

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI
CIRCUIT JUDGE DIVISION

IN RE THE FORMATION OF)
THE OLIVE/GRAESER)
TRANSPORTATION)
DEVELOPMENT DISTRICT)

PACE-CREVE COEUR)
ASSOCIATES, L.L.C., et al.,)

Petitioners,)

v.)

MISSOURI HIGHWAYS AND)
TRANSPORTATION COMMISSION, et al.,)

Respondents.)

Cause No. 09SL-CC03790

Division 18

FILED
JIV. DEC 8 2009 13
JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

JUDGMENT AND ORDER
ORGANIZING A TRANSPORTATION DEVELOPMENT DISTRICT

On this 8th day of December, 2009, Petitioners Pace-Creve Coeur Associates, L.L.C., et al., by and through counsel, appeared before the Court on their Petition for the Formation of a Transportation Development District (the "*Petition*"), to be known as the Olive/Graeser Transportation Development District (the "*District*"), pursuant to the Missouri Transportation Development District Act, Sections 238.200 to 238.280 of the Revised Statutes of Missouri, as amended (the "*Act*"). Respondent City of Creve Coeur, Missouri ("*City*") appeared by counsel. Respondent Missouri Highways and Transportation Commission (the "*Commission*") did not appear but has consented to the entry of this Judgment and Order. After a hearing on the matter, and with no objection from any of the parties hereto, this Court, in consideration of the facts and law, hereby enters its Findings, Certifications and Conclusions and its final Judgment and Order as follows:

All capitalized terms in this Judgment and Order that are not otherwise defined herein have the meanings given to them in Exhibit A attached hereto and incorporated herein by reference.

Findings, Certifications and Conclusions

(a) Section 238.207.1 of the Act provides that if no persons eligible to be registered voters reside within the proposed transportation development district, the owners of record of all of the real property located within the proposed district may file a petition in the circuit court of any county partially or totally within the proposed district requesting the creation of the district. Section 238.217 of the Act authorizes reimbursement to the petitioners for the costs of filing and defending the petition out of the revenues received by the district. Section 238.220.2(1) of the Act further provides that if no persons eligible to be registered voters reside within the proposed district, the owners of the real property within the proposed district may elect the board of directors of the district, which board of directors is “to be composed of owners or representatives of owners of real property in the district.” The board of directors of the district is responsible for exercising all of the district’s legislative and executive powers, including the power to impose sales tax within the district upon approval of voters within the district and to authorize reimbursement to the petitioners or a related third party of any advances made by such parties to pay the Infrastructure Improvement Costs and the TDD Administrative Costs. In sum, when no persons eligible to be registered voters reside within the proposed transportation development district, the Act expressly authorizes the owners of the real property within the proposed district to petition the court to create the proposed district, to elect the district’s governing body, which has authority to approve reimbursement to the petitioners or a related third party of advances

made by such party, and to vote on the imposition of a transportation development district sales tax within the district.

(b) Under Section 238.235 of the Act, a transportation development district sales tax may be imposed upon approval of the qualified voters of the proposed district in increments of one-eighth of one percent, up to a maximum of one percent, on the receipts from the sale at retail of all tangible personal property or taxable services within the District. Section 238.216 of the Act provides that only “qualified voters” are entitled to request a ballot for voting on the question of whether a sales tax should be imposed within the district. Section 238.202.2(2)(b) of the Act defines “qualified voters” as the owners of record of the real property within the proposed transportation development district, with each owner having one vote per acre, if no persons eligible to be registered voters reside within the proposed district.

(c) Petitioners are the owners of record of all real property located within the proposed District (the “*Property*”), and no persons eligible to be registered voters reside within the proposed District. As the owners of the Property, Petitioners have standing to present the Petition seeking to create the District pursuant to the Act.

(d) The owners of record of the Property constitute the only “qualified voters” for purposes of the Act.

(e) The Commission is the body responsible for planning for and maintaining Missouri’s highway network and is a necessary party under Section 238.207.4(2) of the Act.

(f) The City is a municipal corporation of the State of Missouri that has framed and adopted a charter pursuant to Article VI, Section 19 of the Missouri Constitution and is a local transportation authority within the meaning of Section 238.202.1(4) of the Act. As an affected

local transportation authority within the District, the City is a necessary party under Section 238.207.4(2) of the Act.

(g) The Petition contains all of the information required by the Act and is not legally defective. Respondents have been duly served with process in this action or have otherwise properly appeared in this action.

(h) The proposed District is neither illegal nor unconstitutional.

(i) The proposed District is composed of land that is contiguous in that it is separated only by public streets, easements, or rights-of-way. A legal description of the Property is set forth in the Petition and attached hereto as Exhibit B and incorporated herein by reference. A map showing the area included in the District is attached to the Petition and hereto as Exhibit C and incorporated herein by reference.

(j) The District is properly, duly, and lawfully organized.

(k) The District is established as a political subdivision pursuant to and in accordance with the Act for the sole purpose of funding the Infrastructure Improvements and the payment of the Infrastructure Improvement Costs and all TDD Administrative Costs through the imposition of the TDD Sales Tax.

(l) The Infrastructure Improvements are an authorized “project” within the meaning of Section 238.202.1(5) of the Act. A general description of the Infrastructure Improvements, including a description of the approximate location of the Infrastructure Improvements, is set forth in Exhibit D attached hereto and incorporated herein by reference.

(m) Upon the Commission’s approval as hereinafter set forth, the State Infrastructure Improvements will be merged into the state highways and transportation system under the Commission’s jurisdiction. The Commission has declined to consider the Local Infrastructure

Improvements pursuant to Section 238.225.3 of the Act. It is contemplated that the Local Infrastructure Improvements will be dedicated to the City and/or St. Louis County (the “*County*”) following their completion.

(n) Petitioners or a related third party may advance certain Infrastructure Improvement Costs and TDD Administrative Costs and may seek reimbursement for such advances from the District from the proceeds of the TDD Sales Tax to be imposed within the District. This Court hereby authorizes and directs the reimbursement to Petitioners or a related third party of any advances by such party to pay for Infrastructure Improvement Costs and TDD Administrative Costs and authorizes the District to issue a note to evidence the obligation to reimburse Petitioners or a related third party for such advances.

(o) The proposed funding method and mechanism (i.e., the imposition of the TDD Sales Tax) is neither illegal nor unconstitutional, and the TDD Sales Tax is certified for voter approval pursuant to Section 238.210.2 of the Act.

(p) The District and the implementation of this Judgment and Order will not be an undue burden on any owner of the Property and the District is not unjust or unreasonable.

(q) The District may incur indebtedness and issue TDD Obligations pursuant to Sections 238.240 and 238.242 of the Act.

(r) Petitioners and the City have agreed that all activities of the District shall be in accordance with that certain District Development Agreement dated as of August 31, 2009 (the “*District Development Agreement*”), as amended by that certain First Amendment to District Development Agreement dated as of August 31, 2009 (the “*First Amendment*”). The District Development Agreement and First Amendment are attached hereto as Exhibit E and incorporated herein by reference.

(s) The City has approved the description of the Infrastructure Improvements through its approval of the District Development Agreement, as amended (Exhibit “C” of which describes the Infrastructure Improvements), by the City’s Resolution No. 5062 adopted on October 27, 2008; Resolution No. 5071 adopted on December 8, 2008; Resolution No. 5082 adopted on April 13, 2009; and Resolution No. 5099 adopted on August 24, 2009.

(t) Pursuant to this Court’s order dated October 29, 2009, and in accordance with Section 238.212 of the Act, a public hearing on the creation and funding of the District was held on Thursday, December 3, 2009, at 6:00 p.m., at the Creve Coeur Government Center, 300 N. New Ballas Rd., Creve Coeur, Missouri 63141. Proper notice of such hearing was given to the public in accordance with Section 238.212 of the Act, as set forth in the affidavit of publication attached hereto as Exhibit F and incorporated herein by reference. A transcript of the hearing was made and will be kept in the District’s records.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that:

A. The District is hereby organized and established as a political subdivision pursuant to and in accordance with the Act for the sole purpose of financing the Infrastructure Improvements through the imposition of the TDD Sales Tax pursuant to Section 238.235 of the Act. The proceeds of the TDD Sales Tax will be applied to the payment of all costs authorized by or permitted under the Act, including but not limited to the Infrastructure Improvement Costs, the TDD Administrative Costs, and the costs of filing and defending the Petition. Details of the budgeted expenditures for the Infrastructure Improvements and the anticipated revenues from the TDD Sales Tax are attached to the Petition and hereto as Exhibit G and incorporated herein by reference;

B. The District is hereby ordered to execute the District Development Agreement and the First Amendment no later than the first meeting of the board of directors of the District;

C. Until the District completes the Infrastructure Improvements and transfers ownership of or authority over the Infrastructure Improvements to the Commission or a local transportation authority pursuant to Section 238.275 of the Act, all Infrastructure Improvements shall remain under the control and jurisdiction of the District unless otherwise approved by contract of the District, as provided in Section 238.270 of the Act;

D. The District includes in its boundaries all the real property described on Exhibit B, which description is incorporated herein by this reference. A map illustrating the District's boundaries is set forth on Exhibit C. A general description of the Infrastructure Improvements is set forth on Exhibit D;

E. Pursuant to Section 238.235 of the Act, the Missouri Director of Revenue will perform all functions incident to the administration, collection, enforcement, and operation of the TDD Sales Tax, and the Director of Revenue will collect the TDD Sales Tax in addition to all other sales taxes imposed by law. The Director of Revenue will deposit all proceeds of the TDD Sales Tax into a special trust fund to be expended for the purposes specified in Paragraph A of this Judgment and Order;

F. The Infrastructure Improvement Costs and TDD Administrative Costs may be funded from (i) moneys advanced by Petitioners or one or more related third parties, (ii) a loan from another third party, or (iii) by the issuance of TDD Obligations by the District as authorized in Sections 238.240 and 238.242 of the Act or by the City or the County on behalf of the District pursuant to Section 238.242.4 of the Act. The proceeds of such advances, loans, or TDD Obligations will be applied to pay the Infrastructure Improvement Costs and TDD

Administrative Costs. Any funds advanced by Petitioners or a related third party for Infrastructure Improvement Costs and TDD Administrative Costs will be reimbursed directly from the proceeds of the TDD Sales Tax or will be evidenced by a TDD Obligation. The board of directors of the District will seek voter approval of the imposition of a TDD Sales Tax at the rate of one percent (1%). The District will impose such sales tax at such rate, not to exceed one percent, as is necessary to provide revenues sufficient to pay the Infrastructure Improvement Costs, the TDD Administrative Costs, the costs of filing and defending this Petition as authorized by Section 238.217 of the Act, and payment of the principal of, premium, if any, and interest on the TDD Obligations;

G. The District shall have only those powers, rights, and obligations set forth in this Judgment and Order and the Act, and such implied powers, rights, and obligations as are necessary to the execution thereof and necessary and appropriate to the District's purpose described in this Judgment and Order and not inconsistent with the Act;

H. Pursuant to Section 238.220.2 of the Act, a meeting of the owners of record of the Property is hereby called at 10:00 a.m. on December 16, 2009, at the Creve Coeur Government Center, 300 N. New Ballas Rd., Creve Coeur, Missouri 63141, to elect the initial board of directors of the District. The Property owners shall elect a chairperson and secretary of the meeting to conduct the election of the board of directors;

I. The Petitioners, as the sole owners of the Property, shall elect a board of directors of the District pursuant to the requirements of the Act, which board of directors shall consist of nine (9) members. The terms of office of the initial members of the board of directors of the District will be staggered, such that the three members receiving the highest number of votes will have an initial three-year term, the three members receiving the next highest number of votes

will have an initial two-year term, and the three members receiving the fewest number of votes will have an initial one-year term. After the initial terms, all members of the board of directors of the District will be elected for three-year terms. The Commission and the City may each appoint one or more non-voting advisors to the board of directors of the District as provided in Sections 238.220.4 and 238.220.5 of the Act;

J. Pursuant to Section 238.222 of the Act, the board of directors of the District shall have its first meeting for the purpose of conducting business on the same date and at the same location as and immediately following the adjournment of the meeting of the owners of record of the Property;

K. Following the adoption by the board of directors of the District of a resolution imposing the TDD Sales Tax and submitting a proposal relating thereto to the qualified voters of the District, the funding method for the Infrastructure Improvements is certified for qualified voter approval, pursuant to Section 238.216 of the Act, by unanimous petition (substantially in the form set forth on Exhibit H attached hereto and incorporated herein by reference) approving the imposition of a one percent (1%) TDD Sales Tax by the District for a period of no longer than that period of time reasonably required to retire the TDD Obligations, but in no event to exceed forty (40) years, with each owner of the Property receiving one vote per acre owned. The unanimous petition shall be submitted to the Circuit Clerk, who shall verify the authenticity of all signatures thereon by acknowledging and certifying that such signatures have been duly notarized in accordance with Missouri law. This Court recognizes such actions are necessary for the proper formation and operation of the District, are subject to this Judgment and Order and, as such, this Court determines that such actions, and any other actions expressly authorized under

the Act, fall within the intent of Section 105.466 of the Revised Statutes of Missouri, as amended, as “acts required by order of a court or by law to be performed”;

L. The results of the election described in Paragraph K above shall be entered upon the records of this Court and a certified copy shall be filed with the County Clerk’s office to be spread upon the records of the St. Louis County Council pursuant to Section 238.216.6 of the Act; and

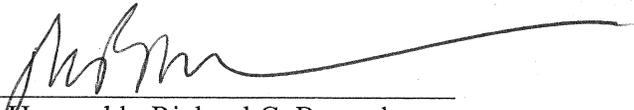
M. In accordance with Section 238.225.1 of the Act, before construction or funding of the State Infrastructure Improvements, the District shall submit the State Infrastructure Improvements, together with the proposed plans and specifications, to the Commission for its prior approval. In accordance with Section 238.225.1 of the Act, if the Commission by minute finds that the State Infrastructure Improvements will improve or are a necessary or desirable extension of the state highways and transportation system, the Commission may approve the State Infrastructure Improvements subject to the District making any revisions in the plans and specifications required by the Commission and the District and Commission entering into a mutually satisfactory agreement regarding development and future maintenance of the State Infrastructure Improvements, and further subject to the District acquiring or causing to be acquired all necessary permits from the Commission for the State Infrastructure Improvements and developing the State Infrastructure Improvements in accordance with the Commission’s approvals and permits; and

N. In accordance with Section 238.225.2 of the Act, before construction or funding of the Local Infrastructure Improvements, the District shall submit the Local Infrastructure Improvements, together with the proposed plans and specifications, to the City and/or the County, as applicable, for prior approval. In accordance with Section 238.225.3 of the Act,

approval of the Local Infrastructure Improvements shall vest exclusively with the City and/or the County, subject to the District making any revisions in the plans and specifications required by the City and/or the County and subject to the District and the City and/or the County entering into a mutually satisfactory agreement regarding development and future maintenance of the Local Infrastructure Improvements, and further subject to the District and the City and/or the County acquiring all necessary permits from the Commission for any connections of the Local Infrastructure Improvements with the state highway system and developing the Local Infrastructure Improvements in a manner compatible with the future development of the state highway system; and

O. Costs are taxed to the Petitioners.

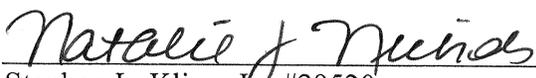
SO ORDERED this 8th day of December, 2009.



The Honorable Richard C. Bresnahan
Twenty-First Judicial Circuit
State of Missouri
Division No. 18

Respectfully submitted,

JENKINS & KLING, P.C.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served via U.S. Mail, postage prepaid, upon:

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this 8th day of December, 2009.

Natalie J. Munds