FINANCING THE FUTURE: INTERPRETING THE "ECONOMIC DEVELOPMENT AREA" PROVISION OF THE IOWA TIF STATUTE

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I. INTRODUCTION

The officials of West Des Moines, a suburb of Des Moines, Iowa, plan to build Town Center at Jordan Creek (Jordan Creek), considered a mall by some and a town center by others.[1] To help finance infrastructure in support of Jordan Creek, West Des Moines plans to use a municipal financing mechanism called tax increment financing (TIF),[2] a financing mechanism traditionally associated with the rehabilitation of slum or blighted areas.[3] To do so, officials interpret the phrase "economic development area" in the Iowa Code as justifying the use of TIF in areas other than areas of slum or blighted areas.[4]

However, TIF remains a controversial method of financing when used to fund projects not involving the rehabilitation of blighted areas.[5] Here, opponents of the Jordan Creek project have brought suit to prevent the use of TIF,[6] disputing West Des Moines' interpretation of economic development area.[7] In response, "Iowa's city leaders" have claimed "that if the mall foes succeed in blocking the use of [TIF], development could grind to a halt."[8]

Using the still-developing Jordan Creek controversy as a touchstone, this Note analyzes the term economic development area, arguing the term should be understood as requiring a relation between the economic development area and findings of blight or slum. The Note first provides a brief overview of TIF. It then demonstrates the need to interpret the term economic development area, applying different interpretational strategies provided by case law. The Note concludes by placing this controversy within the current political climate between cities competing for development.

II. OVERVIEW

A. *What is a TIF District?*

A TIF district refers to an area of a city designated by the governing body as appropriate for redevelopment because blight or slum depresses the property tax

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1. Daniel P. Finney, *Suit Against Mall Will Test Key Development Strategy*, DES MOINES REGISTER, Sept. 25, 2000, at 3B.
2. *Id.* at 3B.
3. Michael L. Starn, *Tax Increment Financing: An Economic Development Tool or Entitlement?*, 22 CURRENT MUN. PROBS. 567, 569 (1996).
4. Defs.' Reply to Pls.' Resistance to Defs.' Mot. to Dismiss at 2, McMurray v. City Council of West Des Moines (Dist. Ct. Polk County 2000) No. (CL-83503) [hereinafter Defs.' Reply].
5. KENT D. REDFIELD, TAX INCREMENT FINANCING IN ILLINOIS, 1995 TAXPAYERS FEDERATION OF ILLINOIS 37.
6. Finney, *supra* note 1, at 3B.
7. Pls.' Pet. for Writ of Cert. and for Declaratory J. at 11, McMurray v. City Council of West Des Moines (Dist. Ct. Polk County 2000) (No. CL-83503) [hereinafter Pls.' Pet.].
8. Finney, *supra* note 1, at 3B.

revenues.[9] Such redevelopment will take place by inviting a business to locate in the TIF district; the city itself supplies the business' initial capital outlay.[10] The city raises this money by issuing bonds to be repaid by the rise in property taxes supplied by the locating business, the locating business presumably generating further investment in the area by other capitalists resulting in more and more freshly generated tax income.[11] Put simply, TIF operates as follows:

> [T]axes levied on property within the redevelopment district are essentially divided into two parts. The taxes levied on the frozen base value [the tax revenue generated by the area at the time of its being declared a TIF] are allocated to the city, county, schools and other taxing authorities in the usual manner. The taxes levied on the increase in property value over the frozen base value are allocated to the TIF authority. The TIF authority uses these diverted taxes to finance the redevelopment project, either by paying the immediate costs of the redevelopment project or by repaying bonds previously issued by the TIF authority.[12]

Originally, TIF's "creators intended TIF as a tool to allow communities to redevelop 'blighted' areas by financing that redevelopment through increased property tax revenues generated by the redeveloped land."[13] More recently, however, TIF has morphed into a general economic tool.[14] Competition now exists between competing municipalities who, because of their vast similarity, primarily distinguish themselves by offering businesses stronger financial packages including TIF.[15]

With this morphing has come controversy.[16] For example, one author asks if TIF has become nothing more than a corporate entitlement program.[17] Concerns also apply to the possibly deleterious effects of a TIF upon schools within the TIF district.[18] Schools are deprived of funds within the TIF district because the increased tax revenue, which would have gone to the school taxing district, goes instead into the general redevelopment fund to pay off the bonds taken out to establish the project in the first place.[19] For another critic, the root of these other insidious effects is

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9. Joseph F. Luther, *Tax Increment Financing: Municipalities Avoiding Voter Accountability*, DETROIT C. L. REV. 89, 96-97 (1987).
10. *Id.*
11. *Id.*
12. *Id.* at 95-96. *See* discussion *infra* Part III.A.1; *see generally* DANIEL R. MANDELKER ET AL., STATE AND LOCAL GOVERNMENT IN A FEDERAL SYSTEM, 290-302 (4th ed. 1996) (examining issues in state and local government and providing an in-depth exposition of TIF's structure and purposes).
13. Julie Goshorn, *In a TIF: Why Missouri Needs Tax Increment Financing Reform*, 77 WASH. U. L.Q. 919, 919 (1999).
14. REDFIELD, *supra* note 5, at 9-10.
15. *Id.* at 39-40.
16. *Id.* at 37.
17. Starn, *supra* note 3, at 567, 571.
18. Luther, *supra* note 9, at 101.
19. *Id.* at 104-05.

simply a lack of voter accountability—municipal officials more or less making unilateral decisions with taxpayer money.[20]

B. *TIF in Iowa*

Iowa adopted its own urban renewal statute in 1957.[21] Originally, this statute was meant to remedy blight.[22] In 1969, the Urban Renewal Law (Act) was amended to allow for TIF.[23]

In 1985, however, Iowa amended this TIF statute, adding the term economic development area to those areas eligible for urban renewal status.[24] Previously, this statute allowed an area to be declared an urban renewal area only if it were a blighted area or slum.[25] This amendment came during what one author sees as the boom era for TIF.[26] During this era, TIF increasingly became a tool for general redevelopment.[27] Therefore, in light of this period in which the amendment was adopted, West Des Moines' argument that Iowa's TIF statute now allows TIF to be used for general development might not be so far-fetched.[28] At least according to the *Des Moines Register*, the amendment as applied has allowed "cities to establish [TIF] districts virtually anywhere for economic development."[29]

But, as with TIF in general, Iowa TIF is subject to the corporate entitlement controversy.[30] As Representative Jeff Angelo explains: "Developers coming to the state expect tax-increment financing. It's becoming a sort of gimme. . . . If everyone has TIF districts, you have to question the net gain."[31] Even before Angelo's observation, Des Moines-area developer, Tim Urban, in light of TIF being available for Jordan Creek, already requested TIF support for a development of his own.[32]

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20. *Id.* at 117.

21. Urban Renewal Law, ch. 197, § 1, 1957 Iowa Laws 247 (codified as amended at IOWA CODE § 403.1 (2001)).

22. IOWA CODE § 403.2.

23. Urban Renewal Funds and Bonds Act, ch. 237, § 2, 1969 Iowa Acts 310 (codified as amended at IOWA CODE § 403.19).

24. Economic Development Authorized for Urban Renewal Act, ch. 66, § 3, 1985 Iowa Acts 153 (codified as amended at Iowa Code § 403.5(1)).

25. IOWA CODE §§ 403.2, .5 (1983).

26. REDFIELD, *supra* note 5, at 8-9.

27. *Id.* at 9.

28. Gene Erb, *Tax-Increment Deals Benefit Communities*, DES MOINES REGISTER, June 13, 2000, at 1D.

29. *Id.*

30. Finney, *supra* note 1, at 3B.

31. *Id.*

32. Daniel P. Finney & Gene Erb, *Second Retail Center Planned in W.D.M.*, DES MOINES REGISTER, July 29, 2000, at 1A.

III. JORDAN CREEK AND THE IOWA TIF STATUTE

With the above background in mind, this section briefly discusses the Iowa Code section in controversy. It then explains how each party to the lawsuit interprets the statute.

A. *The Statute in Controversy*

1. *Section 403*

The main bone of contention between the two parties in the Jordan Creek litigation involves the Urban Renewal Law.[33] This Act allows Iowa municipalities to develop programs to alleviate and prevent urban blight,[34] one option being the use of TIF.[35] In making this allowance, the Act targets three areas for urban renewal: blighted areas, slums, and economic development areas.[36] The Act states: "No municipality shall exercise the authority herein conferred upon municipalities by this chapter until after its local governing body shall have adopted a resolution finding that: 1. One or more slum, blighted or economic development areas exist in the municipality."[37]

The disagreement involves how to interpret the term economic development area.[38] Because of its centrality to the controversy, this Note quotes the statutory definition of economic development area at length:

> 'Economic development area' means an area of a municipality designated by the local governing body as appropriate for commercial and industrial enterprises, public improvements related to housing and residential development, *or* construction of housing and residential development for low and moderate income families, including single or multifamily housing. If an urban renewal plan for an urban renewal area is based upon a finding that the area is an economic development area and that no part contains slum or blighted conditions, then the division of revenue provided in section 403.19 and stated in the plan shall be limited to twenty years from the calendar year following the calendar year in which the city first certifies to the county auditor the amount of any loans, advances, indebtedness, or bonds which qualify for payment from the division of revenue provided in section 403.19. Such designated area shall not

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33. Pls.' Pet., *supra* note 7, at 4.
34. IOWA CODE § 403.3(1)-(4) (2001).
35. *Id.* § 403.19.
36. *Id.* § 403.4(1).
37. *Id.*
38. Pls.' Brief and Mem. of Law in Resistance to Defs.' Mot. to Dismiss Counts Two and Six, to Dismiss Merle Hay Mall as a Pl., and to Strike at 11-12, McMurray v. City Council of West Des Moines (Dist. Ct. Polk County 2000) (No. CL-83503) [hereinafter Pls.' Brief]; Defs.' Reply, *supra* note 4, at 2.

> include agricultural land, including land that is part of a century farm, unless the owner of the agricultural land or century farm agrees to include the agricultural land or century farm in the renewal area. For the purposes of this subsection, 'century farm' means a farm in which at least forty acres of such farm have been held in continuous ownership by the same family for one hundred years or more.[39]

As amended, sections 403.2(3) and 403.4(1) inserted the term economic development area, joining the term to the already existing terms—slum and blighted areas.[40] These sections, therefore, in conjunction with section 403.19, allow for the creation of a TIF district should any municipality find a blighted area, slum, or economic development area within the municipality.[41]

2. *Defendant's Interpretation*

West Des Moines argues the "plain language" of the 1985 amendment to section 403.2(3) inserting economic development area allows section 403.4 to be interpreted in support of its proposed use of TIF for the mall.[42] Because of its centrality to the discussion, this Note quotes section 403.2(3) at length as well:

> It is further found and declared that there exists in this state the continuing need for programs to alleviate and prevent conditions of unemployment and a shortage of housing; and that it is accordingly necessary to assist and retain local industries and commercial enterprises to strengthen and revitalize the economy of this state and its municipalities; that accordingly it is necessary to provide means and methods for the encouragement and assistance of industrial and commercial enterprises in locating, purchasing, constructing, reconstructing, modernizing, improving, maintaining, repairing, furnishing, equipping, and expanding in this state and its municipalities, for the provision of public improvements related to housing and residential development, and for the construction of housing for low and moderate income families; *that accordingly it is necessary to authorize local governing bodies to designate areas of a municipality as economic development areas for commercial and industrial enterprises*, public improvements related to housing and residential development, or construction of housing for low and moderate income families; *and that it is also necessary to encourage the location and expansion of commercial enterprises to more conveniently provide needed services and facilities of the commercial enterprises to municipalities and the residents of the municipalities.* Therefore, the powers granted in this chapter constitute the performance of essential public purposes for this state and its municipalities.[43]

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39. IOWA CODE § 403.17 (emphasis added).
40. *Id.* §§ 403.2(3), .4(1).
41. *Id.* §§ 403.2(3), .4(1), .19.
42. Defs.' Reply, *supra* note 4, at 2.
43. IOWA CODE § 403.2(3) (emphasis added).

In this case, West Des Moines contends that it has found an economic development area within the boundaries of its municipality.[44] This argument results from a city resolution adopting the language of section 403.2(3), emphasized in the passage immediately above; the city combined the language allowing local bodies to designate economic development areas with the language stating the necessity of encouraging the convenient location of commercial enterprises:

> [T]he City adopted a resolution finding that 'the project area [is] suitable for designation as an economic development area, to encourage the location and expansion of certain commercial enterprises to more conveniently provide needed employment services and facilities to the residents of the City, to alleviate and prevent conditions of unemployment by assisting and retaining local industries and commercial enterprises and to strengthen and revitalize the economy of the State and the City.'[45]

According to West Des Moines, other than the finding of an economic development area, no specific findings by the municipality are required.[46] West Des Moines offers its assessment of commercial convenience as the test for whether something is an economic development area, considering no other factors in discerning whether something qualifies as an economic development area.[47]

3. *Plaintiffs' Interpretation*

In contrast, Plaintiffs assert the need for, at least, a specific finding of blight or slum conditions to justify a finding of an economic development area.[48] Plaintiffs acknowledge that the finding of an economic development area alone would suffice,[49] but only insofar as there is a "sufficient nexus" between the economic development area and conditions of slum or blight.[50] In doing so, the plaintiffs argue attention must be given to the placement of the phrase economic development area in the whole of the statute, claiming West Des Moines' interpretation renders the term unintelligible by referencing it in isolation.[51] Plaintiffs also insist that attention be given to the Act's purpose of "alleviat[ing] and prevent[ing] conditions of unemployment and a shortage of housing."[52] Here, Plaintiffs argue Defendant,

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44. Defs.' Reply, *supra* note 4, at 2.
45. *Id.* (using language from § 403.2(3) placing the term economic development area and the statement regarding the need for convenient commercial access in different clauses).
46. *Id.*
47. *Id.*
48. Pls.' Brief, *supra* note 38, at 9.
49. *Id.*
50. Pls.' Pet., *supra* note 7, at 11.
51. Pls.' Brief, *supra* note 38, at 11-12.
52. Pls.' Pet., *supra* note 7, at 10.

without more, has failed to make this showing and therefore may not use TIF to support development of Jordan Creek.[53]

IV. INTERPRETING "ECONOMIC DEVELOPMENT AREA"

This section discusses interpreting the economic development area provision of the Iowa TIF statute. First, this section comments on *Brady v. City of Dubuque*,[54] showing it does not settle the interpretation of "economic development area," contrary to the claims of West Des Moines.[55] After discussing *Brady*, the section discusses various interpretive strategies available to understand economic development area and its role in the Iowa TIF statute.

A. Brady v. City of Dubuque[56]

In contrast to West Des Moines' position, this Note argues *Brady* only held Dubuque had the power and the authority to combine the urban renewal powers of section 403.14 and the economic development powers of section 15A.1.[57] The relation of economic development area to slum and blight was never an issue.[58]

Brady involved property owners who wanted their property exempted from inclusion in a designated economic development area.[59] The owners' claim, already dismissed by the district court, rested on the century farm exemption under then-section 403.17(20).[60] The court consolidated this claim with a taxpayers' claim "challenging the statutory authority for the City's proposed urban renewal and economic development projects and the funding of the same."[61] The court determined the century farm exemption to be constitutional, and "remanded [the property owners'] action . . . to the district court for a decision on their entitlement to an exemption under that statute."[62]

The court's determination regarding the century farm exemption proved fortunate for the property owners as the taxpayer challenge failed.[63] However, this challenge did not fail due to the court's determination of the legitimate definition of

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53. *Id.* at 12.
54. Brady v. City of Dubuque, 495 N.W.2d 701 (Iowa 1993).
55. Pls.' Brief, *supra* note 38, at 13-14.
56. Brady v. City of Dubuque, 495 N.W.2d 701 (Iowa 1993).
57. *Id.*; *see* IOWA CODE § 15A.1 (2001) (codifying Iowa's economic development powers).
58. Brady v. City of Dubuque, 495 N.W.2d at 701.
59. *Id.* at 703-04.
60. *Id.* at 703; *see* IOWA CODE § 403.17(20) (1987 & Supp. 1989) (codified as amended at IOWA CODE § 401.7(10) (2001)).
61. Brady v. City of Dubuque, 495 N.W.2d at 703.
62. *Id.* at 706.
63. *Id.* at 708.

economic development area.[64] Plaintiffs, in fact, never contested the definition of economic development area.[65]

Therefore, the court considered only the following two questions when assessing the taxpayers' claim: One, did the city have authority "to carry out the proposed urban renewal?" Two, could the city use TIF to fund an economic development area?[66] The court answered both questions in the affirmative, and, in answering the second question, noted chapters 403 and 15A "are aimed at the same general purpose, i.e., stemming economic decline and promoting economic growth."[67] However, this does not mean economic development, in general, and an economic development area, specifically, are themselves the same thing though they share the same goal. In deciding these two matters of authority and financing, the *Brady* court, because it was not called on to do so, offered no guidance in determining the relation of an economic development area to blight or slum.[68]

B. *Establishing the Need for Interpretation*

1. *Interpreting an Amendment*

This section analyzes the 1985 amendment to chapter 403 to determine the meaning of "economic development area" as it relates to slum and blight.[69] Interpretation of a statutory amendment involves some special considerations under Iowa law.[70] When considered initially, an amendment is presumed to have changed the law.[71] In fact, it is usually the case that an amendment has indeed changed the law.[72] The amendment is therefore examined to determine the intent of the change.[73]

First, this analysis recognizes the presumption that the 1985 amendment changed the law.[74] This presumption of change, however, does not necessarily mean such an utterly dramatic change that an economic development area may be completely unrelated to conditions of slum or blight.[75] Rather, where the section previously provided TIF funds only to slum or blighted areas, the change in the TIF

64. *See generally id.* at 706-08 (stating that, after the 1985 amendment to the declaration of legislative policy in § 403.2, the impetus for urban renewal programs may be the promotion of economic growth as well as the elimination of slum or blighted areas).
65. *Id.* at 706.
66. *Id.*
67. *Id.* at 707.
68. *Id.*
69. Economic Development Authorized for Urban Renewal Act, ch. 66, 1985 Iowa Acts 153 (codified as amended at IOWA CODE § 403.17(10) (2001)).
70. *See* Martin v. Waterloo Cmty. Sch. Dist., 518 N.W.2d 381, 383 (Iowa 1994).
71. *Id.*
72. Ruthven Consol. Sch. Dist. v. Emmetsburg Cmty. Sch. Dist., 382 N.W.2d 136, 139 (Iowa 1986).
73. *See* Jenney v. Dist. Ct., 456 N.W.2d 921, 923 (Iowa 1990).
74. Martin v. Waterloo Cmty. Sch. Dist., 518 N.W.2d at 383.
75. Defs.' Reply, *supra* note 4, at 2.

statute may now direct TIF funds to areas in danger of becoming slum or blighted themselves as a result of being near to slum or blighted areas.[76] It follows, therefore, that the amendment may only constitute an interpretation of the original Act by the legislature which seeks to clarify or make the statute more specific.[77] In fact, the amendment, rather than substantially changing the law, may instead correspond "'to what had previously been supposed [was] the law.'"[78]

Furthermore, a minor change made by the amendment may "cast light" on the legislature's intent in earlier enacting the statute.[79] For example, if a question involving the parties can be made clear by this minor change, then the amendment "can be said to cast light on the legislature's earlier intent" in enacting the statute.[80] In fact, if it can be demonstrated how one interpretation shows the amendment was enacted to remove the very problem involved in the litigation, the court should recognize that interpretation of the amendment as controlling.[81]

2. *Legislative Intent and the "Plain Meaning" of Words*

Case law indicates the only presumption arising from an amendment is that the law has changed.[82] To determine the legislative intent behind the amendment, the statute must be interpreted.[83] Under Iowa law, interpreting a statute means discerning the legislature's intent for enacting the statute.[84] This interpretation should be reasonable, effective, and not defeat the purpose of the legislative action.[85] Additionally, the legislative intent should control all further constructions and applications of the statute.[86] In discerning the intent of the legislature, attention may be given to the statute's language, purpose, policies, remedies, interpretational consequences, legislative history, preamble, statutory scheme, as well as the evils and mischiefs it sought to remedy.[87] Of these options, the plain language of the statute should serve as the starting point in interpreting the statute.[88] If explicit, this

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76. *See* 65 ILL. COMP. STAT. ANN. 5/11-74.4-3(a)(1) (West 2000) (defining when vacant land within the boundaries of a redevelopment project becomes blighted).

77. State v. Guzman-Juarez, 591 N.W.2d 1, 3 (Iowa 1999).

78. State ex rel. Schuder v. Schuder, 578 N.W.2d 685, 687 (Iowa 1998) (quoting Hansen v. Iowa Employment Sec. Comm'n, 34 N.W.2d 203, 205 (1948)).

79. Ruthven Consol. Sch. Dist. v. Emmetsburg Cmty. Sch. Dist., 382 N.W.2d at 139.

80. Slockett v. Iowa Valley Cmty. Sch. Dist., 359 N.W.2d 446, 448 (Iowa 1984).

81. Willis v. City of Des Moines, 357 N.W.2d 567, 572 (Iowa 1984).

82. *See* Martin v. Waterloo Cmty. Sch. Dist., 518 N.W.2d 381, 383 (Iowa 1994).

83. Keokuk County v. H.B., 593 N.W.2d 118, 125 (Iowa 1999).

84. *Id.*

85. State v. Jackson, 601 N.W.2d 354, 355 (Iowa 1999).

86. State v. Dann, 591 N.W.2d 635, 638 (Iowa 1999).

87. United States v. Kinsley, 518 F.2d 665, 668 (8th Cir. 1975); Planned Parenthood of Greater Iowa, Inc. v. Miller, 30 F. Supp. 2d 1157, 1166 (S.D. Iowa 1998); Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Mobil Oil Corp., 606 N.W.2d 359, 364 (Iowa 2000); McCracken v. Dep't of Human Servs., 595 N.W.2d 779, 784 (Iowa 1999); Shinrone Farms, Inc. v. Gosch, 319 N.W.2d 298, 301 (Iowa 1982).

88. Watson v. Ray, 192 F.3d 1153, 1155 (8th Cir. 1999).

language controls further interpretation of the statute.[89] If not, recourse must be had to established aids of interpretation, such as rules of statutory construction.[90]

However, the phrase "plain language" is somewhat misleading. Plainness, under Iowa law, is determined by reference to the language of the statute itself, the context of the language in the statute, and the "broader context of the statute as a whole."[91] As one court noted, plain meaning exists sometimes in the "eye of the beholder."[92] Therefore, strict construction of words alone should not serve as the only interpretational guide; other guides mentioned above should be used as well.[93]

The dubious status of "plain language" in Iowa becomes clear when considering other rulings.[94] Conclusive language has been said to give way if it contradicts clear legislative intent.[95] Another court stated that the meaning of a statute, "plain or not," depends on its context.[96] The contextual nature of "plain language" becomes even more apparent when considering the courts' insistence that no single sentence or phrase receive isolated attention apart from the rest of the statute when determining the meaning of the isolated portion.[97]

Terms fail the plain language test and are considered ambiguous "when reasonable minds may disagree or be uncertain" as to the meaning of words.[98] "Ambiguity . . . arises in two ways: (1) from the meaning of particular words, or (2) from the general scope and meaning of a statute when all its provisions are examined."[99] This ambiguity, however, must result not from a random assessment of a word's definitional possibilities, but from an assessment of the words within their statutory context.[100]

In the case of section 403, the statute inserts the term economic development area, defining the term in its definitions section.[101] However, the statute never explicitly defines the relation between an economic development area and findings of

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89. State v. Jackson, 601 N.W.2d at 356.

90. Olympus Aluminum Prods., Inc. v. Kehm Enters., 930 F. Supp. 1295, 1311 (N.D. Iowa 1996).

91. Rural Water Sys. No. 1 v. City of Sioux Ctr., 967 F. Supp. 1483, 1518 (N.D. Iowa 1997) (quoting Lovilia Cole Co. v. Harvey, 109 F.3d 445, 449 (8th Cir. 1997)).

92. Muller v. Hotsy Corp., 917 F. Supp. 1389, 1422 (N.D. Iowa 1996).

93. *Id.*

94. Brown v. Am. Life Holdings, Inc., 64 F. Supp. 2d 882, 889 (S.D. Iowa 1998); T & K Roofing Co. v. Dep't of Educ., 593 N.W.2d 159, 162-63 (Iowa 1999).

95. Brown v. Am. Life Holdings, Inc., 64 F. Supp. 2d at 889.

96. Rural Water Sys. No. 1 v. City of Sioux Center, 967 F. Supp. at 1518.

97. *Id.*

98. Prudential Ins. Co. of Am. v. Rand & Reed Powers P'ship, 972 F. Supp. 1194, 1208 (N.D. Iowa 1997); State v. O'Malley, 593 N.W.2d 517, 518 (Iowa 1999); State v. Rodgers, 560 N.W.2d 585, 586 (Iowa 1997).

99. State v. Dann, 591 N.W.2d 635, 638 (Iowa 1999) (citation omitted).

100. *See* Rural Water Sys. No. 1 v. City of Sioux Center, 967 F. Supp. at 1518 (citing Brown v. Gardner, 513 U.S. 115, 118 (1994)).

101. Martin v. Waterloo Cmty. Sch. Dist., 518 N.W.2d 381, 383 (Iowa 1994); IOWA CODE § 403.5(1) (2001).

slum or blight, never defines an economic development as being either totally unrelated to blight and slum, and never defines an economic development area as requiring a relationship to blight and slum.[102] Such ambiguity necessarily means the language falls short of the plain language test.[103] Under Iowa law, when statutory language fails the plain language test, recourse may be had to accepted rules of statutory construction.[104]

C. *Resolving Ambiguous Statutory Language*

In interpreting ambiguous statutory language, a liberal construction should be employed to effect and not frustrate legislative intent.[105] In doing so, statutory construction demands attention to the whole statute, not just a part.[106] Interpreting the "whole" of a statute involves attention both to the statute itself and its context—its intrinsic and extrinsic qualities.[107] This interpretation includes recognized established aids that are both intrinsic and extrinsic.[108]

1. *Intrinsic Interpretive Aids.*

a. *Noscitur a sociis and ejusdem generis.* Intrinsic aids include a word's relation to other words and phrases in the statute.[109] In particular, under the doctrine of *ejusdem generis*, when a general term follows a specific one, general terms must be interpreted as akin to the specific terms.[110] In the Urban Renewal chapter of the Iowa Code,[111] economic development area occurs as the last term in the same sentence after the terms "slum area" and "blighted area."[112] Invoking *ejusdem generis*,[113] the term economic development area must be viewed as akin to slum and blight. To decide economic development area bears no relation to such terms is to ignore the principle of *ejusdem generis*.

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102. IOWA CODE §§ 403.1, .5(1), .17(10).

103. *See* State v. Dann, 591 N.W.2d at 638 (explaining that when ambiguity arises the plain language test is not met).

104. Olympus Aluminum Prods., Inc. v. Kehm Enters., 930 F. Supp. 1295, 1311 (N.D. Iowa 1996); Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Shell Oil Co., 606 N.W.2d 376, 379 (Iowa 2000); State v. O'Malley, 593 N.W.2d 517, 518 (Iowa 1999).

105. State v. O'Malley, 593 N.W.2d 517, 518 (Iowa 1999).

106. John T. v. Marion Indep. Sch. Dist., 173 F.3d 684, 688 (8th Cir. 1999).

107. *See* Brady v. City of Dubuque, 495 N.W.2d 701, 705 (Iowa 1993) (considering the interpretation of the challenged statute to determine what the term "century farm" references); Willis v. City of Des Moines, 357 N.W.2d 567, 571 (Iowa 1984) (determining the meaning of ambiguous terms requires the use of rules of statutory construction).

108. Willis v. City of Des Moines, 357 N.W.2d at 571 (utilizing intrinsic and extrinsic rules of construction).

109. T & K Roofing Co. v. Dep't of Educ., 593 N.W.2d 159, 162 (Iowa 1999).

110. *In re* Eilbert, 162 F.3d 523, 527 (8th Cir. 1998).

111. IOWA CODE § 403.5(1) (2001).

112. *Id.* § 403.5.

113. *In re* Eilbert, 162 F.3d at 527.

Under the doctrine of *noscitur a sociis*, a term is known by those to which it is related.[114] The term economic development area occurs in the same section as discussions of housing shortages, unemployment,[115] slum, and blight.[116] Thus, under *noscitur a sociis*, one must assess the term economic development area in relation to these terms, not as a free floating term that happens to appear in the statute. Considered in this light, one must at least conclude that economic development area can only be understood in relation to slum and blight. Apart from slum and blight, the term loses an essential aspect.

b. *Or*. Words joined by "or" are considered to have separate meanings.[117] The TIF statute defines economic development area as an area "appropriate for *commercial and industrial enterprises*, public improvements related to housing and residential development, *or* construction of housing and residential development for low and moderate income families."[118] The word "or" in this selection presents unique difficulties in statutory interpretation.[119] As one court noted, "Ordinarily, words connected by 'or' have separate meanings."[120] Another court observed more precisely, "When the word 'or' is used it is presumed to be disjunctive unless a contrary legislative intent appears."[121] Thus, the above selection taken alone might suggest that an economic development area may involve commercial and industrial enterprises regardless of a finding of slum or blight.[122]

But, again, such an interpretative result is neither necessary nor required under the statutory language. The selection could instead merely indicate that a housing provision is not required of every commercial and industrial development which alleviates blight.[123] In other words, "or" denotes disjunction, but disjunction does not necessarily mean an absolute lack of relation between "commercial and industrial enterprises," on the one hand, and a requirement of blight or slum, on the other.[124]

To further demonstrate the inadequacy of reading "or" as absolutely disjunctive, as divorcing commercial enterprises from any requirements of slum or blight, consider such an absolutist strategy as applied to reading the word "and." If this strategy of absolutist reading were applied to "and," then no reasonable

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114. *Id.*
115. IOWA CODE § 403.2(3).
116. *Id.* § 403.17(10).
117. T & K Roofing Co. v. Dep't of Educ., 593 N.W.2d 159, 163 (Iowa 1999).
118. IOWA CODE § 403.17(10) (emphasis added).
119. *See* Lahn v. Town of Primghar, 281 N.W. 214, 217 (Iowa 1938) (changing the word "or" to the word "and" entirely changes the nature and consequences of an offense).
120. T & K Roofing Co. v. Dep't of Educ., 593 N.W.2d at 163.
121. Kearney v. Ahmann, 264 N.W.2d 768, 769 (Iowa 1978) (citing Lahn v. Town of Primghar, 281 N.W. 214 at 214).
122. *See* Iowa Code § 403.17(10).
123. *See id.*
124. *See id.*

economic development area could be established.[125] Commercial and industrial areas could be established only if established concurrently because the statute reads "commercial *and* industrial enterprises" instead of "commercial *or* industrial enterprises," the "and" requiring a conjunctive reading by a strict interpretation.[126] Such interpretations, of course, indicate the word "and" should not be read in its normal conjunctive sense because such a strategy would lead to an absurdity.[127] When an absurdity arises as the result of a reading strategy, "the grammatical sense must then be modified, extended or abridged, so far as to avoid such an inconvenience. . . . This court has held the doctrine to be elementary that the word *and* may be interpreted as disjunctive, and the word *or* as a conjunctive."[128] Therefore, a reading of "or" as absolutely disjunctive does not satisfy current standards governing the interpretation of "or," and cannot be supplied to satisfy statutory ambiguity concerning the Iowa TIF statute.

c. *Structure of the Act.* Intrinsic aids also consider the word's relation to the structure, other parts, and phrases of the Act.[129] In this way, no part of the statute should be construed so as to be redundant or superfluous.[130] Perhaps this interpretive bar against redundancy and superfluity most damages readings which would divorce an economic development area from conditions of blight or slum.[131] Under a theory that TIF is a general economic development tool, this divorce is surely the case.[132] However, such an interpretation renders entire sections of the chapter 403 redundant and superfluous.[133]

If an economic development area may receive TIF, but such an area may be designated apart from any relation to slum or blight, why would findings of slum or blight ever be needed?[134] An economic development area would appear to be an all-encompassing term, stretching from the financing of suburban malls to the financing of inner-city redevelopments.[135] Defining an economic development area as broadly as West Des Moines does, there is no longer a need to worry about a finding of blight or slum. One can instead baldly assert that the project's ability to generate "economic development" is sufficient.[136] This development would serve as the only

125. *See id.*
126. *See id.*; *see also* Lahn v. Town of Primghar, 281 N.W. 214, 217 (Iowa 1938).
127. *See* Lahn v. Town of Primghar, 281 N.W. at 217.
128. *Id.* (quoting State v. Smith, 46 Iowa 410 (1877)).
129. T & K Roofing Co. v. Dep't of Educ., 593 N.W.2d 159, 162 (Iowa 1999).
130. *Id.*
131. *Id.*
132. *See* REDFIELD, *supra* note 5, at 9-10.
133. *See* IOWA CODE §§ 403.2, .5, .17(10) (2001).
134. *See id.*
135. *See* REDFIELD, *supra* note 5, at 9-10.
136. *See* Defs.' Reply, *supra* note 4, at 2. Section 15A.1, however, never defines an "economic development *area*," only the kind of investment that qualifies as "economic development." IOWA CODE § 15A.1 (emphasis added). Conceivably, economic development area could mean nothing more than a general assessment of an area in need of investment due to proximity to areas of slum or blight. *See id.* §§ 403.2, .5, .17(10). Additionally, § 15A.1 itself mentions "economic development programs." *See id.* § 15A.1. The plural, "programs," suggests more than one endpoint for investments

requirement necessary to invoke TIF—public purpose, itself defined rather broadly.[137]

Moreover, a part of the statute should not be interpreted inconsistently with the whole of the statute.[138] The whole statute concerns urban renewal.[139] Interpreting a term as not related to urban renewal, although that term is an integral part of the urban renewal statute, clearly raises problems of inconsistency between the term and the statute.[140]

Other parts of the Act which may be considered are the title of the Act,[141] the policy statement,[142] or the preamble.[143] This intrinsic consideration of the chapter, its words and its structure, may also consider the title itself of the chapter in determining legislative intent.[144] As the Iowa Supreme Court explained in *T & K Roofing Co. v. Department of Education*,[145] "[a]lthough the title of a statute cannot limit the plain meaning of the text, it can be considered in determining legislative intent."[146] Just as the court held the title, "Iowa Public Officials Act," to apply to public officials, but not employees, thereby "clearly reveal[ing] the legislature intended for the conflicts of interest provisions to apply to public officials,"[147] so it would seem a chapter titled "Urban Renewal" would apply to urban *re*newal and not greenfield *sub*urban development.[148] Therefore, this situation is similar to *T & K* Roofing, where the court noted that "[a]ny other interpretation would defeat the clear intent of the statute."[149] Thus, while not conclusive, the title of the act may be considered.[150]

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such as "economic development." *Id.* section 15A further emphasizes the exact parameters of *Brady v. City of Dubuque*, 495 N.W.2d 701 (Iowa 1993), which concerned the authority to carry out a project as well as the ability to fund such a project. Brady v. City of Dubuque, 495 N.W.2d at 706-08. *Brady* never specifically dealt with a dispute concerning the definition of the term economic development area. *Id.*

137. *See* Brady v. City of Dubuque, 495 N.W.2d at 706.
138. John T. v. Marion Indep. Sch. Dist., 173 F.3d 684, 688 (8th Cir. 1999).
139. IOWA CODE ch. 403.
140. *See id.*
141. T & K Roofing Co. v. Dep't of Educ., 593 N.W.2d 159, 163 (Iowa 1999).
142. De More v. Dieters, 334 N.W.2d 734, 737 (Iowa 1983).
143. Planned Parenthood of Greater Iowa, Inc. v. Miller, 30 F. Supp. 2d 1157, 1166 (S.D. Iowa 1998).
144. T & K Roofing Co. v. Dep't of Educ., 593 N.W.2d at 163.
145. T & K Roofing Co. v. Dep't of Educ., 593 N.W.2d 159 (Iowa 1999).
146. *Id.* at 163.
147. *Id.*
148. *Id.*; *see* IOWA CODE ch. 403.
149. T & K Roofing Co. v. Dep't of Educ., 593 N.W.2d at 163.
150. *See id.*

2. *Extrinsic Interpretive Aids*

In addition to intrinsic aids, the interpreter of a statute in Iowa may also use extrinsic aids.[151] Such aids may "include 1) the object sought to be attained by the legislature, and 2) the circumstances under which the statute was enacted."[152] The circumstances under which a law was enacted include the state of the law.[153] Another extrinsic aid is consideration of the consequences that a specific interpretation would have, if it were applied.[154] In addition, prior enactments of the statute[155] and prior case law[156] may be referenced for guidance. Legislative history and evils and mischiefs sought to be avoided may also serve as extrinsic guides.[157]

a. *Legislative Objective.* The interpreter may refer to the legislative objective in enacting the statute.[158] In determining the legislative objective, reference may be made to legislative history.[159] Here, the urban renewal chapter was enacted "to provide for the rehabilitation, clearance, and redevelopment of slums and blighted areas in cities and towns." [160]

b. *Circumstances at Time of Enactment.* Circumstances at the time of enactment may also be considered.[161] Urban renewal acts were enacted during the late 1950s to spur development in deteriorating downtown areas[162] with an eye toward preventing further economic flight from the city to the suburbs.[163] Using these same acts to finance these same suburbs offers a less than satisfying result when considering the purpose of the Act.[164]

c. *Consequences of a Particular Interpretation.* More significant is the extrinsic aid which examines the consequences of a particular statutory interpretation.[165] The first consequence of interpreting economic development area as separate from slum or blight is an improper TIF.[166] This result is caused by TIF funding growth already occurring or imminent instead of applying it to the local

151. *See* Rural Water Sys. No. 1 v. City of Sioux Ctr., 967 F. Supp. 1483 (N.D. Iowa 1997).
152. *In re* Kemmerer, 245 B.R. 335, 338 (N.D. Iowa 2000).
153. State v. Dann, 591 N.W.2d 635, 638 (Iowa 1999).
154. State Pub. Defender v. Dist. Ct., 594 N.W.2d 38, 39 (Iowa 1999).
155. Christenson v. Dist. Ct., 557 N.W.2d 259, 261 (Iowa 1996).
156. Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Mobil Oil Corp., 606 N.W.2d 359, 366 (Iowa 2000).
157. Planned Parenthood of Greater Iowa, Inc. v. Miller, 30 F. Supp. 2d 1157, 1166 (S.D. Iowa 1998); Rural Water Sys. No. 1 v. City of Sioux Ctr., 967 F. Supp. 1483, 1518 (N.D. Iowa 1997).
158. *In re* Kemmerer, 245 B.R. 335, 338 (N.D. Iowa 2000).
159. Brady v. City of Dubuque, 495 N.W.2d 701, 706-07 (Iowa 1993).
160. IOWA CODE § 403.1 (2001).
161. *In re* Kemmerer, 245 B.R. at 338.
162. *See* ADAM COHEN & ELIZABETH TAYLOR, AMERICAN PHAROAH, MAYOR RICHARD J. DALEY: HIS BATTLE FOR CHICAGO AND THE NATION 175-215 (2000).
163. *See id.* at 209.
164. *See* IOWA CODE § 403.1.
165. State Pub. Defender v. Dist. Ct., 594 N.W.2d 38, 39-40 (Iowa 1999).
166. REDFIELD, *supra* note 5, at 37.

taxing districts which benefit from the growth.[167] Therefore, instead of generating growth as a proper TIF should, it is squandered on already-occurring growth.[168]

An improper TIF itself has three consequences for equitable generation and expenditure of public funds.[169] First, property taxes normally paid to local taxing districts such as schools, police, and roads, instead repays the tax increment fund for tax increment bonds.[170] Certainly this is not a problem in a proper TIF district where the development and increased revenue would not have occurred but for the TIF. But, where the development was occurring anyway and the local government merely captured the growth, the property tax that would have been received is denied for the life of the TIF.[171]

Second, an improper TIF increases the tax burden on those districts within the TIF district.[172] A burgeoning area demands increased services, which increases costs.[173] But because the increased tax money is paying off the TIF and because inflation will depreciate the baseline tax money still available to the taxing district, taxpayers may be forced to raise their actual taxes to support increased services.[174]

Third, an improper TIF actually increases the tax burden, not just on those districts within the TIF district, but also on those immediately outside the TIF district, thus distorting the distribution of school aid.[175] Because the TIF district only receives the tax allocation it received at the time the baseline was frozen, but its expenditures increase, money between districts is divided between TIF and non-TIF districts inequitably.[176] For instance, if one school is in the TIF district, and another school is outside the district, as the TIF school's enrollment rises, it will receive an increasing share of the statewide tax allocation for schools in general while its local tax allocation remains stagnant.[177] This increased statewide allocation compensates for the gap between the increased enrollment expenditures and the frozen local tax base.[178] Therefore, the more the TIF schools receive, the less tax money goes to each non-TIF school proportionally.[179]

In addition, by not requiring some relation to slum or blight, West Des Moines' interpretation of economic development area lends itself to political jockeying.[180] By

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167. *Id.* at 43.
168. *Id.*
169. *Id.* at 44.
170. *Id.*
171. *Id.* at 43.
172. *Id.* at 44.
173. *Id.* at 45.
174. *Id.*
175. *Id.*
176. *Id.*
177. *Id.*
178. *Id.*
179. *Id.*
180. Jennifer L. Gilbert, *Selling the City Without Selling Out: New Legislation on Development Incentives Emphasizes Accountability*, 27 URB. LAW. 427, 437-38 (1995).

allowing municipal officials to unilaterally capture growth which is already occurring, this interpretation also allows officials to take credit for the growth, as if their sponsorship of the TIF brought about the development.[181] Such a development, as one author comments, allows municipal officials to put "icing [on] cakes that were already baked."[182]

d. *Prior Enactments of the Statute.* Extrinsic aids also include consideration of prior enactments of the statute in question.[183] Here, while always desiring the prevention of the spread of blight, earlier versions of the urban renewal statute offered no method of doing so.[184] TIF was available for those areas deemed to be slum or blight areas, but no mention was made of how to finance those areas at risk of becoming slum or blighted as a result of being in proximity to the existing slum or blight.[185]

e. *Prior Case Law.* The reality and relevance of such difficulty is made more pertinent by recourse to another extrinsic aid—prior case law.[186] In *Dilley v. Des Moines*,[187] the court had to determine if an area was still eligible for TIF even though parts of the area were deemed not to be blighted or slum.[188] The court held such an area was indeed eligible.[189] But such a case raises the problem of how to finance those rundown areas not yet completely blighted or slum, how to finance those areas in a municipality which may never have been developed, sitting vacant, or are merely contiguous to slum or blighted areas.[190]

Illinois eliminated such problems through the adoption of the conservation area, a third category in addition to slum or blight.[191] Being that Illinois is home to Chicago, the largest user of TIF in the nation, [192] Illinois' experience in this area and its conclusions are of interest. A conservation area is an area that is not yet slum or blight but is at risk of becoming so by nature of its being contiguous to an area

181. *See generally* David Brunori, *Interview: Greg Leroy: On Incentives and Accountability*, 17 STATE TAX NOTES 837, 838 (1999).

182. *Id.*

183. Christenson v. Dist. Ct., 557 N.W.2d 259, 262 (Iowa 1996).

184. *See* IOWA CODE §§ 403.2, .5 (1983) (declaring the existence of areas of blight and the power of eminent domain).

185. *Id.*

186. *See* Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Mobil Oil Corp., 606 N.W.2d 359, 366 (Iowa 2000) (reasoning that prior case law holdings may clarify statutory ambiguities).

187. Dilley v. City of Des Moines, 247 N.W.2d 187 (Iowa 1976). Another case, *Knudson v. City of Decorah*, concerns itself more with the meaning of the term "affordable housing" rather than clearly explicating the exact meaning of "economic development area." Knudson v. City of Decorah, 622 N.W.2d 42, 52 (Iowa 2000).

188. *Id.* at 190-92.

189. *See id.* at 191 (holding plaintiff had not met his burden of showing the city's determination that the area was blighted was arbitrary and capricious).

190. *See* IOWA CODE §§ 403.2, .5 (2001).

191. 65 ILL. COMP. STAT. 5/11-74.4-3 (West 2001).

192. Eli Lehrer, *The Town that Loves to TIF*, GOVERNING 44-46 (Sept. 1999).

already determined to be slum or blighted.[193] This conception of blight, slum, and conservation area interlocking much like a quilt removes the problems faced in *Dilley*.[194]

Such an interpretation of economic development area is not unreasonable.[195] The urban renewal chapter mentions areas which may "be susceptible of conservation in such a manner that the conditions and evils hereinbefore enumerated may be eliminated, remedied or prevented."[196] Consequently, conservation and prevention are two goals of Iowa's urban renewal law.[197] Previously, however, no provision had been made to supply such a goal with TIF.[198]

f. *Evils to be Avoided.* Finally, as an extrinsic aid to determine legislative intent, the reader may consider the evils to be avoided by such legislation.[199] Here, the evils to be avoided were the dangers of a deteriorating urban infrastructure. [200] These dangers included, among others, various menaces posed by slum and blight: endangering the public health and welfare, increasing crime and disease, and the economic costs of blight that retard municipal growth. How such evils would be avoided by financing suburban growth through TIF is hard to fathom.[201]

V. CONCLUSION

The Jordan Creek controversy provides a useful point of entry in discussing the Iowa TIF statute and its interpretation. If considered in light of common principles of statutory interpretation, the Iowa TIF statute's allowance for economic development areas does not include suburban greenfield development apart from findings of blight and slum. Instead, in light of the TIF experience in Illinois, status as an economic development area appears to be reserved for what may be called a conservation area, namely, additional public economic support of such an area preventing the spread of blight and slum.

However, such academic exercises of statutory interpretation should not be performed in a political vacuum. In the face of depleted federal resources and growing popular pressure to produce,[202] politicians and municipalities have

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193. 65 ILL. COMP. STAT. 5/11-74.4-3.
194. *See* Dilley v. Des Moines, 247 N.W.2d at 190-92.
195. *See* IOWA CODE § 403.2(2).
196. *Id.*
197. *Id.*
198. *See* IOWA CODE §§ 403.2, .5, .17(20) (1983).
199. Planned Parenthood of Greater Iowa, Inc. v. Miller, 30 F. Supp. 2d 1157, 1166 (S.D. Iowa 1998).
200. IOWA CODE § 403.2(1).
201. *See* Defs.' Reply, *supra* note 4, at 2.
202. Patricia M. Curtner & Sharon L. Eiseman, *Tax Increment Allocation Financing*, 2000 ILL. INST. FOR CONTINUING LEGAL EDUC., MUN. LAW AND PRAC., at 27-5.

discovered a method of seemingly financing the future for free—TIF.[203] These pressures greatly minimize the likelihood of TIF ever again being used solely as a method of restoring blighted property to an economically productive status.[204]

The goal, then, of legislative action will probably not involve the elimination of TIF as a general economic development tool.[205] In making such decisions, legislatures should provide that the state mechanism adequately protects and promotes the interests, not of corporations selling mall developments, but of citizens.[206] As it currently stands, the Iowa TIF statute does not offer such protection. Its wording remains vague enough to allow abuses of TIF while enhancing the standing of politicians who take credit for growth which would have occurred without the TIF.

As demonstrated above, it is all too easy for a municipality to work its way around the Iowa TIF statute. Though ultimately restricting the use of TIF to the elimination and prevention of blight and slum, the Iowa TIF requires more safeguards to make its purpose and method clearer. Otherwise, a method of financing initially intended for the rebuilding of deteriorating infrastructure may instead be used to build roads to new malls.

Municipalities sustain improper TIF practices, though, at the risk of not only their own municipality, but of the region as a whole.[207] Studies have questioned whether or not such incentives have any significant effect on location decisions.[208] Moreover, private enterprise has a short memory.[209] Corporations remain accountable only to their shareholders with no contractual obligations to the municipality and no contractual penalties for leaving.[210] Should a better TIF opportunity arise elsewhere seven years into a twenty-three year TIF deal, corporations are not hesitant to move, leaving the municipality having mortgaged its taxpayers' futures against an expected benefit that will never accrue.[211]

In response to economic flux, the solution is not to offer better incentives in a municipally-funded race to the bottom, but to conduct one's municipality according to sound business principles.[212] Rather than wait for federal intervention or depend on weak non-compete agreements with other municipalities, officials should instead follow the lead of New Haven, Connecticut and Austin, Texas in passing legislation requiring any tax incentive to be made in contractual terms.[213] Therefore, officials

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203. Andrew L. Kolesar, Note, *Can State and Local Tax Incentives and Other Contributions Stimulate Economic Development*, 44 TAX LAW. 285, 307 (1990).

204. *See* Starn, *supra* note 3, at 569.

205. REDFIELD, *supra* note 5, at 36.

206. Gilbert, *supra* note 180, at 478-80.

207. REDFIELD, *supra* note 5, at 44.

208. Rachel Weber, *Why Local Economic Development Incentives Don't Create Jobs: The Role of Corporate Governance*, 32 URB. LAW. 97, 102 (2000).

209. *See id.* at 102-03 (discussing various industries' willingness to exit the market).

210. *Id.* at 119.

211. *Id.* at 102-03.

212. *Id.* at 115-19.

213. *Id.* at 118. Those city councils passed ordinances "requir[ing] contracts and provid[ing] guidelines to recapture abated taxes if the recipient company reneges on its commitments." *Id.* at 118.

can provide such conditional incentives, forcing the corporation to perform its job development projections and fulfill its economic promises to the area,[214] thus protecting the municipality against corporate exploitation.[215]

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214. *Id.* at 119.
215. Gilbert, *supra* note 180, at 429.