

No Standing News

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

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TIF Part 2 – Who is holding the “Smoking Guns”?

“Serious fundamental problems arise, however, when all the branches of government decide that the public is best served by not having a voice in municipal activities. Elimination of voter accountability is the inherent defect in tax increment financing.” – J. F. Luther, *Tax Increment Financing: Municipalities Avoiding Voter Accountability*

Municipalities Avoiding Voter Accountability

Rolla City Council passes TIF ordinance. The council, without a bang or a whimper, took the final vote on their TIF ordinance Monday night. Tax Increment Financing is now law in Rolla. They had to pass it because Petersen was already scheduled to speak to the Chamber of Commerce two days later about their new TIF plans. The council didn't have the good manners to first have a meeting with the taxing districts they were about to rob, but then our taxing districts didn't have the backbone to show up and protest the robbery. Butz did admit that Phelps County Commissioners **Bud Dean** and **Glen Clossner** were both very opposed to it. **Lola Howe**, retired teacher and former Chairman of the Phelps County Democratic Party, genuinely does “care about the children” and she showed up to protest. She showed real class but our “For the Children” school board didn't. Howe asked if the council could exempt the school system taxes from TIF. Petersen said no they couldn't because “it wouldn't be fair.” Wouldn't be fair? Wouldn't be fair to rob some taxing districts but not all of them? He's got a point, why stick up half a bank?

The Greed Factor. Once the six TIF Commissioners appointed by Mayor Morgan and the Rolla City Council, they will take over the TIF system. That's when the Greed Factor kicks in. TIF has no accountability and no controls; in short, it was designed as a vehicle for Greed. Greed, some say, is Good. Now they're saying, “But TIF is a Good tool.” So is a loaded gun but you don't give it to children. No matter what promises are made initially, (remember Southside) when the ripe possibilities of TIF begin to unfold the temptations will be irresistible. Secret negotiations, contracts, land condemnations, meetings, proposals and complex financing issues will pile up over time. The city council, never interested in the extra homework required to

keep up with the mundane details of government, is supposed to control all this but they will never get a grip on something this complicated. In fact they didn't understand it while they were voting on it (in their first vote Sharon Meusch thought she had voted on another Enterprise Zone). Once TIF gets away from them they will become a rubber stamp for their own Frankenstein's – the RREC and the TIF Commission.

How did Rolla wind up with something that was originally intended only for bombed-out inner city slums? Rolla has spent millions on “development” over the years without any coherent plan. Economic development was basically whatever Ed Owsley's RCDC decided it would be. RCDC's overbearing tactics finally wore thin. The new movers and shakers in city hall looked around for money to spend but didn't find any. The city can't raise their sales tax again; that will make us the highest sales tax town in the whole state. The school board just hiked the property tax and voters are still suffering sticker shock so that's out. They decided it would be good to have an Economic Development Plan, one that could be used to steer things away from the old guard and their old ideas, so in September 2001, the **Rolla Regional Economic Commission (RREC)** was created by the council. The RREC (not to be confused with RCDC, the Rolla Community Development Committee) is a new name with some new faces but they represent the same interests that controlled RCDC, banks, developers, chamber etc. Having a development plan is not a bad idea but a plan as a disguise for a TIF tax raid is a very bad idea. The RREC fell in love with this “new” way to get their hands on money just when research studies* are providing evidence that TIF districts have a negative effect on long-term growth – not a positive growth effect.

*El Paso Chamber of Commerce Study: <http://www.elpaso.org/documents/tifreportutep.pdf>

The ‘Smoking Guns’. The officers of the RREC appointed by the Mayor and Council are, RREC President **Bill Marshall**, (Pres. of Phelps County Bank and a St. James resident who doesn't pay Rolla school district or city property taxes), RREC Secy. is Rolla Fourth Ward

councilman **Lou** (“everything is for sale”) **Magdits**, **Bob Larivee** is the RREC Vice President and the alleged Rolla School District representative (who apparently didn't tell his employers he was helping with a plot to rob them.). Other RREC members are, **Randy Verkamp**, Phelps County

Commissioner (and member of Bill Marshall's Phelps County Bank Board) who is allegedly representing Phelps County but over the voted objections of his fellow county commissioners Bud Dean and Glen Clossner. Randy didn't tell them he joined the group anyway and then voted to TIF his own county's revenues. Randy, like Bill also lives in St. James and doesn't pay Rolla school district or Rolla property taxes. **John Petersen**, Rolla City Planner (the city employee who is masterminding the TIF heist) is a voting member of RREC. It is very bad public policy to let city employees vote on public policy (will the trash guys get to vote on sanitation ordinances?) but Morgan doesn't understand why and doesn't care anyway. **Steve Malott**, UMR Vice Chancellor of Administrative Affairs represents the university crowd. Malott is a Johnny-come-lately but he does at least live in Rolla. Someone should tell Chancellor Thomas that lending his staff to redistribute their taxes is unlikely to charm the locals. The last three members are, **Bob Thompson**, former President of Firststar Bank now at Missouri Enterprise, **Linda Kuenzie** from the Chamber of Commerce (The Chamber's tourism tax handout is the only local tax that is most fortunately immune from TIF seizure but they get a place at the table to spend other public tax money); hanging on to the bitter end is **Ed Owsley** representing the now absorbed RCDC. **Mayor Joe Morgan** and City Administrator **John Butz** are Ex-Officio RREC members who theoretically don't vote but they don't need to because they own Petersen. Some of the faces are new but the interlocking connections smell just like the old RCDC gang. These are the people who always say: "The city should be run like a business" and "We know what's best for them" or "If you don't like it sue us." Now they've added, "But TIF is a great tool." Yeah, but whose tool? They have no tolerance for all that democratic folderol that goes along with running government like a government. The ability to dip their fingers in the tax purse and spend it with no accountability, no liability and no interference from the voters is, in their view, the ideal form of 'government.'

The TIF Honey Pot. Democratic government is predicated on a complex system of checks and balances. The important checks on runaway debt has, throughout Missouri's history, been the constitutional debt limitation for municipalities (20 % of the total value of taxable tangible property), the power of the voters to reject foolish proposals for public debt, and the limited, but still present, liability of elected and appointed officials for their official acts. TIF is subject to none of these controls; TIF allows a municipality to act without accountability to voters. The city can, by ordinance, issue revenue bond debt based upon anticipated sales and property tax revenue from the TIF district over 23 years. Voters have no say in the size of this public debt or how it is spent. Marginalizing the power of voters has been a trend for decades but the movement went into overdrive during the roaring '90's and TIF is its unnatural spawn. The fad has been to "empower" fashionable "public/private partnerships" by shifting government functions and policy making to quasi-governmental/corporate hybrids such as RCDC, RREC and the TIF Commission. The myth of the infallibility of the

business model was thoroughly discredited with the many Enron/Anderson scandals but some will never give up the simplistic, but false, analogy.

Without the restraint of cautious taxpayers in the voting booth and with the removal, for TIF purposes only, of the constitutional debt limit for municipalities there is great potential for runaway debt to be incurred by the TIF commission and municipal officials in excess of the anticipated revenues from the TIF district. There is no penalty if they do so because **TIF law specifically absolves "the municipality, its [TIF] commission, the officers of the municipality and any person executing any obligation" from all personal liability. Further it provides that, "The [revenue bond and other] obligations shall not constitute indebtedness within the meaning of any constitutional, statutory or charter debt limitation or restriction."** *RSMo 99.835.5*. That is nothing less than a recipe for abuse of power. With typically lax monitoring from the state and with little attention from the public, the potential for abuse and corruption increases exponentially. When TIF revenues are used to offer incentives to developers (which are subject to secret negotiations with no limits on how lucrative the giveaways can be) it is much too easy for a TIF project to become overburdened with debt, expenses and tax relief concessions to satisfy developers demands. Butz and Morgan, we all well know, can't negotiate their way out of a paper bag. The likely result will be that TIF projects will never realize significantly increased revenues, certainly not a return on investment of the magnitude the public and the frozen taxing entities are led to expect. Can we trust our municipal officials and TIF commissioners over the next 23 years to make these decisions as if there were some painful price to be paid for creating a financial catastrophe when the TIF law has absolved them of blame before the fact? We might give them that trust if they had a strong record of ethical behavior, openness with the public, and were diligent in their attention to their duties – sadly, that is not the case here in the Outlaw City of the Ozarks (Perfectville).

How can they do this, we voted those taxes to the schools, county and disabled? The Missouri Supreme Court, through an exercise in semantic manipulation has declared that PILOTS (payments in lieu of taxes, the sales and property taxes seized by TIF) are "special assessments" paid into a "special fund" by the redevelopment district and therefore, they have declared, PILOTS are not taxes. Because the taxes are, through this judicial alchemy, no longer taxes, TIF debt is not subject to constitutional debt limitations for municipalities, nor is it subject to voter approval. The inherent contradiction in their application of this curious doctrine to the TIF fund is that all money paid into the fund IS from previously voter approved property and sales taxes. In other states on the same TIF question courts have ruled: "...we must look to the transaction for what it is, and not what it is called. The true test of [a special fund] is not what comes out of the fund, but what goes into it." The members of the Missouri Supreme Court, all graduates of big city corporate law firms, have invented a new legal doctrine

- voter nullification. We voters no longer know what we are doing when we vote so they corrected our mistakes by judicial fiat.

RREC, non-profit and non-accountable? This new RREC group is an official city committee and as such is subject to all the public notice requirements of the Open Meeting Open Records Law, but they have had very under-the-radar meetings for over a year. In the RREC minutes of November 28, 2001, they make this admission: *“It was determined that since the Commission was now incorporated, the Sunshine Law clearly applies. Meetings will need to be posted.”* We have a message for RREC: quit getting your legal advice from John Butz. With or without incorporation (why does any city committee need to be incorporated? Are zoning or trash committees incorporated?), it's not their minutes that need to be posted it's their meeting notices. They must have open meetings and provide open records and give “concurrent” notice to the public and the media of all their meetings because they are spending city money and involved in making public policy. In fact, there is one specific section of the Sunshine law, 610.010 (f) b. that was written just for RREC, TIF committees and anyone involved with it. Butz says that the RREC meetings were not posted because no one asked to be notified of them. If no one knows there are meetings because they aren't posted, they naturally won't ask to be notified of them will they? Butz logic: If the public had some ham, citizens could have ham and eggs, if they had some eggs.

The TIF Pitch. TIF pitchmen will tell you that the process may result in enhanced property values *after* the project is done. Most people never notice the qualifiers. TIF pitchmen will give you a few well-chosen anecdotes about building giant malls in blighted urban neighborhoods and the phenomenal sales tax revenues that resulted. They don't mention the drop in sales from other big malls as people shifted the same purchases to the new one. St. Louis Center is collapsing because there are too many TIF “big box” malls in St. Louis. TIF pitchmen will never admit that, for instance, a Walgreen drug store at the Hy. 63/72 intersection, built with all the unfair advantages public money and political muscle can supply (power of condemnation to force land sales), may close down existing pharmacies and simply shift the same purchases to Walgreen's. Rolla has no Ladue's or Clayton's next door to raid for increased sales. People have just so much to spend on drugs or food or clothes each year and they're already spending it. The net result may only be less retail competition and more vacant buildings where the competition that didn't get TIF subsidies once thrived. It is possible for a TIF project to be successful – it has happened when there are strong local controls and the public stays with every step of the process to make sure their long-term community goals are not overrun by short-term commercial greed. But the landscape is also littered with towns that overestimated their ability to force commerce to serve the public interests. Our ‘Bizness’ Mayor and council have already demonstrated that they see nothing wrong with using public funds to provide competition for

their own local business taxpayers when it suits them. The “Build it and They Will Come” fantasy was used for the Recreation Center and Splash Zone. ‘They’ didn't come from Jefferson City and Lebanon no matter how much tax money Wiggins and Bass wasted advertising there. Is this a rerun of the same childish daydream when proof of the fallacy is sticking up like a 70% recapture sore thumb in Ber Juan Park?

TIF Opium. One thing to remember about TIF, there is no such thing as “some TIF” or “not inhaling TIF” or recreational use of TIF. TIF is a mainline fiscal narcotic. Once politicians experience cash without accountability - without the need to face the voters, they're hooked. As with all junkies TIF becomes the easy solution to every fiscal problem and they will mug their grannies for another hit.

TIF opium fumes also work on voters who inhale the two big lies about TIF debt. The first lie is that the TIF revenue bonds won't cost them anything because the bond debt is paid out of TIF revenues. Revenue bonds always carry higher interest rates than voter approved GO bonds because revenue bonds are ONLY secured by project revenues (in this case stolen taxes) not by the “full faith and credit” of the issuing government, i.e. taxpayers personal property. Revenue bonds have a higher chance of default from local mismanagement - failure of the revenue source. Risk is higher, therefore payback, (the bond interest rate) is more expensive. A TIF district has to be big enough to rake off enough extra tax increment year after year to pay back principal and the higher interest rates. If the annual payment is \$1 million the TIF district has to be large enough to generate that much in extra taxes over and above what it was producing in the year the taxes were frozen. Bigger TIF districts mean bigger losses to the other taxing districts, losses that eventually taxpayers will be pressured to make up in reduced services or higher taxes.

The second lie is that revenue bond obligations do “not constitute indebtedness within the meaning of any constitutional, statutory or charter debt limitation or restriction.” Not really debt? No harm, no foul if it's not paid back? No, it's more free lunch logic. The council bought this free lunch story from Butz and Morgan when they issued \$14 million in revenue bonds for Brewer Science. The city's credit rating now hangs by the thread of Brewer Science's ability to make every single payment on time and in full. If a government defaults on revenue bonds their bond rating plunges to junk bond status. In the future, even their formerly good-as-gold GO bonds will carry a high interest rate; that's the punishment the marketplace doles out to jerks who default on their bonds. The only way to avoid this virtual bankruptcy of your municipal fiscal reputation is to get the money somehow – any way you can - to make your payments as promised so the bondholders won't break your bond rating kneecaps. No Virginia, there is no free lunch no matter what kind of crack they're peddling.

The Opportunity Cost of TIF. An ‘opportunity cost’ is the price you pay for not having the means to take advantage of an opportunity today. Remember Wimpy's proposition: “I

will gladly pay you Thursday for a hamburger today.” What TIF proponents don’t ever talk about is the opportunity cost paid by the raided taxing districts; what they might have been able to do for county services, roads, schools, library and the disabled with the seized TIF tax money if they had been able to use it themselves as voters intended. TIF proponents use select anecdotes of some successful TIF projects – mostly in big metropolitan areas - but they have nothing to say about the lost opportunity for learning if a teacher is not hired to teach, if assistance is not available for the disabled, if books are not purchased for the library, if county roads aren’t maintained or health services are not available each year of the life of TIF. All are opportunities lost for a ‘greater good’ postponed - benefits that may or may not materialize, and if they do, they may or may never offset the cost of the lost opportunity.

Murder by TIF? The Sunday Jan. 5, St. L. Post Dispatch carried a story about the mysterious death last August of the late East St. Louis City Manager Harvey Henderson. East St. Louis’ seven TIF districts cover the entire city and the city hands out \$8 million a year in TIF grants. Relatives of Henderson say he told them he was about to blow the whistle on TIF graft and corruption when he fell off a bridge. The official story was that he was drunk, ran into an abutment, blew out two tires, crawled out the passenger side window, “scooted” 20 feet and flung himself off the Poplar Street Bridge. The coroner didn’t buy the official story. Henderson’s relatives say it was a TIF murder; the FBI is investigating.

TIF is easy money. TIF is a good tool. Greed is Good.

TIF Part III: Questions the Council Can’t Answer About Tax Increment Financing

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