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## JURISDICTIONAL STATEMENT

Plaintiff/Appellant Ste. Genevieve School District and its superintendent, Plaintiff/Appellant Mikel Stewart, instituted this lawsuit in the Circuit Court of Ste. Genevieve County seeking a declaration that an ordinance of the Defendant/Respondent City of Ste. Genevieve was invalid. On March 23, 2000, the trial court dismissed the action. On April 24, 2000, the plaintiffs filed a timely notice of appeal to the Missouri Court of Appeals, Eastern District. Legal File (“L.F.”) at 53; § 512.020, RSMo; Rule 81.04(a).

Jurisdiction was proper in the court of appeals pursuant to Article V, Section 3, of the Missouri Constitution because this case does not involve the validity of a treaty or statute of the United States or of a statute or provision of the constitution of this state, the construction of the revenue laws of this state, the title to any state office, or the imposition of the death penalty. The Circuit Court of Ste. Genevieve County is within the territorial jurisdiction of the Missouri Court of Appeals, Eastern District. § 477.050, RSMo.

The court of appeals rendered an opinion affirming the judgment of the trial court. On August 21, 2001, this Court sustained the plaintiffs’ application for transfer. This Court has jurisdiction to entertain appeals on transfer from the court of appeals pursuant to Article V, Section 10, of the Missouri Constitution.

## STATEMENT OF FACTS

The Ste. Genevieve School District and its superintendent, Mikel Stewart, instituted this lawsuit alleging that an ordinance of the City of Ste. Genevieve relating to a redevelopment plan was invalid. The plaintiffs asserted that the ordinance was passed in violation of Missouri's Real Property Tax Increment Allocation Redevelopment Act ("the TIF Act") and that the ordinance violated various provisions of the Missouri Constitution. After the developer was added as a party, the trial court dismissed the action for failure to state a claim and for want of standing. The plaintiffs appeal.

Pursuant to Rule 84.04(c), an appellant is required to provide this Court with "a fair and concise statement of the facts relevant to the questions presented for determination without argument." Rather than reciting the relevant facts, the statement in the plaintiffs' brief largely recites the conclusions that they requested the trial court to draw. The plaintiffs' statement contains little reference to Exhibit 1 to their petition. The exhibit includes Ordinance 3057, the ordinance's Exhibit B (which sets out the two sections of the Redevelopment Plan amended by Ordinance 3057), and a letter from the Ste. Genevieve City Administrator to Mr. Stewart, dated September 10, 1999, outlining the changes to be made to the existing Redevelopment Plan, with an attachment showing the proposed changes by interlineation. Legal File ("L.F.") at 9-27. Accordingly, the respondents submit the following statement of the facts relevant to the issues in this appeal. The documents comprising Exhibit 1 are included in the appendix to the plaintiffs' substitute brief.

On November 16, 1999, the Ste. Genevieve School District (“the District”) filed a Petition in Prohibition in the Circuit Court of Ste. Genevieve County. L.F. at 29; *see State ex rel. Ste. Genevieve School District v. Board of Alderman of the City of Ste. Genevieve*, No. CV899-172CC. The District alleged that the City’s Ordinance 3057 was invalid. L.F. at 29. On November 23, 1999, the petition was denied. L.F. at 29.

On the day that the petition for a writ of prohibition was denied, the plaintiffs filed their Petition for Declaratory Judgment in this case. L.F. at 1, 3. The petition in this case was captioned to indicate that the State of Missouri was the plaintiff on the relation of the District and Mr. Stewart. The state, however, has never been a party to this action. The petition in this case alleged that the District “is a Missouri Public School District” and that Mr. Stewart “is a resident taxpayer of the Ste. Genevieve School District R-II and the City and County of Ste. Genevieve.” L.F. at 3. The plaintiffs contended that the City’s Ordinance 3057 was not properly enacted.

Ordinance 3057 was approved on September 23, 1999. L.F. at 9. The history of the Redevelopment Plan for the Valle Springs Tax Increment Financing District is spelled out in the preamble of Ordinance 3057. Pursuant to the recommendation of the Tax Increment Financing Commission of Ste. Genevieve, Missouri (“TIF Commission”), the City adopted Ordinance 2675 on December 22, 1992. This Ordinance established a redevelopment area (“RPA 1”), approved the Redevelopment Plan for Valle Springs Tax Increment Financing District, and authorized redevelopment activities within RPA 1 in accordance with the TIF Act. L.F. at 10.

Subsequently, on recommendation of the TIF Commission, the City adopted Ordinance 2939 on December 11, 1997. It amended the Redevelopment Plan to alter the boundaries of the redevelopment area to include new redevelopment project areas (RPA 2, RPA 3, and RPA 4, which together with RPA 1 were referred to as the “Redevelopment Area”). Ordinance 2939 also provided for additional redevelopment activities within the Redevelopment Area, including the construction of water, storm water, and sanitary sewer improvements within RPA 3. L.F. at 10.

As reflected in the attachment to the letter dated September 10, 1999, from the Ste. Genevieve City Administrator to Mr. Stewart, which included a mark-up of the proposed changes to the Plan, the Redevelopment Plan, as it had been previously amended by Ordinance 2939, included a description of the three additional projects that were being added to the Redevelopment Area. Area 3, designated as Pointe Basse Redevelopment Project, contained Pointe Basse Plaza and adjoining properties. L.F. at 22, 26-27. The Redevelopment Plan objectives were framed in terms of the entirety of the Redevelopment Area. L.F. at 26.

With respect to estimated redevelopment project costs to be funded by TIF Notes, the Redevelopment Plan, prior to Ordinance 3057, stated:

The following table is the anticipated redevelopment costs to be incurred by public development. The cost actually financed by TIF Notes may vary from those outlined in this table depending on conditions and proposals at the time the projects are activated. However, it is the intent of this

amended Redevelopment Plan to limit the additional issuance of TIF Notes for all Redevelopment Projects to \$6,347,209 plus accrued interest, debt service reserve and issuance costs.

L.F. at 22. Within that limit, the Plan provided that TIF revenues would pay for a portion of the costs of property acquisition, site work, street construction, storm drainage, water and sewer extensions, planning, administration, and legal. L.F. at 24.

Ordinance 3057 reveals that the City solicited proposals for redevelopment of a portion of RPA 3. Golden Management, Inc. (“Golden”), submitted a proposal for the redevelopment of Pointe Basse Plaza, including the acquisition of property, site preparation, storm water improvements, relocation of utilities, road and signalization improvements, relocation of certain tenants, and parking lot improvements. L.F. at 11.

Prior to Ordinance 3057, the Redevelopment Plan did not specify all of the redevelopment activities proposed by Golden in RPA 3. Ordinance 3057 recites that, pursuant to the TIF Act, the Board of Aldermen is authorized to amend the Plan to specify such redevelopment activities. L.F. at 11. The Ordinance then states that, in accordance with the Redevelopment Plan and the TIF Act, “the Board of Aldermen hereby determines that it is necessary and advisable and in the best interest of the City and of its inhabitants to (1) accept the Proposal, (2) designate Golden Management, Inc. as developer of the Plaza Project, (3) authorize and approve the Redevelopment Agreement and the transactions contemplated thereby, (4) authorize the issuance of the Pointe Basse TIF Notes, and (5) amend the Redevelopment Plan.” L.F. at 11.

Exhibit B to Ordinance 3057 sets out the amendments to the Redevelopment Plan. L.F. at 16-19. A comparison of Exhibit B with the mark-up of the changes to the pre-existing Plan, attached to the letter from the City Administrator to Mr. Stewart, points up the changes that were made. L.F. at 16-19, 22-27. In section II.E.1, as a part of the narrative concerning Area 3 (which included Pointe Basse Plaza), a description of its existing condition was added: “Pointe Basse Plaza contains a mix of businesses and service providers critical to the community, but the physical condition of the Plaza has deteriorated and requires major renovation.” L.F. at 27. The redevelopment activities for Pointe Basse Plaza as proposed by Golden were listed. L.F. at 27.

Section III.A, relating to estimated redevelopment project costs, added a reference to the redevelopment activities for Pointe Basse Plaza. The specific activities for Area 3 (the Pointe Basse Redevelopment Project), enumerated the improvements contemplated for Pointe Basse Plaza. This resulted in an anticipated increase in activity costs from \$350,000 to \$1,610,000. L.F. at 22. For Project Area 4, the Pointe Basse Stormwater Project, the anticipated cost was reduced to \$1,000,000. L.F. at 22-23. Engineering and contingencies were reduced. L.F. at 23.

The total permissible redevelopment cost to be financed by TIF Notes for all of the projects within the Valle Springs Tax Increment Financing District did not change. The Redevelopment Plan prior to Ordinance 3057 set this amount at \$6,347,209. L.F. at 22-23. That total cost remained the same under the changes to the Redevelopment Plan approved by Ordinance 3057. L.F. at 18.

The only other changes in Exhibit B were either technical in nature or for clarification of language as to the formula for determining whether additional TIF Obligations could be issued. L.F. at 16-19, 20-27.

Section 3 of Ordinance 3057 amended the Redevelopment Plan in accordance with Exhibit B. It contained findings that the amendment did not enlarge the exterior boundaries of the Redevelopment Area, substantially affect the general land use established by the Redevelopment Plan, or change the nature of the redevelopment project. Thus, the Board of Aldermen determined that it could approve the amendment pursuant to section 99.825.1 of the TIF Act without further public hearings or action by the TIF Commission. L.F. at 12.

The Redevelopment Plan, as amended, was ratified and confirmed by the Board of Aldermen. L.F. at 11. The Board further found and determined “that it is necessary and desirable to enter into the Redevelopment Agreement with the Developer in order to implement the Redevelopment Activities and to enable the Developer to implement the Plaza Project.” L.F. at 11. Accordingly, the Board of Aldermen authorized and directed the Mayor to execute the Redevelopment Agreement between the City and Golden. L.F. at 11-12.

The remaining sections of Ordinance 3057 related to TIF Notes and other TIF Obligations in connection with the Redevelopment Plan and an easement and maintenance agreement between the City and Golden. L.F. at 12-14.

The legal theories asserted in the petition were (1) that the City allegedly lacked the authority to amend the Redevelopment Plan without first submitting it to the TIF

Commission, as allegedly required by the TIF Act, and (2) that the use of payments in lieu of taxes and/or economic activity taxes to fund the redevelopment activities in RPA 3 for the improvement of the Pointe Basse Shopping Center allegedly violated various provisions of the Missouri Constitution. L.F. at 3-8.

On December 23, 1999, the City moved to dismiss the petition for lack of standing and for failure to state a claim. L.F. at 1, 28, 35-48. The City noted that Golden was an indispensable party because of its interests in the outcome of the case. L.F. at 34. The City also noted that Rule 87.04 requires the Attorney General to be notified of cases like the present one in which an ordinance is alleged to be unconstitutional. L.F. at 35.

The trial court heard argument on the City's motion to dismiss on January 18, 2000. L.F. at 1. On that date, the plaintiffs filed a notice that they had provided the Attorney General with a copy of their petition. L.F. at 1. The trial court ordered that Golden be added as a necessary party. L.F. at 1. On February 25, 2000, Golden entered its appearance in the case and moved to dismiss for lack of standing and for failure to state a claim. L.F. at 1-2, 50.

On March 21, 2000, the trial court sustained the motions to dismiss. L.F. at 2, 51. On March 24, 2000, the trial court entered an Amended Order and Judgment stating, in part: "The Court finds that the plaintiffs' claims should be dismissed for want of standing. The Court further finds that, even if the plaintiffs had standing, their petition fails to state a claim upon which relief can be granted. Therefore, the defendants' pending motions to dismiss should be and hereby are sustained." L.F. at 52. On April 24, 2000, the plaintiffs filed a notice of appeal. L.F. at 53.

POINT RELIED ON

**THE TRIAL COURT DID NOT ERR IN DISMISSING THE PLAINTIFFS' PETITION BECAUSE IT FAILED TO STATE A CLAIM UPON WHICH RELIEF COULD BE GRANTED IN THAT IT FAILED TO ALLEGE FACTS TENDING TO SHOW THAT ORDINANCE 3057 VIOLATED MISSOURI STATUTES OR THE MISSOURI CONSTITUTION AND FURTHER FAILED TO SHOW THAT THE PLAINTIFFS HAD STANDING TO SUE.**

**A. Standard of review.**

**B. Ordinance 3057 does not violate the TIF Act.**

**1. The TIF Act permits redevelopment for the public purpose of alleviating blight.**

**2. The TIF Act does not require the amendments in Ordinance 3057 to be referred to the TIF Commission.**

**3. Ordinance 3057 did not change the nature of the redevelopment.**

**C. Ordinance 3057 does not violate the Missouri Constitution.**

**D. The plaintiffs have no standing to assert their alleged claims.**

§ 99.820, RSMo.

§ 99.825, RSMo.

*Tax Increment Financing Commission v. J.E. Dunn Constr. Co.,*

781 S.W.2d 70 (Mo. banc 1989).

*State ex inf. Dalton v. Land Clearance for Redev. Auth.,*

364 Mo. 974, 270 S.W.2d 44 (banc 1954).

## ARGUMENT

**THE TRIAL COURT DID NOT ERR IN DISMISSING THE PLAINTIFFS' PETITION BECAUSE IT FAILED TO STATE A CLAIM UPON WHICH RELIEF COULD BE GRANTED IN THAT IT FAILED TO ALLEGE FACTS TENDING TO SHOW THAT ORDINANCE 3057 VIOLATED MISSOURI STATUTES OR THE MISSOURI CONSTITUTION AND FURTHER FAILED TO SHOW THAT THE PLAINTIFFS HAD STANDING TO SUE.**

The plaintiffs couch their argument in terms of two points relied on, but this case presents only the issue of whether the trial court properly dismissed the petition. Taking the factual allegations of the petition as true, it was properly dismissed because Ordinance 3057 does not violate the TIF Act or the Missouri Constitution. Furthermore, the plaintiffs lack standing to assert their baseless statutory and constitutional claims. The judgment of the trial court should be affirmed.

### **A. Standard of review.**

The trial court's dismissal of an action will be affirmed if any ground supports the motion, regardless of whether the trial court relied on that ground. *St. Charles County v. City of O'Fallon*, 972 S.W.2d 327, 328-29 (Mo. App. 1998); *City of Ellisville v. Lohman*, 972 S.W.2d 527, 530 (Mo. App. 1998).

In reviewing the judgment of a trial court dismissing a petition for failure to state a cause of action, the reviewing court will consider the facts set out in the petition together with the exhibits attached thereto. *Gould v. Missouri State Bd. of Registration for the*

*Healing Arts*, 841 S.W.2d 288, 290 (Mo. App. 1992). An exhibit to a pleading is a part thereof for all purposes. Rule 55.12.

A plaintiff in this state has a duty to plead “a short and plain statement of the *facts* showing that the pleader is entitled to relief.” Rule 55.05 (emphasis added). Mere conclusions of a pleader not supported by factual allegations cannot be taken as true and must be disregarded in determining whether the petition states a claim upon which relief can be granted. *Schott v. Beussink*, 950 S.W.2d 621, 629 (Mo. App. 1997). Therefore, in reviewing the dismissal in this case, the Court should disregard the plaintiffs’ legal conclusions and accept as true their well-pleaded factual allegations. *See Hanrahan v. Nashua Corp.*, 752 S.W.2d 878, 882 (Mo. App. 1988).

**B. Ordinance 3057 does not violate the TIF Act.**

The plaintiffs claim that sections 99.820 and 99.825 of the TIF Act mandate that the approved and adopted Redevelopment Plan could not be amended by Ordinance 3057 without those amendments first being referred to the TIF Commission. This argument is rebutted by the plain language of those statutes as well as the factual record in this case. The amendment of the Redevelopment Plan, as set out in Ordinance 3057, was fully authorized by the TIF Act. For the Court’s convenience, copies of sections 99.820 and 99.825 are included in the appendix to this brief.

**1. The TIF Act permits redevelopment for the public purpose of alleviating blight.**

In light of the issues presented in this case, it is appropriate to provide an overview of the TIF Act. The constitutionality and public purposes of the Act were upheld in *Tax*

*Increment Financing Commission v. J.E. Dunn Construction Co.*, 781 S.W.2d 70 (Mo. banc 1989). Originally adopted in 1982, the TIF Act provides a financing mechanism for addressing the problems of blight, obsolescence, and decay. *Id.* at 76. Under the TIF Act, the redevelopment plan is “the comprehensive program of a municipality for redevelopment intended by the payment of redevelopment costs to reduce or eliminate those conditions, the existence of which qualified the redevelopment area as a blighted area, conservation area, economic development area, or combination thereof, and to thereby enhance the tax bases of the taxing districts which extend into the redevelopment area.” § 99.805(12), RSMo.

The plan must include details as to estimated redevelopment project costs and the source and nature of the funds to finance such costs. No plan may be adopted without the municipality finding, among other things, that the redevelopment area on the whole is neither subject to, nor is it reasonably anticipated that it will be subject to, growth and development through investment by the private sector without tax increment financing. § 99.810 (1), RSMo; *Dunn*, 781 S.W.2d at 73.

To provide funding for the acquisition of property and other permitted project costs, a municipality is authorized to issue “[o]bligations secured by the special allocation fund . . . for the redevelopment project area . . . to provide for redevelopment project costs.” § 99.835.1. The TIF Act contemplates that improvements in the district will result in an increased assessed valuation of the property within the redevelopment area. Thus, each year that the post-plan assessed value of the taxable real property within the redevelopment project area exceeds the pre-plan assessed value, taxes on the increase in

assessed value are abated. In place of taxes, the developer makes payments in lieu of taxes (PILOTS) equal to the amount of tax that would have been collected on the increased assessed valuation of the property after improvements. The PILOTS are paid into the special allocation fund, which is pledged as security for the obligations issued by the municipality. § 99.835.1; *Dunn*, 781 S.W.2d at 73.

Surplus funds in the special allocation fund are distributed annually to the taxing districts in the redevelopment project area. *Dunn*, 781 S.W.2d at 73. When the obligations are retired, the rates of tax of the taxing districts are extended to the entirety of the post-plan assessed valuation of the property and “taxes levied, collected, and distributed in the manner applicable in the absence of the adoption of tax increment financing.” § 99.850.2, RSMo.

**2. The TIF Act does not require the amendments in Ordinance 3057 to be referred to the TIF Commission.**

Contrary to the plaintiffs’ contentions, the TIF Act does not require that the amendments approved by Ordinance 3057 be referred to the TIF Commission. The plaintiffs’ erroneous argument is based on a misreading of sections 99.820 and 99.825 of the TIF Act. The plaintiffs’ approach to their claim that Ordinance 3057 violated these statutory provisions is totally at odds with the well-settled rules for interpretation of statutory language.

This Court construes statutes relating to the same subject harmoniously. *Farmers’ Elec. Coop., Inc. v. Missouri Dept. of Corrections*, 977 S.W.2d 266, 270 (Mo. banc 1998). Statutory provisions relating to the same subject matter are considered in pari

materia, and are to be construed together. *Reece v. Reece*, 890 S.W.2d 706, 709-10 (Mo. App. 1995). Statutes in pari materia are intended to be read consistently and harmoniously. *Id.* at 710.

Sections 99.820 and 99.825 are in pari materia in that they are both part of the TIF Act and both address the procedures for consideration and adoption of redevelopment plans. The close connection between these provisions is demonstrated by the fact that section 99.820.3 specifically refers to section 99.825. As the Missouri Court of Appeals correctly noted in its opinion in this case, “Sections 99.820 and 99.825 are both part of the TIF Act, they both relate to redevelopment of substandard areas to foster economic growth and Section 99.820 specifically refers to Section 99.825. Therefore, we will consider the sections in pari materia and read them together.” Opinion at 9.

The plaintiffs’ argument rests on section 99.820.2(7) and section 99.820.3. Section 99.820 generally provides for the formation of the TIF Commission and specifies its powers and duties. Section 99.820.2(7) relates to the term of the members of the TIF Commission who are appointed by the school districts and other taxing districts that are located within the redevelopment area.

Section 99.820.3 provides that, subject to approval of the City, the TIF Commission “may exercise the powers enumerated in sections 99.800 to 99.865, except final approval of plans, projects and designation of redevelopment areas.” Section 99.820.3 states that the TIF Commission is empowered to hold hearings on proposed redevelopment plans and make recommendations to the board of aldermen:

The commission shall vote on all proposed redevelopment plans, redevelopment projects and designations of redevelopment areas, and amendments thereto, within thirty days following completion of the hearing on any such plan, project or designation and shall make recommendations to the governing body within ninety days of the hearing referred to in Section 99.825 concerning the adoption of, or amendment to redevelopment plans and redevelopment projects and the designation of redevelopment areas.

Section 99.825 generally provides for the passage of ordinances authorizing redevelopment projects and specifies the circumstances under which redevelopment plans may be amended. The section contains different provisions that are applicable depending on when the amendment comes in the adoption of the redevelopment plan or redevelopment project. After a municipality adopts a redevelopment plan by ordinance, a new hearing and recommendation by the TIF Commission are required only when an adopted redevelopment plan is amended to change (1) the boundaries of the redevelopment area, (2) its general land uses, or (3) the nature of the redevelopment project.:

After the adoption of an ordinance approving a redevelopment plan or redevelopment project, or designating a redevelopment area, no ordinance shall be adopted altering the exterior boundaries, affecting the general land uses

established pursuant to the redevelopment plan or changing the nature of the redevelopment project without complying with the procedures provided in this section pertaining to the initial approval of a redevelopment plan or redevelopment project and designation of a redevelopment area.

*Id.*

Read together and harmonized as required by the law of this state, sections 99.820 and 99.825 demonstrate that it was proper for the City to amend the Redevelopment Plan through Ordinance 3057. The plaintiffs suggest that section 99.820 requires the TIF Commission to hold a public hearing and make a recommendation on every amendment to every redevelopment plan, even those that have been adopted by ordinance. The plain terms of section 99.820, however, are quite to the contrary.

Section 99.820.3 provides that the TIF Commission “shall vote on all *proposed* redevelopment plans, redevelopment projects and designations of redevelopment areas, and amendments thereto.” § 99.820.3 (emphasis added). The same subsection denies the TIF Commission “final approval of plans, projects and designation of redevelopment areas.” *Id.* This power is reserved to the governing body of the City. *See* § 99.825(1); *Smith v. Independence Tax Increment Fin. Comm’n*, 919 S.W.2d 292, 294 (Mo. App. 1996). Section 99.820.3 plainly does not require the TIF Commission to take any action on amendments to redevelopment plans that have already been adopted by the City, but only on “proposed redevelopment plans . . . and amendments thereto.”

In this case, it is undisputed that the City had already adopted the Redevelopment Plan by ordinance prior to the changes set forth in Ordinance 3057. There was no longer a proposed redevelopment plan, but rather one that had been adopted. Therefore, the plaintiffs are mistaken in their contention that section 99.820.3 required the TIF Commission to be involved in the amendments.

Section 99.825, which is explicitly referenced in section 99.820, specifies the types of amendments to an adopted redevelopment plan that must be referred to the TIF Commission. After the adoption of an ordinance approving a redevelopment plan, “no ordinance shall be adopted altering the exterior boundaries, affecting the general land uses established pursuant to the redevelopment plan or changing the nature of the redevelopment project” without complying with the procedures for the initial approval of a redevelopment plan. § 99.825.1. Thus, a hearing and recommendation from the TIF Commission are required only when an adopted redevelopment plan is amended to change (1) the boundaries of the redevelopment area, (2) its general land uses, or (3) the nature of the redevelopment project.

When a statute is unambiguous, courts must give effect to the language used by the legislature. *Keeney v. Hereford Concrete Prods., Inc.*, 911 S.W.2d 622, 624 (Mo. banc 1995); *see Hughes Dev. Co. v. Omega Realty Co.*, 951 S.W.2d 615, 617 (Mo. banc 1997). The Court must consider the words of the statute in their plain and ordinary meaning. *Butler v. Mitchell-Hugeback, Inc.*, 895 S.W.2d 15, 19 (Mo. banc 1995). Courts are without authority to read into a statute a legislative intent contrary to the intent made evident by the statute’s plain language. *Kearney Special Road Dist. v. County of Clay*,

863 S.W.2d 841, 842 (Mo. banc 1993). The TIF Act unambiguously permits the City to enact Ordinance 3057 without referring the matter to the TIF Commission.

The plaintiffs' attempts to diminish the meaning of section 99.825.1 are wholly without merit. Their contention that the statutory language does not contain the word "amendments" plainly overlooks the fact that an ordinance that alters the exterior boundaries, affects the general land uses established pursuant a redevelopment plan, or changes the nature of a redevelopment project necessarily constitutes an amendment to the previously adopted ordinance approving the plan.

Their argument that the statutory language is a restriction, and not a grant of authority, ignores the fact that only the governing body of the municipality is authorized by the TIF Act to approve a redevelopment plan, by ordinance. § 99.820.1(1). The TIF Commission has no such authority. § 99.820.3.

The plaintiffs suggest that the City's power to enact Ordinance 3057 without referring it to the TIF Commission exists only by implication. This ludicrous contention ignores the inherent powers of any legislative body. Under Missouri law, the City has the power "to enact and ordain *any and all* ordinances not repugnant to the constitution and laws of this state." § 79.110, RSMo (emphasis added). Necessarily, this must include the power to enact ordinances amending prior ordinances. It is well settled that the authority to enact ordinances includes the authority to amend them. *Lodge of the Ozarks, Inc. v. City of Branson*, 796 S.W.2d 646, 655 (Mo. App. 1990); McQuillin Mun. Corp. § 21.02 (3d ed. 1998). The City has the express, inherent power to amend the redevelopment plan, subject only to restrictions in the constitution and laws of this state.

The plaintiffs make the baseless claim that section 99.820 was most recently amended in 1998 and thereby takes precedence over section 99.825, which was amended in 1997. The plaintiffs fail to inform the Court that both sections have been in substantially their present form since the amendments of 1991 and that no change in the relevant language of *either* section was made in the latest amendments. Furthermore, as shown above, section 99.820 is not inconsistent with section 99.825; therefore, there can be no reasonable argument that one section was enacted in an effort to achieve the surreptitious repeal of the other section by implication. The plaintiffs cite no authority in support of their repeal-by-later-enacted-statute argument because there is no authority to support it. *See County of Jefferson v. Quiktrip Corp.*, 912 S.W.2d 487 (Mo. banc 1995); *State ex rel. Village of Bel-Ridge v. Lohman*, 966 S.W.2d 356, (Mo. App. 1998).

The fundamental fallacy in the plaintiffs' approach to this issue is their failure to adhere to the basic standards of statutory interpretation. They have seized on a single word or phrase, without reference to the context in which the word or phrase appears. They have contrived a conflict between section 99.820 and section 99.825, without recognizing that these two sections are in harmony. Read together and harmonized as required by the laws of this state, sections 99.820 and 99.825 clearly support the finding of the City that the amendments to the Redevelopment Plan as adopted by Ordinance 3057 were appropriate.

**3. Ordinance 3057 did not change the nature of the redevelopment.**

The plaintiffs' contention that section 99.825 required the referral of the amendments to the TIF Commission on the theory that they changed the nature of the

Redevelopment Project is similarly erroneous. This contention is contrary to the settled rule that the words of a statute must be given their plain and ordinary meaning. *Butler v. Mitchell-Hugeback, Inc.*, 895 S.W.2d 15, 19 (Mo. banc 1995). The plain and ordinary meaning is its dictionary definition. *City of Dellwood v. Twyford*, 912 S.W.2d 58, 60 (Mo. banc 1995).

The plaintiffs' argument ignores the plain meaning of the "nature" of the Redevelopment Project. The dictionary defines "nature" as "the essential characteristics of and qualities of a person or thing." American Heritage College Dictionary 909 (3d ed. 1993). Essential characteristics are "the intrinsic or indispensable properties that characterize or identify something." *Id.* at 469. Indeed, the plaintiffs acknowledge that this definition of "nature" is correct. Appellant's Substitute Brief at 42.

The plaintiffs' arguments that the "nature" of the redevelopment project was changed are belied by the factual record in this case. As is evident from a review of the Redevelopment Plan adopted by Ordinance 2939, three new redevelopment project areas were added (RPA 2, RPA 3 and RPA 4). These areas, together with RPA 1, constituted the Redevelopment Area. L.F. at 10. The Redevelopment Plan set out the objectives for the entirety of the Redevelopment Area. They included the elimination and/or reduction of the blighting conditions and under-utilization factors that qualified the Redevelopment Area as a blighted area, the prevention of the reoccurrences of the previously identified blighting conditions, the enhancement of the tax base of the City and the tax base of other taxing districts within the Redevelopment Area, the expansion of opportunities for new commercial development to support and encourage major development activities on

properties both within and adjacent to the Redevelopment Area, and the provision of an implementation mechanism that would accelerate the achievement of these objectives and compliment other community and economic development tools and programs. L.F. at 26. RPA 3 (designated as Pointe Basse Redevelopment Project), contained Pointe Basse Plaza and adjoining properties. L.F. at 22, 26-27.

The stated objectives of the Plan did not change. They were a part of the Redevelopment Plan as adopted in Ordinance 2939 and they remained the purposes after the enactment of Ordinance 3057. The redevelopment of the properties within the Pointe Basse Redevelopment Project, which included Pointe Basse Plaza, was and remained a part of the Plan.

To avoid the impact of the fact that the nature of the Redevelopment Project was not being changed, the plaintiffs have focused on the increase in cost attributable to the project and the alleged substantial change in the purpose for which payments in lieu of taxes would be used. L.F. at 7 (Petition at ¶¶ 22, 23). These changes, as set forth in Ordinance 3057, clearly fall within the scope of the activities contemplated by the Redevelopment Plan as it existed prior to Ordinance 3057. As shown by the exhibit to the plaintiffs' petition, the Redevelopment Plan contemplated changes in line items of the plan as long as the total cost did not change:

The following table is the anticipated redevelopment costs to be incurred by public development. The cost actually financed by TIF Notes may vary from those outlined in this

table depending on conditions and proposals at the time the projects are activated. However, it is the intent of this amended Redevelopment Plan to limit the additional issuance of TIF Notes for all Redevelopment Projects to \$6,347,209 plus accrued interest, debt service reserve and issuance costs.

L.F. at 22.

Thus, it is crystal clear that, prior to Ordinance 3057, the Redevelopment Plan recommended by the TIF Commission provided that items of expenditures “may vary . . . depending on conditions and proposals at the time the projects are activated.” L.F. at 22. The Redevelopment Plan contemplated such changes, as long as the total redevelopment costs did not exceed \$6,347,209. Thus, the contemplated changes cannot be a change in the essential nature of the development.

What the plaintiffs argue is that any reallocation of the resources in the Redevelopment Plan, even after it has been adopted by ordinance, requires another round of notice, public hearing, and recommendation from the TIF Commission. This would require any amendment, no matter how trivial, to be submitted to a hearing after at least forty-five days notice. § 99.830.3. The TIF Commission would have thirty days following the completion of the hearing in which to vote on the amendment and ninety days in which to make its recommendation. 99.820.3. Only then could the municipality approve the amended ordinance. § 99.820.1(1). This would render redevelopment projects unworkable, particularly *after* a project has been properly adopted (after the required hearings) and a developer selected. Such a process would be unwieldy and

unresponsive to economic and market conditions. It is for this reason that section 99.825 requires the TIF Commission process to be repeated only when the essential character of a project is altered, such as when the boundaries or land uses or nature of the project are changed. None of those circumstances exist in this case; therefore, section 99.825 does not render Ordinance 3057 invalid. The court of appeals was correct in rejecting the plaintiffs' claims on this issue. Opinion at 9-12.

This case serves as a classic example of the truism that a TIF redevelopment plan is an ongoing project. Refinements and enhancements of the original plan are both expected and desirable. Equally inevitable is the fact that some will assert opposition to any change. If those in opposition fail to defeat the original plan, they should not be able to accomplish their purpose by seriatim charges against each refinement or enhancement that does not adversely affect their position. By the same token, those who supported the passage of a redevelopment (like the plaintiffs in this case) should not be able to change course after the fact. But that is assuredly the result if each facet of a redevelopment plan can be considered a separate, distinct project subject to further hearings, votes, and delays. Modifications within the same area and at identical cost to an originally approved proposal should not require a brand new start. Otherwise, a redevelopment plan could never be brought to completion, and the public purpose of the TIF Act would be thwarted.

Under these circumstances, the reallocation of the costs to accommodate the redevelopment of Pointe Basse Plaza cannot be deemed a change in the essential nature of the Pointe Basse Redevelopment Project. Accordingly, the amendments to the Plan

adopted by Ordinance 3057 did not require a referral to the TIF Commission pursuant to section 99.825, RSMo.

**C. Ordinance 3057 does not violate the Missouri Constitution.**

The plaintiffs assert that Ordinance 3057 violates the Missouri Constitution. This argument must be rejected because it is the settled law of this state, as shown by decisions of this Court going back *decades*, that redevelopment programs for the elimination of blighted areas are constitutional.

The plaintiffs' petition alleged that Ordinance 3057 "would provide for payments in lieu of taxes and/or economic activity taxes to be used to fund or to reimburse the costs of private parties to purchase and improve private property and relocate existing tenants on private property," L.F. at 7 (¶26), and that such use would violate Article III, Sections 38(a) and 39(1-2), and Article VI, Sections 23 and 25 of the Missouri Constitution. L.F. at 7 (¶27). These constitutional provisions generally prohibit the lending of public credit or the granting of public funds or property to private parties for private use, but they are not implicated in this case.

Despite the reference to economic activity taxes in the allegations of the petition, the plaintiffs' brief in the court of appeals presented no issue concerning such taxes. Rule 83.08(b) provides that a substitute brief filed on transfer to this Court "shall not alter the basis of any claim that was raised in the Court of Appeals brief." None of the contentions concerning economic activity taxes in the plaintiffs' substitute brief are properly before this Court. *Blackstock v. Kohn*, 994 S.W.2d 947, 953 (Mo. banc 1999); *Linzenni v. Hoffman*, 937 S.W.2d 723, 727 (Mo. banc 1997).

The plaintiffs' argument reflects a fundamental misunderstanding of the TIF Act and the mechanism provided by the General Assembly for addressing the problems of blight, obsolescence, and decay. Section B-1 of this brief sets out an overview of the TIF Act and need not be repeated. For the purpose of responding to the alleged constitutional questions asserted by the plaintiffs, it suffices to point out that a redevelopment plan cannot be adopted without the city finding that the redevelopment area on the whole constitutes a blighted area, a conservation area, or an economic development area (as those terms are defined in the TIF Act) "and has not been subject to growth and development through investment by private enterprise and would not reasonably be anticipated to be developed without the adoption of tax increment financing."

§ 99.810(1), RSMo.

Accordingly, a city is authorized to issue obligations secured by the special allocation fund for the redevelopment project area to provide for redevelopment costs. § 99.835.1, RSMo. Payments in lieu of taxes are made by the developer (based on the increase in the assessed valuation of the redevelopment area resulting from the improvements made pursuant to the redevelopment plan) and are deposited into the special allocation fund. § 99.845.3, RSMo. The revenue from PILOTS in the special allocation fund is used to retire the obligations issued to pay for the redevelopment costs.

TIF obligations, whether in the form of notes, bonds or other evidences of indebtedness, are payable solely from the special allocation fund:

Neither the municipality, its duly authorized commission, the commissioners or the officers of a municipality nor any

person executing any obligation shall be personally liable for such obligation by reason of the issuance thereof. The obligations issued pursuant to Sections 99.800 to 99.865 shall not be a general obligation of the municipality, county, state of Missouri, or any political subdivision thereof, nor in any event shall such obligation be payable out of any funds or properties other than those specifically pledged as security therefor. The obligations shall not constitute indebtedness within the meaning of any constitutional, statutory or charter debt limitation or restriction.

§ 99.835.5, RSMo.

Thus, reimbursement for redevelopment costs incurred by the developer is totally dependent on the success of the Redevelopment Project in generating new revenues by way of an increase in the assessed valuation. Only that “increment” is available for payment of the TIF obligations. If an “increment” is not produced, the developer receives nothing. The risk is on the developer, not the city.

The plaintiffs’ mischaracterization of the financing provisions of the TIF Act is matched by their blatant disregard of the express provisions of the TIF Act concerning redevelopment costs. Their claim that the Act includes no express authority to make the expenditures challenged by them (Appellants’ Brief at 48) simply ignores the enumeration of authorized redevelopment project costs in section 99.805(14). These include the very costs that they purport to challenge, the acquisition of property, site

preparation, the costs of relocating tenants and parking lot improvements. *JG St. Louis West L.L.C. v. City of Des Peres*, 41 S.W.3d 513, 521-523 (Mo. App. 2001), held that parking improvements for a shopping mall were “a reasonable and necessary cost of a redevelopment plan” within the meaning of the statutory provision.

In an obvious effort to evade the decisions of this Court upholding the constitutionality of statutory programs designed to eliminate blighted areas, the plaintiffs claim that the alleged constitutional issue presented by them “is an open and substantial question of first impression.” Appellants’ Substitute Brief at 50. In fact, their contentions are a poorly disguised effort to reargue the constitutional issues that this Court determined in *Dunn*. Every possible constitutional challenge was asserted in *Dunn*, and this Court upheld the TIF Act against each challenge.

As to the argument that the uses anticipated for the PILOTS would violate the constitution, this Court noted the authorization conferred on the General Assembly by Article X, Section 7 of the Missouri Constitution to provide tax relief for the reconstruction, redevelopment, and rehabilitation of obsolete, decadent, or blighted areas. This power permits PILOTS for the public purpose of redevelopment:

[I]ncluded within that power is the authority to redirect the revenues attributable to improvements for the purposes enumerated in art. X, §7. The PILOTS are the General Assembly’s mechanism for addressing the problems of blight, obsolescence and decay, particularly within, though not

limited to, the urban setting here. The Act is consistent with the Constitution.

*Id.* at 76. The Court also rejected the contention that the use to which the land within the tax increment financing district would be put was not a public purpose. *Id.* at 78-79.

In the *Dunn* case, this Court explicitly rejected the plaintiffs' claims as to the constitutionality of PILOTS being used for redevelopment purposes. "Dunn argues that the Act authorizes an unconstitutional diversion of tax proceeds for 'non-public purposes.' If PILOTS are not taxes--and we hold here that they are not--it follows that the Act cannot require an unlawful diversion of taxes. For the reasons stated, we reject Dunn's 'non-public purpose' argument as well." 781 S.W.2d at 77 n.4.

The holding in *Dunn* is merely one of a long line of decisions of this Court that have held that the redevelopment of blighted areas and the fostering of economic development constitute a public purpose. It has been the settled law of this state, since at least 1954, "that the primary purpose of a redevelopment project is a public purpose, and that any benefits to private individuals are merely incidental to the public purpose." *State ex inf. Dalton v. Land Clearance for Redevelopment Auth.*, 364 Mo. 974, 270 S.W.2d 44, 53 (banc 1954). If the purpose of a government act is public, the fact that benefits may accrue to some private persons does not deprive the government action of its public character. *State ex rel. Atkinson v. Planned Industrial Expansion Auth.*, 517 S.W.2d 36, 45 (Mo. banc 1975). Improved employment and stimulation of the economy serve essential public purposes. *State ex rel. Jardon v. Industrial Dev. Auth.*, 570 S.W.2d 666, 675 (Mo. banc 1978).

Indeed, the Missouri Constitution itself explicitly recognizes the public benefits of redevelopment, authorizing the taking of private property by eminent domain for the purpose of “clearance, replanning, reconstruction, redevelopment and rehabilitation of blighted, substandard or insanitary areas.” Mo. Const. art VI, § 21; *see Annbar Associates v. West Side Redevelopment Corp.*, 397 S.W.2d 635 (Mo. banc 1965).

The plaintiffs’ statements about the constitution totally disregard the public purpose embodied in the TIF Act. A redevelopment plan represents the comprehensive program of a city to reduce or eliminate blighted areas and to enhance the tax bases of the taxing districts which extend into the redevelopment area. § 99.805(12), RSMo. The tool of tax increment financing authorized by the TIF Act to achieve these objectives represents the legislative declaration of public purpose. The plaintiffs’ failure to acknowledge this determination cannot detract from the legislative mandate.

Article VI, sections 23 and 25, state that no city may lend its credit or grant public money or property to or in aid of any private corporation, association, or individual, except as provided in the Missouri Constitution. This Court has long explicitly held that redevelopment plans do not violate Article VI, sections 23 and 25. *Dalton*, 270 S.W.2d at 52-53; *Jardon*, 570 S.W.2d at 674, 676; *Dunn*, 781 S.W.2d at 79.

Similarly, Article III, sections 38(a) and 39(1-2), provide that the general assembly shall not have the power to lend public credit, authorize the lending of public credit, or grant public money or property to or in aid of any private corporation, association, or individual. This Court has explicitly held that redevelopment plans do not violate Article

III, sections 38(a) and 39(1-2). *Dalton*, 270 S.W.2d at 52-53; *Atkinson*, 517 S.W.2d at 44-45.

The plaintiffs' attempted avoidance of these cases is meaningless. Their cavalier declaration that *Dunn*, *Jardon*, and *Atkinson* are not relevant on the theory that they involved the issuance of bonds ignores the TIF Act definition of "obligations." It includes bonds, loans, debentures, notes, special certificates, or other evidences of indebtedness issued by a municipality to carry out a redevelopment project. § 99.805(8), RSMo. A city is expressly authorized to issue "obligations" to provide for redevelopment costs. §§ 99.820.1(10), 99.835.1. The plaintiffs' description of *Dalton* ignores the fact that the acquisition of property by the redevelopment authority, its demolition of existing structures and installation of site improvements, and its conveyance to redevelopers for conversion to useful purposes in accordance with the redevelopment plan is conceptually no different than the mechanism authorized by the TIF Act.

Notably, the plaintiffs make no claim or factual allegation that the Redevelopment Plan was improper or that the redevelopment fails to advance a public purpose. Even if they had, in making its determination that an area is blighted, and in approving the redevelopment plan, the Board of Aldermen acted in its legislative capacity. *Crestwood Commons Redevelopment Corp. v. 66 Drive-In, Inc.*, 812 S.W.2d 903, 910 (Mo. App. 1991). Judicial review is limited to whether the legislative determination was arbitrary or was induced by fraud, collusion, or bad faith or whether the City exceeded its powers. *Id.* Courts cannot interfere with a discretionary exercise of judgment in determining a

condition of blight in a given area. *Id.* Unless it appears that the conclusion of the Board of Aldermen is clearly arbitrary, the Court cannot substitute its opinion for that of the Board. *Id.* “If the Board’s action is reasonably doubtful or even fairly debatable we cannot substitute our opinion for that of the Board.” *Id.* The plaintiffs have made no factual allegation that the Board of Alderman abused its discretion in determining that the redevelopment in this case was for a public purpose. Thus, it cannot reasonably be maintained that Ordinance 3057 is for anything other than a public purpose.

The plaintiffs would have the Court believe that the respondents’ position is that any expenditure pursuant to a redevelopment project automatically qualifies as an expenditure for a public purpose. This is untrue. Rather, the respondents’ position is that it is a matter of unchallenged fact that Ordinance 3057 exists for the public purpose of redevelopment. In particular, the Board of Aldermen found that “it is necessary and advisable and in the best interests of the City and of its inhabitants” to amend the Redevelopment Plan. L.F. at 11. This legislative finding is conclusive if it is even fairly debatable, regardless of whether benefits may accrue to some private persons. *Id.*; *Dalton*, 270 S.W.2d at 52; *Atkinson*, 517 S.W.2d at 45. The plaintiffs’ failure even to contest this finding dooms their constitutional claims.

Despite the plaintiffs’ obvious desire to avoid the doctrine established by the foregoing decisions, they unambiguously demonstrate the constitutionality of the procedures set out in the TIF Act. The use of PILOTS for the implementation of the Redevelopment Plan for the Valle Springs Tax Increment Financing District conforms with the TIF Act. The plaintiffs’ contentions are refuted by *Dunn* and the settled law of

this state. Since the petition failed to state a claim for any constitutional violation, it was properly dismissed.

**D. The plaintiffs have no standing to assert their alleged claims.**

In addition to being defective for failing to state a claim, the plaintiffs' petition was properly dismissed for want of standing. Standing is a concept utilized to determine whether a party is sufficiently affected so as to insure that a justiciable controversy is presented to the Court. *American Economy Ins. Co. v. Ledbetter*, 903 S.W.2d 272, 274 (Mo. App. 1995). A justiciable controversy is a necessary element in every declaratory judgment action. *Id.* at 274-75. In a declaratory judgment action, the standard to be applied in determining whether a party has standing to bring a suit is whether the plaintiff has a legally protectible interest at stake. *City of Hannibal v. Marion County*, 745 S.W.2d 842, 884 (Mo. App. 1988).

The matter of standing does not relate to the legal capacity to sue, but to the interest of an adversary in the subject of the suit as an antecedent to the right to relief. *Id.* Standing to sue is a jurisdictional requirement. *Id.* Standing requires an interest directly in issue or jeopardy that is subject to some relief. *American Economy*, 903 S.W.2d at 274.

In this case, neither of the plaintiffs has standing to claim that Ordinance 3057 is invalid. It should be noted that Ordinance 3057 is merely the most recent in a series of actions dating back to 1992 in connection with the Redevelopment Plan. L.F. at 10. Under the plan prior to Ordinance 3057, the total redevelopment cost was to be \$6,347,209. After reallocating the costs pursuant to Ordinance 3057, the total

redevelopment costs are exactly the same: \$6,347,209. Even if a court were to rule in the plaintiffs' favor, they would be in no different position and would realize no benefit. Thus, the plaintiffs lack standing to assert their claims in this case.

Furthermore, the District does not stand to lose any tax revenues as a result of the ordinance. As shown in Ordinance 3057, the Redevelopment Plan had already been adopted by the City. Pursuant to section 99.845 of the TIF Act, the District's tax revenues from the Redevelopment Area were already "capped." Any increase in the assessed valuation of the project area would not lead to increased tax revenues, but rather to PILOTS going into a special allocation fund to defray redevelopment costs. Thus, under the Redevelopment Plan both before and after the enactment of Ordinance 3057, the District will not see any increase in tax revenue. Ordinance 3057 will have no effect on the District's receipts. Because the District does not stand to benefit from any ruling of the Court, the District has no standing to assert the alleged invalidity of the ordinance.

The plaintiffs' cited cases demonstrate why the District lacks standing. In *Regal-Tinneys Grove Special Road Dist. v. Fields*, 552 S.W.2d 719 (Mo. banc 1977), road districts were held to have standing to question a county's action directly affecting the amount of state money the road districts would receive. In *State ex rel. School Dist. of City of Independence v. Jones*, 653 S.W.2d 178 (Mo. banc 1983), this Court held that a school district imminently threatened with allegedly unlawful deprivation of its statutorily-mandated share of state school funds had standing to challenge the statutory interpretation for calculating the amounts due. This Court explained the school district's direct pecuniary interest in the *Independence* case thusly: "Plaintiff school districts are

direct beneficiaries of the statutory right to certain portions of appropriate state school funds. Plaintiffs allege defendants' unlawful procedures for calculating their portions of these funds will result in distribution to plaintiffs of less state money than they have a statutory right to receive." *Id.* at 186.

The *Independence* and *Regal* cases are plainly distinguishable. Unlike the districts in those cases, which stood to obtain additional funds if they prevailed, the District in this case has no stake in the outcome. As noted, regardless of whether Ordinance 3057 was enacted, the District's tax revenues have been capped for years. The District does not stand to gain even one extra penny if it receives all of the relief it requested in this lawsuit. This is the paradigm for a party who lacks standing. Rather than supporting the plaintiffs' position, *Independence* and *Regal* show why the plaintiffs' claims were properly dismissed.

The District asserts that it has standing because, under the circumstances set forth in the TIF Act, it is entitled to representation on the TIF Commission. This assertion ignores the fact that the District would not stand to obtain any benefit from a ruling in its favor so that it has no interest in the outcome of this case to create standing. Further, this assertion is based on the plaintiffs' misreading of the TIF Act. As discussed extensively above, the plaintiffs' petition fails to state any facts to support their claim that sections 99.820 and 99.825 require referral to the TIF Commission of the matters addressed in Ordinance 3057. For the same reasons that it fails to state a claim for relief, the petition fails to allege facts (as opposed to legal conclusions) to show standing.

Under certain circumstances not present in this case, a taxpayer can have standing to contest the allegedly illegal spending of tax money. *See Medical Management of Osage Beach, Inc. v. Missouri Health Facilities Review Comm.*, 904 S.W.2d 291, 297 (Mo. App. 1995). To have such standing, a taxpayer must be able to demonstrate a direct expenditure of funds generated through taxation, or an increased levy in taxes, or a pecuniary loss attributable to the challenged transaction of a municipality. *Id.*

The District does not claim to have standing under this theory. It is a governmental entity, not a taxpayer. The Missouri Constitution provides that public property is exempt from taxation. Mo. Const. art. X, § 6. There is no allegation that the District pays any taxes to anyone.

Mr. Stewart is in no better position than the District in terms of taxpayer standing. Mr. Stewart alleged that he was a taxpayer, L.F. at 3, but this allegation does not confer taxpayer standing on him. As noted, no additional costs will be incurred as a result of Ordinance 3057. Mr. Stewart cannot point to any additional expenditures, or any increased tax levy, or any pecuniary loss to him as a consequence of the passage of Ordinance 3057. The petition is devoid of any such factual allegations.

Furthermore, any complaints about the use of PILOTS do not confer taxpayer standing. As the Court noted in the *Dunn* case, PILOTS are not taxes, but rather special assessments levied against the property in the District for the improvements provided to that property under a redevelopment plan. 781 S.W.2d at 77. As a matter of black-letter law, obligations issued pursuant to the TIF Act “are special obligations of the

municipality *payable solely from the special allocation fund.*” § 99.835.3, RSMo (emphasis added).

Mr. Stewart lacks taxpayer standing for the reasons this Court explicitly stated in the *Dunn* case: “By its clear terms, the Act protects the taxpaying public from any liability for funds to retire bonds issued.” 781 S.W.2d at 77; *see Atkinson*, 517 S.W.2d at 47. Because all taxpayers are protected from liability for payments secured by the PILOTS in the special allocation fund, Mr. Stewart lacks taxpayer standing.

In this case, the plaintiffs lack standing because they lack the interest in the outcome required by their cited cases. The trial court did not err in dismissing the plaintiffs’ petition for want of standing.

CONCLUSION

For the foregoing reasons, the judgment of the trial court should be affirmed.

Respectfully submitted,

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James E. Mello                    #37734  
Jeffery T. McPherson        #42825  
Armstrong Teasdale LLP  
One Metropolitan Square, Suite 2600  
St. Louis, MO 63102-2740  
314-621-5070                FAX 314-621-5065

ATTORNEYS FOR RESPONDENT  
CITY OF STE. GENEVIEVE

---

Shulamith Simon                #16441  
Schlueter, Haywood, Bick & Kistner, P.C.  
7700 Bonhomme Ave., Suite 450  
St. Louis, MO 63105  
314-727-0777                FAX 314-727-9071

ATTORNEYS FOR RESPONDENT  
GOLDEN MANAGEMENT, INC.

RULE 84.06 CERTIFICATE

1. a. The undersigned certifies pursuant to Rule 55.03(a) that this brief is signed by at least one attorney of record in the attorney's individual name. The signer's address, Missouri bar number, and telephone number are as follows:

Jeffery T. McPherson #42825  
ARMSTRONG TEASDALE LLP  
One Metropolitan Square, Suite 2600  
St. Louis, Missouri 63102-2740  
(314) 621-5070 FAX (314) 621-5065

The undersigned certifies that this brief is not verified or accompanied by affidavit.

b. The undersigned certifies pursuant to Rule 55.03(b) to the best of his knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that: (1) the matters set forth in this brief are not presented or maintained for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; (2) the matters set forth in this brief are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

c. The undersigned certifies pursuant to Rule 55.03(c) that this brief does not seek sanctions.

2. The undersigned certifies that this brief complies with the limitations contained in Rule 84.06(b).

3. Relying on the word and line count of the word-processing system used to prepare this brief, the undersigned certifies that this brief contains 10,575 words and 1,009 lines of text.

4. Pursuant to Rule 84.06(g), the undersigned certifies that the disks containing this brief that are filed with the Court and served on the parties have been scanned for viruses and that they are virus-free.

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Jeffery T. McPherson

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this brief and a disk containing the brief were mailed, first-class postage prepaid, on November 5, 2001, to:

Steven L. Wright, Esq.  
Wright & Gray  
2716 Forum Blvd., Suite 3B  
Columbia, MO 65203

Kelli Hopkins, Esq.  
Missouri School Boards' Association  
2000 I-70 Drive Southwest  
Columbia, MO 65203

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