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Maximize “West End Opportunity” in America: Alternative policy options to address perceived drawbacks of Tax Increment Financing (TIF) & Opportunity Zones

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Commonwealth Policy Institute 2022-23 Congressional Summit

Center for Rights, Liberties, and Equity

Maximize "West End Opportunity" in America: Alternative policy options to address perceived drawbacks of Tax Increment Financing (TIF) & Opportunity Zones

Suggested local, state, and federal policy measures to address perceived community concerns in implementation of Kentucky's unique West End Opportunity Partnership in Louisville

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Commonwealth Policy Institute

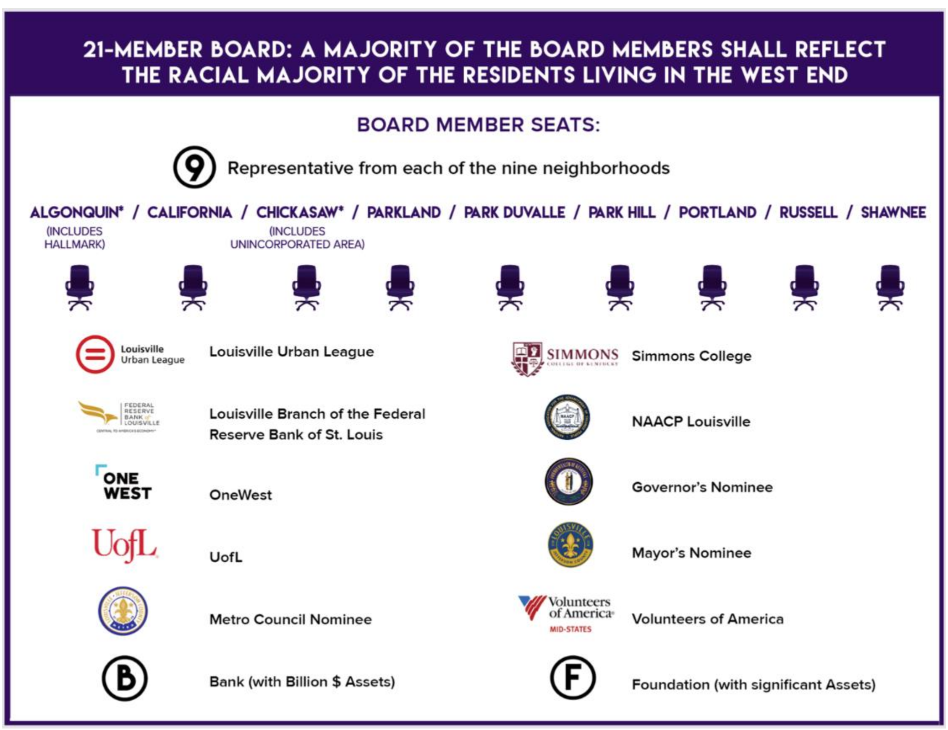
Summit Introduction

This policy brief recommends new development of federal, state, and local policy measures. It is derived from the 2022 and 2023 Congressional Summit meetings of the Commonwealth Policy Institute think tank, and meetings with elected state government officials immediately prior. The Commonwealth Policy Institute (CPI) is nonpartisan think tank serving as a resource for tailored policymaking in Kentucky under bicameral resolutions of the KY General Assembly. Under its stream of work conducted as public service, CPI forms policy centers combining university level research of faculty and university community members with input of stakeholder groups, businesses, and policymakers to create tailored policy solutions to needs faced across the Commonwealth of Kentucky. As many issues we address are common to other states, and as discussion across the states at a federal level may incubate new ideas which may be tailorable to Kentucky, each year CPI conducts an annual Congressional Summit for the purpose of leveraging the federal system for policy diffusion -- "trickling up" ideas from our state-level policy design into a federal context, or, "trickling down" new policy approaches to tailor for implementation in Kentucky.

This brief reports policy recommendations from a "trickle-down" approach, for policy measures to mitigate community concerns with the West End Opportunity Partnership, based on feedback with staff in Congress behind the design of Federal Qualified Opportunity Zones and similar challenges faced between QOZ's and tax increment financing. CPI then synthesized this feedback to further develop new policy options intended to add protections against gentrification and increase direct transparency, while allowing what is ultimately a necessary external investment needed to re-invigorate the West End community and add new generational wealth.

Introduction: The Unique approach of the West End Opportunity Partnership

In March 2021, the Kentucky General Assembly passed House Bill 321 (Ky. Acts ch. 203, sec. 4. ; amended in 2023 as Ky. Acts ch. 12, sec.1) which authorized the creation of a tax increment finance (TIF) district within the West End of Louisville. The historically black West End area of Louisville has significantly lower business growth than the surrounding region, in need of economic stimulation. To spur community-wide economic development, the statutes established a public-private nonprofit partnership. Known as the West End Opportunity Partnership (WEOP), this 21-seat board including community members would have sole control over any fund disbursement. Funds can be used towards a broad array of investments including small business loans, financing affordable housing units, home improvements, etc. The initial budget from the state government allotted was $10 million. Once the WEOP board raised $10 million in donations from private-public sources, the state was to match another $10 million. At the establishment of the board, the City of Louisville pledged $10 million, which then brought the total to $30 million.



Source: West End Opportunity Partnership, Louisville KY.

Simultaneously, inclusion of community leaders behind these investments was considered necessary in order for external stimulus to avoid gentrification driven by increased property value associated with the investment, or else, investments in such a manner that a margin of profits may compensate for increased residential costs should those costs occur. To this end, unlike other TIF legislation across the United States, this state legislation uniquely established a local board of advisees and investors under KRS 65.503, and an advisory council under KRS 65.506 acting as a subcommittee of members working with the board. This subcommittee included members representative of each neighborhood located inside the TIF district (Shawnee, Chickasaw, Algonquin, Park Duvalle, Portland, Parkland, Russell, California, and Park Hill). Other seats on the board also were to include representatives of local organizations. The measures also included a development area tax credit under KRS 141.398, crediting homeowners the difference in their property value from year 2021 at the beginning of the TIF to the current year in the 20 year period.

By enacting this legislation filed from representatives of the area, the Commonwealth of Kentucky began the incubation of new policy with the intention of balancing traditional concerns in development districts and offering mutual gains. This was intended to allow external investments which are needed to be sustainably tailored to community needs, to areas supported by the community, and in ways that could ensure the investment would have diffusion and tangible benefit to the community as opposed to sole benefit by external business. Likewise, to local business participants, the WEOP board is an opportunity to contribute directly to community-focused business and rejuvenation. The ability of neighborhood representatives to influence the board was also intended such that areas may be renovated and rejuvenated, and that impact on residential areas would be minimized or else tailored to be a mutual gain for the residential communities represented.

Background: Community Implementation Challenges with the WEOP Tax Increment Financing

CPI confirmed the intention of sponsoring legislators was to strike a balance and build in a mutual-gains approach to the legislation. Community members serving on the advisory committee also were provided training by those with corporate expertise to allow direct input on investments made and support their steering capabilities. Direct community input was also intended to allow dialogue and input over ground-level planning & development to occur under investments made. State Senator Gerald Neal, HB 321's leading sponsor, noted to that "this district is not a panacea to the issues that led to the historic divestment of the West End", and that the board of 21 individuals, including neighborhood residents, has full discretion over the projects that will shape West Louisville and its 62,000 residents.

Although this legislation had a very innovative design, residents within the district still voiced opposition to the measure. This was in part driven by a campaign titled "#StoptheWestEndTIF" which initially garnered 425 signatures, and was led by a local resident group The Historically Black Neighborhood Assembly. In analyzing these and other public communications, opposition appears driven in part due to perceptions of the effects of traditional TIF legislation despite the design of the WEOP legislation, and in part as any tailored protections are not necessarily clear that would avoid the level of gentrification and answer to community concern. Simultaneously, a number of local business leaders supported the TIF as life-changing opportunity.

Due to these public pressures, enthusiasm of neighborhood participants waned, and also led to governor-appointed seats on the advisory board to be vacated by the Urban League though no reason was provided. After the drafting of this Congressional Brief, the Louisville Urban League later published a 127 page report focused on recommendations for inclusionary zoning. Two seats remain vacant as of 2023. Although the board was designed to include community members, the willingness of those members to participate now depends on the ability to ensure their constituents that investment will not result in gentrification.

The Need for Policy Intervention

Therefore, to avoid implementation failure of the representative capacity the legislation was designed to include and simultaneously direct investments for equitable growth, there is need for tangible policy structure to be put in place that may afford guarantees to community members that gentrification may protected against which would complement and potentially improve the mutual gains focused intention for business and community under HB 321. Tangible measures to address these concerns, support community involvement, and simultaneously allow for maximized local economic development, may help to solve challenges faced in equitable implementation of economic development districts in similar areas across the United States.

The state law as written already attempts to provide protections though various measures which likewise do not stifle investment (e.g. ensure projects include the employment of area residents, both in short-term construction jobs and long-term employment in businesses locating within the development area, ensure that all housing projects include the creation of housing that is deemed affordable in accordance with federal guidelines for low-income families, that the board is bound to the Kentucky Open Meetings Act, etc.). However, in the time after the bill's passage, these measures which board members were aware of did not dissuade a number of those representative from stepping away from their duties regardless out of concern of constituent perception.

In CPI's annual Congressional Summit for 2022, it was recognized that similar criticisms were likely from advocacy groups and the bills which formed Federal Qualified Opportunity Zones (QOZ's). A large degree of progress in forming these zones in a new chapter of federal tax code was driven by the office of Sen. Rand Paul (R – KY) and Sen. Cory Booker (D – NJ).

In addition to meeting with the Kentucky Congressional Delegation, the CPI Center for Rights, Liberties, and Equity team met with staff of Sen. Bookers office involved in forming the new QOZ legislation to discuss issues common to TIF's across the country and potential policy solutions to resolve community interests and concerns while addressing the need that these areas are need growth and internal economic interdependence and not only external economic stimulation.

These discussions, in combination with consultation with state legislators behind the design of HB 321, resulted in the below recommended policy solutions at local, state, and federal level that may potentially improve the implementation of the WEOP and willingness of reserved members to participate while still allowing the substantial investment opportunity afforded.

Recommended Policy Measures

To encourage community involvement in dealing with this public entity, the following actions are recommended:

Local Level (Metro Louisville)

- Pursuant to the KRS 99.727(5) and Metro Ord. No. 11-2003, tax delinquency diversion program for blighted property, all blighted property within the boundaries of this TIF within the 20 year period should automatically be designated as enrolled under the diversion program
- Develop new initiatives to work proactively with existing business & homeowners to remedy code violations and facilitate lien releases
- Promote innovative measures to further reduce local costs of living to residents in the TIF district
- Develop new guidelines to assist board investment and encourage board investment in the establishment of new funds to support residential mobility for TIF residents
- Develop a new engagement and mentorship program between the WEOP board, local business supported by the TIF in the west end, students of JCPS schools in and around the district seeking exposure to business, and students of local colleges seeking exposure to business and investment management

State Level

The following amendments are recommended to the provisions over the TIF, notwithstanding amendments to these ends made to-date:

- Amend KRS 99.727 (5), adding an exception for purchase by or for the purposes of investment under the West-End Opportunity Partnership directed by the to afford capability of purchasing blighted properties enrolled in lien diversion
- Expand the Low-Income Housing Tax Credit (LITECH) program within TIF districts and make refundable within TIF districts
- Extend refundable tax credit for increases in property taxes above the frozen 2021 rate to renters who make up 60 percent of West Louisville residents
- Conduct an open hearing upon authorization & final approval for any site of a minimum threshold or group of sites selected by the WEOP board for investment. An open hearing provisions should not be written in such a way that creates undue administrative burden.
- Any announcements made by the WEOP board relating to development or investment must be in public circulation for a minimum 10-day period
- In addition to considering linkage fees between business development and residential areas, direct that the board with create a separate fund to be managed by the board to

support residential mobility and mitigating unintended impact of future residential property value increase, and, increase the rate of state fund matching above 1:1 towards the general WEOP in matching contributions given to WEOP directed towards this separate fund.

- Improved public disclosure:
  - Prior to the disbursement of funds at the disposal of the WEOP, the board should issue a statement on publicly identify broad targets (I.e., 20-year target) of the desired economic development level with each particular investment and the target impact in the district (e.g. Grow the local equivalent of GDP or commercial revenue by 150%). Statements should be issued within reason to a degree that also avoids administrative burden.
  - Considering the above targets, a study of each investment or group of investments be conducted which considered whether increase in property value or gentrification would occur in association with an investment of a minimum value or group of investments in a particular area within the TIF at a minimum value
  - Should such a study reveal that gentrification would occur with the investment, the board may then disclose actions or other investments intended to reduce gentrification to a justifiably minimal level (see federal level recommendations)
  - Methods for which the gentrified population will either be indirectly compensated (increase in local economic interdependence) or directly compensated (if the indirect benefit is not clear) must be a part of the study
  - The board should show the disclosures in a single report accessible and readable by the public no less than 185 days (about 6 months) prior to the first investment—excludes preliminary reports from this requirement
  - Clarify that board members are to hold limited liability

Federal Level

- Non-profit groups like the WEOP board appointed to oversee business development in disadvantaged low-income areas or federally designated Qualified Opportunity Zones (West Louisville and portions of downtown Louisville received FQOZ designation in 2019) must register under a new chapter of the 501c Code. Any groups under this chapter of code would be subject to brief and reasonable disclosure requirements, which may also be drafted by a designated secretary of the board. Type of disclosure would be for federal legislators to decide, however, the state level comprehensive disclosure requirements previously recommended can be viewed as an example
- Mirror the state-level tax credit to homeowners in QOZ's
- The US Department of Housing and Urban Development must set up clearly compliable guidelines for the largest threshold of gentrification that is considered unnecessary per residential population density of any development area, per the disclosure items suggested below
- Federal support to ensure lower rental costs of buildings constructed under HUD standards located within local or state tax development districts, or federal QOZ's

- Establishment of a federal fund under the US Department of Housing and Urban Development, where private entities may contribute in exchange for a new tax credit, and the fund is disbursed to compensate cases of development associated property value increase for private property of an initial maximum value, and other housing categories.