IN THE
MISSOURI SUPREME COURT

BARBARA MANZARA, et al.	)	
	)	
Appellants,	)	
	)	
v.	)	SC91025
	)	
STATE OF MISSOURI,	)	
	)	
Respondent,	)	
	)	
NORTHSIDE REGENERATION, LLC,	)	
	)	
Intervenor-Respondent.)		

Appeal from the Cole County Circuit Court, Division IV
The Honorable Patricia S. Joyce

BRIEF OF RESPONDENT

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STATEMENT OF FACTS

This is a facial challenge seeking to invalidate a tax credit law, the land assemblage tax credit, § 99.1205. That credit was enacted in its current form by the General Assembly in 2009, and went into effect in August of that year. *See* Appellants' Appendix A-4.

The appellants, plaintiffs Manzara and Marquard, live in an area in which another taxpayer has purchased property and been certified as eligible for the land assemblage tax credit. *See* Appellants' Appendix A-7. Manzara and Marquard sued in the circuit court for Cole County to hold invalid and bar use of the credit. *See* Legal File at p. 12. The circuit court rejected that effort, finding that Manzara and Marquard lacked standing to sue regarding a decrease in someone else's taxes, and that if they did have standing, the court would uphold the tax credit law. Appellants' Appendix at A-3 – A-21.

ARGUMENT

I. The land assemblage tax credit.

This appeal addresses one of the newest but only one of many Missouri tax credit programs: § 99.1205, RSMo, the "Distressed Areas Land Assemblage Tax Credit Act." That credit is available only under very specific circumstances.

As to location, the credit is available only as to the acquisition of 75 acres or more located within an "eligible project area," as that term is defined in § 99.1205.2(8). At least 80 percent of the eligible project area must be located within a federally designated Missouri qualified census tract (26 U.S.C. § 42) or within a distressed community (§ 135.530, RSMo). At least 50 acres must consist of "eligible parcels" and less than 5 percent can consist of owner-occupied residences. § 99.1205.2(8).

In order to qualify for a tax credit under the statute, the applicant must first acquire the "eligible project area." § 99.1205.2(2). None of the eligible parcels may be acquired through the use of eminent domain or constitute land acquired from a municipal authority. § 99.1205.2(7)(d). A municipality must approve a redevelopment agreement with the applicant, and abide by that agreement. § 99.1205.2(2)(b), § 99.1205.2(15). And the redeveloper must have commenced construction on these parcels after November 28, 2007. § 99.1205.2(7)(c).

Moreover, for an applicant to qualify for a tax credit, all outstanding municipal taxes, fines, and bills levied on an eligible parcel during the time that the applicant held title to that parcel must have been paid in full. § 99.1205.2(7)(e).

The land assemblage credit is available only after application. *See* § 99.1205.2(2)(b)a, § 99.1205.3, § 99.1205.6. An applicant may annually apply for a "tax credit against the taxes imposed under chapters 143, 147, and 148, except for sections 143.191 to 143.265, in an amount equal to fifty percent of the acquisition costs, and one hundred percent of the interest costs incurred for a period of five years after the acquisition of an eligible parcel." § 99.1205.3, § 99.1205.6. The Department of Economic Development shall "verify that the applicant has submitted a valid application in the form and format required by the department." § 99.1205.6. A certificate for a tax credit will issue only after the applicant has met the criteria of § 99.1205.6. *Id.* The credit is limited to the amount of tax liability; though unused qualifying amounts may be carried over to future tax years, there is no authorization for a tax refund using the credit to exceed the amount of estimated payments made by the taxpayer for that year. § 99.1205.4.; (compare with Missouri credits identified in note 5 *infra*).

Unlike many tax credits, the land assemblage tax credits can be sold. § 99.1205.4 ("Applicants entitled to receive such tax credits may transfer, sell, or assign the tax credits.") But the funds generated through the use or sale of the tax credits must be used to redevelop the eligible project area. § 99.1205.2(2)(b)a.

II. Appellants do not have standing as taxpayers to complain that the legislature lowered someone else's taxes. (Responds to Appellant's Point III.)

The first question before the Court is whether appellants Manzara and Marquard have standing to sue to invalidate a tax credit given to someone else. Standing is an antecedent to the right to relief. *Comm. for Educ. Equal. v. State*, 878 S.W.2d 446, 450 n. 3 (Mo. banc 1994), *citing State ex rel. Williams v. Marsh*, 626 S.W.2d 223, 227 n.6 (Mo. banc 1982).

Manzara and Marquard bore the burden of establishing that they had standing. *Bender v. Forest Park Forever, Inc.*, 142 S.W.3d 772, 773-74 (Mo. App. E.D. 2004) ("The party seeking relief must show that he is sufficiently affected by the challenged action to justify consideration by the court and that the action violates his particular rights and not those of some third party."). Thus they were required to prove that they had "some legally protectable interest in the litigation so as to be directly and adversely affected by its outcome." *Missouri State Med. Ass'n v. State,* 256 S.W.3d 85,

87 (Mo. banc 2008). "[P]ersons who do not pose present, real, live, and personal ... claims of right under the law do not give the Court the honed development of facts and legal argument that are the hallmark of real controversies." *State ex rel. Mathewson v. Bd. of Election Comm'rs of St. Louis County*, 841 S.W.2d 633, 635 (Mo. banc 1992).

Manzara and Marquard have no direct, personal complaint about the land assemblage tax credit. They do not assert that they sought to use the credit themselves, or that the credit in some way deprived them of property, process, or right. They assert standing merely as taxpayers.

Missouri courts give liberal standing to taxpayers. "Missouri courts allow taxpayer standing so that ordinary citizens have the ability to make their government officials conform to the dictates of the law when spending public money." *Ste. Genevieve Sch. Dist. R-II v. Bd. of Aldermen of City of Ste. Genevieve*, 66 S.W.3d 6, 11 (Mo. banc 2002), *citing State ex rel. Nixon v. American Tobacco Co., Inc.,* 34 S.W.3d 122, 133 (Mo. banc 2000). "Missouri's taxpayer standing doctrine … concerns taxpayer *plaintiffs* seeking to restrain the State from improperly spending tax revenue." *Comm. for Educ. Equal. v. State (CEE II),* 294 S.W.3d 477, 487 (Mo. banc 2009) (emphasis original). The key in each case is an allegation that a state official or agency is spending or is going to spend tax revenue improperly.

But even in Missouri, taxpayer standing does not extend to complaints regarding how the government decides to tax others. *W.R. Grace & Co. v. Hughlett,* 729 S.W.2d 203, 206-07 (Mo. banc 1987) ("We fail to see how it can be said that appellant has been '*adversely affected by the statute[s] in question*' when those statutes would merely excuse the tax obligations of others.") (emphasis and alternation in original), *quoting Ryder v. St. Charles County,* 552 S.W.2d 705, 707 (Mo. banc 1977). *See also Hertz Corp. v. State Tax Comm'n,* 528 S.W.2d 952, 954 (Mo. banc 1975) (city was not an "aggrieved party" and lacked sufficient interest to seek review of taxes assessed against its tenants, rather than the city itself). This Court most recently took up that question in *Comm. for Educ. Equal. v. State (CEE II)*, 294 S.W.3d 477, 487 (Mo. banc 2009). There, the court held that the "[p]laintiff taxpayers [had] standing to raise their assessment challenges to the extent that they allege that the State is *spending* tax revenue improperly under articles IX and X of the Missouri Constitution[.]" 294 S.W.3d at 486 (emphasis added). In other words, it was not enough that some plaintiffs in *CEE II* objected to property tax assessments given to others; the plaintiffs had to allege a problem with "spending," *i.e.*, with the manner in which tax-funded officials were performing an assigned task – there, assessing the value of property for tax purposes.

Previously, this Court had held in *Ste. Genevieve* that a taxpayer had standing to seek a declaratory judgment that the city was acting beyond its authority where it was pursuing a redevelopment project that would cost the school district and the city future tax revenue. But that holding appeared in the context of a challenge to proposed expenditures of tax increment finance revenues under an amended redevelopment plan. *Ste. Genevieve,* 66 S.W.3d at 9, 10 n.2. Likewise, in *Curchin v. Missouri Indus. Dev. Bd.,* 722 S.W.2d 930 (Mo. banc 1987), this Court found a taxpayer interest in preventing the improper disposition of tax revenues that would result from default on allegedly unconstitutional revenue bonds – not that a taxpayer could sue regarding only the availability to or use of a tax credit by someone else. 722 S.W.2d at 931, 933.[1]

Ultimately, Manzara and Marquard simply do not challenge any spending; they only challenge the reduction of someone else's tax burden. Consistent with *W.R. Grace*, the Court should affirm the circuit court's

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[1] Manzara and Marquard also cite a court of appeals decision, *Sommer v. City of Louis*, 631 S.W.2d 676 (Mo. App. E.D. 1982). There, the Eastern District suggests that an alleged improper tax abatement can support taxpayer standing in the absence of a challenged expenditure. That decision, however, predates and cannot be easily reconciled with *W.R. Grace.*

holding that they lack standing as plaintiffs to pursue such claims. The kind of policy question that they present is one to be resolved by the legislature, not by the courts.

III. The land assemblage tax credit and similar credits and other tax reductions are not "public money" subject to the prohibitions in Article III, sections 38(a) and 39(1)-(2). (Responds to Appellant's Points I and II.)

Manzara's and Marquard's claim of standing and their claim on the merits rest on the proposition that every tax credit is "public money," as that term is used in Article III, §§ 38(a) and 39(1) and (2), of the Missouri Constitution. The constitution does not define "public money." But the pertinent definitions demonstrate that to become "public," "money" must belong to the government.

"Public money" has never been defined in Missouri caselaw. The term was defined in Black's Law Dictionary (6th ed. 1990 at 1005) as "[r]evenue received from federal, state, and local governments from taxes, fees, fines, etc." That is consistent with lay dictionary definitions of "public." Webster's Third New International Dictionary defines "public" as "of, relating to, affecting the people as an organized community." Webster's Third New International Dictionary (1993) at 1836. *See* also Black's Law Dictionary (7th ed., 1999) at 1242 ("public" is "[r]elating or belonging to an entire community,

state, or nation."). That definition contrasts with "private" – pertinent because the constitutional ban at issue is on giving "public money or property" to a "private person, association or corporation." Mo. Const. Article III, § 38(a). "Private" means "belonging to a particular person, company, or interest." Webster's at 1804-05.[2]

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[2] When dictionaries define the combination of "public" with a noun, they give "public" a similar meaning. *E.g.*,"public corporation," *id.* ("government-owned corporation"); "public land" *id.* ("land owned by a government"); "public record," *id.* ("record made by a public official in the course of his legal duties"); "public rights," *id.* ("rights under law of the state over the subject or the subject against the state"); "public servant," *id.* (a "holder of public office"); "public works," *id.* ("fixed works … constructed for public use or enjoyment esp. when financed and owned by the government"); "public property," Black's Law Dictionary (7th ed. 1999) at 1233 ("State- or community-owned property not restricted to any one individual's use or possession"); and "public corporation," *id.* at 344, ("corporation that is created by the state as an agency in the administration of civil government" or a "government-owned corporation that engages in activities that benefit the general public"; contrasted with a "private corporation": a "corporation

There is no suggestion in Appellants' Brief that the money at issue was ever "received" by or from the State, nor that it ever belonged to "the people as an organized community." Rather, the decision of the General Assembly was to leave the money in the hands of "a particular person, company, or interest." Thus it never becomes "public money" subject to the constitutional restriction.

Reading "public money or property" as restricted to funds that belong to the State makes sense in the context of the Missouri Constitution. Nothing in the constitution hints at a limit on the ability of the General Assembly to take into account myriad economic concerns and criteria, including land acquisition and ownership costs and redevelopment plans or potential, in setting income tax rates. Nor does anything in the Missouri constitution hint at a limit on allowing tax deductions or credits on such bases. Lowering taxes by such means does not move money out of the public treasury; it leaves it in private hands.

Ignoring what seems so obvious, Manzara and Marquard claim that the land assemblage tax credit is "unquestionably a grant of public money or

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founded by and composed of private individuals principally for a nonpublic purpose").

property." App. Br. at 15. Their claim is based on a very broad statement made by this court 24 years ago:

> This tax credit is as much a grant of public money or property and is as much a drain on the state's coffers as would be an outright payment by the state to the bondholder upon default. There is no difference between the state granting a tax credit and foregoing the collection of the tax and the state making an outright payment to the bondholder from revenues already collected ... . The allowance of such a tax credit constitutes a grant of public money or property within Article III, Section 38(a) of the Missouri Constitution.

Curchin v. Missouri Ind. Dev. Bd., 722 S.W.2d 930, 933 (Mo. banc 1987). There is a certain practical logic to part of that statement: whether checks are written by the Treasurer based on appropriations and warrants, or taxes are repealed or reduced (whether the reduction is in the rate, or in deductions or credits), the State treasury ultimately has less money. But the factual conclusion is wrong as to the land assemblage tax credit and other credits that are limited to the amount of tax liability (*see* § 99.1205.4; compare

Missouri credits identified in note 5, *infra*). Such a tax credit is not a "drain on the state's coffers"; it closes the faucet rather than opening the drain.

As to the court's legal conclusion, merely reducing the amount of money in the treasury cannot make a tax credit "public money." Indeed, there is no legal logic to the Court's conclusion: contrary to what the Court said, there is a considerable – indeed, dispositive – "difference between the state granting a tax credit and foregoing the collection of the tax and the state making an outright payment." In one instance there is "public money" as that term is properly defined; in the other instance there is not.[3] One implicates the constitutional restrictions on use of "public money"; the other does not.

The statement in *Curchin* is broader than the holding in that case requires – and is thus open to being labeled dicta. The *Curchin* majority was troubled by the "unqualified use" of the tax credit at issue. *See Rice v. Ashcroft*, 831 S.W.2d 206, 209 (Mo. App. W.D. 1991) (construing *Curchin*).

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[3] The error in Manzara's and Marquard's analysis, based on the overly broad statement in *Curchin*, reappears in their Point III. The key facts here are undisputable – and directly contrary to what Manzara and Marquard say (Appellants' brief at 26): "Respondent has [*not*] paid out tax revenue" and "Section 99.1205 [*does not*] require[] the Respondent to pay" anything at all to anyone.

Indeed, while in name a tax credit, the Court found the credit to be a state guarantee of repayment to a bondholder in the event of default. *Curchin,* 722 S.W.2d at 933 ("The tax credit authorized in § 100.297 simply shifts the risk of loss upon default from the bondholder to the state. The allowance of such a tax credit constitutes a grant of public money or property[.]"). That implicated Mo. Const. Art. III, § 39(1)-(2), addressing the "giving or lending of the credit of the state." But the land assemblage tax credit does not shift the risk of loss to the State. Nor does it allow for the payment of State funds from the State treasury to any private person.

More logical than the broad, unsupported statement in *Curchin* is the discussion in *Kotterman v. Killian*, 972 P.2d 606 (Ariz. 1999), of "public money" as that term appears in a religion clause in the Arizona Constitution.[4] After citing Arizona precedents and quoting the Black's Law Dictionary definition of "public money" (*see* page 13, *supra*), the Arizona court concluded:

> As respondents note, however, no money *ever* enters the state's control as a result of this tax credit.

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[4] Arizona Const., Art. II, § 12 ("No public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or to the support of any religious establishment.")

> Nothing is deposited in the state treasury or other accounts under the management or possession of governmental agencies or public officials. Thus, under any common understanding of the words, we are not here dealing with "public money."

Id. at 618 (emphasis in original). The court rejected the suggestion by the plaintiffs there – a suggestion that largely parallels what appellants Manzara and Marquard say here – "that because taxpayer money *could* enter the treasury if it were not excluded by way of the tax credit, the state effectively controls and exerts quasi-ownership over it." *Id.* (emphasis in original). The court explained that such an "expansive interpretation is fraught with problems" and explained:

> Indeed, under such reasoning all taxpayer income could be viewed as belonging to the state because it is subject to taxation by the legislature. That body has plenary power to set tax rates, categorize taxable income, and determine the type and amount of adjustments including deductions, exemptions, and credits.

Id. The court rejected the idea that a tax credit was constitutionally different from tax deductions or tax rates, other means by which the legislature lowers

the tax liability of individual taxpayers. *Id.* The court then correctly characterized the money at issue as the taxpayer's money, as opposed to "public money":

> We do not accept the proposition, implicit in petitioners' argument, that the tax return's purpose is to return state money to taxpayers. For us to agree that a tax credit constitutes public money would require a finding that state ownership springs into existence at the point where taxable income is first determined, if not before. The tax on that amount would then instantly become public money. We believe that such a conclusion is both artificial and premature. It is far more reasonable to say that funds remain in the taxpayer's ownership *at least* until final calculation of the amount actually owed to the government, and upon which the state has a legal claim.

Id. (footnotes omitted; emphasis in original).

The Arizona court's conclusion was consistent with Justice Brennan's explanation that payments and tax exemptions are "qualitatively different," and thus given different treatment:

> Tax exemptions and general subsidies, however, are qualitatively different [from the payment of state funds]. Though both provide economic assistance, they do so in fundamentally different ways. A subsidy involves the direct transfer of public monies to the subsidized enterprise and uses resources exacted from taxpayers as a whole. An exemption, on the other hand, involves no such transfer. It assists the exempted enterprise only passively, by relieving a privately funded venture of the burden of paying taxes.

Walz v. Tax Comm'n of City of New York, 397 U.S. 664, 690 (1970) (Brennan, J., concurring) (footnotes and citations omitted)). *See also Isenhour v. State*, 952 So.2d 1216, 1223 n. 5 (Fla. App. 5 Dist., 2007), and cases cited therein.

Here, there is no "direct transfer of public monies to the subsidized enterprise."[5] The Court should hold that when the legislature merely

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[5] That would not be true if Manzara and Marquard were challenging a so-called "refundable" tax reedit, *i.e.* a credit that can result in a "refund" that is higher than the amount withheld or estimated, payments made, such as the federal Earned Income Tax Credit (26 U.S.C. § 32) and Missouri

relieves someone of paying taxes – whether through a rate reduction, an exclusion, a deduction, or a credit – Article III, §§ 38(a) and 39(1)-(2) are not implicated as they may have been in *Curchin*. And the Court should expressly disavow the statement in *Curchin* that any and every tax credit is a "grant [of] public money or property."

IV. If the land assemblage tax credit were "public money," it would nonetheless be valid because it is restricted to a public purpose: redevelopment of economically disadvantaged areas. (Responds to Appellant's Point IV.)

If Manzara and Marquard had standing, and the land assemblage tax credit were "public money or property" subject to constitutional restriction, the Court should still affirm because the credit serves a public, rather than a private, purpose.

The Missouri constitution does not define what constitutes a "grant" of "public money or property." But in applying the constitutional prohibition, this Court has excluded from the term "grant" payments that the State makes – even payments to private parties – in return for a public benefit.

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credits like the Public Safety Officer Surviving Spouse Credit (§ 135.090.2), Enhanced Enterprise Zone Credit (§ 135.967.13), Mega Project Credit (§ 135.968.5), and Expanded Business Facility Credit (§ 135.110.13).

Thus this Court has consistently held that if a payment serves a public purpose, it does not violate the constitutional prohibition against granting public funds to private entities. *E.g.*, *Fust v. Attorney General for State of Missouri,* 947 S.W.2d 424, 429-30 (Mo. banc 1997); *Menorah Med. Ctr. v. Health and Educ. Facilities Auth.*, 584 S.W.2d 73, 78 (Mo. banc 1979).

This Court has found guidance in the Debates from the 1943-44 Constitutional Convention, which "indicate the belief that Missouri's constitution should be flexible and progressive enough to allow state public funds to be committed to new needs and purposes." *Menorah,* 584 S.W.2d at 79*, citing* 11 Debates, Constitutional Convention of 1943-44 ("Debates"), pp. 3208-3212. Indeed, the "whole point" of including what is now Article III, § 38(a), was that "the people ha[d] been slow to realize what was a public purpose." Debates, p. 3211. Thus Missouri courts have declined to draw a bright line to define "public purpose"; they recognize that the concept "keeps pace with changing conditions." *Burks v. City of Licking*, 980 S.W.2d 109, 112 (Mo. App. S.D. 1998) (internal quotation omitted). *See also, Americans United v. Rogers*, 538 S.W.2d 711, 719 (Mo. banc 1976) (same); *State ex rel. Jardon v. Indust. Dev. Auth. of Jasper County*, 570 S.W.2d 666, 675 (Mo. banc 1978) ("'The consensus of modern legislative and judicial thinking is to broaden the scope of activities which may be classed as involving a public purpose.'"), *quoting* 37 Am.Jur., Municipal Corporations, § 132. "If the

primary purpose of a statute is public the fact that special benefits may accrue to some private persons does not deprive the government action of its public character, such benefits being incidental to the primary public purpose." *State ex rel. Wagner v. St. Louis County Port Auth.*, 604 S.W.2d 592, 597 (Mo. banc 1980) (internal quotation omitted). And the courts have largely left the determination of a public purpose to the legislative branch; the legislative determination will not be overturned unless it is found to be arbitrary and unreasonable. *Menorah*, 584 S.W.2d at 78.

The purpose of the land assemblage tax credit is to encourage and assist in the redevelopment of land in areas deemed distressed under federal and Missouri law. *See* § 99.1205.2(8). This Court has expressly recognized redevelopment as a public purpose for constitutional analysis. "Redevelopment of blighted, substandard or insanitary areas is a public purpose." *Tierney v. Planned Indus. Expansion Auth. of Kansas City*, 742 S.W.2d 146, 150 (Mo. banc 1987). "[T]he clearing and redevelopment of a blighted area is for the public use of revitalizing such area to make it healthful." *State ex rel. U.S. Steel v. Koehr*, 811 S.W.2d 385, 389 (Mo. banc 1991). Even the Missouri constitution itself contemplates the State's involvement in redevelopment. Article VI, § 21 provides that "[l]aws may be enacted, and any city or county operating under a constitutional charter may enact ordinances, providing for the clearance, replanning, reconstruction,

redevelopment and rehabilitation of blighted, substandard or insanitary areas[.]"

Thus Missouri courts have routinely found that land redevelopment and urban renewal projects serve a public purpose. *See Koehr*, 811 S.W.2d at 389 (acquisition of parking lot to be conveyed to private developer for use with hotel upheld against public purpose challenge); *Rice*, 831 S.W.2d at 209 (city and county financing of Edward Jones Dome upheld against public purpose challenge); *Moschenross v. St. Louis County,* 188 S.W.3d 13, 21-22 (Mo. App. E.D. 2006) (loan of bond proceeds to private corporation for development of ballpark project upheld against public purpose challenge); *Tax Increment Fin. Comm'n v. J.E. Dunn Constr. Co., Inc.*, 781 S.W.2d 70, 74, 78-79 (Mo. banc. 1989) (rehabilitation of buildings and construction of new building for "office/warehouse uses" in tax increment financing district upheld against public purpose challenge). *See also State ex rel. Atkinson v. Planned Indus. Expansion Auth. of St. Louis,* 517 S.W.2d 36, 45 (Mo. banc 1975) (upholding planned industrial expansion statute against challenge that tax exemptions and easier financing given to private parties who bought or leased land for development outweighed public purpose); *State ex rel. Jardon,* 570 S.W.2d at 673-74 (legislation that authorized political subdivisions to approve separate corporations for purpose of developing industrial facilities to be leased or sold to private entities served a public purpose); *State ex inf.*

Danforth ex rel. Farmers' Elec. Co-op., Inc. v. State Envtl. Improvement Auth., 518 S.W.2d 68, 72-73 (Mo. banc 1975) (acquiring and construction of pollution abatement facilities for lease or sale to private industry served public purpose).

Nothing in the record nor in Manzara's and Marquard's argument establishes that the land assemblage tax credit is not the redevelopment program that it purports to be. *See* § 135.800.12 (includes land assemblage tax credit in list of "Redevelopment tax credits"). As set forth above, § 99.1205 provides the criteria that must be satisfied before an applicant is eligible for a land assemblage tax credit. These requirements include, among other things, that the land to be redeveloped be located within an "eligible project area" and be redeveloped in accordance with a redevelopment agreement approved by a municipality under an economic incentive law. § 99.1205.2(2), (7), (8), and (15). Further, the statute specifies the amount and use of permissible tax credits, requiring the funds generated through the use or sale of the tax credits to be used to redevelop the eligible project area. § 99.1205.2(2)(b)a and § 99.1205.3.

Given the onerous requirements, it is certainly possible that few will qualify for the land assemblage tax credit. But Manzara and Marquard have simply not shown that the land assemblage tax credit does not have a valid

public purpose: to assist in the redevelopment of distressed areas – as it so happens, including areas near their homes.

CONCLUSION

For the reasons stated above, the decision of the circuit court should be affirmed.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

The undersigned hereby certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b), and that the brief contains 4,817 words.

The undersigned further certifies that the labeled disk simultaneously filed with the hard copies of the brief has been scanned for viruses and is virus-free.

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