American Planning Association
Planning & Environmental Law
February 2008 Vol. 60, No. 2 | p.3

Commentary

TIF, Greenfields, and Sprawl: How an Incentive Created to Alleviate Slums Has Come to Subsidize Upscale Malls and New Urbanist Developments

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Tax-increment development districts have become the financial underpinning of regional smart growth, through the fair funding and efficient development of infrastructure before new homes are built.

—Will Steadman, SunCal Companies, New Mexico[1]

Economic development incentives are an obscure subject, receiving little news media attention. One, however, has provided colorful fodder for many a newspaper. "Created to combat sprawl, tax breaks now subsidize it," moaned the *Kansas City Star*. "Yuk! Ick! A Farm!" chided the *St. Louis Post-Dispatch*. "Oh, those blighted suburbs," editorialized the *Des Moines Register*.[2]

The culprit is TIF—tax increment financing—a complicated device for subsidizing development that has morphed from a tool for inner-city revitalization into a widely used suburban program frequently associated with disputes about sprawl. For years the most controversial issue within the economic development profession, it is now emerging as a significant issue in land use planning. For example, the Council of Development Finance Agencies (CDFA), the nation's largest association of financing professionals, has for the past few years sought to promote best practices in TIF, including a focus on its original policy intent for urban revitalization. CDFA's 2007 training conference on TIF was substantially oversubscribed and it projects substantial TIF content for its 2008 annual meeting. Similarly, the 2008 New Partners for Smart Growth conference organized by the Local Government Commission included a workshop on TIF and other financing devices.

"Among our members today, TIF is certainly the most widely explored and implemented finance tool, and the issue on which they are most eager to receive professional development," said CDFA executive director Toby Rittner. "The issue of the appropriate use of TIF is a recurring debate in many states." In 2007, CDFA published a best practices reference guide on TIF jointly with the International Council of Shopping Centers.

WHAT IS TAX INCREMENT FINANCING (TIF)?

TIF is an economic development incentive enabled under state law and in turn awarded by local governments. As regulated by state statute, a locality designates an area as a "TIF district" for redevelopment (or in the case of a greenfield site, for new development). When new construction occurs within that district, property values and tax assessments go up and therefore property taxes also rise. When that happens, the tax revenue is split into two streams.

The first stream, derived from the "base value" or pre-TIF assessment, continues to go to local taxing bodies as it did before (i.e., to schools, city, county, etc.). The second stream—made up of all the increase or "tax increment"—gets diverted to benefit only the new development activity in the TIF district. This diversion can last as many as 15, 23, even 40 years, depending on each state's rules (durations that can strain the idea that a TIF district is "priming the pump" to restore private-sector confidence).

The diverted increment can support the issuance of debt (TIF bonds) or it can be used on a "pay-as-you-go" basis. The funds are typically restricted to paying for infrastructure or other public

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1. Will Steadman, *Commentary: SunCal plan has city's sustainable future in mind*, Albuquerque Tribune (Sept.18, 2007).

2. Chris Lester and Steve Nicely, *Giveaways Set the Stage for a Loss*, Kansas City Star (Dec. 20,1995). *Editorial, Yulk! Ick! A Farm*, St. Louis Post-Dispatch (Jan.11, 2005). *Editorial, Oh, those blighted suburbs,* The Des Moines Register (April 10, 2001).

As originally enacted, TIF in many states required that developers certify that "but for" the TIF subsidy, the project would not occur.

improvements; they are also commonly allowed for brownfield clean-up, land parceling, demolition or other site preparation. However, in some states TIF revenues may even be directly paid to developers to reimburse private construction costs, effectively increasing their rates of profit.

In addition to property tax diversions, some states also allow incremental increases in the local share of sales taxes to be "TIFed," but not the state share, which is usually largest. However, as detailed below, New Mexico in 2006 began to allow all three increments of its Gross Receipts Tax to be captured for TIF—diverting large sums of revenue from the state as well as from cities and counties.

As originally enacted, TIF in many states required that developers certify that "but for" the TIF subsidy, the project would not occur. This was intended as a safeguard to ensure that the TIF truly met the definition of "incentive"; that is, that it caused something to occur that would not otherwise have happened—to "leverage" private investment. However, the "but for" test has in most states become at best a pro forma gesture, and at worst a fig leaf enabling public officials to avoid the charge of "giveaway" and claim credit even for projects that would have occurred anyway.

Many early TIF statutes restricted TIF to areas with "blight." (California pioneered TIF in 1952; today it is on the books in the District of Columbia and every state but Arizona.[3]) However, most state statutes defined "blight" with a string of descriptors that lacked hard quantitative thresholds. Since the 1980s, a combination of loose state oversight of local practices, state legislative relaxation, and state court decisions has given local governments in most states wide discretion in determining which areas are "blighted" enough for TIF. As detailed below in a retail case, this has even come to include upscale suburban shopping malls in Missouri.

TIF AND THE ELUSIVE DEFINITION OF 'BLIGHT'

A central legal issue in the long-term deregulation of TIF that has enabled it to become embroiled in controversies over greenfield developments and sprawl is the definition of "blight," the condition TIF is intended to cure.

As urban historian Colin Gordon has chronicled,[4] the "condition" and "cure" frame that grew up around physical blight traces back to Progressive-era model tenement ordinances intended to address urban slum conditions. With little legal power or financial capacity to shape development, cities began to invoke blight as something it could regulate under police powers—as a threat to public health, safety, and morals.

The Great Depression brought federal and state attention—and a typical definition of "slum" from the National Association of Housing Officials that laundry-listed broad, vague terms such as "dilapidation, obsolescence, overcrowding, poor arrangement or design, lack of ventilation, light or sanitary facilities, or a combination of these factors [that] are detrimental to the safety, health, morals, and comfort of the inhabitants thereof." When most states' TIF statutes were enacted in the 1970s and 1980s, these Progressive-era and Depression-era definitions were routinely borrowed, sometimes verbatim, in defining TIF-eligible redevelopment areas.

In addition to the "condition" and "cure" frame that informed TIF statutes, another kind of qualifying criterion has been reflected in blight or TIF-eligibility definitions: the idea that an area is not realizing its greatest potential for commercial use or tax revenue. These amendments tended to expand TIF's economic development mission more explicitly into commercial and industrial projects, and with fewer geographic restrictions. For example, Virginia deleted the word "blight" from its TIF statute in 1990, enabling localities to TIF any area in the interest of promoting "commerce and prosperity." Other states granted localities broad discretion to designate TIF where they find that an area may have future blight.

State-enabled enterprise zones, not to be confused with federal empowerment zones, are another common geographically targeted, pro-urban revitalization incentive. A few states—Arkansas, Kansas, and South Carolina—have declared the entire state to be an enterprise zone. Others, like Ohio, which has more than 300 zones, responded to the "economic war among the states" by revising their program's legislative intent: It is no longer to revive older areas; it is to reduce business property taxes to discourage Ohio jobs from moving to other states. Some of those other states, like New York with its "Empire Zone" program, have loosened their rules by allowing zones to grow in both size and number and to expand noncontiguously into previously ineligible areas, including suburban office parks.[5]

The cumulative effect of these expansive definitions of blight, pro-discretion court decisions, and loose state oversight of local practices has been to grant local governments an ever-widening latitude in granting TIF. A handful of states have enacted modest reforms, but sometimes, as in Illinois and Minnesota, only after enormous TIF-district proliferation.

3. The Florida Supreme Court recently held that bonds that rely upon TIF require a referendum. *See* Strand v. Escambia County, 2007 WL2492294.

4. Colin Gordon, *Blighting the Way: Urban Renewal, Economic Development, and the Elusive Definition of Blight*, Fordham Urban Law Journal, Vol. 31, No. 2 (Jan. 2004).

5. Alyssa Talanker and Kate Davis, *Straying from Good Intentions: How States Are Weakening Enterprise Zone and Tax Increment Financing Programs*, Good Jobs First, June 2003. *Available* at www.goodjobs-first.org/pdf/straying.pdf.

Blight-related litigation against specific TIF projects has typically been initiated by rival commercial entities (such as malls) that believe a TIF-subsidized project will undermine their business.

Iowa, like Minnesota, has more than 2,000 TIF districts and their migration into greenfield projects has provoked some sharp debates. In 1992, the West Des Moines City Council created a greenfield TIF district for the $50 million Glen Oaks Golf Course project. The city awarded it $2.3 million in TIF for the construction of sewer lines. The development included exclusive market rate housing and led the way for further use of TIF on residential market rate projects in Iowa. Opponents of the TIF deal formed "Concerned Citizens for Representative Government," and launched a successful bid to unseat the standing mayor. The founder of Concerned Citizens was elected mayor in a 1993 special election.

Blight-related litigation against specific TIF projects has typically been initiated by rival commercial entities (such as malls) that believe a TIF-subsidized project will undermine their business. However, state court decisions have generally upheld local discretionary authority to grant TIF, including rulings akin to the U.S. Supreme Court's *Kelo* decision upholding local government's right to use eminent domain to transfer property from one private owner to another in the service of economic development.[6]

A factually remarkable but legally typical case arose in Missouri, where there has been a heated policy debate about TIF for almost a decade, largely triggered by the use of TIF for new retail space and the resulting harm to existing stores. The problem is especially severe in the St. Louis area, where the East-West Gateway Council (the region's metropolitan planning organization) has documented that most TIF projects occur in wealthy suburban malls to help developers offset high land prices.

Westfield America, a real estate investment trust, bought West County Center in Des Peres, an upscale suburb of St. Louis (2000 median family income: $106,195). Announcing it wanted to expand the center to include Nordstrom and Lord & Taylor, Westfield asked for a $29 million TIF. The Des Peres Board of Aldermen declared the mall to be "blighted" even though it was almost 100 percent occupied and grossing more than $100 million a year. Des Peres citizens, together with the owners of a rival mall, sued to block the deal, but lost at trial and before the Missouri Court of Appeals.[7]

Endorsing a proposed Missouri reform, the CEO of Schnuck's, a major grocery chain there, wrote: "Over time, the definition of 'blight' has become more or less meaningless. . . . TIF has in many cases become just a subsidy offered to entice a developer for the benefit of enhancing a municipality's sales tax base."[8]

TIF: 'FREE LUNCH' FOR CITIES AND THE 'FISCALIZATION OF LAND USE'

In many states, city governments have the authority to designate a TIF district by themselves even though the local property and/or sales tax increments will be diverted from multiple taxing authorities. When that happens, county governments and school districts typically stand to lose the most revenue. In some states, payments in lieu of taxes (PILOTs) may be negotiated to offset such losses, although the control and allocation of PILOTs can be a source of tension. Additionally, some states, through their school-funding equity formulas, effectively grant school boards financial relief for at least a part of their TIF losses.[9]

That is, in a city-initiated TIF, school districts and counties can become passive investors in projects that rebuild the cities' infrastructure. Or in a county-initiated residential TIF, a school district may gain new students to educate but not receive its normal property tax revenue increase to cover that expense. John Lefebvre, then treasurer of Adams County, Colorado, denounced the "TIFing" of 240 greenfield acres for big box retail. Eyeing a $26.9 million tax increment "without a penny [of it] accruing to the county," he pointed out that if a murder occurs at the mall, the county coroner, county district attorney, county sheriff, county jail, and county court would all incur expenses.[10]

In Chicago, an analysis of 36 TIF districts estimated they will divert $1.3 billion in tax revenues that otherwise would have gone to schools and other public services, because the property values in the districts were rising prior to the creation of the districts. However, once within a TIF district, all the properties' incremental tax increases are captured and diverted.[11]

The same intergovernmental dynamic is true when cities or counties grant property tax abatements, or exemptions, that may cover multiple taxing jurisdictions. In response to these tensions, a handful of states have enacted rules that effectively shield the school increment from TIF and/or abatements, or grant school boards some form of authority or at least consultative rights about their increments.

These revenue tensions within TIF rest atop a broader intergovernmental problem: the "fiscalization of land use." For three reasons, local governments in many states face chronic budget squeezes that can distort their economic development priorities. First, since the 1970s, there has been a long-term decline in federal aid to cities. Second, when states face budget deficits, one common way they resolve

6. The Institute for Justice, the Libertarian litigation center that assisted plaintiff Kelo, subsequently created the Castle Coalition (www.castlecoalition.org) to provide legal support nationwide against "eminent domain abuse." Significantly, a large share of the cases the Coalition cites as current disputes and success stories involve residential properties threatened with displacement by retail and/or commercial projects.

7. Josh Reinert, *Comment: Tax Increment Financing in Missouri: Is It Time for Blight and But-For to Go?* 45 St. Louis University Law Journal1019 (Summer 2001).

8. Craig D. Schnuck, letter to Missouri State Sen. Wayne Goode regarding Senate Bill172, Feb. 24, 2003.

9. Good Jobs First for the National Education Association, *Protecting Public Education from Tax Giveaways to Corporations: Property Tax Abatements, Tax Increment Financing, and Funding for Schools*, January 2003. National Association of Counties, *Tax Increment Financing: An Alternative Economic Development Financing Technique*, Issue Brief (January 2000).

10. John Lefebvre, *Tax increment financing impacts greenfield development*, National Association of Counties, undated article in Finance & Intergovernmental Affairs.

11. Neighborhood Capital Budget Group, *Who Pays for the Only Game in Town?* undated. *Available at* www.ncbg.org/documents/IMPACT%20STUDY%20FINAL.doc.

Scholars of sprawl point out that one of its root causes is the lack of regional cooperation and zero-sum tax-base competition among neighboring localities within metropolitan areas.

them is to reduce state revenue-sharing with local governments. Third, some states have enacted "tax revolt" ballot initiatives or legislation (beginning with California's proposition 13 in 1978) that cap the rate at which property tax assessments may rise (and thereby depress property tax revenues).

Forced to find other sources of revenue, cities have a perverse incentive to adopt economic development and land use strategies that stray from traditional measures of development (such as rising living standards or declining dependency). The perverse incentive prompts them to maximize revenue (so they favor big box stores that generate a lot of local sales tax revenue) and minimize spending (so they shun multifamily housing, because it raises costs for public education). A survey of local development officials in California,[12] for example, found that their first priority in developing or redeveloping land is to attract big box retail (with one and a quarter cents of the sales tax going to the local government where the sale occurs)—not to create good jobs or build affordable housing.

When localities make such distorted decisions, TIF is led astray: Instead of being used where it is needed most, to leverage investment in disinvested areas, it becomes most attractive to use in areas where it can sequester the most sales and/or property tax for the locality—i.e., where it is needed least because the project is attractive for private investment. And greenfields, because they have very low "base value" property tax assessments and no sales tax base values at all, offer by far the largest increments.

The land use fiscalization dynamic can play out in central cities as well as newly developing suburbs. The District of Columbia grew under-retailed beginning in the 1970s as department stores and other retailers closed while suburban malls opened in surrounding Virginia and Maryland, costing the District chronic sales tax "leakage." The District also has federal strictures on its ability to tax income and a large amount of tax-exempt land. Thus especially needy for sales tax revenue, but short of it, the District has eagerly offered TIF deals to big box retailers such as Target and Home Depot that have agreed to open stores, even though the stores are projected to enjoy high sales because they are entering a very underserved market.

Exclusionary housing practices and auto-oriented big box retail are, of course, classic elements of suburban sprawl. Scholars of sprawl point out that one of its root causes is the lack of regional cooperation and zero-sum tax-base competition among neighboring localities within metropolitan areas. This is especially evident in retail development, where the suburban malls that undermined downtown shopping districts in the 1970s and 1980s are today undermined by the arrival of "power centers" and "lifestyle centers."

Greenfield sites on the fringes of metro areas, with large parcels of undeveloped land, have the advantage attracting such projects. However, building ever more shopping space begs the question: How much is enough? The U.S. is arguably well overbuilt in retail space, some of it subsidized by TIF. The National Trust for Historic Preservation estimates the nation has 38 square feet of store space per capita, compared to other industrialized nations with between 1.5 and eight square feet (and eight square feet in the U.S. 30 years ago). A 2001 study by the Congress for the New Urbanism and PriceWaterhouseCoopers about "grayfields"— the euphemism for dead malls—found that 7 percent of regional malls were already grayfields and another 12 percent were "potentially moving towards grayfield status in the next five years"; that would be 389 dead malls.[13]

When retailing becomes oversaturated, sales are cannibalized from older malls and main street districts, imperiling their contributions to the tax base and exacerbating the fiscal plight of central cities and older suburbs. Since vacant or underutilized properties typically get reassessed and pay much lower property taxes, dead malls mean big tax revenue drops. For example, Northridge Mall in Brown Deer, Wisconsin, went from an assessed value of $107 million in 1990 to a grayfield sale value of $3.5 million in 2001.[14]

TIF AND SPRAWLING 'JOB PIRACY'

Even if a suburb's economic development strategy is not distorted by a need for sales tax revenue, TIF may become a tool with which it can entice companies to relocate from elsewhere in the same metro area (and thereby win jobs and long-term tax-base growth). When there is no regional mechanism to promote cooperation and TIF's targeting rules have been relaxed so that even newly developing areas can create TIF districts, intraregional "job piracy" is inevitable.

Detailed evidence of this process has become available thanks to Minnesota's exemplary economic development disclosure law which since 2000 has required localities to report when incentives pay for corporate relocations. An analysis of 86 such deals involving 8,200 jobs in the Twin Cities metro area found an overwhelming pro-sprawling bias.[15] Three-fourths of the deals involved TIF: typically a suburb

12. Paul G. Lewis and Eliza Barbour, *California Cities and the Local Sales Tax*. Public Policy Institute of California,1999. Their survey covered all 471 California cities in existence in1998.

13. Kennedy Lawson Smith, the 19-year director of the National Trust for Historic Preservation's Main Street program, 2001 estimate, relayed in May 21, 2004, correspondence. Retail Forward, Inc., *United States Retail Environment*, Global Economic and Retail Outlook (May 2003, p. 92). Kennedy Lawson Smith, *Main Street at 15*, Preservation Forum,1992. PriceWaterhouseCoopers Global Strategic Real Estate Research Group, *Greyfield Regional Mall Study* for Congress for the New Urbanism, January 2001. *Available at* www.cnu.org/malls. A grayfield or dead mall is one with sales of less than $150 per square foot per year. CNU notes that grayfields tend to be located on suburban arterial streets and therefore are transit-accessible, even transit hubs, whereas thriving malls tend to have "freeway visibility and direct ramp access." *Greyfields into Goldfields*, CNU and PWC, February 2001. *Available at* www.cnu.org/malls.

14. Matt Kures, *Greyfields and Ghostboxes: Evolving Real Estate Challenges*, Let's Talk Business (May 2003). Publication of the University of Wisconsin-Extension, Center for Community Economic Development.

15. Greg LeRoy and Karla Walter, *The Thin Cities: How Subsidized Job Piracy Deepens Inequality in the Twin Cities Region*, Good Jobs First (December 2006).

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giving free land to small manufacturing companies to relocate into newly created industrial parks.

Four-fifths of the subsidized relocations were outbound and 22 companies moved more than 10 miles outward from the Twin Cities' center. The winning suburbs had higher growth rates (as measured by property tax wealth), less racial diversity, higher household incomes, and less poverty. Sixty of the 86 companies ended up in locations inaccessible by public transit, including 24 companies that were accessible before moving.

The relocations also sketch the region's long-term march of sprawl. A third of the relocations moved out from what used to be the seven-county Twin Cities MSA and into one of four additional Minnesota counties that the metro area now includes (or they began and ended within the four outlying counties). The four fringe counties are the region's most thinly populated and newly developing.

Findings such as these are consistent with other analyses that suggest most economic development incentives are actually windfalls, not determinants. Newer suburbs have numerous advantages competing with inner cities and inner-ring suburbs for new investment: more undeveloped and uncontaminated land, newer infrastructure, a more educated workforce, less dependency, and higher incomes. As one Twin Cities civic wag put it: "Subsidizing economic development in the suburbs is like paying teenagers to think about sex."[16]

Cabela's: Case Study in Greenfield Big Box Use of TIF

Cabela's is the nation's largest marketer of outdoor sporting goods. Long a privately owned catalog seller with only one store in Nebraska, Cabela's went public in 2004 and has been on an aggressive campaign to build enormous "destination" stores of up to 200,000 square feet. It claims that each store draws millions of shoppers a year, many of them from hundreds of miles away. Indeed, newspaper accounts feature loyal shoppers making trips they liken to pilgrimages.

Cabela's auto-dependent greenfield footprints are generally located "in towns and municipalities that do not have a large base of commercial businesses."[17] Cabela's says it has never built a store without an economic development incentive; TIF is the most common. To date, according to news reports and competitor Gander Mountain, Cabela's has received or been pledged about $500 million in incentives for just 20 facilities. Bass Pro, number two in the market, is also on an aggressive megastore build out; it has received more than $200 million in recent years.[18]

Cabela's and Bass Pro justify their incentive demands by touting their megastores as economic development "destinations," like Disney World or Six Flags, spinning off ancillary jobs and tax benefits from hotels, restaurants, and other tourism-style spending. Using this argument, they have won the enactment of new "high-impact retail" incentives that include TIF in South Carolina and Ohio.

Some Cabela's stores have an unusual pseudo-museum feature that blurs public space with private enterprise to a remarkable extreme. The stores' "Conservation Mountain" centerpieces are "museum-quality wildlife displays" of big-game taxidermy and large aquariums. In some stores, the space devoted to these displays is legally structured as a condominium within the store and owned by the local government—making it property-tax exempt.

Case Study: Albuquerque Struggles with Greenfield New Urbanist TIF Demands

The most contentious policy debate on TIF for greenfield projects is now playing out in Albuquerque. Since the state of New Mexico drastically liberalized its dormant TIF law in 2006, the city has faced aggressive demands for TIF from developers planning two very large greenfield new urbanist projects. The debate takes TIF beyond big box retail and market-rate housing and asks: Should an incentive originally created to alleviate slums be allowed to subsidize premium developments on the urban fringe?

New Mexico's property-tax TIF law was effectively dormant; the 2006 amendments to what are called Tax Increment Development Districts, or TIDDs, created a very aggressive new program. No longer was TIF limited to redevelopment. Most significantly, the new law greatly expanded the tax base that could be diverted, even adding a state increment. In addition to a fraction of local property taxes, TIDDs could now capture shares of all three increments of the Gross Receipts Tax (GRT)—state, city, and county—and TIDD could back bonds. This was a remarkable state action with profound implications for how public services driven by future growth will be paid for, given that the GRT (a broad-based business activity tax including construction) provides a very significant share of revenue for both localities and the state. It provided 32 percent of New Mexico's recurring general fund revenue in FY 2007 and 73 percent of Albuquerque's.[19]

Lobbying heavily in Santa Fe for the TIDD statute change was Forest City Covington NM, LLC, a joint venture between Cleveland-based Forest City Enterprises (the publicly traded firm

16. Lyle Wray, Minneapolis Citizens League, as quoted in Eileen Weber, *Corporate Subsidies Often Defeat Own Purposes*, St. Paul Pioneer Press (Feb. 28,1999).

17. Cabela's Inc., Form10-K filing to the U.S. Securities and Exchange Commission for the fiscal year ending December 31, 2005, page 48.

18. This section draws from Greg LeRoy, *Not Very Sporting: Outdoor Sporting Goods Retail Subsidy Scam*, Multinational Monitor (Vol. 27, No. 5, September/October 2006).

19. City of Albuquerque, Five Year Forecast, Fiscal Year 2007–2011, December 2006. State of New Mexico, October 2007 Consensus Revenue Estimate Update, Legislative Finance Committee Revenue Brief, Oct. 23, 2007.

Some councilors were also worried that another big greenfield project also seeking a TIDD would further shortchange the city's disinvested areas.

with $9 billion in assets that redeveloped the Stapleton airport site in Denver) and Covington Capital Partners of Santa Monica, California. The Associated Press reported that Forest City Covington spent $220,000 in monetary and in-kind contributions to New Mexico politicians in 2006, more than any other organization with a lobbyist registered in the state. About $150,000 of that sum benefited Gov. Bill Richardson as he won reelection, including $21,000 worth of private-jet flights.[20]

Forest City Covington was formed to build Mesa del Sol, a 12,900-acre new urbanist, mixed use project south of Albuquerque International Airport. Three times larger than Stapleton, the site may be the largest tract of undeveloped land within one U.S. city. Over a 35- to 50-year build out, the project envisions thousands of jobs (with a few companies already recruited), 37,500 homes, 18 million square feet of office and industrial space, a town center, and a big box retail center adjacent to an Interstate exchange.

Moving quickly to exploit its legislative victory, Forest City Covington applied for five TIDDs (to coincide with construction phases) to pay for Mesa del Sol's infrastructure, requesting the maximum allowable diversion of 75 percent of city and state GRT increments (as well as a smaller allowable share of property taxes); the City negotiated its GRT share down to 67 percent. In early 2007, Forest City Covington also won state legislation and Richardson's signature authorizing up to $500 million in TIDD bonds to be backed by the state GRT share alone.

A Fiscal Impact Report by the state's Legislative Finance Committee found the state will eventually break even, but as a caveat it noted that if only 10 percent of the economic activity in the Mesa del Sol TIDD comes from other parts of the state, or would otherwise have happened elsewhere in the state, then the project will have a negative fiscal impact on the state. This break-even finding, critical to Mesa del Sol's TIDD financing, rested upon the assumption that zero percent of the project's business activity—including retail activity—will be pirated. Thirty-eight percent of the projected increment is to come from retail sales alone.[21]

Soon after the city approved the Mesa del Sol TIDD, some members of the Albuquerque City Council had serious misgivings. Previously, developers bore most infrastructure costs, paving residential streets and paying impact fees for arterial roads, water, and sewer. Now, the council members worried that the size and duration of the TIDD would divert too much revenue and deprive the city of resources it will need to revitalize older areas of the city, undermining a Planned Growth Strategy (PGS) they had recently adopted after a protracted public debate. The PGS estimated the city's infrastructure rehabilitation needs at $1.9 billion.

Some officials were also concerned about the potential for the new projects pirating retail and other business activity. The state's TIDD law has a "no net expense" provision, intending that a project will not create a net fiscal loss for the state or locality. However, as with the state fiscal impact study, two studies (performed by private consultants) used the assumption that Mesa del Sol would draw zero percent of its GRT from elsewhere in the state—that is, all job creation would be new to the state, as would all commercial tenants and all retail sales, including those at the big box center by the Interstate.

Some councilors were also worried that another big greenfield project also seeking a TIDD would further shortchange the city's disinvested areas. Irvine, California-based SunCal claims to be the largest privately held company in the West specializing in master planned communities. With a coinvestor, in late 2006 it purchased 55,000 acres stretching from Albuquerque's west side into Bernalillo County. (The enormous parcel dated back to a Spanish land grant of 1692.) For its first phase, the 1,500-acre Lower Petroglyphs project, SunCal now sought the same TIDD-for-infrastructure deal Forest City Covington had won for Mesa del Sol.

Both companies have employed some of the nation's most prominent land use practitioners. Forest City Covington hired new urbanist planner and architect Peter Calthorpe to develop the master plan for Mesa del Sol. SunCal employed architect and urban designer Stefanos Polyzoides to design its New Mexico projects. Calthorpe and Polyzoides, among other things, helped found the Congress for the New Urbanism. SunCal also hired two prominent growth management experts: Rutgers University economist Robert Burchell (a pioneering scholar on the infrastructure savings from compact development, who performed a fiscal impact analysis) and attorney Robert Freilich (former editor of the American Bar Association's *Urban Lawyer*).[22]

Beginning in the spring of 2007, City Councilor Michael Cadigan (who represents part of the west side) and other council members held hearings and proposed to amend the city's TIDD ordinance. Their proposals ranged widely over time, and their debate was slowed by a fall 2007 council election. At one turn, they sought to roll back the state's 2006 action, so that at least within the city limits of Albuquerque, future TIDDs would effectively revert to being

20. Barry Massey, *Richardson Signs Bill Benefiting Donor*, Associated Press (April 10, 2007). Jeff Jones and Andrew Webb, *Governor Takes Heat for Plane Trips*, Associated Press (April 11, 2007).

21. Norton Francis, Legislative Finance Committee, *Mesa Del Sol Development Gross Receipts*. Fiscal Impact Report, February 28, 2007.

22. Freilich was denied the chance to testify for SunCal at a May 2007 Albuquerque City Council committee hearing when a councilor raised the issue of his prior work for the city on the Planned Growth Strategy. However, in the Summer 2003 issue of NATURAL RESOURCES JOURNAL, he wrote: "As growth occurs in urbanized and planned urbanizing areas, adequate public facility ordinances and impact fees are essential to assure that development pays its fair share of infrastructure costs generated by the development." He defined impact fees as "mandatory payments paid by developers or builders in return for development approval. They are calculated to be the proportionate share of the capital cost (e.g., roads, schools, sewer lines, or gutters) the need for which is created by a new development."

Unlike infill projects in already dense or mixed use areas, greenfield developments are not located in a place where the market has already demonstrated an appetite for density.

used as they were before the state changes. In subsequent proposals, they sought less sweeping changes to essentially attach safeguards to future TIDDs. (Disclosure: This writer testified at the first of these hearings at the request of the City Council and participated in two subsequent member-convened meetings by telephone, providing a national perspective and answering questions about TIF.)

In a written submission to the Albuquerque City Council in May 2007,[23] SunCal's New Mexico Division president argued that the proposed amendment "is nothing more than an attempt to halt growth on the west side." However, in the next sentence, he stated the opposite and made the argument local officials found most vexing: If the TIDD restrictions were adopted (making SunCal's Lower Petroglyphs project ineligible), "conventional sprawl will continue on the west side and smart growth, mixed use communities will be discouraged and unlikely to develop." Citing a survey about the growing popularity of "satellite cities," he wrote, "[t]he model of a single downtown as the single job center is outdated: vibrant cities have multiple centers of employment and retail, surrounded by residential areas."

On the issue of whether SunCal's greenfield new urbanist project needs to be subsidized, the executive also offered conflicting messages. On the one hand, he declared "[n]ot true" the "popular misconception that a TIDD is a subsidy given to developers by the city." Later, however, he argued the need for a subsidy by asserting that mixed use projects can cost substantially more to build than conventional single-use developments, writing: "the city should be incentivizing this development. . ."

Indeed, the nub issue about SunCal's need for a "public-private partnership" came in its discussion of financing and risk. The company wrote: because "new urbanist, mixed-use developments work on a slower business model than standard developments," "the phases of development must be designed to guarantee a cash flow as quickly as possible in order to attract investors and keep up with the required rates of return needed due to higher perceived risks."

SunCal's submission cited a 2000 paper[24] by University of Pennsylvania professors Joseph E. Gyourko and Witold Rybczynski in support of this argument. Their paper, a survey of 23 real estate industry practitioners commissioned by the Congress for the New Urbanism, finds that mixed use new urbanist projects are viewed by investors as riskier than single-use projects, especially because of their complexity which makes them harder to evaluate.

Regarding projects like those in Albuquerque, they found "the lender/investor community was adamant that suburban greenfield sites were much riskier—so much so that many would not even consider investing in them." The respondents also sited "large up-front infrastructure costs and [the difficulty] of making large-scale retail work in a setting without an established population base." Unlike infill projects in already dense or mixed use areas, greenfield developments are not located in a place where the market has already demonstrated an appetite for density.

Because of the heightened risk, Gyourko and Rybczynski found, equity investors demand high rates of return to cover the elevated risk, in the range of 15 to 18 percent. Such a high cost of capital generates the need for substantial early cash flow, so "unless there is a patient financing source such as a pension fund or an endowment, this can be a major problem."[25]

Gyourko and Rybczynski also found that the risk perceptions around new urbanism cause investors to favor large, experienced developers—a description that would certainly fit both Forest City Covington and SunCal—because of their experience executing the projects in phases to generate enough cash flow. Absent a nontraditional source of financing willing to accept a lower rate of return despite higher risk, the professors conclude, "some type of intervention from the public sector" may be necessary, but that would be justifiable only if there is "a social benefit that is not obtained by standard suburban development."

Such social benefits have been at the heart of negotiations in Albuquerque, both in project negotiations and in proposed statutory TIDD amendments. For example, some city councilors propose calibrating the amount of TIDD diversion to community benefits such as up to a 20 percent share of affordable housing and similar affordable rent set-asides within commercial space for small, locally owned businesses. (California requires that 20 percent of all TIF revenues—no matter what the nature of the project—go for affordable housing.) Because of concerns that the new developments' retail space would undermine existing malls, some councilors considered excluding the retail share of the GRT from the TIDD (an estimated 38 percent reduction).

Informing the proposed amendments is a diverse coalition of citizen and watchdog groups that, by its own admission, failed to notice the state's drastic deregulation of TIDD in 2006 and was barely able to examine the Mesa del Sol TIDD before it was ap-

23. Will Steadman, SunCal New Mexico Division president, letter to Albuquerque City Council President Debbie O'Malley, May 31, 2007.

24. Joseph E. Gyourko and Witold Rybczynski, *Financing New Urbanism Projects: Obstacles and Solutions*. Housing Policy Debate, Vol. 11, Issue 3, Fannie Mae Foundation 2000.

25. In Albuquerque, the recent history of philanthropic involvement in financing development was cautionary. In 1999, the Santa Fe-based Marshall L. and Perrine D. McCune Charitable Foundation invested $5 million to capitalize the for-profit Historic District Improvement Corporation (HDIC), a partnership with the Arcadia Land Development Company and the nonprofit Downtown Action Team, to revitalize downtown Albuquerque. The foundation viewed the investment as a smart growth complement to its support for the anti-sprawl work of 1000 Friends of New Mexico. By 2005, however, an upscale 41-condo project by HDIC sold only six units and two retail projects were struggling to find tenants; the foundation bought out Arcadia and brought in new management.

The concept of smart growth is, of course, contested territory, and not synonymous with new urbanism.

proved. (Indeed, because TIF is such an obscure and complex subject, it often escapes the scrutiny of groups concerned about land use or tax policy.) The smart growth group 1000 Friends of New Mexico convened a network of affordable housing, environmental and environmental justice, tax and budget, labor and other community groups; none had ever studied TIF before.

Citing the American Planning Association's 2002 Policy Guide on Smart Growth and its 2004 Public Redevelopment policy guide[26] (which includes a section specifically on TIF), a New Mexico planner urged the City of Albuquerque "to limit the use of tax increment financing districts to areas of the community which are seriously in need of redevelopment, such as brownfields and underdeveloped parcels." TIF, the planner wrote, "should be significantly strengthened to ensure [it] remains a strong tool for redevelopment and revitalization of existing neighborhoods, and not be used as an unintentional subsidy for greenfield development at the edge of our community."[27]

Citing similar concerns, 1000 Friends of New Mexico, New Mexico Voices for Children, the Sierra Club, and the American Federation of State, County and Municipal Employees went on record in favor of such TIF amendments. The 1000 Friends group stressed the need for workforce housing, estimating that 30 percent of the jobs in Mesa del Sol will not pay enough for workers to live there, exacerbating a jobs-housing imbalance. The Albuquerque Chamber of Commerce and SunCal have opposed the amendments. The same interests squared off as SunCal began its application process with Bernalillo County for approval of nine TIDDs worth $621 million on more than 3,900 acres.

In December, the Albuquerque City Council approved amendments to the city's TIDD ordinance to prohibit tax increment financing for greenfield developments, by a vote of 4 to 1 (with four councilors boycotting the meeting). Two days later the mayor vetoed the measure; an attempt to override the veto failed. Meanwhile, the Bernalillo County Commission approved the nine TIDDs requested by SunCal. On a fast-track because of the upcoming New Mexico legislative session beginning in January, SunCal made a presentation to the state's Board of Finance in mid-December, seeking to convince the board to approve its TIDD application. In reviewing the application, the analyst for Department of Finance and Administration concluded "[i]n effect, this is a capital outlay project that will only benefit residents of the project area and the near surrounding areas, but will be funded by all of the taxpayers of New Mexico through lower levels of state services (in the short- and medium-term). There would be no substantial likelihood of funding these bonds through the normal capital outlay process. In large measure, the TIDD statute is a means of subverting the ordinary capital outlay process, and using General Fund operating revenues to do the subversion."[28] The TIDD story in New Mexico continues to unfold.

CONCLUSION: IS TIF FOR GREENFIELDS CONSISTENT WITH NEW URBANISM OR SMART GROWTH?

The concept of smart growth is, of course, contested territory, and not synonymous with new urbanism. However, consistent with the American Planning Association's adopted policy guides cited above, the use of TIF for large-scale greenfield projects—of whatever quality—seems far afield from both the original mission of TIFs and the intent of smart growth. Using TIF to leverage reinvestment in mature areas lacking private investment serves smart growth by acting as "urban Rogaine"; using it to reduce financing costs for market-rate housing and commercial space in greenfield sites is another matter.

By mixing uses, building compactly, and creating a diverse, attractive community that is less likely to suffer economic decline or property abandonment, smart growth projects are meant to make more efficient use of infrastructure and be less prone to the tax base stress associated with sprawl.

On the specific issue of infrastructure construction cost savings, there is little published evidence. However, a study by the National Oceanic and Atmospheric Administration (NOAA) compared three scenarios for a project of about 800 homes in coastal Georgia: new urbanist, conservation, or conven-

26. The policy guides are located at www.planning.org/policyguides/redevelopment.htm and www.planning.org/policyguides/smartgrowth.htm.

27. Correspondence to Albuquerque City Council President O'Malley from Dan Pava, New Mexico Chapter of the American Planning Association, Sept. 5, 2007.

28. Comments and Recommendations: SunCal's Upper Petroglyphs Project TIDD Application, prepared by Department of Finance and Administration/Economic Analysis Unit, Dec. 18, 2007.

CNU's founding charter speaks favorably about regional revenue-sharing, whereas TIF, by sequestering tax revenues, is often used as a tool of tax-base competition.

ADDITIONAL RESOURCES

INTERNATIONAL COUNCIL OF SHOPPING CENTERS AND THE COUNCIL OF DEVELOPMENT FINANCE AGENCIES, TAX INCREMENT FINANCE: BEST PRACTICES REFERENCE GUIDE, October 2007.

New Rules website recommends TIF statutory reform: www.newrules.org/retail/tifreform.html.

Evans Paull, *Using Tax Increment Financing for Brownfields Redevelopment*. Northeast–Midwest Institute, July 2007.

Richard F. Dye and David F. Merriman, *Tax Increment Financing—A Tool for Economic Development* (LAND LINES, Lincoln Institute of Land Policy, January 2006), at http://lincolninst.edu/pubs/PubDetail.aspx?pubid=1078.

Rachel Weber, *Equity and Entrepreneurialism: The Impact of Tax Increment Financing on School District Finances*. URBAN AFFAIRS REVIEW 38:5, May 2003.

Peter S. Fisher and Charles Bruner, *Tax Increment Financing in Iowa: What Should Be Done?* Iowa Policy Project and Child & Family Policy Center, April 2003. Somewhat specific to Iowa, but also a good overview of TIF's promises and perils.

James Krohe Jr., *At the Tipping Point: Has tax increment financing become too much of a good thing?* PLANNING, March 2007.

tional suburban development. It found that on a per-unit basis, the new urbanist scenario had lower costs for sewer, water, paths, trails, and sidewalks. Road costs were somewhat higher (perhaps due to alleys). Compared to conventional suburban development, the new urbanist scenario also preserved more than five times as much open space, created almost four times as many miles of paths, trails, and sidewalks, and improved water quality by reducing consumption and pollutant runoff.[29]

Although some prominent new urbanist practitioners are involved in the Albuquerque developments, the Congress for the New Urbanism (CNU) as an organization is "agnostic" about TIF and has never opined on the issue, according to its president and CEO, John Norquist. "Almost everyone in CNU would say if there is going to be a taxpayer benefit to the development, then there should be a public benefit, clearly identified and open in the public realm," said Norquist. He deemed it "perfectly appropriate" to consider affordable housing set-asides as a quid pro quo for TIF; he also suggested mixed use and "connectivity" to adjoining neighborhoods (i.e., no gated communities). He expressed confidence that whatever cost premium there is now for new urbanist construction, it will diminish as it becomes more common. A city's ability to leverage developer concessions depends primarily upon its overall strength and growth, he stressed, not upon TIF.[30]

CNU's founding charter speaks favorably about regional revenue-sharing, whereas TIF, by sequestering tax revenues, is often used as a tool of tax-base competition. The charter[31] states:

> Revenues and resources can be shared more cooperatively among the municipalities and centers within regions to avoid destructive competition for tax base and to promote rational coordination of transportation, recreation, public services, housing, and community institutions.

CNU's charter also speaks clearly for affordable workforce housing:

> Affordable housing should be distributed throughout the region to match job opportunities and to avoid concentrations of poverty. . . .Within neighborhoods, a broad range of housing types and price levels can bring people of diverse ages, races, and incomes into daily interaction, strengthening the personal and civic bonds essential to an authentic community.

As an elected official prior to heading CNU, Norquist both opposed and used TIF. As a state legislator in 1975, he voted (in a small bipartisan minority) against Wisconsin's original TIF-enabling legislation because he felt it was not well targeted and would shift risk onto cities rather than help to revitalize them. Later, as the 16-year mayor of Milwaukee, he found TIF useful to accelerate development, but he realized it was coming at the expense of the school district and other taxing bodies. He found the city had its greatest success attracting new downtown condominium developments when "we stopped subsidizing, we stopped playing favorites."[32]

Norquist's fears about Wisconsin's TIF rules appear well placed. By 1999, a study by 1000 Friends of Wisconsin found, 45 percent of the state's 661 TIF districts had been used to develop open space—or approximately 30,000 acres of open space (mostly farmland) developed with TIF. Perhaps the state's most controversial TIF is in Baraboo, where Wal-Mart built a Supercenter (i.e., with groceries) on what was an apple orchard to replace an existing store just two miles away that lacked grocery space. In a remarkable admission that the "but for" test did not hold, a Wal-Mart manager stated in a letter that the project would have proceeded even without the TIF.[33]

29. Coastal Services Center, National Oceanic and Atmospheric Administration, *Alternatives for Coastal Development: One Site, Three Scenarios. Available at* www.csc.noaa.gov/alternatives.

30. John Norquist, telephone interview, Nov. 19, 2007.

31. Charter of the New Urbanism at: www.cnu.org/charter.

32. John Norquist, telephone interview, *op cit*.

33.1000 Friends of Wisconsin, *Wisconsin's Tax Incremental Financing Law: Lending a Hand to Blighted Areas or Turning Cornfields into Parking Lots?* (October 1999).