with the capital to fund new ideas can be a way for any community in the country to start to grow its local economy again.<sup>127</sup>

Second, the report states that “innovation districts can specifically empower entrepreneurs as a key vehicle for economic growth and job creation.”<sup>128</sup> Entrepreneurs’ place in the economy prior to the Great Recession was slightly different than their place today.<sup>129</sup> Before, they were present but hardly lauded members of the business world.<sup>130</sup> Today, they are some of the most sought-after members of the community.<sup>131</sup> Having a thriving start-up economy in a region and being viewed as desirable by entrepreneurs is now a marker of prestige in the post-recession era.<sup>132</sup> These entrepreneurs can create the next Google or Amazon. They can create jobs and taxable revenue like few companies before them, and with amazing speed as well.<sup>133</sup>

Third, innovation districts can serve to minimize the inequality in a community. This is because they are able to “grow better and more accessible

---

121. *Id.* at 2.

122. *Id.*

123. *Id.*

124. Brian Feldt, *Cortex could be innovation hub of Midwest*, ST. LOUIS BUS. J., Mar. 14, 2014, <http://www.bizjournals.com/stlouis/print-edition/2014/03/14/cortex-could-be-innovation-hub-of-midwest.html>.

125. Katz & Wagner, *supra* note 114, at 4.

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. Katz & Wagner, *supra* note 114, at 4.

132. *Id.*

133. *Id.*



jobs at a time of rising poverty and social inequality.”<sup>134</sup> Learning coding or web design does not necessarily require advanced, or even college, degrees.<sup>135</sup> Computers have democratizing effects on the economy.<sup>136</sup>

Fourth, the Brookings Institute contends that “innovation districts can reduce carbon emissions and drive denser residential and employment patterns at a time of growing concern with environmentally sustainable development.”<sup>137</sup> Sustainable development that is at odds with the sprawling development surrounding the central city of St. Louis seems like a goal that is out of step with many of the others.<sup>138</sup> Yet taken with the final important facet of innovation districts, it makes more sense.<sup>139</sup>

Finally, “innovation districts can help cities and metropolitan areas raise revenues and repair their balance sheets at a time when federal resources are diminishing and many state governments are adrift.”<sup>140</sup> Pairing the goals of sustainable development in the region with a sustainable local budget makes sense.<sup>141</sup> Sprawling development requires more resources spread over a wider region.<sup>142</sup> More miles of roads and sewer must be constructed and maintained in order to service residents that live across ever-expanding exurbs.<sup>143</sup> Denser development keeps the infrastructure costs lower and keeps the tax base for a community more densely settled in one place, as opposed to spreading it across the region.<sup>144</sup> The report cites this aspect as an important feature of innovation districts because it is a remarkable departure from much of the development strategies used prior. Sprawling suburban research campuses were costly not just to build, but to maintain as well. Denser development can reduce the long-term costs of maintaining infrastructure by reducing the amount that must be replaced and increasing the number of taxpaying entities in the space that will pay into the maintenance of the facilities.

This innovation district is meant to be an investment in the future of the region, much the same way the Pagedale TIF is viewed as an investment in the future of that community. Cortex would not have happened, due mainly to the

---

134. *Id.*

135. *Id.* at 25.

136. *Id.* at 5.

137. Katz & Wagner, *supra* note 114, at 5.

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. Katz & Wagner, *supra* note 114, at 5.

144. *Id.* at 4.

substantial size of the investment upfront, if not for tax increment financing.<sup>145</sup> The Pagedale development would not have happened, due to the location in a depressed or blighted neighborhood, if not for tax increment financing.<sup>146</sup> These are the “good TIFs.” These are major developments, publicly subsidized, to make meaningful change happen. These are also, sadly, not the norm.<sup>147</sup>

#### B. *Bad TIF*

It is, perhaps, unfair to characterize these instances of tax increment financing as “bad TIFs,” but it is unfortunately apt in some instances.<sup>148</sup> The Gravois Bluffs Redevelopment Project (Fenton, MO), Ballwin Town Center TIF Redevelopment (Ballwin, MO), and Highway 141/Manchester Road Redevelopment Area (Manchester, MO) are all projects located in St. Louis County where the major focus of each project was centered on retail development.<sup>149</sup> Wal-Mart, Marshalls, Kohl’s, Petco, OfficeMax, Target, Best Buy, Bed Bath & Beyond, Lowe’s, Stein Mart, and other chain restaurants provide considerable amounts of sales tax revenue for the municipality that each development is in.<sup>150</sup>

As this article has already discussed, there is a constant fight happening between the municipalities of St. Louis County for sales tax revenues.<sup>151</sup> In that constant battle, TIF is the primary weapon and sales tax revenue from big-box retail development is the ultimate spoils of war.<sup>152</sup> Tax increment financing abuse has made “subsidies a permanent fixture of development in our community.”<sup>153</sup> But too many TIFs have failed at their one purpose: economic growth. The East-West Gateway Council of Governments concluded that TIFs “have created jobs in our community at the rate of one retail job for every \$370,000 in taxpayer subsidies. That is not the road to growth—it is a

---

145. Tim Bryant, *City panel approves TIF help for CORTEX*, ST. LOUIS POST-DISPATCH, Dec. 12, 2012, [http://www.stltoday.com/business/columns/building-blocks/city-panel-approves-tif-help-for-cortex/article\\_9081d3bc-99f0-538a-8112-f3964cc74c4d.html](http://www.stltoday.com/business/columns/building-blocks/city-panel-approves-tif-help-for-cortex/article_9081d3bc-99f0-538a-8112-f3964cc74c4d.html).

146. Chris Krehmeyer & Mary Carter, *Pagedale sets an example*, ST. LOUIS POST-DISPATCH, Feb. 16, 2011, [http://www.stltoday.com/news/opinion/pagedale-sets-an-example/article\\_207270d6-8a0d-5877-869f-c71bdab831bb.html](http://www.stltoday.com/news/opinion/pagedale-sets-an-example/article_207270d6-8a0d-5877-869f-c71bdab831bb.html).

147. C.D. Stelzer, *Easy Money*, RIVERFRONT TIMES, June 2, 1999, <http://www.riverfronttimes.com/1999-06-02/news/easy-money/full/>.

148. *Id.*

149. *Id.*

150. *Id.*

151. EAST-WEST GATEWAY COUNCIL OF GOV'TS, *supra* note 6, at 63.

152. Stelzer, *supra* note 147.

153. DAVID STOKES, SHOW-ME INST., *THE USE OF TAX INCREMENT FINANCING IN THE CITY OF SAINT LOUIS 2* (2013), available at <http://showmeinstitute.org/publications/testimony/corporate-welfare/1046-the-use-of-tax-increment-financing-in-the-city-of-saint-louis.html>.

road to poverty.”<sup>154</sup> Tax increment financing abuse “has authorized local leaders to make tax decisions that may benefit their immediate city at the expense of everyone else.”<sup>155</sup> If one municipality succeeds at the cost of all municipalities surrounding it, then one can hardly say that the economy is improving at all.

The realities of tax increment financing in the region are unfortunate for many. An East-West Gateway Council of Governments report from 2011 suggests that for every \$1 million of TIF investment, about six or seven jobs and about \$400,000–\$500,000 in taxable sales are added to that zip code.<sup>156</sup> That same \$1 million TIF investment, however, corresponds to a \$14,000 loss in taxable sales for the community next to the TIF.<sup>157</sup> Every \$10 million in TIF investment in a single community also corresponds to a loss of one job in every municipality in the region.<sup>158</sup> Tax increment financing is not being used to fuel development, draw in outside investment, or lure new residents to a community.<sup>159</sup> It is being used to shift the same jobs and tax revenues from one municipality to the next.<sup>160</sup>

## VI. CONCLUSION

The utility of tax increment financing cannot be denied, and in fact, it is a tremendously useful tool that is available to large and small communities alike. TIF has been used to make many useful and worthwhile developments a reality. Yet it has also been used to publicly subsidize the developments of giant national and multinational retailers. The issue, then, should not be whether tax increment financing is used at all, but instead what can be done to guard the community against the abuse of this economic development tool.

Reforming the TIF Commission so that it has some greater power to enforce or push for the determination it comes to, limiting the ease with which a municipal government can override the TIF commission determination, narrowing the definition of the term “blight” to be less all-encompassing, and shoring up the weak Missouri but-for test would go a long way in eliminating the abuse of tax increment financing in the St. Louis region. The prisoner’s dilemma St. Louis municipal leadership finds itself in is one of the driving factors for TIF abuse in the St. Louis region. If the leadership of the municipalities of St. Louis County and the City of St. Louis would work more closely, and with less of an eye toward undercutting each other, TIF abuse

---

154. *Id.*

155. *Id.*

156. EAST-WEST GATEWAY COUNCIL OF GOV’TS, *supra* note 6, at 28.

157. *Id.*

158. *Id.*

159. Stelzer, *supra* note 147.

160. EAST-WEST GATEWAY COUNCIL OF GOV’TS, *supra* note 6, at 24.

would also be reduced. This would require and promote a greater sense of regional unity as opposed to regional competition. Yet if regional unity is paired with structural and interpretive changes to TIF use, the region should be able to shake the habit of using tax increment financing everywhere, for everything.

