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Tax Increment Financing: A New Source of Funds for Community Redevelopment in Illinois - People ex rel. City of Canton v. Crouch

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TAX INCREMENT FINANCING: A NEW SOURCE OF FUNDS FOR COMMUNITY REDEVELOPMENT IN ILLINOIS— *PEOPLE EX REL. CITY OF CANTON V. CROUCH*

Traditionally, municipalities acquired funds for community redevelopment either by enlisting federal assistance or by raising tax rates.[1] As federal appropriations for redevelopment decline[2] and as increased tax rates become unpopular,[3] municipalities have been forced to seek alternative methods for financing redevelopment. To supply municipalities with a new source of funds, the Illinois General Assembly in 1977 enacted the Real Property Tax Increment Allocation Redevelopment Act.[4] The Act authorizes tax increment financing to obtain redevelopment funds. Such funds are acquired from the increase in the real property tax revenue generated as the property is developed and increases in value.[5]

Recently, the constitutionality of the Act was challenged. In *People ex rel. City of Canton v. Crouch*,[6] a case of first impression,[7] the Illinois Supreme

1. *See* S. LAFER, URBAN REDEVELOPMENT: AN INTRODUCTORY GUIDE 49-61 (1977) [hereinafter cited as LAFER]; Davidson, *Tax Increment Financing as a Tool for Community Redevelopment*, 56 J. URB. L. 405 (1979) [hereinafter cited as Davidson]; Henderson, *Local Money, Local Control: The Tax-Increment Road to Urban Renewal*, ILL. ISSUES, June, 1980, at 16 [hereinafter cited as Henderson].

2. Actual federal outlays for community and regional development for 1979 decreased to $9.482 billion from $11.039 billion in 1978. Projected federal outlays for community and regional development indicate a further decrease to $8.467 billion in 1980 and to $8.820 billion in 1981. U.S. OFFICE OF MANAGEMENT AND BUDGET, THE BUDGET OF THE UNITED STATES GOVERNMENT, H.R. DOC. NO. 96-246, 96th Cong., 2d Sess. 604 (1980) (fiscal year 1981).

3. The public's most forceful objection to increasing property taxes was the passage of Proposition 13 in California. Proposition 13 restricts state and local governments' ability to tax real property by establishing a maximum tax rate and by limiting the assessed value of real property. *See* CAL. CONST. art. XIIIA §§ 1-6.

4. ILL. REV. STAT. ch. 24, §§ 11-74.4-1 to -11 (1979) [hereinafter referred to as Act]. *See* notes 18-36 and accompanying text *infra* for an explanation of the Act's provisions.

In addition to Illinois, twenty-three states have authorized the use of tax increment financing to raise funds for urban redevelopment. *See* ALASKA STAT. § 18.55.695 (1974); ARIZ. REV. STAT. ANN. § 36-1488.01 (Supp. 1980); CAL. HEALTH & SAFETY CODE §§ 33670-33677 (West 1973 & Supp. 1980); COLO. REV. STAT. §§ 31-25-801 to -822 (1973 & Supp. 1979); CONN. GEN. STAT. ANN. § 8-134(a) (West Supp. 1980); FLA. STAT. ANN. § 163.387 (West Supp. 1980); IND. CODE ANN. § 18-7-7-39.1 (Burns Supp. 1979); IOWA CODE ANN. § 403.19 (West 1976); KAN. STAT. ANN. § 12-1775 (Supp. 1978); ME. REV. STAT. ANN. tit. 30, § 4864 (1978); MICH. COMP. LAWS ANN. § 125.1664-65 (West 1976 & Supp. 1980); MINN. STAT. ANN. §§ 472A.01-.13 (West 1977 & Supp. 1980); MONT. REV. CODES ANN. § 11-3921 (Supp. II 1977); NEV. REV. STAT. § 279.676 (1973); N.M. STAT. ANN. § 3-46-45 (1978); N.D. CENT. CODE § 40-58-20 (Supp. 1979); OR. REV. STAT. §§ 457.420-.460 (1979); S.D. CODIFIED LAWS ANN. §§ 11-9-1 to -47 (Supp. 1980); TENN. CODE ANN. § 13-20-205 (1980); TEX. REV. CIV. STAT. ANN. art. 1066d (Vernon Supp. 1980); UTAH CODE ANN. § 11-19-29 (Supp. 1979); WIS. STAT. ANN. § 66.46 (West Supp. 1980 & Supp. 1981); WYO. STAT. § 15-10-121 (1977).

5. *See* notes 10-17 and accompanying text *infra*.

6. 79 Ill. 2d 356, 403 N.E.2d 242 (1980) (per curiam).

7. Other jurisdictions have ruled on the constitutionality of state statutes providing for the use of tax increment financing to fund urban redevelopment. *See* note 98 *infra*.

Court held that the use of tax increment financing as prescribed in the Act was constitutionally sound.[8] In so doing, the court provided municipalities throughout Illinois with a flexible tool for community redevelopment.[9]

This Note analyzes the court's reasoning in *Crouch* and evaluates the use of tax increment financing as a source of funds for community renewal in Illinois. It not only demonstrates that the Illinois Supreme Court was justified in finding the Act constitutional, but also establishes that tax increment financing is an effective method for funding redevelopment.

BACKGROUND

Tax Increment Financing

Real property taxes are computed by multiplying the property's equalized assessed value[10] by the tax rate.[11] As redevelopment of a substandard area takes place, the equalized assessed value of the refurbished property in that area rises, pushing up property taxes attributable to that area.

Under a tax increment financing scheme, the increase in tax revenue resulting from redevelopment is known as the tax increment.[12] This incre-

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8. 79 Ill. 2d at 363, 403 N.E.2d at 245.

9. *See* notes 99-121 and accompanying text *infra*.

10. The Illinois Constitution requires that real property taxes shall be levied according to the value of the property. ILL. CONST. art. IX, § 4(a). *See* note 80 *infra* for the text of this provision of the Illinois Constitution. The Illinois General Assembly has determined that, in general, real property shall be valued at 33⅓% of its fair cash value. ILL. REV. STAT. ch. 120, § 501 (1979). So that property is in fact assessed at this value, statutes provide that reported property valuations, both within each county, *id.* § 589.1, and between each county, *id.* § 627, are adjusted by an equalizing factor. The Illinois Constitution, however, allows counties with a population of more than 200,000 to determine their own valuation procedures for the taxation of real property. ILL. CONST. art. IX, § 4(b).

11. After the equalized assessed value of all real property has been determined, a tax rate is calculated and imposed to generate enough revenue to meet the needs of state and local government. ILL. REV. STAT. ch. 120, §§ 634-638 (1979).

12. For general discussions of the operation of tax increment financing, see COUNCIL OF STATE GOVERNMENTS, TAX INCREMENT FINANCING OF COMMUNITY DEVELOPMENT, CSG RESEARCH BRIEF (1977) [hereinafter cited as COUNCIL OF STATE GOVERNMENTS]; LAFER, *supra* note 1; Davidson, *supra* note 1; Hegg, *Tax-Increment Financing of Urban Renewal—Redevelopment Incentive Without Federal Assistance*, 2 REAL EST. L.J. 575 (1973); Note, *Urban Redevelopment: Utilization of Tax Increment Financing*, 19 WASHBURN L.J. 536 (1980) [hereinafter cited as *Urban Redevelopment*].

For discussions of the operation of tax increment financing in Illinois, see BARTON-ASCHMAN ASSOCIATES, INC., TAX INCREMENT FINANCING OF URBAN REDEVELOPMENT (1973) (a report on a conference held in Chicago which analyzed the implementation of tax increment financing in other jurisdictions and explored the utilization of tax increment financing in Illinois); Henderson, *supra* note 1 (analysis of tax increment financing in Canton and other cities in Illinois); Nebel, *Chicago Redevelopment Can Succeed*, 12TH ANN. METROPOLITAN CHICAGO INDUS./COM. DEV. GUIDE, July, 1978, at 50 (discussion of tax increment financing as a new means to accomplish redevelopment in Chicago); Nebel & Teplitz, *Tax Increment Financing*, ILL. HORIZONS, July/August, 1977, at 6 (explanation of the operation of the Act) [hereinafter cited as Nebel & Teplitz].

For analyses of tax increment financing, see Jefferson & Taggart, *Tax Increments Criticized*, 32 J. HOUS. 5 (1975) (criticizing) [hereinafter cited as Jefferson & Taggart]; Mitchell, *Tax*

ment is allocated to a special fund controlled by the municipality. The property tax revenue accumulated in this fund can be used to pay for redevelopment projects directly or to retire tax increment bonds.[13] Municipalities often prefer to issue tax increment bonds because the bond proceeds are immediately available to pay redevelopment costs, such as write down,[14] relocation,[15] and public improvements.[16]

Tax increment financing is unique because it requires each taxing district overlapping the redevelopment project area to allocate its tax increment to

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Increment Financing For Redevelopment, 34 J. Hous. 226 (1977) (generally supporting) [hereinafter cited as Mitchell]; Swick, *Tax Increments Supported*, 32 J. Hous. 52 (1975) [hereinafter cited as Swick]; Trimble, *Tax Increment Financing For Redevelopment: California Experience Is Good*, 31 J. Hous. 485 (1974) (generally supporting).

13. The following example illustrates how tax increment financing works:

Within *X* city there exist five acres of land fronting a major river which bisects the community. The land is presently occupied by an automobile junkyard and represents a blighting factor. Its use as a junkyard frustrates *X* city's efforts to upgrade its river frontage and make the area available for inner-city housing. To achieve these urban renewal goals, the community wishes to undertake a tax increment financed redevelopment project based on the following figures:

Cost of acquisition, relocation, demolition, administration, and site improvements	$ 500,000
Less	
Cash received from resale of land	$ 200,000
Net cost of project to be financed through the sale of tax-increment bonds	$ 300,000
Original taxable value of junkyard	$ 100,000
Original tax revenue received	$ 3,000
New taxable value created from redevelopment of the parcel by construction of 200 dwelling units of housing	$3,000,000
New annual tax revenue received	$ 90,000
Net annual increase (increment created through redevelopment)	$ 87,000
Bond repayment	4 years

All taxing bodies continue to receive the original tax revenue ($3,000) derived from the original taxable value ($100,000) as if the junkyard still existed. The increment ($87,000) in tax revenue is segregated and allocated for the repayment of the bonds issued for undertaking the redevelopment project.

Hegg, *Tax-Increment Financing of Urban Renewal—Redevelopment Incentive Without Federal Assistance*, 2 Real Est. L.J. 575, 575-76 (1973).

14. Write down is a redevelopment cost representing the difference between a city's cost in acquiring the blighted property and the proceeds received from a private developer upon sale of the property. A city will often sell the property for less than the purchase price in order to encourage development. Davidson, *supra* note 1, at 409 n.20 (citing Minn. Office of Local & Urb. Affs., Tax Increment Financing for Minnesota Communities 1-2 (1973)).

15. Relocation refers to the costs incurred to assist present residents to move to a new location.

16. A city will often make improvements, such as streets, sidewalks, sewers, and parks, to attract private investment.

the municipality.[17] In a typical redeveloped area, there are various taxing districts—county, park district, school district, and city. Each of these districts will continue to receive property tax revenue based on the assessed property value before redevelopment. The increased tax revenue attributable to the redevelopment project, however, will be paid to the municipality.

Real Property Tax Increment Allocation Redevelopment Act

The Real Property Tax Increment Allocation Redevelopment Act established specific procedures to implement tax increment financing in Illinois. Under the Act, a municipality initially must determine that the statutory conditions for either a blighted area[18] or a conservation area[19] exist,[20] and must demonstrate that revitalization has not occurred, and will not occur, through private investment without the assistance of a redevelopment plan.[21] If both of these factors are present, the municipality may propose an overall redevelopment plan as well as specific redevelopment projects[22] for

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17. Another unique aspect of tax increment financing is that it combines the features of revenue bonds and special assessment taxation. Davidson, *supra* note 1, at 413. Revenue bonds finance public improvements by pledging the anticipated income arising from the use of the public improvement to the retirement of the bonds. They usually are used when demands for particular services exist, such as toll bridges or utility improvements. Special assessment taxation, on the other hand, finances public improvements by taxing property owners who benefit directly from the improvements. For example, the installation of sewers in a specified district could be paid for by a tax levy on property owners in that district. 15 E. McQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS §§ 43.34-.35 (3d ed. 1970) [hereinafter cited as McQUILLIN].

18. A "blighted area" is an area which is "detrimental to the public safety, health, morals, or welfare" because of a combination of five or more of the following factors: age; dilapidation; obsolescence; deterioration; presence of structures below minimum code standards; lack of ventilation, light, or sanitary facilities; lack of community planning; inadequate utilities; deleterious land use or layout. ILL. REV. STAT. ch. 24, § 11-74.4-3(a) (1979).

19. A "conservation area" is an area in which 50% or more of the structures have an age of 35 years or greater. Such an area is not yet blighted, but is "detrimental to the public safety, health, morals, or welfare" because of a combination of three or more of the following factors: dilapidation; obsolescence; deterioration; presence of structures below minimum code standards; lack of ventilation, light, or sanitary facilities; lack of community planning; inadequate utilities; deleterious land use or layout. *Id.* § 11-74.4-3(b).

20. *Id.* § 11-74.4-3(h).

21. *Id.* § 11-74.4-3(f). A "redevelopment plan" is a municipality's comprehensive program for redevelopment intended to eliminate those conditions that qualified the redevelopment project area as a blighted or conservation area and thereby to enhance the tax bases of the taxing districts within the project area. *Id.*

22. A "redevelopment project" is any development project in furtherance of the objectives of a redevelopment plan. *Id.* § 11-74.4-3(g).

The formation of redevelopment plans and projects requires extensive municipal planning. Nebel & Teplitz, *supra* note 12, at 7. A municipality must evaluate project costs as well as sources of funds. *Id.* Moreover, a municipality must be sure that the funds will be available at the proper time to pay redevelopment costs. *Id.* Careful attention should be given to the timing involved in redevelopment plans. Thus, a municipality should obtain a binding commitment from private investors before issuing tax increment bonds so the investors cannot impede the plan's success by unexpectedly withdrawing from the project. *Id.*

the targeted project area.[23] Both the plan and the projects must conform to the comprehensive development scheme for the entire community.[24]

Public hearings are required to resolve the objections of interested persons and affected taxing districts,[25] before a municipality may introduce ordinances approving the redevelopment plan and redevelopment projects and designating the redevelopment project area.[26] Upon enacting these ordinances, a municipality may introduce an ordinance establishing tax increment financing.[27] If this ordinance is approved, the municipality acquires broad discretionary power to implement the redevelopment plan.[28] The Act expressly authorizes a municipality (1) to enter into contracts,[29] (2) to acquire, sell, lease, demolish, rehabilitate, or construct any structure within the project area,[30] (3) to create a supervisory commission,[31] and (4) to issue bonds to finance project costs.[32]

After adoption of tax increment financing, the county clerk must calculate the most recent (*initial*) equalized assessed value of all real property in the

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23. A "redevelopment project area" is an area not less than one and one-half acres in which the municipality has found that there exist conditions which cause the area to be classified as a blighted or conservation area. ILL. REV. STAT. ch. 24, § 11-74.4-3(h) (1979).

24. *Id.* § 11-74.4-3(f). The wording of the Act pertaining to redevelopment plans, projects, and project areas is somewhat circular. It appears from one section of the Act that the redevelopment plan should be formulated before the redevelopment project area is designated. *Id.* § 11-74.4-4. Another section makes the opposite appear true. *Id.* § 11-74.4-3(f). According to Kai Allen Nebel, a Chicago attorney who drafted the Act with Jack L. Teplitz, although there is need for a municipality to make studies to determine that blighted conditions exist in an area being considered for redevelopment, the Act requires that municipalities first approve the redevelopment plan and project and then designate the redevelopment project area. The purpose of this sequence of action is to prevent municipalities from characterizing an area as blighted and then not taking prompt remedial action. Experience with urban renewal projects under federal law and prior state law indicated to the authors of the legislation that the designation of an area as a conservation area without the implementation of remedial action tends to become a self-fulfilling prophecy. The Act, therefore, requires "the cure to be administered at the time of the diagnosis of the illness." Interview with Kai Allen Nebel (Sept. 4, 1980).

25. ILL. REV. STAT. ch. 24, § 11-74.4-5 (1979). The Act requires that notice of the public hearing be given twice by publication during the 30 days before the hearing. Additionally, notice by mailing is required to be given to all affected taxing districts and to those people who paid the property taxes in the last year for each lot in the redevelopment project area. *Id.* § 11-74.4-6.

26. *Id.* § 11-74.4-4(a). Before the adoption of any redevelopment ordinance, changes can be made which "do not alter the exterior boundaries" or "substantially change the nature of the redevelopment project," provided that notice is given by mailing to the taxing districts and by publication. After the adoption of any of the redevelopment ordinances, "no ordinance shall be adopted altering the exterior boundaries, affecting the general land use established pursuant to the plan, or changing the nature of the redevelopment project" without first complying with the procedures for public hearing and notice. *Id.* § 11-74.4-5.

27. *Id.* § 11-74.4-8.

28. *Id.* §§ 11-74.4-4(a) to -4(h).

29. *Id.* § 11-74.4-4(b).

30. *Id.* §§ 11-74.4(c) to -4(e).

31. *Id.* § 11-74.4-4(k).

32. *Id.* § 11-74.4-7. The term of the bonds may not exceed 20 years. A municipality secures repayment of the bonds by pledging the revenue in the tax allocation fund. However, it may also pledge revenue from the redevelopment project, the municipality's real property tax revenue, the full faith and credit of the municipality, a mortgage on the redevelopment project, and other

project area.[33] Each year thereafter, real property taxes attributable to the *initial* equalized assessed value are paid to the various taxing districts in the same manner and proportion as before the adoption of tax increment financing. The portion of the taxes attributable to the *current* equalized assessed value over the *initial* equalized assessed value is allocated to the municipality to pay for redevelopment costs or obligations.[34]

After project costs have been paid, the Act requires the municipality to adopt an ordinance terminating the tax allocation fund and the redevelopment project area.[35] Thereafter, the affected taxing districts will receive tax revenue calculated on the current equalized assessed value of the property and distributed in the same manner and proportion as before the implementation of tax increment financing.[36]

The Canton Redevelopment Project

Canton, a city of 15,000 persons, is located in central Illinois. Its redevelopment project area covers nine square blocks in the downtown section of the city.[37] Most buildings in this area were constructed more than thirty-five years ago,[38] centered around a town square.[39] These deteriorated, dilapidated structures[40] made the district unattractive to private investors, particularly because the buildings contained structural deficiencies,[41] the land platting was obsolete,[42] and the area lacked adequate public facilities.[43]

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taxes that the municipality may legally pledge. Further, the bonds are not subject to statutory debt limitations. *Id.*

33. *Id.* § 11-74.4-9.

34. *Id.* §§ 11-74.4-8(a) to -(b). The tax revenue is deposited in a "special tax allocation fund." *Id.* § 11-74.4-8(b). Any surplus funds raised by this system are distributed annually and upon final payment of redevelopment project costs to the various taxing districts within the redevelopment project area. *Id.* §§ 11-74.4-7, -8(b). Surplus funds are amounts in the special tax allocation which are not pledged to pay for redevelopment project costs. *Id.* § 11-74.4-7.

35. *Id.* § 11-74.4-8(b).

36. *Id.*

37. Brief for Appellant at 15, People *ex rel.* City of Canton v. Crouch, 79 Ill. 2d 356, 403 N.E.2d 242 (1980).

38. *Id.* Eighty-nine percent of these buildings were over 35 years old, and many were built before 1900. *Id.*

39. Henderson, *supra* note 1, at 18.

40. Seventy-three percent of these buildings contained structural defects or other defects which cannot be corrected through normal maintenance. Brief for Appellant at 15-16. In addition, many buildings were seriously damaged by fires in 1973 and by a tornado in 1975. *Id.* at 17.

41. *Id.* at 16. Typically, these buildings had excessive heating costs due to high ceilings and poorly fitted windows, heating systems which are not easily adaptable to central air conditioning, inadequate plumbing facilities, and no elevators or escalators. *Id.*

42. The redevelopment area contained 125 parcels under separate ownership, many of which were 25 feet or less in width and 150 feet or more in depth. *Id.* This disproportionate width to depth ratio stifled modern development which prefers extended frontage exposure. Only a few of the parcels in the area possessed the requisite size and shape for new construction. *Id.*

43. *Id.* at 17. The streets in the area are congested with traffic due to a lack of public parking and merchandise loading zones. *Id.*

The combination of these factors caused the real property value in the area to decline substantially.[44] Attempting to counteract this trend, Canton formulated a redevelopment plan that provided for three privately financed developments: a retail outlet, 65,000 square-foot retail shopping complex, and expansion of an existing medical clinic.[45] To facilitate the commercial development, the plan also provided for construction of public improvements, including parking lots, streets, lights, and parks.[46]

THE COURT'S DECISION

In 1978, the City of Canton approved the redevelopment plan and projects, and designated a project area.[47] A controversy arose, however, when the mayor refused to execute the tax increment bonds because there was doubt about the "validity, interpretation and constitutionality" of the Real Property Tax Increment Allocation Redevelopment Act.[48] The Canton City Council petitioned for a writ of mandamus to compel the mayor to execute the bonds,[49] and both parties moved for summary judgment. The Circuit Court of Fulton County entered summary judgment for the city.[50]

Thereafter, the action was appealed directly to the Illinois Supreme Court under Illinois Supreme Court Rule 302(b).[51] Although Mayor Crouch alleged that the Act violated the Illinois Constitution on several different grounds,[52] the Illinois Supreme Court concluded that the Act did not exceed

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44. *Id.* The initial equalized assessed value of the property in the redevelopment area is $2,473,977. As a result of the redevelopment project, it is anticipated that the equalized assessed value will increase to $5,682,158. Based on a current tax rate of $6.615 per $100.00 of assessed value, the increase in assessed value of $3,208,181 will produce $211,740 of tax increment revenue each year. It is anticipated that the tax increment revenue will support the issuance and retirement of $2.4 million of tax increment allocation bonds. *Id.* at 18-19.

45. *Id.* at 18.

46. *Id.*; Henderson, *supra* note 1, at 18.

47. Brief for Appellant at 14. Canton also authorized the sale of $50,000 of tax increment allocation bonds. *Id.* The taxing districts affected by the redevelopment project were the County of Fulton, Canton Township, Canton Park District, Spoon River College District, Canton Union School District No. 66, and the City of Canton. 79 Ill. 2d at 362, 403 N.E.2d at 245.

48. 79 Ill. 2d at 359, 403 N.E.2d at 244.

49. *Id.* at 359, 403 N.E.2d at 243.

50. *Id.* at 359-60, 403 N.E.2d at 244.

51. *Id.* at 360, 403 N.E.2d at 244. Rule 302(b) provides for a direct appeal from a circuit court to the Illinois Supreme Court when matters of public interest require expeditious determination. ILL. REV. STAT. ch. 110A, § 302(b) (1979).

52. The mayor contended that the Act violated the public purpose doctrine, due process, equal protection, and uniformity. For an analysis of the court's opinion concerning these claims, see notes 55-73 and accompanying text *infra*. The mayor's other claims were dismissed by the court. These claims were trivial and do not warrant a detailed analysis. First, it was alleged that the Act was vague and as a result constituted an improper delegation of legislative authority and violated the separation of powers doctrine. The court held that the Act was not unconstitutionally vague because it identified the harm to be prevented (urban blight) and the means available to the municipality to prevent the harm (e.g., eminent domain, issuance of bonds, sale or lease of property). Since the Act was not vague, the court concluded that the Act did not constitute an

any constitutional provisions.[53] The court's opinion addressed two major issues: (1) whether the allocation of the tax increment was an unconstitutional violation of the requirement that taxing districts only expend public funds for a public purpose,[54] and (2) whether the allocation of the tax increment constituted an improper diversion of tax revenue from the taxing districts to the municipality.

The court responded to the first issue by noting that the elimination of blighted conditions, as proposed in the Act, has long been considered a valid public purpose.[55] Moreover, the court reaffirmed its position in *People ex rel. City of Urbana v. Paley*[56] that the stimulation of commercial and economic development also falls within the scope of the public purpose doctrine.[57] As to the allocation of tax increments by the taxing districts, the court emphasized that the constitution requires that public funds be spent for a public purpose, but not necessarily the corporate purpose of the taxing

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improper delegation of legislative authority or violate the separation of powers doctrine. 79 Ill. 2d at 372-74, 403 N.E.2d at 250. Second, it was claimed that the Governor's recommendations for change of the Act exceeded his amendatory veto power, which allows him to make specific recommendations for change of a proposed statute, but not to substitute an entirely new bill. The court determined that the Governor's changes in the Act did not exceed his amendatory veto power because the changes did not alter the essential purpose or intent of the Act. *Id.* at 375-76, 403 N.E.2d at 251. Third, it was contended that the Act amended various laws without indicating what sections were amended. The court concluded that the Act was not unconstitutional because it is not necessary for a new act to set forth all prior acts modified by implication. *Id.* at 376-77, 403 N.E.2d at 252.

Additionally, the court refused to decide a fourth trivial claim, that the Act would impair the obligation of the taxing districts' contracts in the future, because that issue was not raised at trial. *Id.* at 374-75, 403 N.E.2d at 251.

53. 79 Ill. 2d at 363, 403 N.E.2d at 245.

54. *See* note 81 *infra* for the relevant portion of the Illinois Constitution.

55. 79 Ill. 2d at 364, 403 N.E.2d at 245-46. In People *ex rel.* Gutknecht v. City of Chicago, 414 Ill. 600, 111 N.E.2d 626 (1953), the constitutionality of a 1949 amendment to the Blighted Areas Redevelopment Act of 1947 was questioned. The amendment expanded the scope of the 1947 act to include land which was unmarketable for housing or other economic purposes due to obsolete land platting, diversity of ownership, deterioration of structures, or tax delinquencies. The court held that the acquisition of the land under the amendment was within the scope of the public purpose doctrine because the redevelopment of the land sought to eliminate economic, social, and physical blight. *Id.* at 611-14, 111 N.E.2d at 633-34.

56. 68 Ill. 2d 62, 368 N.E.2d 915 (1977). In *Paley*, the City of Urbana's plan to eliminate urban blight through the expansion of the Lincoln Square Mall was challenged on constitutional grounds. It was contended that the commercial revitalization of the downtown area constituted a public expenditure for a private purpose. To the contrary, the court held that commercial and economic stimulation are within the scope of the public purpose doctrine since the elimination of commercial and economic stagnation benefits the public in general. *Id.* at 74-75, 368 N.E.2d at 920-21. As stated by the court in *Paley:*

> [T]oday's decision denotes that the application of the public-purpose doctrine to sanction urban redevelopment can no longer be restricted to areas where crime, vacancy, or physical decay produce undesirable living conditions or imperil public health. Stimulation of commercial growth and removal of economic stagnation are also objectives which enhance the public weal.

Id.

57. 79 Ill. 2d at 363, 403 N.E.2d at 245.

district.[58] Because the elimination of blighted conditions is a valid public purpose, the allocation was held constitutional.[59]

Additionally, the *Crouch* majority noted that the legislature may compel a municipal corporation,[60] as an agent of the state, to perform any duty that promotes the state's general welfare, even if such performance creates a debt payable from local tax revenue.[61] Because redevelopment enhances the "welfare" of the state, the court held that the allocation of tax revenue to the municipality constituted a proper public purpose.[62] Further, this type of revenue sharing was constitutional because it was incorporated specifically into the 1970 Illinois Constitution.[63]

Finally, the court held that benefits to private commercial developers resulting from public funding of the redevelopment project did not render the Act unconstitutional. The court reasoned that as long as the "principal purpose" of an enactment is public in nature, incidental benefits to private parties are irrelevant.[64] The court determined that the participation of

58. *Id.* at 364, 403 N.E.2d at 246.

59. *Id.*

60. *Id.* In this passage the court in *Crouch* was quoting from People *ex rel.* Sanitary Dist. v. Schlaeger, 391 Ill. 314, 63 N.E.2d 382 (1945). The court in *Schlaeger* apparently used the term "municipal corporation" to include local taxing districts. However, "municipal corporation" is usually construed to mean only cities, towns, or villages. Local taxing districts are generally considered to be "quasi-municipal corporations." 1 McQUILLIN, *supra* note 17, § 2.23 (3d ed. 1971).

61. 79 Ill. 2d at 364-66, 403 N.E. 2d at 246-47 (quoting People *ex rel.* Sanitary District v. Schlaeger, 391 Ill. 314, 324-25, 63 N.E.2d 382, 388 (1945)).

62. *Id.* The legislature has broad authority to control the distribution of tax revenue as long as the distribution is for a public purpose. 16 McQUILLIN, *supra* note 17, § 44.186 (3d ed. 1979).

63. 79 Ill. 2d at 366, 403 N.E.2d at 247. The Illinois Constitution provides:

> SECTION 10. INTERGOVERNMENTAL COOPERATION
>
> (a) Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or ordinance. Units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other resources to pay costs and to service debt related to intergovernmental activities.

ILL. CONST. art. 7, § 10(a).

64. 79 Ill. 2d at 368-69, 403 N.E.2d at 248. *Accord,* People *ex rel.* City of Urbana v. Paley, 68 Ill. 2d 62, 75-76, 368 N.E.2d 915, 921 (1977) (downtown redevelopment was held to be primarily a public purpose even though some benefits accrued to private developers); People *ex rel.* City of Salem v. McMakin, 53 Ill. 2d 347, 355, 291 N.E.2d 807, 812-13 (1972) (basic objective of industrial development was public in nature regardless of incidental benefits to private developers); People *ex rel.* Adamowski v. Chicago R.R. Terminal Auth., 14 Ill. 2d 230, 236, 151 N.E.2d 311, 315 (1958) (redevelopment of railroad terminals constituted an appropriate public purpose despite collateral benefits to private developers); People *ex rel.* Gutknecht v. City of Chicago, 414 Ill. 600, 611-14, 111 N.E.2d 626, 633-37 (1953) (acquisition of vacant land for subsequent resale to private developers was held to constitute a public purpose); Poole v. City of Kankakee, 406 Ill. 521, 530, 94 N.E.2d 416, 421 (1950) (construction of a parking facility was held to be primarily for a public purpose); Cremer v. Peoria Hous. Auth., 399 Ill. 579, 591-92, 78 N.E.2d 276, 283 (1948) (slum clearance was predominantly a public purpose).

private commercial developers was essential to the plan's success, although the Act was not passed primarily for the benefit of private developers.[65] Thus, the court concluded that the allocation of tax increments did constitute an expenditure for a public purpose.[66]

In response to the second issue—whether the taxation scheme was an improper diversion of tax revenue from the taxing districts to the municipality—the court emphasized again that tax revenue sharing among local governmental units was specifically provided for in the 1970 Illinois Constitution.[67] Furthermore, the court acknowledged that the legislature possesses broad discretionary power to establish classifications defining the objects of taxation.[68] These classifications are constitutional, provided they bear some reasonable relationship to the object of the taxation.[69] Since tax increments reasonably may be used to retire the debt created by the redevelopment plan, the court held that the tax increment allocation scheme did not violate the constitution.[70]

Moreover, the court rejected the argument that the Act taxes residents of taxing districts which are participating in the redevelopment project at a rate greater than residents of non-participating districts.[71] Because only taxing districts that actually have increased property tax revenue as a result of the redevelopment allocate their tax increment, the court reasoned that only taxpayers who directly benefit from the redevelopment project pay towards its cost.[72] Therefore, the court concluded that the tax increment allocation scheme was neither arbitrary nor unreasonable, and did not violate due process, equal protection, or uniformity.[73]

ANALYSIS OF *CROUCH*

Ultimately, the controversy in *Crouch* turned on the constitutionality of the tax increment allocation scheme. The dissenting opinion in *Crouch* argued that this scheme conflicted with the constitutional prohibition against

65. 79 Ill. 2d at 368-69, 403 N.E.2d at 248.

66. *Id.* at 369, 403 N.E.2d at 248.

67. *Id. See* note 63 *supra* for the relevant portion of the Illinois Constitution.

68. 79 Ill. 2d at 370, 403 N.E.2d at 248-49. The legislature's power to establish classifications defining objects of taxation refers to the legislature's ability to determine exactly which property within the state will be taxed and at what rate. 16 McQUILLIN, *supra* note 17, § 44.20 (3d ed. 1979).

69. 79 Ill. 2d at 370, 403 N.E.2d at 248-49. *Accord,* Kerasotes Rialto Theater Corp. v. City of Peoria, 77 Ill. 2d 491, 495-96, 397 N.E.2d 790, 792 (1979) (the exclusion of not-for-profit organizations from amusement tax was not arbitrary or unreasonable); Williams v. City of Chicago, 66 Ill. 2d 423, 432-33, 362 N.E.2d 1030, 1035 (1977) (lower transaction tax rates for non-residents of Chicago was not arbitrary or unreasonable); 16 McQUILLIN, *supra* note 17, § 44.20 (3d ed. 1979).

70. 79 Ill. 2d at 370-71, 403 N.E.2d at 249. The court noted at this point that its sole function was to determine the constitutionality of the act in question. Thus, the court refrained from commenting on the advisability or utility of the Act. *Id.* at 369-70, 403 N.E.2d at 248.

71. *Id.* at 371, 403 N.E.2d at 249.

72. *Id.*

73. *Id.*

forcing one unit of government to pay for debts it did not incur or for the corporate purpose of another unit.[74] Although this argument may appear to have merit, the majority in *Crouch* was justified in upholding the constitutionality of the Act because the tax increment allocation scheme did not require an improper diversion of tax revenue.

Article VII, section 10(a) of the Illinois Constitution provides that local governmental units and school districts may contract among themselves to obtain needed services.[75] The court in *Crouch* utilized this section as one of the principal justifications for approving the tax increment allocation scheme.[76] But, it was not the intent of this section to sanction the mandatory transfer of revenue. As noted by the dissenting opinion in *Crouch*, the formal explanation to section 10 indicates that its purpose was to allow the sharing of revenue rather than the outright transfer of it.[77] Even if it can be construed to permit the transfer of funds among units of government,[78] section 10 was clearly designed to sanction voluntary agreements, not mandatory arrangements as provided in the Act.[79]

Yet, the fact that section 10 was not intended to be applicable to the tax increment allocation scheme is not necessarily fatal to the Act. The Act must, however, comply with the constitutional requirements for the collection and distribution of property tax revenue. The Illinois Constitution requires property tax revenue to be collected with uniformity[80] and to be expended for a public purpose.[81]

In order for property tax revenue to be collected with uniformity, there must be equality in the burden of taxation.[82] This equality is achieved

74. *Id.* at 378-82, 403 N.E.2d at 253-54 (Clark & Moran, JJ., dissenting).

75. *See* note 63 *supra* for the text of this provision of the Illinois Constitution.

76. 79 Ill. 2d at 369, 403 N.E.2d at 248.

77. *Id.* at 381, 403 N.E.2d at 254. The official explanation of section 10 states: "This section is new. It permits government at all levels to cooperate in working out common problems. Thus, one local government can contract with another government or private parties to share services and divide the costs equitably." 7 RECORD OF PROCEEDINGS, SIXTH ILLINOIS CONSTITUTIONAL CONVENTION 2730 (1970).

78. The discussion of section 10 at the 1970 Illinois Constitutional Convention raised the issue of whether it prohibited the transfer, rather than the sharing, of funds between governmental units. It was decided that section 10 did not prohibit such a transfer. 4 RECORD OF PROCEEDINGS, SIXTH ILLINOIS CONSTITUTIONAL CONVENTION 3423 (1970).

79. During the discussion of section 10 at the 1970 Illinois Constitutional Convention, it was stated: "What is intergovernmental cooperation? Well, it is a *voluntary* participation to contract, to agree, to cooperate, to associate at all levels of government." *Id.* at 3421 (emphasis added).

80. "Except as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law." ILL. CONST. art. IX, § 4(a).

81. "Public funds, property or credit shall be used only for public purposes." ILL. CONST. art. VIII, § 1(a).

82. *See* Greene v. Louisville & Interurban R.R., 244 U.S. 499, 515 (1916) (franchise tax held to be discriminatory); Giebelhausen v. Daley, 407 Ill. 25, 42, 95 N.E.2d 84, 92 (1950) (amendatory act creating the office of county assessment supervisor and appropriations act providing for the payment of their salaries held to be unconstitutional); Hanover Fire Ins. Co. v. Harding, 327 Ill. 590, 601, 158 N.E. 849, 853 (1927) (property tax held to be non-discriminatory).

through equality in the rate of taxation and the mode of assessment.[83] Tax increment financing does not alter the uniform collection of tax revenue because the property within the redevelopment project area is still taxed at the same rate and assessed in the same manner as the property in the rest of the municipality.[84] Thus, the tax increment allocation scheme does not violate uniformity.

The adoption of tax increment financing does, however, alter the uniform distribution of property tax revenue. Tax increment financing freezes the amount of revenue distributed to the taxing districts at the pre-plan level and allocates all the revenue in excess of that amount to the municipality.[85] But, this in itself does not render tax increment financing unconstitutional because uniformity is required only in the collection of tax revenue, not in its distribution.[86]

The constitutional requirement that public funds be expended for public purposes has been construed broadly to include any expenditure which primarily enhances "the general well-being of society and the happiness and prosperity of the people."[87] As stated in *Crouch*, it is well settled that the elimination of blighted conditions enhances the well being of society.[88] Therefore, the tax increment allocation scheme constitutes an expenditure for a public purpose because the redevelopment seeks to eliminate blighted conditions.

The dissenting opinion in *Crouch* argued that the tax increment allocation scheme was unconstitutional because it forced the taxing districts to expend tax revenue for the corporate purpose of another governmental unit—the City of Canton.[89] To illustrate its argument, the dissent cited *Flynn v. Kucharski*.[90] In *Flynn*, township collectors received a two percent commission upon the total amount of Cook County property taxes that they collected from suburban Cook County residents before transferring the revenue

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83. "Uniformity in taxation, as required by the constitution, implies equality in the burden of taxation, and this equality in burden cannot exist without uniformity in the mode of assessment as well as the rate of taxation." Giebelhausen v. Daley, 407 Ill. 25, 42, 95 N.E.2d 84, 92 (1950). *Accord*, Greene v. Louisville & Interurban R.R., 244 U.S. 499, 515 (1916); Hanover Fire Ins. Co. v. Harding, 327 Ill. 590, 601, 158 N.E. 849, 853 (1927).

84. ILL. REV. STAT. ch. 24, § 11-74.4-8 (1979).

85. *See* notes 33-34 *supra*.

86. According to the Illinois Supreme Court,

> [t]he rule to be gathered from the cases decided in States which likewise have the constitutional limitation of uniformity, is that lack of uniformity in the imposition of tax is fatal to the levy, but if the tax is imposed with equality and uniformity and collected for the public welfare, the rule does not apply to inequality of distribution.

Board of Library Directors v. City of Lake Forest, 17 Ill. 2d 277, 282, 161 N.E.2d 272, 276 (1959).

87. Hagler v. Small, 307 Ill. 460, 474, 138 N.E. 849, 854 (1923) (compensation for veterans held to be an expenditure for a public purpose), *quoted in* People *ex rel.* City of Salem v. McMakin, 53 Ill. 2d 347, 357, 291 N.E.2d 807, 814 (1972).

88. *See* note 55 *supra*.

89. 79 Ill. 2d at 379-81, 403 N.E.2d at 253-54.

90. 45 Ill. 2d 211, 258 N.E.2d 329 (1970).

to the county collector.[91] The *Flynn* court held that the two percent commission paid to the township collectors constituted a diversion of tax revenue from the county to the township.[92] *Flynn* concluded that the taxation scheme was unconstitutional because the revenue collected for the county was expended for the corporate purpose of the township.[93]

Flynn is inapplicable to the tax increment allocation scheme because it was decided under the 1870 Illinois Constitution.[94] That constitution provided that funds collected by a municipal corporation must be spent for its own corporate purpose.[95] When Illinois ratified a new constitution in 1970,[96] the provision pertaining to the expenditure of corporate funds was eliminated. Instead, the 1970 Illinois Constitution required only that public funds be expended for public purposes.[97] Because the elimination of blighted conditions was found to constitute a public purpose, there was no additional requirement that funds be expended for a corporate purpose.

Since the tax increment allocation scheme established in the Act satisfies the constitutional requirements of uniformity and public purpose, the court in *Crouch* correctly concluded that the Act did not constitute an improper diversion of tax revenue among units of local government. Moreover, the court's decision in *Crouch* was consistent with other jurisdictions which have ruled on the constitutionality of tax increment financing.[98] Thus, the court was completely justified in declaring the Act to be constitutional.

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91. *Id.* at 213-14, 258 N.E.2d 329, 330. Suburban residents could pay their property taxes to either the township or county collector, but the residents of Chicago had to pay their property taxes to the county collector. *Id.*

92. *Id.* at 219-20, 258 N.E.2d at 333-34.

93. *Id.*

94. *Flynn* was decided March 17, 1970. The 1970 Illinois Constitution, however, did not become generally effective until July 1, 1971. People *ex rel.* City of Salem v. McMakin, 53 Ill. 2d 347, 354, 291 N.E.2d 807, 812 (1972).

95. ILL. CONST. art. IX, § 9 (1870). *See also* Board of Library Directors v. City of Lake Forest, 17 Ill. 2d 277, 161 N.E.2d 272 (1959). The court in *Library Directors* stated that "[t]he prohibition of the constitution is that one municipality may not force another to levy taxes to pay a debt which it did not incur or for the corporate purpose of the other municipality." *Id.* at 286, 161 N.E.2d at 278.

96. The 1970 Illinois Constitution was ratified on December 15, 1970. People *ex rel.* City of Salem v. McMakin, 53 Ill. 2d 347, 354, 291 N.E.2d 807, 812 (1972).

97. ILL. CONST. art VIII, § 1(a). For the text of this provision of the Illinois Constitution, see note 81 *supra.*

98. Of the many jurisdictions which have ruled on the constitutionality of tax increment financing, only Kentucky has held it unconstitutional. The Kentucky Constitution provides that revenue collected for education cannot be expended for any other purpose. KY. CONST. § 184. In Miller v. Covington Dev. Auth., 539 S.W.2d 1 (Ky. 1976), the Kentucky Supreme Court held that the Kentucky Tax Increment Act was unconstitutional, because it attempted to allocate taxes which were levied for education for other purposes. *Id.* at 5. Because the Illinois Constitution does not contain a statutory provision similar to that in Kentucky, *Miller* is therefore clearly distinguishable from *Crouch.*

In Richards v. City of Muscatine, 237 N.W.2d 48 (Iowa 1975), the Iowa Supreme Court held that tax increment financing comported with the constitutional requirements of due process, equal protection, and delegation of legislative authority. However, the court prohibited the section of an urban renewal act that exempted tax increment bonds from statutory debt limita-

Canton was confronted with the problem of obsolete and deteriorated physical structures in a once thriving downtown section of the city[99]—a typical problem faced by municipalities throughout Illinois. These cities find it increasingly more difficult to retain old commerce and industry, and to attract new business because facilities comparable to those in suburban or previously undeveloped rural areas are unavailable.[100] As commerce and industry flee these municipalities, the tax base decreases, forcing corresponding reductions in municipal services. By reaffirming the expansion of the

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tions. *Id.* at 64. *Richards* emphasized that, even though a tax allocation fund was established, the bonds were to be repaid from the general revenue of the city. *Id.* Since the city pledged part of its general revenue towards the repayment of the bonds, the resulting obligations had to meet the debt limitation imposed on the city. Thus, the court held that the tax increment bonds were valid, but only to the amount of the debt limit. *Id.* at 66.

Other jurisdictions, however, have been completely supportive of tax increment financing. In Tennessee, for example the state statute authorizing tax increment financing was challenged on the grounds of public purpose, unauthorized lending of public credit, uniformity, due process, and equal protection. Metropolitan Dev. & Hous. Auth. v. Leech, 591 S.W.2d 427 (Tenn. 1979). The Supreme Court of Tennessee held that the statute was constitutionally sound in all respects. *Id.* at 428. The court emphasized that the tax increment bonds did not constitute lending of the public credit because only the local housing authority was liable for the repayment of the bonds. *Id.* at 429. Moreover, the court stated that the tax increment allocation scheme was not an unconstitutional diversion of tax revenue because the allocation was just a means of appropriating revenue, equal to the amount of the increment, to pay for redevelopment costs. *Id.* at 430.

Similarly, the Wisconsin Supreme Court found that its tax increment financing statute complied with the public purpose doctrine and uniformity. Sigma Tau Gamma Fraternity House Corp. v. City of Menomonie, 93 Wis. 2d 392, 288 N.W.2d 85 (1980). The court stressed that under tax increment financing local governmental units are not forced to pay over revenue to which they are otherwise entitled because the revenue would not have been collected but for the redevelopment project. *Id.* at 414, 288 N.W.2d at 95. Finally, in R.E. Short Co. v. City of Minneapolis, 269 N.W.2d 331 (Minn. 1978), the Minnesota Supreme Court held that the construction of a parking ramp by the city intended to induce a private developer to build a hotel complex on the adjoining property was within the scope of the public purpose doctrine. These developments were planned in connection with a redevelopment project which utilized tax increment financing. The court concluded that the benefits to the private developer were outweighed by the benefits to the entire community from a successful redevelopment project. *Id.* at 336-41.

See also State *ex rel.* Schneider v. City of Topeka, 227 Kan. 115, 605 P.2d 556 (1980) (tax increment upheld on the basis of uniformity); City of Sparks v. Best, 605 P.2d 638 (Nev. 1980) (tax increment financing upheld on the grounds of uniformity and lawful delegation of legislative authority); Tribe v. Salt Lake City Corp., 540 P.2d 499 (Utah 1975) (tax increment financing upheld on the basis of the public purpose doctrine).

Thus, it appears that the decision of the Illinois Supreme Court in *Crouch* upholding the constitutionality of tax increment financing is consistent with decisions of other jurisdictions which have ruled on the issue.

99. For an explanation of the physical conditions in Canton, see notes 37-43 and accompanying text *supra.*

100. In Canton, the downtown area was not able to adjust to consumers' demands for modern shopping facilities. As a result, consumers patronized modern stores in other locations. Henderson, *supra* note 1, at 18.

public purpose doctrine and by upholding tax increment financing, the Illinois Supreme Court in *Crouch* has provided Illinois municipalities with an effective tool to reverse this trend.

Expansion of the public purpose doctrine to include commercial and economic revitalization enables a municipality to employ a wide range of creativity and flexibility in its redevelopment plans.[101] Thus, community redevelopment is no longer limited solely to slum clearance. A community redevelopment plan may encompass various types of projects, from shopping centers, office complexes and hotels to low or middle income housing.[102] As a result, a community may choose the particular project, or combination of projects, which will best accommodate its particular needs.

Tax increment financing provides a municipality with significant advantages unavailable through other methods of funding community redevelopment. While tax increment financing permits local control by the municipality or the redevelopment agency,[103] it does not raise tax rates or invest current tax revenue.[104] Local control means that the funds can be used flexibly to adjust the redevelopment plan to the needs of a particular area[105] or to encourage private investment in a development that otherwise would be prohibitively expensive.[106] This private investment increases the tax base, which in turn provides added revenue for the taxing districts after the project costs have been paid.[107] Local control also allows the funds to be employed

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101. After People *ex rel.* City of Urbana v. Paley, 68 Ill. 2d 62, 368 N.E.2d 915 (1977), one commentator stated:

> The *Urbana* decision is broad authority for innovative efforts by municipalities to stimulate commercial development or redevelopment. Increasingly cities have found that successful downtown redevelopment progress requires a level of municipal participation that only 10 or 15 years ago would have been thought unacceptable. In aid of commercial or industrial redevelopment, several cities have actively entered the real estate market to undertake projects that were not economically feasible for private enterprise or in order to secure important public objectives.

Note, *Municipal Authority to Stimulate Commercial Growth and Arrest Economic Stagnation: People ex rel. Urbana v. Paley*, 41B NIMLO MUNICIPAL L. REV. 319, 329 (1978).

102. COUNCIL OF STATE GOVERNMENTS, *supra* note 12, at 6.

103. Mitchell, *supra* note 12, at 229.

104. Henderson, *supra* note 1, at 16; *Urban Redevelopment*, *supra* note 12, at 540.

105. Due to the expansion of the public purpose doctrine, various types of redevelopment plans are available to communities. Thus, communities are able to plan redevelopment in order to meet their needs. For an explanation on the expansion of the public purpose doctrine, see notes 100-01 and accompanying text *supra*.

106. COUNCIL OF STATE GOVERNMENTS, *supra* note 12, at 1. According to the Council:

> The municipal TIF (tax increment financing) authority may buy the land to be developed, prepare it by demolishing existing buildings or other action, then sell land to a developer at a financial loss. This may be done in order to encourage developers to become involved in what might otherwise be a prohibitively expensive development.

Id.

107. *See*, Nebel, *Chicago Redevelopment Can Succeed*, 12TH ANN. METROPOLITAN CHICAGO INDUS./COM. DEV. GUIDE, July, 1978, at 86; *Urban Redevelopment*, *supra* note 12, at 541.

quickly to halt the spread of blight,[108] in sharp contrast to federal programs which are often plagued by red tape and delay.[109]

Perhaps the most significant aspect of tax increment financing is its use in conjunction with other sources of redevelopment funds.[110] Although it is not always the most appropriate method of financing every redevelopment project,[111] the use of tax increment funds to revitalize one area may be the turning point in the overall redevelopment plan and lead to the successful renewal of the entire community.

Critics of tax increment financing, however, contend that vesting broad discretionary power in the local governing body will lead to an abuse of authority.[112] Since voter approval is not required for the passage of redevelopment ordinances, the redevelopment agency has virtually uncontrolled power to establish a plan and commit a significant portion of future tax revenue to the repayment of project costs.[113] In addition, the need for tax increments encourages inclusion of property that is attractive to private investment rather than property which is merely blighted.[114] Moreover,

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108. Mitchell, *supra* note 12, at 229. According to Mitchell:

> Local government makes the decision to use tax increment and decides what it shall be used for (within the state statutory enabling legislative authority). This local autonomy makes it possible for local government to move rapidly and precisely to the solution of specific problems, without waiting for external approvals from state or federal officials.

Id.

109. Davidson, *supra* note 1, at 408.

110. For example, the City of Canton is using tax increment financing to fund only part of its total redevelopment cost. Canton's other sources of revenue for redevelopment are a grant from the United States Department of Housing and Urban Development, a loan by the Local Development Corporation, and the issuance of tax-exempt commercial redevelopment bonds. Henderson, *supra* note 1, at 18. Another example is Hopkins, Minnesota. The city built an eleven-story apartment complex and a senior citizen housing complex by using tax increment financing to raise the local share of a federally-funded program. Swick, *supra* note 12, at 52.

For a general discussion on the sources of redevelopment funds available from federal, state, and local government, see LAFER, *supra* note 1, at 49-60.

111. Tax increment financing is not appropriate in situations where the redevelopment project area is unable to generate sufficient tax increment revenue to pay for redevelopment costs or obligations as they come due. *See* Nebel & Teplitz, *supra* note 12, at 7.

112. Davidson, *supra* note 1, at 408.

113. Jefferson & Taggart, *supra* note 12, at 5. The authors stated:

> According to [one commentator], "the most significant feature of tax allocation bonds is that they can be issued and refunded without the requirement of voter approval." This is to say that redevelopment authorities—and not the voters—can obligate significant chunks of a municipality's future revenue to an urban renewal project. The issue that [this commentator] avoids is whether the fundamental prerogative of committing tax dollars ought to be delegated to a single-purpose authority whose primary mission is to maximize urban renewal activity.

Id.

114. COUNCIL OF STATE GOVERNMENTS, *supra* note 12, at 4. The Council pointed out that

> [c]ritics of TIF argue that the system's proponents often make unwarranted assumptions about increases in the tax base due to development. It may be argued that redevelopment activity would have occurred in the area without the TIF program,

some critics allege that tax increment financing results in additional municipal services and expenses to accommodate the increase in commercial and industrial activity.[115]

To the contrary, tax increment financing does not necessarily require additional municipal services because substandard property often demands more public services than properly maintained property.[116] Other potential infirmities of tax increment financing may be avoided through carefully drafted statutes. For example, a redevelopment project in Illinois cannot be established solely to snare large tax increments because of safeguards in the Act. These safeguards include requirements that a blighted or conservation area exist,[117] that redevelopment will not occur without public assistance,[118] and that revitalization conforms to the development of the entire community.[119] Additionally, the detailed provisions for notice[120] and public hearings[121] ensure that those affected by the proposed redevelopment are adequately informed and afforded the opportunity to object to the redevelopment plan.

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in which case the municipality has wasted money on an unnecessary project. Or, it may be that cities using TIF have an incentive to include nonblighted areas of certain growth in the project in order to ensure that the increment will materialize. If this occurs there is no way to link the increased tax base causally to tax increment financing.

Id. Accord, Jefferson & Taggart, *supra* note 12, at 6.

115. Jefferson & Taggart, *supra* note 12, at 5-6. These critics opined that

> a more significant flaw in the "frozen base roll" concept is its failure to account for increased municipal expenses imposed by higher density commercial and industrial uses, which, by definition, accompany tax increment-financed projects. The effect of this scheme is to delude the public into believing that urban renewal pays for itself through an arbitrarily-established tax increment without simultaneously taking into account the cost increment for new facilities and services.

Id.

116. Swick, *supra* note 12, at 52. That commentator stated:

> The premise that tax increment fails to account for increased municipal costs is grossly overstated, if you consider the community as a whole and the cost of alternatives. While theoretically the city tax base may expand or erode, overwhelming evidence shows that central cities in this country are eroding far faster than they are expanding.
>
> Many rundown areas disproportionately require more services—for example, police and fire services—while if the property was renewed it would decrease these extra needs. Using this criterion, several projects would not have the alleged significant increased need for municipal services.

Id.

117. *See* notes 18-20 *supra.*

118. *See* note 21 *supra.*

119. *See* note 24 *supra.*

120. *See* notes 25 & 26 *supra.*

121. *Id.* Another safeguard contained in the Act is the provision which requires surplus funds acquired through tax increment financing to be distributed annually to the taxing districts. *See* note 34 and accompanying text *supra.*

CONCLUSION

By upholding the constitutionality of tax increment financing, the Illinois Supreme Court in *Crouch* sanctioned a new source of funds for community redevelopment. These funds are needed by communities throughout Illinois which, like Canton, suffer from antiquated physical structures and stagnant business districts.[122] The flexibility of tax increment financing in conjunction with the expansion of the public purpose doctrine allows a community to choose from a wide range of redevelopment projects and formulate the redevelopment plan best suited to its needs. Revitalization will draw people, commerce, and industry back to the community. The additional private investment increases the tax base and ensures a strong community in the future.

Michael L. Molinaro

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122. Peoria, Rockford, Rosemont, Homewood, and Danville have passed the requisite ordinances to implement tax increment financing. Henderson, *supra* note 1, at 17.