

No Standing News

Since we have no standing, we stand with those left standing

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Development for Dummies

Chapter three: Creating a CID taxing district

Now we see how foolish we were but after two TIF failures and their flop with the Expanded Enterprise Zone, we thought the RREC development militants would cool their jets, sit down and figure out why they keep falling on their faces. If they tried again (we imagined) they would do better. They wouldn't repeat their mistakes; they wouldn't hide the truth and jerk us around with the same sneaky public relations. Even sheep, we figured, learn to avoid electric fences. Boy were we wrong.

The council gives the Rolla Regional Economic Commission (RREC) around \$150,000 a year in cash and miscellaneous undisclosed city services. In return, the RREC and their director, **Elizabeth Bax** are supposed to bring economic progress to Rolla. In the last four years the RREC has given us a series of unfiltered gee-whiz development 'initiatives' taken straight from the Missouri Department of Economic Development's *Development for Dummies* handbook. They didn't study these 'initiatives' carefully, they didn't have to. They knew these DED programs would raise taxes earmarked for their hand-picked projects without the bother of getting voter approval and that's all they wanted to know. RREC has sold each of these development projects to the council claiming that each will be Rolla's development miracle. When all the facts finally emerge their 'miracles' turn out to be deeply flawed multi-million dollar tax-and-spend schemes that wreck havoc on the community.

Four years ago when the RREC was formed the city promised to give them an annual allowance of \$511,000 over the next 5 years. The agreement was that if they hadn't accomplished anything in five years their allowance would stop – end of experiment, good money would not be thrown after bad. **Councilman Magdits** alone insisted the RREC produce some kind of "deliverables" to prove our tax money wasn't being wasted. Four years and \$400,000+ later the "deliverables" have turned out to be two odiferous TIF's, one EEZ that didn't survive irate county citizens, annual waste of \$10,000 a year to some development group in Waynesville, an idiotic proposal to build Terry Brewer a private vanity park, a highway bypass scheme propped up with CID taxes and a partridge in a pear tree. Are these the "deliverables? Is this all there is? If the council can't get one sound development idea out of the RREC in four years it's time to quit wasting our money.

But we must give credit where some credit is due. Bax and the RREC are finally getting around to fixing the Hy Point advertising sign which has the contact phone numbers of **Ed Owsley** and **Dain Ward**, both of whom have been dead for some years. Both the sign and the industrial park are the private property of the RCDC which raises the question of why RREC (city) money and staff time being used to fix RCDC's sign? Why

has it taken so many years for the RCDC **President Jim Sowers** and the entire RCDC board, which includes **Mayor Bill Jenks**, to do something as simple as get their own sign repainted? Those RCDC guys, they're really on-the-ball.

In the open council session on February 5, Bax gave the RREC's quarterly non report, report. That's one of the RREC 'deliverables,' a development report that's so Top Secret it doesn't contain any verifiable information. Bax reports every few months that lots of "great things" are just about to happen but when they don't happen we don't know they didn't happen because they were so secret we couldn't be told what they were when they were going to happen.

RREC's strategy for the "Rolla West Project" was for Bax and her RREC "Rolla West" swat team (**Wiggins, Butz and Hargis**) to meet in December with the Phelps County Commission and hit them up for \$100,000. Commissioner Verkamp was all for it but then Randy salutes anything Rolla wants. Then PCRMC and UMR will be tapped to get the rest of the \$300,000 to pay for the preliminary bypass studies. MoDOT won't pay for the studies which is a clue as to how little MoDOT cares about this bypass and how little they're going to contribute to the \$35,000,000 it will cost.

The RREC has already written the blanket resolution they want the council to pass which will endorse the bypass project and by implication to the CID taxes that will finance it. It will also give the council's permission in advance for Butz, Petersen and the RREC to do any development with anyone for anything anytime. Three years ago the council casually endorsed a similar ambiguous resolution for TIF at the recommendation of the RREC with no more information about what they were getting into than Butz' soothing generalities and Petersen's vague talking points and just look how well that turned out. Butz and Petersen 'briefed' the council on TIF by omitting all discussion of evicting people from their homes, the millions in revenue bond debt we'd be giving away to subsidize their "Preferred Developer," the financial risk to the city and the 23-year seizure of taxes from other local taxing jurisdictions. It was a full disclosure...except for everything they left out.

The Rolla West Project in a nutshell. They're telling us that ploughing a bypass through the homes in Ridgeview will bring us this great prosperity but they don't explain exactly how destroying homes for a bypass will become, as Bax claims, "success for the entire region." (the *entire region*?) It's not going to help any of the businesses on Kingshighway that's for sure so how does re-routing and diverting the Kingshighway traffic away from Fast Food Row bring "success for the *entire region*." Why can't they just be honest and say: "Without getting to vote on the tax increase you're going to pay about \$20,000,000 more in sales

taxes over the next 20 years to build a new road that isn't needed for any traffic or transportation purpose. You will also pay - by sacrificing your own future city services - to provide city services to the hundreds of acres of land we want to annex on the west side. The whole purpose of this bypass, taxation and annexation is to break open a lot of new commercial land on the west side of town so real estate speculators can move in and exploit the alleged retail investment opportunities. If we get lucky and this isn't just another big development flop, *a few lucky people* will make lots of money thanks to the huge public debt *the rest of you people* will be paying off."

See, how easy it would be for them to tell the straight story. Of course, if everyone knew how they were going to be used to benefit the elite few they'd revolt, that's why it's necessary to disguise all the harsh details. Instead of talking about increases in sales taxes they talk about "covering the costs of transportation improvements." Instead of saying they're going

to issue revenue bonds to subsidize developers again, they talk about using "incentives to offset the costs for public improvements." Instead of saying the RREC is milking taxpayers for the benefit of the bankers and developers in the RREC they talk about how they're looking forward to "partnering with the City."

Before the council rubber-stamps another RREC blanket resolution for another ill-considered RREC project they should read *RSMo. Chapter 67*, sections *1401 to 1571* and find out exactly what a CID is. How many more RREC ideas have to fail before the council figures out that these 'experts' are just another group of high-maintenance amateurs who promote DED's bad ideas because they don't have any good ideas of their own? They should start asking themselves if the RREC is worth their annual subsidy if all they can come up with is another tax-and-spend program thoughtlessly copied out of the state's *Development for Dummies* handbook.

The Community Improvement District Primer

What is a CID? A Community Improvement District, like TIF, is another government-for-profit vehicle to grab new taxes that the voters don't get to vote on so their elected officials, who can't save money or balance a budget, can have more cash to spend on things voters don't want to pay for. A CID in the hands of careless amateurs and greedy developers has the same potential for financial abuse as TIF. Unlike TIF a CID becomes a separate legal entity distinct and apart from the parent municipality that created the district. Once formed, the 'child' can't be controlled by the 'parent.' Think teenagers on smack.

A CID is created by an ordinance passed by a simple majority of the governing body of the municipality in which the CID is located. The CID may either be a political subdivision or a not-for-profit corporation depending on what the petitioners want. A CID is a blueprint for going behind the backs of taxpayers to load us up with more taxes and fees they want spend on things they tell us we can't live without. In this case, 20-years of taxes will be spent to build a three-lane highway bypass from the intersection of 63/72 to the proposed Interstate overpass beyond Blues Lake. The RREC and Bax are also not talking about the expense to the city of the huge annexations planned on both sides of the Interstate that are included in this project. Will Butz tell the council that another gigantic annexation won't cost anyone anything as he did with the Southside annexation? Will the people who own the land they intend to annex be agreeable to paying 10.1¢ per kilowatt hour and extra city property taxes for years before they get any city services? (See map of the proposed CID district: <http://www.rollacity.org/images/maps/5th-interchange.pdf>)

1. Who controls the CID? A CID board may have from five to thirty board members. If the petitioners want a (1.) political subdivision board members will be elected by only the "qualified voters" in the district. If they ask for a (2.) corporation the board members will be appointed by the mayor and council from among the "qualified" voters in the district. Depending on what is being voted on only "qualified voters" within the district

may vote. "Qualified voters"¹ are registered voters who reside within the district and/or owners of property or a business operating within the district or "any other qualifications set forth in the petition establishing the district."² Outrageous as it may be, members of the CID board can potentially be people who own land in the district but don't live in the district, the city or even the state. Those of us living outside the district will have no say in the taxes we will pay when we shop in the district but the absentee landlords could! This is what the good citizens of RREC are promoting – proxy government and taxation without representation.

2. What powers does the CID board have? Unless limited in the petition that creates the district, each district has all of the powers necessary to carry out the purposes of the CID Act. In addition to this broad but vague grant of power, the act outlines a *non-exhaustive list* of 28 powers granted to CIDs. Among these powers are the powers typically granted to all legal corporate entities: to *sue* (but not to be sued, see #8), to enter into *contracts*, to *buy and sell* property and to *borrow and loan* money. More particular to community improvement districts, however, is the grant of power to levy and collect special assessments and taxes. CIDs may also collect fees or rents for use of the district's real or personal property, and restrict "traffic and vendors" on streets, alleys, malls, bridges, ramps, sidewalks and tunnels. . . ." Improvement districts have the power to raise and expend funds to promote business activity and recruit new development and business, to promote special events and "decorate any public place in the district."³

3. What taxes and fees and when do we vote on them? "We" don't get to vote on anything concerning this district. Only registered voters and *property owners in the district* get to vote on the taxes and/or fees the rest of us will pay when we buy anything in the district. We also don't get to vote on whether we want to have a CID or whether we want to have a bypass bulldozed through a residential subdivision. The petition to create the district will be voted on only by the council. The petition itself can only be signed by (1) property owners collectively owning more than fifty percent by assessed value of

the real property within the boundaries of the proposed district; and (2) fifty percent per capita of all owners of real property.⁴ within the boundaries of the proposed district. This includes the property owners in the Ridgeview Subdivision they plan to demolish.

4. Where will the \$20+ million come from that we have to pay for the bypass? Depending on how it is set up, a CID board may impose a menu of sales taxes and/or “special assessments” (code for property taxes). They may borrow and loan money, and even issue business licenses in the district. The CID Act limits the ability to levy sales taxes to only those districts established as political subdivisions.⁵ CIDs that are not-for-profit corporations may impose “special assessments” which is code for property taxes. For the bypass project, the council or the district board will issue revenue bonds (which the public also doesn’t get to vote on) to provide the \$15 to \$20 million they will need to pay for the bypass and other things MoPEP won’t pay for. Attention Wal-Mart shoppers! The bonds will be paid off with up to a 1/2-cent increase added to our existing sales tax on every purchase made within the district. They’ve already drawn the CID district boundary to include Wal-Mart, the only cash-cow big enough to generate the sales taxes necessary to pay off this multi-million dollar road project. This, you will be told, will be a “no tax increase tax increase” such as the similar no-tax-tax financial manipulations the city and the school district have used to avoid letting you vote on tax increases. Another one of those free lunch’s.

5. Are the “special assessments” perpetual liens against all district property? Absolutely. The “special assessments” (the CID name for property taxes) will “*constitute a perpetual lien*” against the “*property from which it is derived*” and, upon default, that “*lien may be foreclosed in the same manner as any other special assessment lien as provided in section 88.861, RSMo.*”⁶ Once the ‘special assessment’ has been established, the district will have the financial backing it needs to issue debt obligations or obtain loans necessary to make improvements or provide services.

6. Can the CID board condemn property? If they organize the CID as a political subdivision it can do anything a political subdivision can do unless specifically prohibited in the CID statute - and very little is prohibited in that statute. When the CID board gets ready to use eminent domain on the Ridgeview Subdivision or anyone else in the way of their 3-lane highway, presumably the CID can condemn property, if not, the city and/or MoDOT will do it for them. Immediately after the sole public hearing on the CID petition closes, the council may approve the petition/ordinance and establish the district. *They may also make any designation of blight sought by the applicants.*⁷ We all know what ‘blight’ designations lead to don’t we? The only reason for declaring land blighted is so government can use the blight stigma to keep private land in limbo which will devalue it and force down the price.

7. Does a CID have any responsibilities? They must submit an annual budget to the governing body once a year. That’s it. There isn’t even a requirement for an annual audit to find out what they’re doing with the sales taxes, “special assessments,” licenses and other revenue mechanisms under their exclusive control. It would be like another unenforceable Chamber contract, only much worse.

8. Can the CID be sued? No, that would be an accountability mechanism and accountability is not what this money-making machine is about. A CID is nearly bulletproof. Unlike every other public institution, Community Improvement Districts are protected by a statute of limitations.⁸ “No lawsuit to set aside a district established, or a special assessment or a tax levied under sections 67.1401 to 67.1571 or to otherwise question the validity of the proceedings related thereto shall be brought after the expiration of ninety days from the effective date of the ordinance establishing such district in question or the effective date of the resolution levying such special assessment or tax in question.” It is no exaggeration to call the CID a Neo-Fascist’s Delight.

9. Blight, eminent domain, due process and other crimes against property rights. If the petitioners have been farsighted enough to designate some or all of the district to be “blighted,” The CID will have additional special powers:⁹ The CID may contract with individual private property owners to “demolish and remove, renovate, reconstruct or rehabilitate any building or structure” owned by the private property owner.¹⁰ The CID also may expend or loan its revenues in accord with the contract for blight removal, so long as the governing body of the municipality determines that the proposed action of the CID and the private property owner is “reasonably anticipated to remediate the blighting conditions and will serve a public purpose.”¹¹ The statute says nothing about any due process the board must extend to the private property owners whose ‘blighted’ buildings are being demolished. It is implied but not stated that the owner will receive fair compensation but there are no details about the basis of determining such compensation. If the property owner feels the compensation offered isn’t fair there is no due process and no recourse because (see #8) the CID district is immune from lawsuits.

That’s CID in a nutshell. We’ve only hit the highlights and there’s much worse we haven’t covered. Why haven’t the RREC and Bax included any of these CID facts in their glowing press releases?

How did Missouri get all these twisted economic development laws? A Community Improvement District, like its older ugly sister, Tax Increment Financing, was custom designed for very extreme urban renewal problems not for little rural development issues like ours. Until 2005, Missouri law makers had been duly cautious and restricted the use of the CID to our largest first and second class counties and cities in the state. These 22 communities typically had sophisticated home rule and charter government structures and also higher-level, more professional public officers and managers than are found in little third and fourth class towns. Their staff of experienced public officers could oversee these complex long-term projects. They could make sure the developers colored inside the lines and exercise the detailed daily oversight necessary to protect the millions in taxes that slopped through TIF and CID slush funds. In 2005, the state development lobby needed a new tool to replace the worn out and increasingly hard-to-sell TIF so they had their pet politicians lift the first/second-class restriction on CID’s. Now any fool can have one. One size fits all they said. One size never fits all in bathing suits or neo-governmental taxing schemes.

CID's were designed so elite golf communities and McMansion burbs could have the upscale indulgences they couldn't live without, boutique malls, coffee bars, art galleries and clubhouses. CID's allowed Yuppies to tax themselves within their exclusive enclaves for indulgences that wider community voters wouldn't pay taxes to give them. They could create the necessary Yuppie perks but without burdening the whole community with their expensive demands. If the rest of the community didn't want to pay the extra taxes to shop with the rich folks at their upscale malls inside the CID district they could still buy their tube sox at a dollar store outside the tax district. A CID was not intended for the people *inside* a district to have the exclusive right to impose more taxes on all shoppers *outside* the improvement district who have no other place to buy their tube sox.

One of the research sources we used for this article is a paper written by attorney **Joseph G. Lauber**. He was a law clerk in the City of Lee's Summit Law Department when he wrote his analysis of CID's. It was published in the Journal of the Missouri Bar in 2003 before the last fatal legislative changes in '05 which lifted the class restriction. A city like Lee's Summit which is large enough to have a Law Department and employ law clerks like Lauber has the personnel depth and expertise to handle the complex legal issues of potentially dangerous systems like TIF and CID. Careful management is vital because the Department of Economic Development keeps no records on how CID's work or if they work at all. DED doesn't even know how many CID's there are in the state. DED, by the way, is where Elizabeth Bax learned to be an 'expert' developer. DED and the MML (Mo Municipal League - Butz is now on their board) promote these neo-governmental tax-raising experiments by telling credulous

little towns that they will be left behind if they don't have all these economic development "tools" in their "toolboxes." If that cliché sounds familiar it's because the RREC's swat team, **Bax, Wiggins** and **Butz** use it a lot.

"Hey," we can already hear Rolla Boosters protesting, "isn't it too harsh to say these gee-whiz state programs are over Rolla's head?" No it's not too harsh; it's very realistic as City Hall repeatedly demonstrates. On more than one occasion our city council, upon the recommendation of their 'expert' city administrator and his staff and in the glassy-eyed, presence of their \$200 per hour city counselor, have conducted televised Dog Trials. After listening to rambling but irrelevant testimony by people who were nowhere near the alleged pit bull attack, and after a rambling dissertation on the practice of pig hunting in Texas, our twelve rent-a-judges - at the urging of the pit bull's blubbering owner - solemnly passed from hand-to-hand the framed baby picture of the pit bull apparently in the belief that they could look at the perp's picture and judge his guilt or innocence. The council's so-called legal counselor didn't bother to enlighten them at any time during this or any of the other farcical dog trials they have held that they were impersonating the wrong branch of government. To this day, most of the council couldn't tell you which branch that was or name the other two. On the Competence in Governance scale - lower than that you cannot go. The size and depth of the proficiency gap between a Lee's Summit Law Department and the Rolla Dog Trials is something on the order of the Great Abyss. This proficiency gap is why Rolla's TIF's didn't work twice. It's why the CID will also run aground but not until more time and money is wasted. Until Rolla's government grows up, they'd better stick to more age-appropriate "tools."

¹ Section 67.1401(14)(11)(12), ² Section 67.1451 2.(2)-3. ³ Section 67.1461(1)-(28), ⁴ Section 67.1421(1)(2)
⁵ Section 67.1461(10), ⁶ Section 67.1521 5., ⁷ Section 67.1421.4, and 67.1461 2.(1)(2) ⁸ Section 67.1561
⁹ Section 67.1461(2), ¹⁰ Section 67.1461(2)(1), ¹¹ Section 67.1461. 2 (2).

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