

Brother, Can You Spare a Dime: Tax Increment Financing in Indiana

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INTRODUCTION

On September 8, 1995, Indianapolis residents gathered for the grand opening of Circle Centre, the city's largest and most controversial retail endeavor in several decades.¹ The four-story mall, located in the center of the downtown area, offers upscale shopping and entertainment, an entire floor of nightclubs, and the Arts Garden, a large glass dome suspended over an intersection which will provide performance, exhibit, and marketing space for local artists.² City officials hope that the mall will tie together existing downtown projects, such as the RCA Dome and Union Station, and attract new development to this central district.³

Public opinion has been divided as to whether the city's investment in the project will ultimately provide the anticipated funds and developments. The city's \$187 million share⁴ in the project comes from a tax increment financing scheme that will divert future property tax revenues from the area to pay off construction bonds. The city's expenses included \$55 million for land purchases and related fees, \$100 million for construction costs, and \$32 million for professional services such as lawyers, architects, and engineers; private investors contributed \$75 million to the project.⁵ In order to generate sufficient property tax revenues to meet future bond payment schedules, the mall must attract a significant amount of new development to the area. City officials estimate the mall property itself will generate approximately \$1.5 million in property tax revenue each year, but annual bond payments will rise to \$29 million by the year 2013.⁶ In addition, the city's share of operating profits will originally be set aside to pay off a \$30 million state loan for the project. Thus, Indianapolis may not receive profits from the mall for at least a decade.⁷

In the last several decades, a large number of Indiana municipalities have turned to taxing mechanisms, such as tax increment financing ("TIF"), to finance a wide variety of projects, including infrastructure improvements, retail centers, manufacturing centers, and housing developments.⁸ Projects such as Circle Centre have fueled a national debate about the ever-increasing use of TIF to fund these types of municipal development projects and the future impact of this type of funding on these communities.

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1. *Up with the Curtain*, INDIANAPOLIS NEWS, Sept. 7, 1995, at A10.

2. *Indy's Circle Centre Mall Opens Friday*, COURIER J. (Louisville), Sept. 3, 1995, at B5.

3. *Up with the Curtain*, *supra* note 1, at A10.

4. Linda G. Caleca, *Circle Centre Price was Costly in Dollars—and Emotions; City Bought Old Family-Owned Stores, Halting Their Traditions, to Make Room for a Bright and Shiny New Structure*, INDIANAPOLIS STAR, Sept. 6, 1995, at A1.

5. *Id.*

6. Kevin Morgan, *Build Now, Pay Later; Optimistic Circle Centre Planners Say That with Tax-Increment Financing Plan, They Will Gladly Pay Tomorrow for a Nice Mall Today*, INDIANAPOLIS STAR, Aug. 27, 1995, at A1, A4.

7. Greg Andrews, *City Begins Wait for Mall Payoff*, INDIANAPOLIS B. J., Aug. 7, 1995, at 1A, 47A.

8. The number of TIF districts in Indiana tripled between 1989 and 1992. DREW KLACIK, INDIANA TIFS: A STUDY OF TAX INCREMENT FINANCING IN INDIANA 13 (1994). Fifty-one districts collected tax increments in 1992, and a number of other TIF districts have been created or expanded since that time. *Id.*

TIF is a tool which allows local government to finance redevelopment projects through future increases in the ad valorem property tax revenue.⁹ As the property is redeveloped, its inherent value should rise, and property tax revenues should increase correspondingly.¹⁰ Most municipalities issue bonds prior to the development in order to raise money for the project, then gradually retire those bonds through the surplus tax revenue gained as the property value of the area rises.¹¹

For example, a redevelopment agency could designate a particular inner-city neighborhood as a TIF district. Each resident of the area pays property taxes based on the market value of the resident's property. This money goes into a general fund which is used to pay for schools, city and county services, and other municipal obligations. The redevelopment commission would look at recent tax rolls to determine the current property tax revenue from that neighborhood or the base value of the area. If the combined residents of the designated redevelopment area currently paid a total of \$50,000 per year, then the agency would continue to contribute that amount every year to the taxing body's general fund. As the redevelopment progresses, the property tax values in the area should rise, and residents would consequently pay higher taxes. Any amount collected above the original \$50,000 would be placed into a tax increment fund, administered by the redevelopment commission, to finance the redevelopment project. Since property taxes, the basis for most TIF funding, account for a large percentage of most local revenues,¹² this mechanism provides a powerful way for cities to gather funds. After the area is improved and the bonds are retired, the city should benefit from a greater tax base and increased tax revenues.

This financing plan assumes that a city will eventually "recover the cost of its investment and expenditures in acquiring and preparing a site for redevelopment through the increase in taxes it can realize once redevelopment is completed."¹³ By using TIF, a city can induce hesitant developers to infuse resources and capital into a redevelopment district by offering government subsidies in return for these investments.¹⁴ Through the use of eminent domain and tax exempt bonds, this mechanism can reduce developers' costs and promote development of economically depressed areas. This development can in turn provide jobs and other valuable opportunities for local residents. By providing needed capital up front, TIF allows municipalities to implement expensive development projects that might otherwise be unavailable but that will greatly enhance residents' quality of life.

Although TIF can provide beneficial revitalization or development projects for municipalities, city officials may not always use it in this manner due to the ease of implementing TIF and the lack of limitations on its use. This Note proceeds from the premise that these projects should focus on providing long-term economic benefits for community residents, especially those low-income residents who are most affected by the redevelopment process and most in need of financial help. TIF provides an opportunity

9. CHARLES M. HAAR & MICHAEL A. WOLF, *LAND-USE PLANNING* 968 (1989).

10. Gary P. Winter, *Tax Increment Financing: A Potential Redevelopment Financing Mechanism for New York Municipalities*, 18 *FORDHAM URB. L.J.* 655, 658 (1991).

11. HAAR & WOLF, *supra* note 9, at 968.

12. In the nation's 53 largest cities, property taxes accounted for almost 29% of own-source general revenue and 42.5% of own-source tax revenue for fiscal year 1989. *URBAN FINANCE UNDER SIEGE* 110 (Thomas R. Swartz & Frank J. Bonello eds., 1993).

13. Winter, *supra* note 10, at 658.

14. Benjamin B. Quinones, *Facing Up to Tax Increment Financing*, *ECON. DEV. & L. CENTER REP.*, Apr. 1993, at 12, 13.

for city officials to implement community-based economic development strategies such as affordable housing, job creation, and necessary services that would provide important benefits but that generally would not occur without government intervention.

This Note focuses on Indiana municipalities' current use of TIF and suggests legislative changes to make this financial mechanism more responsive to community needs. Part I explains the structure of the TIF process and the rationale behind this type of legislation. It also describes particular provisions of the Indiana redevelopment statute and federal bond requirements. Part II describes judicial responses to TIF legislation and the use of eminent domain in the redevelopment arena. Part III illustrates some of the economic, financial, and policy problems which may arise if this mechanism is abused. Part IV suggests possibilities for statutory reform in this area to maximize the positive economic impact TIF projects can provide for communities.

I. THE STRUCTURE OF TIF AND ITS USE IN INDIANA

A. Structure of Redevelopment/TIF Laws

The basic components of TIF are similar in most states. Indiana's law is typical. In Indiana, each municipality or county may set up a commission responsible for directing any redevelopment and TIF activities in that taxing district;¹⁵ this commission usually is called either a redevelopment commission or a metropolitan development commission. In order to exercise its powers in a redevelopment district, the commission must declare that the area is "blighted,"¹⁶ and that the project is of a type that cannot be accomplished through the "ordinary operations of private enterprise."¹⁷ A commission may also designate a nonblighted area as an "economic development area"; it may exercise most of the same powers in this area as are available in a redevelopment area, but it cannot use its powers of eminent domain.¹⁸ A separate chapter includes special provisions for using the mechanism to develop counties having closed or partially inactive military bases.¹⁹

Before beginning a project, the redevelopment commission must prepare a statement showing the area which is to be developed, the property owners who will be affected, and a cost estimate of the project.²⁰ If the area is designated as a redevelopment area, the commission must then adopt a resolution declaring that the area they have chosen is a

15. IND. CODE § 36-7-14-12.2 (1993). Redevelopment taking place in Marion County (Indianapolis) is governed by a separate chapter of the Indiana Code, but is subject to essentially the same restrictions. See *id.* §§ 36-7-15.1-1 to -35.

16. Indiana law defines a "blighted area" as one in which "normal development and occupancy are undesirable or impossible" due to "lack of development," "cessation of growth," "deterioration of improvements," "age or obsolescence of the area," "character of occupancy," "substandard buildings," or presence of "other factors that impair values or prevent a normal use or development of property." *Id.* § 36-7-1-3.

17. *Id.* § 36-7-14-15. The redevelopment district can include property that is not blighted if it is located within the blighted area. *Murray v. City of Richmond*, 276 N.E.2d 519, 523 (Ind. 1971); *Alanel Corp. v. Indianapolis Redev. Comm'n*, 154 N.E.2d 515, 521 (Ind. 1958) ("Even though the property here involved may not itself be 'blighted,' yet it may be subject to condemnation under the Act because it is located in a 'blighted area,' and its taking is necessary to clear the area.")

18. IND. CODE § 36-7-14-43 (Supp. 1995). Before the area can qualify as an economic development area, the city must show that the property cannot be developed through regulatory processes or private development due to lack of public improvements, lower property values than nearby land, multiple ownership problems, or "other similar conditions." *Id.* § 36-7-14-41(b)(2). The project must provide employment opportunities, attract business to the area, retain or expand existing businesses, or provide other public benefits to the area. *Id.* § 36-7-14-41(b)(4).

19. *Id.* § 36-7-14.5-12.5 (1993 & Supp. 1995).

20. *Id.* § 36-7-14-15(a).

“menace to the social and economic interest” of the municipality.²¹ The commission will then submit the resolution and redevelopment plan to the city’s plan commission for written approval.²² The plan commission and city legislative body must give their approval before the redevelopment commission may proceed.²³

At this point, the redevelopment commission must notify the public of the proposed plan. It must publish a notice, generally in the local newspaper’s legal section, informing citizens of the adoption and substance of the proposed plan.²⁴ It must also give the date of the public hearing at which the commission will listen to complaints from affected residents and determine whether the proposed project will be beneficial to the community.²⁵

Once a redevelopment area has been designated, the commission has extensive powers within that area. If the area is designated as a redevelopment area, the commission may use its powers of eminent domain and may acquire or transfer any personal property within that area and build, remodel, or tear down any included structures.²⁶ A commission may arrange all financial matters for that redevelopment district.²⁷ It may also assist qualified low-income families or neighborhood development corporations by providing financial or other assistance in rehabilitating, constructing, or repairing residential or commercial units within the area.²⁸ The commission can provide financial aid to owners of multiple-unit residences as well and has the power to condition that aid upon each unit’s affordability to low-income residents of the area.²⁹

During the redevelopment project, the commission will collect revenues in allocation funds in order to pay any necessary expenses.³⁰ The allocation funds may be used for almost every activity undertaken by the redevelopment commission, including bond payments, public improvements, rent payments, and property tax replacement credits for taxpayers located in the allocation area.³¹

B. Financing a Redevelopment Project

The commission may choose from several alternatives when deciding how to finance a redevelopment project. It may directly sell, rent, lease, or give away property in the area to developers, nonprofit groups, or other interested parties.³² A small number of communities use TIF on an as-available basis, and finance public investment gradually

21. *Id.* § 36-7-14-15(b).

22. *Id.* § 36-7-14-16(a).

23. *Id.* § 36-7-14-16(b).

24. *Id.* § 36-7-14-17(a) (1993 & Supp. 1995).

25. *Id.*

26. *Id.* § 36-7-14-12.2.

27. *Id.*

28. *Id.* § 36-7-14-12.2(a)(23)-(24).

29. *Id.* § 36-7-14-12.2(a)(25). The commission may require that the units “be leased: (A) for a period to be determined by the commission, which may not be less than five (5) years; (B) to families whose income does not exceed eighty percent (80%) of the unit’s median income for families; and (C) at an affordable rate.” *Id.*

30. *Id.* § 36-7-14-39(b) (1993 & Supp. 1995).

31. *Id.* § 36-7-14-39(b)(2). The allocation fund cannot be used to pay operating expenses of the redevelopment commission. *Id.* § 36-7-14-39(b)(2)(K).

32. *Id.* §§ 36-7-14-22 to -22.1. A redevelopment commission may give property to a neighborhood development corporation free of charge. *Id.* § 36-7-14-22.1. The corporation must use the property for low-income housing or other development which will serve low-income residents, and must employ low-income residents in the construction process to the greatest extent possible. *Id.*

as revenue is collected.³³ Most communities, however, incur debt based on anticipated future income. These communities issue bonds to pay any and all expenses incurred through acquisition and redevelopment of the property.³⁴

1. Use of Municipal Bonds

The cost of financing a redevelopment project depends in large part upon the type of bonds issued. Numerous restrictions and limitations determine whether the interest on a bond will be tax exempt or taxable for federal income tax purposes. If the commission is able to use tax-exempt bonds to finance a project, it may be able to pay a lower rate of interest on that debt and achieve significant savings on the project.³⁵ Prior to 1986, most cities were able to finance redevelopment projects in whole or in part through tax-exempt bonds.³⁶

The Tax Reform Act of 1986 ("Act") imposed strict limitations on tax-exempt municipal bonds, however, and made it increasingly difficult to qualify interest from redevelopment indebtedness as tax exempt.³⁷ Bonds are now classified as either "private activity bonds" or "non-private activity bonds." Nonprivate activity bonds are automatically tax exempt; therefore, a municipality normally will try to qualify for this type of financing whenever possible. A municipal bond will be classified as a private activity bond, however, if it meets both the "private business use" test and the "private security or payment" test, or, in the alternative, the "private loan financing test."³⁸ A private activity bond is generally not considered tax exempt unless it is a "qualified bond" and meets other extensive requirements.³⁹

Interest from "qualified redevelopment bonds," for example, will be tax exempt if 95% of the net proceeds from the bonds will be used for redevelopment purposes in a blighted area, and the payments are secured primarily by tax revenues.⁴⁰ Activities are for "redevelopment purposes" if they involve acquisition, clearance, preparation, or

33. KLACIK, *supra* note 8, at 26.

34. IND. CODE § 36-7-14-25.1(a) describes the procedure for issuance of bonds.

35. David E. Cardwell & Harold R. Bucholtz, *Tax-Exempt Redevelopment Financing in Florida*, 20 STETSON L. REV. 667, 680-81 (1991).

36. *See id.* at 684-87.

37. *Id.* at 681.

38. I.R.C. § 141(a) (1994); *see* William L. Henn, Jr. & Jeanette M. Bond, *The Basic Rules for Tax-Exempt Financing*, in TAX LAW AND PRACTICE (PLI Tax Law & Estate Planning Course Handbook Series No. 365, 1995). A bond issue will meet the "private business use" test if more than 10% of the proceeds from the bonds will be used for private business rather than the public at large. I.R.C. § 141(b)(1). Likewise, the "private security or payment" test hinges upon whether the bonds will be repaid through private funds rather than public funds. If the payment of the principal or interest on more than 10% of the proceeds is directly or indirectly secured by an interest in property used for private business or payments in respect of such property, the test is met. *Id.* § 141(b)(2). If the bonds are used to acquire land which will be sold to private persons for redevelopment, any money which those persons pay for the land will be considered as payments under this test; therefore, if these payments exceed 10% of principal or interest, the bonds will be private activity bonds. Larry D. Sobel & Harold Altscher, *Tax Increment/Redevelopment*, in TAX LAW AND PRACTICE (PLI Tax Law & Estate Planning Course Handbook, No. 245, 1986). A bond issue meets the "private loan financing" test if the amount of proceeds from the issue which will be used to extend or finance loans to entities or persons other than governmental units exceeds the lesser of 5% of bond proceeds or \$5 million. I.R.C. § 141(c).

Generally, tax increment bonds will not be classified as private bonds since the use of tax receipts does not pass the security interest test. If the bonds are used to acquire land which is sold for redevelopment to private persons, however, and the amount paid for the land exceeds 10% of the principal or interest of the bonds, the bonds will be private activity bonds. Sobel & Altscher, *supra*, at 6.

39. *See* I.R.C. § 103(b)(1) (1994). For further explanation of these categories and requirements, *see* John C. Bates, Jr., *Changes Made in Tax-Exempt Bond Area by 1986 Act Usher in New Era in Public Finance*, 66 J. TAX'N 72 (1987); Henn & Bond, *supra* note 38.

40. I.R.C. § 144(c) (1988).

rehabilitation of land located in a blighted area or relocation of residents living on that property.⁴¹ Along with the general restrictions which apply to all private activity bonds such as per capita volume caps and limitations on issuance costs, the municipality must also meet strict rules regarding the size of the area treated as blighted and types of facilities which may be financed.⁴²

2. Repayment of Bonds

If the district chooses to use bonds to pay for redevelopment costs, it has a wide range of options from which to choose when repaying its obligation. Most communities repay TIF bonds solely with revenue collected through increases in real property valuation.⁴³ Some communities also use a portion of the taxes imposed on depreciable personal property to repay TIF obligations.⁴⁴

Not all redevelopment bond issues are TIF bonds repayable through property tax revenue, however. A community may levy a special tax upon the property located in the taxing district to meet bond payments and other redevelopment expenses.⁴⁵ The local legislative body may also contribute extra funds from the county option income tax or any other source of municipal revenue in order to pay back bonds due by the taxing district.⁴⁶ However, these bonds will be considered to be "debts" of the municipality if they are to be paid out of revenues other than those generated by the project alone, and will consequently be subject to state constitutional debt limitations.⁴⁷

II. JUDICIAL RESPONSES TO TIF

The judiciary has generally treated economic and community development laws deferentially and has allowed cities to exercise a wide range of powers when implementing these projects. Indiana courts, like those in most other states, have upheld municipalities' use of TIF since its inception.⁴⁸

A. Use of Eminent Domain Powers

An important component of a redevelopment project is a municipality's ability to acquire land through eminent domain. Federal and state laws limit the use of this power; eminent domain may only be used when it serves a public use or purpose.⁴⁹ Most state statutes limit the use of eminent domain, in the TIF arena, to those areas which are

41. *Id.* § 144(c)(3)(A).

42. For further explanation of these restrictions, see generally Henn & Bond, *supra* note 38; Sobel & Altscher, *supra* note 38.

43. KLACIK, *supra* note 8, at 27.

44. IND. CODE § 36-7-14-39 (1993 & Supp. 1995) allows some municipalities to include taxes on qualifying depreciable personal property within the definition of "property taxes" for purposes of TIF.

45. *Id.* § 36-7-14-27.

46. *Id.* § 36-7-14-25.5.

47. See *infra* part II.C.

48. See Joseph F. Luther, *Tax Increment Financing: Municipalities Avoiding Voter Accountability*, 1987 DET. C.L. REV. 89, 106.

49. Daniel R. Mandelker, *Update on Redevelopment, Planning, Regulation, Litigation, Eminent Domain, and Compensation*, C629 A.L.I.-A.B.A. 583, 586 (1991).

"blighted."⁵⁰ However, "blight" can take many forms, and the wording of the particular statute in question can influence the court's decision.

Indiana courts have liberally construed the statutory requirement of blight and given redevelopment commissions wide-ranging power to acquire land for redevelopment. Any area which suffers from a lack of development, contains a number of deteriorated buildings, or has been increasingly abandoned by business is likely to qualify as blighted and therefore be subject to the redevelopment commission's power of eminent domain.⁵¹ Although the redevelopment area itself must qualify as blighted, other property within it need not be blighted in order for the redevelopment commission to acquire it, as long as the taking is necessary to clear the area.⁵² The structural condition of a single building will not be a determining factor in deciding whether the building may be condemned as part of a redevelopment plan.⁵³ Likewise, buildings immediately outside the blighted area may be included if necessary to facilitate the redevelopment plan.⁵⁴

B. Use of Public Funds for Private Gain

The Indiana Constitution, like most other state constitutions, proscribes the use of public funds for the benefit of private enterprise.⁵⁵ It specifically prohibits state or county governments from loaning money to, buying stock from, or assuming a debt for any private company or corporation.⁵⁶ Like most other states, Indiana has had little trouble declaring TIF to be constitutional under this provision.⁵⁷

In *Hawley v. South Bend*,⁵⁸ the Indiana Supreme Court determined that the seizure of private property to be used as a shopping mall did not contravene state constitutional limitations. The court reasoned that since the resale of the property would take place after the redevelopment commission's main objective—clearing the blighted area—had already occurred, it was "merely incidental" to the purpose of the Redevelopment Act.⁵⁹ The court also determined that the new shopping mall was within the meaning of "public purpose," as defined in the Redevelopment Act.⁶⁰ "So long as the eventual use of the property is related to a discernible public purpose or use, the actions of redevelopment commissions

50. *Id.*

51. See *Hawley v. City of South Bend*, 383 N.E.2d 333, 337-38 (Ind. 1978).

52. See *Alanel Corp. v. Indianapolis Redev. Comm'n*, 154 N.E.2d 515, 521 (Ind. 1958).

53. *Murray v. City of Richmond*, 276 N.E.2d 519, 523 (Ind. 1971).

54. See IND. CODE § 36-7-14-15.5.

55. For a comprehensive analysis of states' aid limitation provisions, see Dale F. Rubin, *Constitutional Aid Limitation Provisions and the Public Purpose Doctrine*, 12 ST. LOUIS U. PUB. L. REV. 143, 144 n.1 (1993).

56. IND. CONST. art. X, § 6 ("No county shall subscribe for stock in any incorporated company, unless the same be paid for at the time of such subscription; nor shall any county loan its credit to any incorporated company, nor borrow money for the purpose of taking stock in any such company."); IND. CONST. art. XI, § 12 ("[N]or shall the credit of the State ever be given, or loaned, in aid of any person, association or corporation; nor shall the State become a stockholder in any corporation or association.").

57. See Christina G. Dudley, *Tax Increment Financing for Redevelopment in Missouri: Beauty and the Beast*, 54 UMKC L. REV. 77, 98-100 (1985).

58. 383 N.E.2d 333 (Ind. 1978).

59. *Id.* at 341.

60. The court stated:

In enacting the Redevelopment Act, the General Assembly, in its "declaration of public policy," stated that the redevelopment of blighted areas is a "public and governmental function [which] will benefit the public health, safety, morals and welfare, and will serve to protect and increase property values [and] that the clearance, replanning and redevelopment of such blighted areas are public uses and purposes for which public money may be spent and private property acquired."

Id.; see IND. CODE § 36-7-14-2.5.

will not be disturbed on the ground of a public taking of private property for a private purpose."⁶¹

C. Debt Limitations

Most states place limitations on the amount of public debt that cities can incur. In Indiana, for example, a municipality may not be indebted in an amount greater than two percent of the value of all taxable property in that jurisdiction.⁶² States have not always agreed on whether TIF financing constitutes "municipal debt" for state constitutional purposes. Although most TIF statutes explicitly provide that any debt incurred or bonds issued by a municipality are not to be considered as a debt of that municipality, several states have held that TIF plans are subject to constitutional debt limitations.⁶³

In 1992, the Supreme Court of Wisconsin invalidated the state's TIF legislation on these grounds in *City of Hartford v. Kirley*.⁶⁴ Although the statute specifically provided that the municipality was not responsible for the indebtedness, the court found that this arrangement was merely a means of avoiding the constitutional limitation:

If the City's TIF bonds . . . were payable directly from the general property tax revenues of the City, they clearly would constitute debt under art. XI, sec. 3. The result should not be different because the tax increment statute and the TIF bond declare that TIF bonds . . . shall be paid from only part of the general tax revenues.

The very fact that the constitutional debt limit is calculated as a percentage of the taxable property located within a municipality's boundaries shows that the drafters of the constitutional provision were concerned about a municipality's incurring excessive obligations to be paid out of general property tax revenues.⁶⁵

In contrast, the Indiana Supreme Court has determined that redevelopment commissions are not bound by the debt limitation provision of Article 13, Section 1 of the Indiana Constitution.⁶⁶ Since the legislature designated redevelopment commissions as "special taxing districts" rather than political or municipal corporations, they do not fall under the debt limitation specified by the Framers.⁶⁷ This exception has been applied to exclude two types of financing from the debt limitation: revenue bonds and "special funds." A revenue bond will not constitute indebtedness if it is to be repaid solely from

61. *Hawley*, 383 N.E.2d at 341.

62. IND. CONST. art. XIII, § 1.

63. See, e.g., *City of Tucson v. Corbin*, 623 P.2d 1239 (Ariz. Ct. App. 1980) (striking down TIF statute on grounds that TIF financing constituted debt and should be subject to voter approval); *Richards v. City of Muscatine*, 237 N.W.2d 48 (Iowa 1975) (upholding TIF statute but holding that TIF financing subject to constitutional debt limitations); *Meierhenry v. City of Huron*, 354 N.W.2d 171 (S.D. 1984) (upholding TIF statute but holding that TIF financing subject to constitutional debt limitations).

In 1993, the Oklahoma Supreme Court likewise found that the state's tax increment financing legislation violated the state's constitutional debt limitations. *Muskogee Urban Renewal Auth. v. Excise Bd. of Muskogee County*, No. 74-424, 1993 WL 205147, at *27 (Okla. June 15, 1993). However, the court modified its position two years later upon a rehearing of the case. *Muskogee Urban Renewal Auth. v. Excise Bd. Of Muskogee County*, 899 P.2d 624 (Okla. 1995) (per curiam). The court held that state legislation authorizing TIF was facially valid. Thus, Oklahoma municipalities may use the financing process so long as constitutional requirements are met: the debts incurred must be within prescribed debt limits, the municipality must publicly identify the tax, and the debt must be authorized by local voters. *Id.* at *24-25.

64. 493 N.W.2d 45 (Wis. 1992).

65. *Id.* at 55-56.

66. *South Bend Pub. Transp. Corp. v. City of South Bend*, 428 N.E.2d 217, 220 (Ind. 1981).

67. *Eakin v. State ex. rel. Capital Improvement Bd.*, 474 N.E.2d 62, 65 (Ind. 1985); *Dortch v. Lugar*, 266 N.E.2d 25, 42 (Ind. 1971).

a fund created by revenues from the project for which the bonds were sold.⁶⁸ Thus, a TIF project, which depends solely on tax revenue created through redevelopment, does not create indebtedness under this standard. The Indiana Supreme Court reasoned that the original taxing power of the municipality was not changed through the use of TIF because the redevelopment commission had access only to the incremental tax revenues from the property in the designated district. The commission had no power to raise taxes and collect additional money if the property did not rise in value; therefore, the municipality did not delegate its taxing power to the commission through the use of tax increment financing.⁶⁹

In addition, a financing arrangement which depends only on "special funds" will fall within this exception as well. A municipality may place a special assessment on real estate which is benefited by a particular project or create a special tax for all property within a taxing district; since the tax or assessment is merely a "return" for the benefit received by these persons, it does not constitute debt.⁷⁰

D. Uniform and Equal Taxation

Tax increment financing also meets the requirements for uniform and equal taxation set out in Article X, Section 1 of the Indiana Constitution.⁷¹ In *South Bend Public Transportation Corp. v. City of South Bend*, the city's public transportation corporation and a group of city taxpayers argued that surrounding areas would be required to share the costs of the repayment project but would receive no benefits. The court rejected this argument, reasoning that the overlapping taxing units would eventually share in the benefits from the higher assessed values of the redevelopment area.⁷² Only the original assessment of taxes need be uniform; the distribution of the tax money is a matter of legislative discretion. Since TIF does not change the basic rate of assessment in either the redevelopment district or the surrounding areas, the taxation is uniform and thus meets the constitutional standard.⁷³

E. Contracts Clause

The *South Bend* court also held that TIF did not violate the contracts clause of either the state or federal constitution.⁷⁴ In *South Bend*, opponents of TIF argued that the financing mechanism would "freeze" the assessed valuation of property within the district while the bonds were being repaid and would limit property owners' ability to repay previous obligations.⁷⁵ The court disagreed with this argument, noting, "The same general tax revenues previously available to the other taxing districts will likewise be available after the plan is operative. . . . [S]ince the other taxing districts have not lost the benefit

68. *Eakin*, 474 N.E.2d at 66 (citing *Letz Mfg. Co. v. Pub. Serv. Comm'n*, 4 N.E.2d 194 (Ind. 1936)).

69. *South Bend Pub. Transp. Corp.*, 428 N.E.2d at 221.

70. *Eakin*, 474 N.E.2d at 67.

71. "The General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property, both real and personal." IND. CONST. art. X, § 1.

72. *South Bend Pub. Transp. Corp.*, 428 N.E.2d at 222-23.

73. *Id.* at 223.

74. See U.S. CONST. art. I, § 10; IND. CONST. art. I, § 24.

75. *South Bend Pub. Transp. Corp.*, 428 N.E.2d at 225.

of any tax revenues which would have otherwise been available, no impairment of contracts has occurred."⁷⁶

As illustrated by these examples, Indiana's TIF legislation has weathered all the constitutional arguments which litigants have brought against it. Indiana's judiciary, like most other courts, has interpreted these statutes in a manner which allows municipalities great freedom to creatively finance redevelopment projects. However, financing mechanisms such as TIF may not always prove to be beneficial for all communities.

III. THE DANGERS OF USING TIF

Indiana's current statutory scheme gives redevelopment commissions broad power to direct huge projects and divert millions of dollars in community monies with little oversight or community input. This freedom may allow city officials to quickly and easily implement projects which can benefit the overall community, such as the creation of high-paying jobs or affordable housing. In these circumstances, the use of TIF serves as a catalyst for development which would otherwise be unavailable to residents and unprofitable to developers. However, not all TIF projects are carefully designed and implemented. Rather than furnishing benefits to the overall community, these TIF schemes may actually cost the municipality more in the long run if they are used incorrectly. If a project is not properly evaluated before TIF is implemented, the community may suffer from financial, economic, and/or policy-related problems when this mechanism is implemented.

A. Possible Economic Problems

When TIF is employed in areas that are prosperous, likely to attract private development, or unsuitable for the type of development proposed, the use of TIF is likely to cause economic problems for the community at large by promoting inefficient use of land or resources. If the project could be privately financed rather than subsidized through TIF, the city loses the use of revenue it would have gained through the natural expansion of the tax base and unnecessarily subsidizes the cost of the development. TIF schemes may merely induce a developer to relocate a project onto a site selected by city officials or make a project more profitable for a developer than it otherwise would have been.⁷⁷ Private enterprise has always been involved in the construction of shopping centers, office buildings, and restaurants. The belief is that "if [a] city is really worth investing in, then private developers will make that investment without having taxpayers subsidize their cost and risk."⁷⁸

A finding of blight, however, does not automatically signal a need for redevelopment or the use of the TIF mechanism. TIF is often used to revitalize inner-city areas which

76. *Id.*

77. The California Planning and Development Reporter nominated Indian Wells, California for its 1993 "Creative Misuse of Public Purpose" award for its use of tax increment financing to subsidize a private golf resort. The city used \$10 million in tax increment funding to build two golf courses and attract other investors, then allowed a luxury homes developer to keep the money and build a third golf course for the community. The city justified its use of the financing mechanism by pointing to the jobs created by the new facilities, including a golf pro position. Morris Newman, *More Golf Courses for Indian Wells*, CAL. PLAN. & DEV. REP., Oct. 1993, at 12.

78. ROBIN P. MALLOY, PLANNING FOR SERFDOM: LEGAL ECONOMIC DISCOURSE AND DOWNTOWN DEVELOPMENT 124 (1991).

have been abandoned as industry and commercial enterprises have retreated to the suburbs. This lack of investment may actually be a signal that the designated redevelopment area is not suitable for the type of project envisioned by city officials.⁷⁹ Through political pressure, redevelopment areas may attract resources that could more efficiently be used elsewhere, resulting in an overall loss to the community.⁸⁰ The new construction accompanying these projects may be unnecessary, and can harm preexisting businesses which are unable to compete with these new developments.⁸¹

The city may suffer lost opportunity costs if the development created through the TIF project is not the most necessary or beneficial one for that area.⁸² For example, a city which constructs a shopping mall in a previously low-income area will prevent those residents from building other facilities such as youth centers or job training sites on that property. A manufacturing plant, which could have provided high-paying jobs for many of these residents, would now be unable to locate on that site, while the shopping mall would offer predominantly low-skill, low-wage service sector jobs.⁸³ Revitalization projects may provide only short-term benefits to low-income residents, and these benefits may not justify the project's overall cost to the community at large. Construction of retail centers, office buildings, and hotels provides mainly project-oriented jobs, such as construction or renovation work, and service sector retail or fast-food jobs. Rather than diversifying the local economy and providing meaningful long-term employment opportunities, these projects may merely shift these low-income jobs from one area of the city to another.⁸⁴

If gentrification occurs, these developments will also impose significant costs upon those persons living in or near the redevelopment district. Established residents may

79. *Id.* at 131. Malloy categorizes the "location question" as merely "a disagreement as to where private capital should be invested within a particular market or city region." *Id.* Since investors will try to seek the best return possible on their investment, they should be equally as good at choosing a location as politically driven city officials. *Id.*

80. *Id.* at 11.

81. Quinones, *supra* note 14, at 15. Developers may receive enough subsidies to make a project profitable even at a lower occupancy rate than that dictated by the free market, resulting in a glut of available space. *Id.* An overabundance of commercial space may cause prices to fall and neighboring areas to lose revenue as tenants move to new developments. See URBAN FINANCE UNDER SIEGE, *supra* note 12, at 23.

82. Quinones, *supra* note 14, at 16.

83. This example is taken from Quinones, *supra* note 14, at 16. In contrast, several Minnesota communities have successfully used TIF to preserve or expand local businesses and provide needed blue-collar jobs. SUSAN E. BLOCH, NEIGHBORHOOD REINVESTMENT CORP., TAX INCREMENT FINANCING: A TOOL FOR COMMUNITY DEVELOPMENT 10 (1988). St. Paul, Minnesota saved 900 jobs at a paper mill and carton folding company when the city sold TIF bonds to help local investors buy the plant. The town of Faribault, Minnesota also used the mechanism to help a local bus rehabilitation service expand and provide special technical training to over 145 local residents. *Id.*

Some Indiana municipalities have used TIF to promote employment and educational opportunities as well. The town of Clarksville used TIF funds to construct Kidsville, a day care center serving predominantly low- and moderate-income families. Scott Wade, *Family Circle: Centers Provide Variety of Services Under 1 Roof*, COURIER J. (Louisville), July 24, 1994, at A1, A15. The center is one of 31 family service centers established in Indiana since 1989, and offers day care, programs on nutrition and childrearing, and speech, physical, and occupational therapy. *Id.* These programs, along with the low-cost day care provided by the centers, enable many parents to return to work or school and become more self-sufficient. *Id.*

Communities may also use TIF to provide employment opportunities by attracting permanent, high-wage jobs to the area. A \$35 million state and local tax incentive package for a steel mini-mill in Indiana's DeKalb County could help bring 600 permanent jobs and a possible \$35 million rise in annual income and retail trade to the area. John Ketzenberger, *Indiana's Man of Steel*, IND. BUS. MAG. July, 1995, at 8, 10. The first phase will include a melting and casting facility and hot-rolling mill, which will produce over 1.2 million tons of steel per year and employ approximately 300 people. Construction is scheduled to begin on the second phase, a cold-rolling plant, in 1996. *Id.* Private investors provided the bulk of the \$514 million project cost; state and local governments offered property tax abatements, infrastructure improvements financed through TIF, and state training grants and incentives. *Id.*

84. MALLOY, *supra* note 78, at 121.

ultimately subsidize an influx of newcomers who are drawn to the area as it becomes more fashionable.⁸⁵ These newcomers will increase demands for public services and compete for available jobs. Because these new residents will have greater purchasing power than the original low-income residents of the area, prices for housing and consumer goods will rise in response.⁸⁶ As the area improves and costs rise, residents may be forced to move elsewhere, losing housing, jobs, and contacts they had prior to the development project.⁸⁷ Rather than eliminating poverty, the redevelopment merely concentrates it elsewhere in the city, since the original residents must find alternative places to live and work. Since these residents generally do not move far from their original neighborhoods, these development projects may actually increase the concentration of poverty in areas immediately surrounding the tax increment zone rather than improve overall conditions.⁸⁸

B. Possible Financial Problems

The use of TIF may also cause financial difficulties for the community and surrounding areas. TIF limits the amount of money that a redevelopment area will contribute to the general municipal fund based on the area's original assessed value at the time the project began. Even though costs for city services may rise, the area will not submit any additional monies to the taxing unit until the entire cost of the development project has been recouped. Since the redevelopment agency is a separate corporate entity from local government, any additional TIF revenue generated will be automatically funneled to the agency until all bonds have been retired.⁸⁹ The agency cannot shift money into city coffers even if the commission receives a higher increase in property taxes than expected,

85. FRANK J. POPPER, *POLITICS OF LAND USE REFORM* 37 (1981).

86. *Id.*; see also *Florida v. Miami Beach Redev. Agency*, 392 So. 2d 875, 900 (Fla. 1981) (Boyd, J., concurring in part and dissenting in part).

87. Quinones, *supra* note 14, at 14. Rather than assisting the poor in the redevelopment area, this type of project has been criticized as actually punishing the victim by funneling area resources to the rich and reducing economic multipliers. *Id.*

Redevelopment projects may limit the amount of low-income housing in the taxing district, and residents may not be able to afford rent in other areas of the city. When the city of Evansville targeted its center-city Jacobsville area for redevelopment in 1993, the annual income of residents in the district was only about \$12,100. Dave DeWitte, *Jacobsville Plan Gets Mixed Reviews*, EVANSVILLE COURIER, Feb. 16, 1994, at A1, A3. Few other areas in the city offer housing at the low rents available in the Jacobsville neighborhood, and a number of Jacobsville homes would be acquired by the city during redevelopment in order to expand local businesses and provide neighborhood parks. *Id.* Developers may be reluctant to spend a great deal of money to renovate deteriorated housing, preferring to clear the area and construct new, more expensive housing. While this makes financial sense, it creates severe problems for many residents who receive little for their property and are unable to afford to buy a home elsewhere. See also Byron Rohrig, *Jacobsville Redevelopment Questioned: Critics Say Few Homes in the Area Worth Investment*, EVANSVILLE COURIER, July 21, 1993, at A4. City officials can often work with nonprofit groups and provide grants or other financing to renovate or build other affordable housing in the area. Evansville, for instance, proposed a matching grant plan in which the city would offer initial financing for renovation or construction. The nonprofit entities would match the funds, then repay the money to the city after the houses are sold in order to finance other homes. See Mel Runge, *Jacobsville Renewal Moves Ahead; Current Ideas Revolve Around Central Park*, EVANSVILLE PRESS, Feb. 15, 1994, at A1. If used well, creative financing schemes such as these can improve neighborhood conditions, save money, and provide employment for local residents.

88. Benjamin B. Quinones, *Redevelopment Redefined: Revitalizing the Central City with Resident Control*, 27 U. MICH. J.L. REF. 689, 737-39 (1994). Since poor neighborhoods are generally clustered together in urban areas, surrounding neighborhoods may be the only ones offering rents comparable to those found in the redevelopment area. See *id.* at 737.

89. See IND. CODE § 36-7-14-39 (1993 & Supp. 1995). This can place a heavy burden on school districts and other entities which receive most or all of their funding from tax revenues. If the population increases, the demand for these services is likely to rise in proportion. However, these entities will not receive any additional tax revenue from the improvements until the bonds are repaid.

as long as the funds are needed to finance redevelopment bonds or protect the interests of bondholders.⁹⁰ Population increases, inflation, or other factors may heighten the need for city services, but the increased property taxes from the redevelopment area will not be available for city use until the bonds have been fully repaid, which could take up to thirty years or possibly longer.⁹¹ The city may be forced to implement other tax increases or seek subsidies from federal or state sources in order to keep up with rising costs during this period.

The effects of TIF may be felt most strongly in areas surrounding the tax increment district since these areas may be forced to pay higher taxes in order to keep city services at the necessary level.⁹² The city may also offer other subsidies as further incentives for developers to invest in the project. The combination of TIF and other types of relief, such as tax abatements and exemptions, could further raise other residents' payments and force surrounding areas to contribute more money as the area becomes more highly subsidized.⁹³

C. Policy-Related Concerns

The freedom inherent in TIF provides great potential for abuse, and projects may be designed to benefit developers or politicians rather than the people of the community. As federal oversight of redevelopment projects has waned,⁹⁴ city officials have been subject to fewer governmental restrictions upon the type and quantity of redevelopment projects they can pursue. Residents may no longer turn to the federal courts to enforce relocation, participation, and planning requirements.⁹⁵ While federal procedures provided a stronger basis for resident input, state law contains fewer and less stringent protections.⁹⁶

The complexity of TIF programs may also keep citizens from understanding the true costs and benefits of redevelopment programs. City officials may laud TIF programs as one way to avoid present tax increases yet pay for development projects. If the city is forced to raise taxes later, however, citizens may not realize that this is a direct result of the TIF program. Since TIF's costs are hidden and may occur years later, citizens are unable to judge correctly the costs and benefits of using TIF:

90. See *id.* § 36-7-14-39(b)(3). If the TIF district is located in an enterprise zone, excess funds gathered through property tax proceeds will be used to create a "special zone fund," to be used primarily for job training and other programs to benefit residents and employers in the area. *Id.* § 36-7-14-39(g).

91. See *id.* § 36-7-14-39(b) (Supp. 1995); *id.* § 36-7-14-25.1(c)(3).

92. See Jack Huddleston, *Taxpayers in Some Communities May Pay More in Tax Increments*, 19 LAND USE DIG. 5 (1986). Huddleston's study of 19 municipalities in Milwaukee County, Wisconsin found that the residents of the 10 cities that did not use tax increment financing subsidized taxpayers in the nine municipalities that did use the mechanism.

93. See Jo Ellen Meyers Sharp, *Regional Development Group to Cooperate, Not Compete*, INDIANAPOLIS STAR, Oct. 26, 1994, at E1. Since a substantial portion of the area's tax base does not put money into the city's coffers, other residents or surrounding areas must either contribute more or face a lack of necessary services in the years to come. In Indianapolis' Center Township, for example, 22% of the property tax base is already exempt from taxes under either state or federal law. *Id.* In addition, the tax base is further reduced by the presence of tax abatements, TIF districts, and enterprise zones. In 1992, 14.4% of Center Township's tax base fell into this category. *Id.* In the 10-year span between 1982 and 1992, the township lost over \$102 million in taxes due to these three programs. *Id.*

These programs are not used only in Indianapolis; tax relief schemes are used in a large number of Indiana municipalities. The nonpartisan Legislative Services Agency estimated that abatements and incentives raised the average Hoosier's tax bill by 3.6% in 1994. Lary MacIntyre, *House Looks at Tax Breaks, Committee Moves Quickly Toward Renewing Law That Helps Provide Incentives for Business*, INDIANAPOLIS STAR, Jan. 5, 1995, at B5.

94. For an overview of federal redevelopment programs, see generally Quinones, *supra* note 88.

95. See Quinones, *supra* note 88, at 707. Federal law may have offered a potentially more effective arena for plaintiffs, since federal judges would presumably be less subject to the political pressures found in state courts. *Id.*

96. See *infra* part IV.A.

It is relatively easy to point to the new office building or shopping center constructed in downtown Indianapolis. It is next to impossible, however, to determine which taxpayers actually paid for the project and, more important, which towns and people elsewhere in the state or country lost out on real estate projects or jobs because of the advantage Indianapolis gained from public funds.⁹⁷

Citizens may not get a correct view of the program from the media if the reporters do not understand this type of financing or the paper is politically biased.⁹⁸

City leaders are naturally more eager to fund projects which will enhance a city's image and serve as a symbol of their administration's accomplishments. Large projects such as shopping complexes and office buildings often improve a city's image, allow the area to compete with neighboring jurisdictions, and pave the way for further development in that location. This mindset, described by one commentator as the "edifice complex," often furthers city leaders' political careers at the expense of low-income residents.⁹⁹ The ease of using TIF and the few restrictions it contains serve as further encouragement to city officials to pursue these large projects rather than smaller ones which could improve the quality of life in low-income neighborhoods.

City officials and developers may work hand in hand on these important development projects to assure profits to the developer and further officials' political careers. Public-private partnerships restrict the impartial decisionmaking ability of city officials and reduce the ability of citizens to restrain government power.¹⁰⁰ Important business figures, who often hold connections to city government, are likely to have more clout in the political process than low-income residents and can assert more influence on the outcome of development projects. Politically wise entrepreneurs will often ally themselves with the current power structure in order to gain additional benefits and assistance. Likewise, city officials are more inclined to know and trust businessmen with whom they have business connections or friendships, and are thus more apt to favor their ideas. City officials often have little involvement with low-income residents and little idea of their actual needs, and are thus more likely to pursue projects that cater to the interests of higher income groups.

The availability of TIF and other subsidies, and the influence that developers have in the political process, may lead to large financial gains for developers. If one developer has strong political ties to government leaders, it may receive a majority of that city's business.¹⁰¹ This lack of competition could harm smaller development firms and raise the price of development projects. Developers may also receive unnecessary public financing for projects such as office buildings and retail centers which could be supported by the private marketplace. Since these projects could be completed without governmental assistance, the developer who receives TIF subsidies is merely receiving a windfall due

97. MALLOY, *supra* note 78, at 115-16.

98. *Id.* at 107.

99. Quinones, *supra* note 14, at 13-14. City leaders "needed brick-and-mortar symbols to demonstrate their accomplishments," and projects such as sports arenas, hotels, convention centers, and office towers are calculated to appeal to large numbers of voters. BERNARD J. FRIEDEN & LYNNE B. SAGALYN, *DOWNTOWN, INC.: HOW AMERICA BUILDS CITIES* 281 (1989). One survey of mayors found that most wanted to provide more opportunities for entertainment, rid the city of eyesores, and "demonstrate the city's competence to manage development," and were generally not concerned with economic considerations of downtown redevelopment projects. *Id.*

100. MALLOY, *supra* note 78, at 125.

101. *See id.* at 104.

to his personal or business connections.¹⁰² Other businesses and developers will be prone to expect the same treatment in the future, and the costs of redevelopment will rise correspondingly.¹⁰³ The city may be forced to use TIF in order to *keep* jobs and businesses in the area rather than to attract them.

IV. USING TAX INCREMENT FINANCING FOR COMMUNITY ECONOMIC DEVELOPMENT

Current TIF legislation enables redevelopment commissions to create a wide variety of redevelopment projects and financial strategies. As discussed earlier, however, not all strategies will provide long-term economic benefits for the community. Nearly all states have implemented TIF legislation in response to the federal government's diminishing role in the redevelopment area. Both federal and sister-states' statutes can provide procedural and substantive models for building safeguards into current Indiana law to assure that TIF projects will meet the needs of the community.

City officials cannot make informed decisions without analyzing effects of the program on both the redevelopment area and surrounding neighborhoods and comparing the utility of TIF with other available financial mechanisms. By building in greater citizen participation requirements, city officials can better understand the effects that a redevelopment plan will have on a community and can work more closely with residents to maximize positive impacts of a project. The city is also more likely to receive a clear picture of the financial risks and benefits involved in using TIF and may be able to tailor its financial planning to minimize these risks.

Other statutory safeguards can further insure that residents will have sufficient affordable housing by allowing some residents to keep their homes and aiding others in finding replacement housing. Additional recommended provisions call for replacement of all housing which is lost due to redevelopment and require replacement units to be affordable to residents for a minimum time period. Finally, a set-aside provision would require the city to use a portion of the money gathered to directly benefit lower income people, either through the creation of affordable housing or by funding programs used by lower income residents. By implementing these statutory safeguards, communities can use TIF more responsibly and maximize the positive impacts of the program.

A. Creating Participation Requirements

When determining whether a community will benefit from TIF, decisionmakers must consider the long-term effects a project will have on the community. They must consider the impact upon residents, businesses, and surrounding communities, and determine both the feasibility of conducting the project and the pros and cons of using this type of funding mechanism. City officials are often unaware of the full range of effects which

102. TIF allows the developer to reduce his federal income tax liability as well, since any property tax that the developer pays for the project will be passed back to him in the form of an income tax deduction. I.R.C. § 164 (1994).

103. In 1989, Hoffman Estates, Illinois offered \$61.1 million in subsidies to Sears in order to keep the company from leaving the state. Nancy Ryan, *Suburbs See Sears Deal As Expensive Precedent*, CHI. TRIB., July 7, 1989, §1, at 1. The city declared the site a tax increment financing district and allowed the retailer to pay off the bonds in lieu of paying property taxes. *Id.* at 11. The mayor of another Chicago suburb said he expected more companies to request the same treatment: "Municipalities will have difficulty bringing companies that have unrealistic expectations back to reality." *Id.*

may flow from their decisions, as procedural requirements for TIF projects are minimal.¹⁰⁴ City officials can be sure that a TIF project is tailored to the needs of the community only by first finding out what the needs of the community are.

Stronger citizen participation requirements would allow these residents to assist the city in tailoring the projects to make them more responsive to the community's needs. Through stronger requirements, politicians will be better able to respond to the wants and needs of their constituents. Citizens are likely to take a more proactive view of government and become more involved if they are able to see the difference that their input makes in the process and guide it in ways which will improve their neighborhoods. Citizen participation requirements help make the decisionmaking process more responsible and responsive to the needs of the community.

1. Notice Requirements

In order to have meaningful citizen participation, current notice requirements should be strengthened to insure that all affected groups know of the redevelopment process before any actions are taken. The city should be required to individually notify each resident of the proposed redevelopment area by mail several weeks prior to a public hearing to ensure that each resident is aware of the proposed project and is allowed sufficient time to prepare for the hearing and retain legal assistance, if necessary. The letter should explain the basic ramifications of the redevelopment project and notify residents of the time and place of the public meeting. Finally, the public meeting should be scheduled for a time at which residents are likely to be able to attend, not merely one which is convenient for city officials.

California law provides much stronger procedural safeguards than those present in Indiana. Under California law, the redevelopment agency must publish notice of the hearing at least once per week for four successive weeks prior to the hearing.¹⁰⁵ The agency must mail every landowner, resident, or business in the redevelopment area a copy of the published notice at least thirty days prior to the hearing.¹⁰⁶ The agency must also mail notices by certified mail to any taxing agencies which levy taxes upon any property located in the redevelopment area.¹⁰⁷ Provisions of this type help to ensure that residents have an opportunity to learn about the project before it is implemented and gives them sufficient time to prepare for the hearing or any other action.

104. See *supra* part I.A. During the debate over renewal of the current TIF legislation, an amendment was proposed which would have required extensive public hearings prior to implementation of TIF projects. Mary Dieter, *Tax-Financing Plan for Road Under Fire; Local Officials Abusing Law, Legislator Charges*, COURIER J. (Louisville), Jan. 15, 1995, at A1. The amendment would have required retailers and other employers involved in the project to provide specific information to the public regarding benefits they planned to offer to the community if the tax incentives were granted. *Id.* This amendment, along with a number of others, was never considered on its merits; opposing legislators said they had received insufficient time to consider the proposals. *Id.*

105. CAL. HEALTH & SAFETY CODE § 33349(a) (West Supp. 1995).

106. *Id.* § 33349(b)-(c). This notice requirement applies only to those addresses which can be obtained by the agency at a reasonable cost, and notices may be addressed to "occupant" if the owner is unknown. *Id.*

107. *Id.* § 33349(d).

2. Citizens Advisory Committee

Citizens living in or near the redevelopment area could serve on a citizens advisory committee to review the proposed project and give suggestions regarding implementation. In order to fully represent the community, the board must have a diverse membership and include persons from all groups affected by the proposed redevelopment. Neighborhood coalitions, nonprofit groups, municipal agencies, and other local groups should be present to ensure that their interests are being considered.

For example, California law requires a city to form a project area committee whenever a redevelopment project will have an impact on an area involving a substantial number of low- or moderate-income people or could displace a substantial number of these residents.¹⁰⁸ The city must mail notices to all residents, businesses, and community organizations within the project area explaining the functions of and opportunity to serve on the committee, and notifying them of all meetings and hearings involving the project.¹⁰⁹ The committee consists of elected representatives from residential areas, business owners, and existing organizations within the redevelopment district.¹¹⁰

This representative group should be given substantial voting power during implementation of the project to prevent the commission from overriding the wishes of the community in order to further its own goals and interests. California law limits residents' influence by giving them no real voting power in the redevelopment process. Although the redevelopment agency must consult with and get advice from this committee during the planning process, it is not required to follow the residents' recommendations.¹¹¹ If the project area committee ultimately recommends that the plan be rejected, the plan may still be implemented if two-thirds of the legislative body vote for the plan at a later meeting.¹¹²

Under Indiana law, both the area plan commission and the local legislative body or county executive wield a veto power over redevelopment projects. The redevelopment commission cannot proceed with any acquisition until the plan commission issues an order approving the plan and either the county executive approves the plan or the legislative body approves it by majority vote.¹¹³ Residents currently have no direct voting power in this process. Although they can obviously vote the city or county council members out of office if they are unhappy with the members' votes, this after-the-fact power is little consolation to those who will be affected by the upcoming redevelopment project.

108. *Id.* § 33385(a) specifies:

(a) The legislative body of a city or county shall . . . form a project area committee in either of the following situations:

(1) A substantial number of low-income or moderate-income persons, or both, reside within the project area, and the redevelopment plan as adopted will contain authority for the agency to acquire, by eminent domain, property on which any persons reside.

(2) The redevelopment plan as adopted contains one or more public projects that will displace a substantial number of low-income persons or moderate-income persons, or both.

109. *Id.* § 33385(a)(1)-(2), (4).

110. *Id.* § 33385(a)(7)(c). The representative group should be directly elected, in order to ensure that residents who will represent the neighborhood's views will be present on the committee.

111. *Id.* § 33386 (West 1973).

112. *Id.* § 33366 (West 1973 & Supp. 1995).

113. IND. CODE § 36-7-14-16(b).

By establishing citizens advisory committees, Indiana residents would acquire a voice in the redevelopment process. These residents must be given meaningful voting power, however, in order to ensure that their views are fully taken into consideration in planning and implementation of a project. This can best be accomplished by according this group equal status with the plan commission. By requiring the citizens advisory group to issue its approval before implementation, legislators could better protect those who are affected by the redevelopment process.¹¹⁴ New legislation should also delineate minimum meeting requirements for the committee and develop a clear understanding of the committee's role and legal rights in order to maximize the effectiveness of the committee.¹¹⁵ By establishing a vital role for residents in the political process, the legislature can help ensure that redevelopment projects will better meet the needs of the community in the future.

3. Community Outreach Programs

Implementation of community outreach programs would further increase the effectiveness of the decisionmaking process. Residents must understand the implications of the redevelopment process and the TIF mechanism in order to decide whether it would be a beneficial step for the community to take. The citizens serving on the advisory board and members of city government are similarly unlikely to understand all the intricacies of these programs. Citizens, advisory committee members, and other decisionmakers need access to complete and accurate information in order to make informed, intelligent decisions about the use of TIF in their community. Community meetings, flyers, and presentations can help both city officials and residents understand the implications of their actions.¹¹⁶ As residents and city officials grow more informed about the redevelopment process, they can work toward implementing increasingly comprehensive TIF projects which are more likely to meet the needs of the community.

The Dudley Street Neighborhood Initiative (DSNI) is a striking example of the success of this type of governmental outreach program.¹¹⁷ Residents of the Dudley Street area, located just southwest of downtown Boston, formed a community-based coalition to work with local officials and create a comprehensive master plan for redevelopment of the area. Residents hold a majority of the coalition's board seats, and a number of ethnic communities, local nonprofit agencies, religious groups, and small businesses are represented.¹¹⁸ The district has a long history of community education, and a large number of residents have participated in workshops and other group projects throughout

114. One commentator has suggested that giving citizens groups veto power over the redevelopment commission would give the city more negotiating strength and allow it to "drive harder bargains," since "staff can say we would love to agree to this give-away but citizens groups will never go along with it so we have to change the plan." Quinones, *supra* note 14, at 18 n.27.

115. The mere formation of a committee is not sufficient to ensure meaningful citizen participation; the citizens must have a clear understanding of the project and their role in its development. In East Palo Alto, California, for instance, residents were part of a citizens advisory committee, but were unable to guide the redevelopment process in their neighborhood. Community residents stated that they were unaware of their role and of their legal rights throughout the process. National Economic Development and Law Center, *Facing the Local Redevelopment Agency*, 24 CLEARINGHOUSE REV. 1051, 1056 (1991).

116. If a neutral party, rather than a city official, is available to give a presentation on TIF and redevelopment, this solution is likely to be preferable. Residents are likely to distrust city officials, especially in this context, and a third party may be better able to present both pros and cons of the project.

117. National Economic Development and Law Center, *supra* note 115, at 1057-60.

118. *Id.* at 1058.

the process.¹¹⁹ The redevelopment plan preserves resident control over community resources, promotes the development of housing and retail areas which will benefit residents, and implements programs to improve the quality of life for local residents.¹²⁰

While few communities are as organized as the Dudley Street neighborhood, the program can serve as a valuable model for Indiana municipalities. Through community education, other residents can also begin to take a more active role in the redevelopment process in their neighborhoods. City officials are unlikely to push for this community involvement alone, however; legislators can only ensure that community involvement will increase by making these programs mandatory. By implementing minimum standards for community outreach programs, legislators can help city officials and residents learn more about the redevelopment process and implement beneficial community development projects.

B. Affordable Housing Provisions

Since redevelopment normally occurs, by definition, in "blighted" areas, many projects include either renovation or demolition of substandard housing stock located in the redevelopment district. Residents or businesses may be forced, through the eminent domain process, to surrender their properties to the city in order to further an overall redevelopment plan. Indiana law currently offers little protection to these residents: although they will receive compensation for their property and relocation expenses through the eminent domain process, these residents are offered no guarantees that the city will find alternative affordable temporary housing or replace the housing that was lost.¹²¹ While city officials *may* use tax increment funds to provide housing for low-income residents, they are not *required* to do so.¹²² Indiana law allows a redevelopment commission to help with housing payments, fund neighborhood development corporations, and require owners to rent housing units at affordable prices, but these provisions are merely discretionary.¹²³ Mandatory provisions which protect owners' interests in their property, aid them in finding new housing, require the replacement of housing stock, and ensure that the availability of decent, affordable housing will minimize redevelopment's negative impacts upon lower income residents.

I. Protecting Owners' Interests

When a redevelopment commission designates an area as a "redevelopment district," it often includes property which needs only minor improvements in order to comply with the city's overall plan for the area. Many housing units or businesses may have code violations or necessary renovations which could be fixed relatively easily and at low cost to the owner. These properties, along with nonblighted properties located within the district, could often be improved more efficiently by private parties than by the local redevelopment agency. A program which gives the previous owner "first chance" to

119. *Id.*

120. *See id.* at 1060.

121. Indiana law requires only that the redevelopment commission and plan commission "give consideration" to transitional and permanent housing when determining the location and extent of a blighted area which will be acquired for a redevelopment project. IND. CODE § 36-7-14-16(c).

122. *See id.* § 36-7-14-12.2(a)(19), (23).

123. *Id.* § 36-7-14-12.2(a)(23)-(25).

purchase the property and offers financial help for renovations and repairs would allow residents to keep their properties while using redevelopment resources more efficiently.

Residents currently receive limited protection of this type under Maine law. In Maine, a municipality cannot sell undeveloped or unrehabilitated property acquired by eminent domain without first offering it to the prior owners or their heirs.¹²⁴ The property must be offered at a price no more than the sum of the compensation and damages from the eminent domain proceedings, any relocation payments or benefits, and the costs of any improvements made by the municipality.¹²⁵ In return, the owner must agree to use the property in accordance with the municipality's community development program.¹²⁶ Since Maine law allows the city to loan or grant money to owners for rehabilitation and repair,¹²⁷ these owners have the opportunity to improve their property but are not forced to lose their homes in the process. This provision is limited, however. It does not apply if the property is one of three or more contiguous parcels which are to be redeveloped as a unit.¹²⁸ The provision, then, allows the redevelopment commission to assemble land for larger projects involving a number of properties.

A legislative provision of this type could allow more Indiana residents to keep their property and increase the efficiency of the redevelopment process. While a provision of this type obviously would not provide assistance to owners if a large project such as a factory or community center was to be built on the land, it could provide protection if the redevelopment consisted mainly of piecemeal construction and renovation. Creative financing strategies for renovations would enable residents and nonprofit agencies to improve housing quality and would reduce overall project costs. Since residents are required to use the property in a manner consistent with the overall redevelopment plan, the city could further be assured that the end result would be satisfactory.

2. Antidisplacement/Replacement Provisions

Owners who are ultimately unable to keep their homes may receive little help from the city when trying to find replacement housing. Indiana law currently provides no mandatory relocation assistance, and does not require redevelopment officials to find or create alternative housing before implementing a redevelopment project. Residents who are displaced may receive little money for their property and may be unable to afford rent in other areas. In addition, the project may destroy a large number of residential units and further limit the amount of affordable housing available in the area. A stronger antidisplacement plan would require officials to assist residents in finding alternative housing and call for the replacement of any housing which is no longer available due to redevelopment. A comprehensive assistance plan of this type would alleviate many of the immediate problems faced by these displaced residents and help prevent a future shortage of affordable housing.

Legislators can use both federal and sister states' redevelopment laws as models when drafting antidisplacement legislation. Communities receiving federal Community Development Block Grant ("CDBG") funds are required to provide comparable

124. ME. REV. STAT. ANN. tit. 30-A, § 5203(3)(E) (West Supp. 1994).

125. *Id.*

126. *Id.* § 5203(3)(E)(2).

127. *Id.* § 5203(3)(B).

128. *Id.* § 5203(3)(E).

replacement dwellings as part of an antidisplacement and relocation assistance plan.¹²⁹ These replacement dwellings must house the same number of occupants as could have been housed in the units which were demolished or converted to other uses and must remain affordable for at least ten years.¹³⁰ The replacement housing must also be decent, safe, sanitary, functionally equivalent, and located in an area which is "not subject to unreasonably adverse environmental conditions."¹³¹ Residents are also entitled to relocation benefits including moving expenses, security deposits, interim living costs, and compensation for increased costs of housing.¹³²

California law provides residents with similar protection. Before displacing residents, a redevelopment commission must adopt a relocation plan and ensure that comparable housing is available.¹³³ Whenever housing units are destroyed or converted, redevelopment agencies are required to renovate, construct, or assist in the renovation or construction of an equal number of affordable housing units.¹³⁴

While these provisions are necessarily limited only to those directly displaced by redevelopment, they can serve as a starting point for ameliorating the negative effects on these residents. Indiana law allows redevelopment officials to replace destroyed or converted units, or to assist residents in obtaining replacement housing. In order to help these residents consistently, however, these provisions must be mandatory rather than optional.

3. Minimum Time Requirements

As demand increases for replacement and redeveloped housing, the price of these units may rise, forcing residents to leave once again. A comprehensive relocation plan must ensure that this housing remains affordable to residents for a substantial period of time. Indiana law currently does not assist these residents in obtaining housing at affordable rates, and does not place mandatory cost limits on redeveloped units. While a redevelopment commission *may* impose rent limitations on the owner of a multiple unit building as a condition of financial assistance, it is not required to do so.¹³⁵

In contrast, other jurisdictions have imposed minimum time requirements during which the properties must remain at affordable cost. For instance, municipalities receiving federal CDBG funds must provide replacement dwellings which will remain

129. 42 U.S.C. § 5304(d)(2)(A)(i) (1988 & Supp. V 1993). Those communities which contain an adequate supply of habitable affordable housing are not required to provide this assistance. *Id.* § 5304(d)(3).

130. *Id.* § 5304(d)(2)(A)(i)-(ii).

131. *Id.* § 5304(d)(2)(A)(iv).

132. *Id.* § 5304(d)(2)(A)(iii).

133. CAL. HEALTH & SAFETY CODE § 33367(8)(A)-(B) (West 1973 & Supp. 1995). California municipalities are required to produce specific evidence that replacement housing exists or is being built before enacting a redevelopment plan. *Gonzales v. City of Santa Ana*, 16 Cal. Rptr. 2d 132, 139-41 (Ct. App. 1993) (finding that promise by city that housing would be found or built and evidence regarding vacancy rates and potentiality of new units were not sufficient to satisfy statutory requirements of specificity). In contrast, Indiana officials need only "give consideration" to this problem, and no formal showing is necessary. IND. CODE § 36-7-14-16(c); *Hawley v. South Bend Dep't of Redevel.*, 383 N.E.2d 333, 338 (1978) (holding testimony by commissioners that consideration had been given to replacement housing, although not discussed formally at hearing or commission meetings, was sufficient to support conclusion that displacement was considered).

134. CAL. HEALTH & SAFETY CODE § 33334.5 (West 1973 & Supp. 1995).

135. IND. CODE § 36-7-14-12.2(a)(25)(C). A redevelopment commission *may* require that an owner lease rental units at an affordable rate to families whose income is below 80% of the unit's median income. *Id.* § 36-7-14-12.2(a)(25)(B). If this requirement is imposed, the rent limitations must remain in place for at least five years. *Id.* § 36-7-14-12.2(a)(25)(A).

affordable to persons of low or moderate income for at least ten years from the time of initial occupancy.¹³⁶ California law contains similar provisions; it requires housing units which were rehabilitated or assisted with money from the Low and Moderate Income Housing Fund to remain affordable for specified time periods.¹³⁷ Under the California statute, rental units must remain affordable for fifteen years, while owner-occupied units must remain affordable for ten years.¹³⁸

If redevelopment projects are to help low-income residents, they must provide sufficient housing to meet their needs. Mandatory provisions limiting the cost of both replacement housing and redeveloped units would help city officials preserve the community's supply of affordable housing and assist residents in obtaining adequate housing.

C. Mandatory Set-Asides

Another safeguard to protect the interests of lower income residents is a mandatory set-aside, or designated portion of the tax increment funds which must be used to directly benefit lower income residents in or near the redevelopment area. For instance, California law requires that redevelopment commissions use at least 20% of the tax increment funds collected to increase, improve, and preserve the supply of affordable housing.¹³⁹ This portion must be designated as "Low and Moderate Income Housing Fund[s]" and may only be used for this purpose.¹⁴⁰ This money can be used for building, improving, or preserving low and moderate income housing,¹⁴¹ and all units must remain available at affordable costs to people in these income ranges for specified time limits.¹⁴² A mandatory provision such as this would better ensure that Indiana redevelopment officials will be able to meet the housing needs of their communities in the future.

Mandatory set-asides need not be limited to affordable housing, however. Instead, legislators could specify that a certain percentage of the funds must be spent "for the benefit of low or moderate income residents" and list activities eligible to receive this assistance. For instance, federal law specifies that 70% of CDBG grant monies must be spent to benefit these income groups and contains a list of eligible activities.¹⁴³ State provisions could allow redevelopment officials to fund a wide variety of programs, such as affordable housing, job creation or training, child care facilities, and technical assistance for neighborhood groups and businesses.¹⁴⁴

136. 42 U.S.C. § 5304(d)(2)(A)(ii).

137. CAL. HEALTH & SAFETY CODE § 33334.3(f) (West Supp. 1995).

138. *Id.* § 33334.3(f)(1)(A)-(B).

139. *Id.* § 33334.2(a). California law allows cities to escape this restriction, however, if certain conditions are met. The city may use less than the specified 20% if a lesser amount is sufficient to meet community needs, or if the community has no need to improve, increase, or preserve low- or moderate-income housing. *Id.* § 33334.2(a)(1)(A), (a)(2)(A). If the planning agency claims that this is true, the finding must be reviewed by the state Department of Housing and Community Development, and the agency will be responsible for supporting the claim "by substantial evidence" in any subsequent litigation. *Id.* § 33334.2(b)-(c).

140. *Id.* § 33334.3(a).

141. *Id.* § 33334.3(d).

142. *Id.* § 33334.3(f)(1)(A)-(B).

143. See 42 U.S.C. §§ 5301, 5305 (1988 & Supp. V 1993).

144. For instance, legislators could specify that the activities must involve facilities used predominantly by lower income residents, provide employment for a certain number of lower income residents, or provide services for residents of a lower income area in order to qualify for the set-aside funds. In the alternative, legislators could provide a comprehensive list of eligible activities and recipients.

These programs could directly benefit residents and also provide a strong support structure for the redevelopment project. For example, by funding business incubators, cities could promote strong economic development and help to limit the failure rate of new businesses located in the redevelopment area. An incubator could offer planning, accounting, legal, and management assistance to these fledgling businesses in order to help them compete with more established companies and further the redevelopment commission's goal of retaining and creating jobs. This provision could also help residents obtain jobs which will emerge as economic development continues by allowing the city to fund a job training program and consequently help residents become eligible for higher paying, higher skilled jobs. These programs could be linked to transportation and child care programs in order to ensure that residents will be able to obtain and keep jobs which are created through the redevelopment project. In concert with strong citizen participation, a flexible, open-ended set-aside provision would allow communities to tailor the use to the particular needs of each redevelopment area.

CONCLUSION

Tax increment financing offers a powerful tool for municipalities to use in the redevelopment process. City officials must use it carefully, however, in order to assure that TIF projects will actually serve the community's needs. In order to help the residents and businesses in a redevelopment area continue to thrive once the projects are complete, decisionmakers must tailor the projects to provide long-term economic benefits which would otherwise be unavailable to the community. By implementing the statutory changes suggested in this Note, the legislature can help channel cities' efforts toward this goal. These safeguards can help to reduce residents' disenfranchisement and improve the quality of housing, education, and employment opportunities available to these citizens. Through the reform of current law, legislators and municipalities can make tax increment financing an effective tool for economic development.

