The Conceptual Pliability of TIF and the Political Rhetoric of Environmental Remediation:

Groundwater Pollution and Tax “Decrement” Financing in Wichita

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Introduction

As federal support for cities has eroded over the past half century, as cities have become more entrepreneurial in their approach to municipal finance, and as taxpayers and elected officials have tended to express little appetite for new local taxes, tax increment financing (TIF) has emerged as cities’ “most popular tool” – that is, as “the most widely used local government program for financing economic development in the United States” (Briffault 2010, p. 65). The flexibility inherent in the concept of TIF has facilitated its spread to cover both redevelopment and new-build development related to a wide variety of projects, not just in inner cities but across urban, suburban, and exurban locations. Far from being merely an application of a new financial mechanism to cover previously established urban renewal goals like blight removal and remediation (see Weber and O’Neill-Kohl 2013), TIF is now commonly used to support the creation of new suburban shopping plazas (Arvidson, Hissong, and Cole 2001), brownfield redevelopment in small cities (Zachmann and Steinwall 2001), and a range of athletic stadiums, museums, and institutional structures in municipalities large and small across the country (see Briffault 2010; Weber and Goddeeris 2007). Its maturation into “an all-purpose property development tool” has been facilitated by the fact that, in most states, “the legislation was written so loosely that actors could exploit its flexibility and the gray areas where the law did not reach” (Weber and O’Neill-Kohl 2013, p. 203). This flexibility has been further enhanced by a loosening of the application and interpretation of the word term “blight” (Weber and O’Neill-
Kohl 2013), as well as by a steady shift of municipal priorities away from excising blight and toward remediating obsolescence (Weber 2002).

The broad applicability and flexible financial mechanisms of TIF dovetail with a widespread lack of understanding of TIF among policymakers and the public alike in augmenting the political palatability of TIF, and both the flexibility and the vagueness of the idea of TIF at once fuel and depend upon ongoing controversies regarding the effectiveness and equity of TIF. Evaluations of TIF often arrive at competing conclusions. Some studies find that TIF yields robust economic growth, while others detect minimal impact; some conclude that TIF harms overlapping taxing jurisdictions, while others conclude that the economic growth generated by TIF ultimately outweighs those negative impacts, providing long-term revenue benefits for all taxing jurisdictions (for an overview, see Man 2001). Ambivalence in evaluations of TIF is especially prevalent in considerations of the “but for” argument, as the difficulty involved in proving a negative provides supporters of TIF projects with rhetorical ammunition to deflect critiques of projects that fail to realize lofty development goals. Such inconclusiveness (combined with the common assertion of “fiscal responsibility” surrounding a tax mechanism that, by definition, does not ostensibly raise tax rates on a tax-averse public) lends TIF a mystical veneer of incorruptibility. When it is successful, TIF seems to create entirely new value – paying for itself, generating new development, and providing augmented tax revenue that otherwise would not have existed. And even when TIF projects fail to achieve their development goals, they can be written off as noble initiatives that placed little, if any, additional cost burden on taxpayers. This perception of TIF as a mechanism with minimal downside has certainly contributed both to the growth in its implementation and to its increasingly creative and diverse applications (Briffault 2010).
Despite localized conflicts that emerge over proposals for new TIF districts, the combination of these factors – the growing popularity of TIF as an economic development tool, the lack of public understanding of TIF, and the general perception that TIF provides an opportunity for otherwise unachievable development with minimal risk to taxpayers – make TIF a continuously appealing option for developers and cash-strapped municipalities alike. Other researchers have explained how these attractive features have contributed to the increasingly loose application of TIF to new types of projects. In this chapter, we demonstrate how these same factors underlying the appeal of TIF can provide an incentive to apply the “TIF” label to tax structures that bear little, if any, resemblance to the actual logic of TIF.

In 1991, the city of Wichita, Kansas, under the leadership of City Manager Chris Cherches, established what it called “Tax Increment Financing District #1” to generate locally-sourced revenue to fund environmental remediation of contaminated groundwater below several square miles of the city. Despite its label, this TIF district was not authorized under the state’s existing TIF law, but instead required the drafting of an entirely new state statute permitting the city to implement a special tax district that bears only cosmetic resemblance to a TIF district. In this chapter, we examine this case of the application of the appealing “TIF” label to a non-TIF-based tax policy. Drawing on archival research, media reports from the 1980s through the present, data from annual city budgets and tax documents from Sedgwick County, Kansas, and in-depth interviews with current and former city and county officials, EPA officials, and experts in fields ranging from environmental contamination to property appraisal, we trace the history of Wichita’s groundwater pollution crisis and the city’s attempt to use TIF to address the problem. We examine the legal and legislative obstacles that the city faced in its attempt to implement such a plan, and we dissect and evaluate the property tax strategy that the city ultimately put into
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place to fund the cleanup. Throughout our analysis, we draw particular attention to city officials’ commitment to the idea of TIF, the rhetorical strategies that they utilized to persuade legislators, other taxing jurisdictions, and the public to adopt their plan, and the strategic deployment of “but for” arguments to defend this plan in the face of criticism.

Wichita’s Groundwater Pollution Crisis

In 1986, a routine inspection conducted by the Kansas Department of Health and Environment (KDHE) revealed substantial pollution in the soil near an industrial firm about three miles south of Downtown Wichita. As further tests were conducted over the following years, it became increasingly clear that the city’s pollution problem was not confined to this property (Terrebonne 1994). The scale of the problem that Wichita was dealing with began to emerge in 1988 and became clearer through 1989 and early 1990, as further tests were conducted (Rosegrant [1992] 1996). While many small sites of contamination – common in cities across the country – had previously been identified for remediation, a major plume of groundwater pollution was identified in 1990 underneath the massive factory of the Coleman Company, the Wichita-based manufacturer of lamps and camping equipment (Terrebonne 1994). In February, 1990, Coleman was sued by a Wichita bank, which claimed that a property that the bank had foreclosed on and was trying to sell had been rendered effectively worthless by the polluted groundwater beneath it (Hays 1990a). Coleman, which conducted tests of the area, suspected that the groundwater contaminants had come from a leaking sump pump.

Unlike the original contamination that had been discovered several miles from Downtown in 1986, the Coleman factory was located mere blocks from the heart of Downtown Wichita, and the leaching contaminants had infiltrated the groundwater that lay beneath most of
the city’s central business district and were spreading slowly southward, affecting an area roughly one mile wide and 4.5 miles long (Rosegrant [1992] 1996; Terrebonne 1994). The intersection of Gilbert Street and Mosley Street, in an industrial area south of Downtown Wichita, lay at the center of the polluted region, and this intersection quickly became the namesake of the contaminated district, which has been referred to as the “Gilbert-Mosley” district both in official documents and in casual conversation about groundwater pollution in Wichita since the early 1990s. As the true scope of the Gilbert-Mosley problem became clear, business owners, downtown boosters, developers, and city leaders grew increasingly alarmed: if, as the plaintiffs alleged in the 1990 lawsuit against Coleman, downtown real estate was deemed unsellable and “essentially worthless” (Finger 1990) due to the pollution, banks would halt lending in the city’s core and the already sluggish economic activity in the central business district (see Billingham 2017) would stagnate even further.

These fears intensified when KDHE revealed that the area of contamination – including, notably, all of Downtown Wichita – might be designated a Superfund site under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA; see Terrebonne 1994; Tripp 1991). The Coleman site, though large in pollutant volume, was just one of hundreds of industrial spaces that had potentially contributed to the area’s groundwater contamination; moreover, many, if not most, of the establishments that had contributed to the pollution were either no longer in business or had changed hands, further complicating the determination of blame and responsibility for cleanup (Glaser 1994).

This was precisely the kind of situation that CERCLA was designed to deal with. By sidestepping the tedious and contentious process of identifying individual responsibility, EPA could step in and manage a centralized and efficient cleanup process (at least in theory; in
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practice, Superfund had by this time yielded mixed results and generated significant pushback from municipalities). The idea of a Superfund declaration for Gilbert and Mosley, however, was a non-starter for municipal and financial leaders in Wichita. They were primarily concerned with the potential for stigma associated with the Superfund designation itself. City officials feared that the stigma attached to that label could doom redevelopment efforts in the already moribund urban core (Glaser and Cherches 1991). Equally troubling, though, was the issue of liability. CERCLA gave EPA quite expansive power to collect the cost of cleanup from current property owners, regardless of whether they contributed to the pollution (Tripp 1991). The potential for such liability for ostensibly innocent parties could make potential buyers and investors wary of all downtown property. “You buy the property, you buy the cleanup. That’s a fact, Jack,” said a local attorney representing a downtown property owner (Hays 1990b).

Crafting a Local Solution: Increments, Decrements, and the Mysterious “40 Percent”

City officials, led by City Manager Chris Cherches, knew that they had to hurry to address the pollution problem. Having endured negative experiences dealing with Superfund in the past, the city was desperate to avoid having Gilbert-Mosley added to EPA’s National Priority List (NPL), an early step in invoking Superfund. Because an EPA site investigation (potentially resulting in NPL listing) could be imminent, they agreed that they had to act quickly to propose an alternative strategy for cleaning the groundwater if they wanted to be assured that the site would not be taken over by EPA (Glaser and Cherches 1991, 1992; Rosegrant [1992] 1996).

In the early 1990s, negative perceptions of Superfund were common and not limited to the Wichita officials overseeing Gilbert-Mosley. Communities across the country found themselves in similar situations, with large tracts of land that were polluted for decades and were
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suddenly facing NPL listing by EPA. More than 1,400 potential sites were identified in the decade after the passage of CERCLA (O’Neil 2007). Thus, when city leaders began contemplating the option of Superfund status, they were likely drawing on a common perception of Superfund as a sluggish, expensive, and inefficient federal program that slowed the pace of environmental cleanup, cost billions of dollars, and wasted too much public money in “transaction costs” – the dollars that went to the lawyers and consultants who helped negotiate with the thousands of potentially responsible parties (Eliot 1992). Over time, the program’s reputation has improved as issues regarding efficiency, cost, and litigation have largely been resolved. At the time that the Gilbert-Mosley pollution crisis was unfolding, however, Wichita’s reaction to the looming threat of Superfund was not necessarily unreasonable.

Cherches and his staff considered a range of options for how to generate public financing for the cleanup, including setting up a special tax district that would charge property owners an additional levy directed toward remediation activities, issuing bonds that would be paid off through increased property taxes citywide, or levying a tax across Sedgwick County or across the state to distribute the burden (Cross 1990a; Glaser 1994; Rosegrant [1992] 1996). Each of these options was deemed unworkable, largely because the city leadership worried that those ideas would face fierce public opposition and could spark a tax revolt from property tax owners in other parts of the city, county, or state who were far removed from the Gilbert-Mosley site.

Instead, the city opted to use TIF to generate the revenue needed for the remediation, reasoning that this strategy “would be the most equitable and politically palatable way to raise funds” (Rosegrant [1992] 1996, p. 152). This application of TIF would make up one dimension of Cherches’s multifaceted strategy for financing a locally based cleanup effort. The plan would involve at least five moving parts, and all of the pieces would need to fall into place for the entire
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plan to function properly. The city would (1) enter into an agreement with EPA and KDHE to initiate a local cleanup with minimal state or federal involvement. Financing the local cleanup would require (2) entering into negotiations with polluters (especially Coleman) to extract payments for the portion of the pollution that was deemed to be their responsibility. Such an agreement would also be necessary (3) to persuade local banks to restart lending activity in Downtown Wichita, thus halting the redlining that was presumed to have caused the precipitous decline in property values. In order to convince the banks to lend again, the banks demanded that the city (4) implement what came to be known as a “certificate and release” program, issuing certificates to property owners within Gilbert-Mosley who were confirmed not to have contributed to the groundwater pollution and thereby also testifying to those properties’ safety from the pollution itself, the other major factor imperiling property values in the area. Having thus shielded innocent property owners from the threat of litigation, restored their ability to obtain bank loans, and (presumably) restored confidence in their property values, the final piece of the puzzle involved (5) establishing a TIF district that would certify the devaluation and revaluation of thousands of parcels in the district, thereby generating an “increment” in value that could be tapped as a revenue source of last resort in the (unlikely, in city officials’ estimation) event that polluters failed to pay their fair share of the cleanup costs. Cherches and his staff moved quickly in 1990, successfully putting the first four of these mechanisms into place; it was the TIF proposal itself that gave the city the most consternation.

The main advantage of typical TIF projects, as others have explained (see, e.g., Klacik and Nunn 2001), is that the necessary funds can be raised with no ostensible impact upon property tax rates if the improvements that the TIF district supports result in rising property values over time. This was an attractive prospect in tax-averse Kansas, and was especially useful
in this circumstance, since many residents believed that the companies who caused the pollution, and not all taxpayers, should be held responsible for the cost of the cleanup. As Mark Glaser, a professor who served as special assistant to Cherches at the time, explained, “Wichita city government risked its taxpayers’ wrath by accepting liability for environmental cleanup” (Glaser 1994, p. 349); directing tax dollars toward the cleanup without any obvious impact on anyone’s property tax rate could, therefore, help to assuage some of that wrath.

TIF districts generally operate on the assumption that the public improvements financed through TIF-supported bonds lead to increased assessments, thereby generating higher tax revenues that can be used to pay off initial bonds used to finance the improvements. Cherches and his staff envisioned this projected working in a different manner, however. They presumed that all property values in the Gilbert-Mosley region either had fallen in reality, or could potentially fall precipitously, because of the pollution crisis. They further presumed that by intervening in this cleanup, the city had either restored those property values to their previous levels, or alternatively that they had prevented what would have been a catastrophic decline in values. It is unclear which of those scenarios Wichita’s city leaders actually believed to be true, since they vocalized both scenarios at various times. At some points, Cherches suggested that property in Gilbert-Mosley had “lost value drastically since bankers began refusing to make loans in the area” (Cross 1990c), while at other times he suggested that the decline in values was hypothetical, stressing that “[f]ailure to act would have placed a significant portion of Wichita’s tax base in jeopardy” (Glaser and Cherches 1991, p. 170; emphasis added).

Along with the vagueness surrounding the understanding of the movement of property values in Gilbert-Mosley, Cherches and his staff also remained vague regarding the mechanism by which property values had suddenly been restored, thus justifying the “increment.” Was the
decline in value caused by the pollution itself? If so, then the city’s mere announcement that it, rather than EPA, would clean up the pollution would presumably have little immediate effect, since it would be years before the remediation would actually begin and all of those properties would remain polluted. Was it the threat of the stigma of Superfund that did (or potentially could) cause values to plummet? This would be difficult to quantify and nearly impossible to disentangle from the stigma of the pollution itself, which would remain in the area regardless of which entity took control of the cleanup. Or, alternatively, was it banks’ threat of redlining the area and cancelling all lending activity in the face of Superfund intervention that drove down property values? This is the most likely scenario, but this assertion itself calls into question the likelihood that Cherches’s plan would restabilize values in the area by reinvigorating lending.

Downtown Wichita had been stagnant for decades (Billingham 2017), and the industrial and residential neighborhoods of South Wichita that made up the bulk of the Gilbert-Mosley district were perennially distressed. While the banks may have agreed in principle not to deny loans solely on the basis of contamination, they were still free to engage in their normal process of loan application review. The agreement signed by the city and KDHE specified that banks would not deny loans if property owners had obtained the proper certificate and release document, “so long as such loans are consistent with the historic and prudent lending practices” that they had engaged in prior to the discovery of the pollution (Powell 1994). But the pollution or other stigmatizing factors could still dissuade potential buyers, even if banks agreed not to explicitly redline the area. As a local attorney who opposed the Cherches plan asserted, the strategy “is not going to affect the marketability of these downtown properties. Banks still won’t loan money on those properties” (Cross 1990b).

For all of these reasons, the logic behind the “tax decrement” plan was shaky. In practice,
the process of measuring and recording the impact of the pollution and/or Superfund risk proved unwieldy. Forced to move quickly, city officials could not suddenly have thousands of properties reappraised to ascertain a true decline in property values, and there was no reliable process for incorporating the threat of pollution or EPA involvement into the value of real property. With no definitive means of determining the unique impact that the contamination would have on each parcel, proponents of the Cherches plan began using the phrase “40 percent” to refer to a blanket and uniform devaluation across all parcels within the six-square-mile area. In February, 1990, the Wichita Eagle reported that “[b]y some estimates downtown property values have fallen 40 percent because of pollution” (Cross 1991; emphasis added). Four days later, the same newspaper quoted Cherches as saying “property values in the pollution zone could drop as much as 40 percent because of the groundwater contamination” (Comes 1991b; emphasis added).

The origins of the 40 percent figure are difficult to ascertain. In a similar groundwater pollution site north of Downtown Wichita that came to be known as the “Northern Industrial Corridor” (NIC) site, affected property owners had appealed to have their property tax bills lowered in the face of the pollution, and, as Glaser and Cherches (1991) wrote in a magazine article explaining and celebrating the city’s response plan, property owners in that area were “typically being granted 40 percent reductions in property values as a market reaction to the discovery of groundwater contamination” (p. 173; see also Tripp 1991; Glaser and Cherches 1992, p. 5; Powell 1994; Glaser 1994; Terrebonne 1994; and Rosegrant [1992] 1996 for arguments using similar language, with no explanation for the 40 percent figure other than citations to other reports written by city officials). In an interview, one former city official who was heavily involved in the planning and negotiation for the Gilbert-Mosley plan speculated that the 40 percent figure may simply have been overheard by a Sedgwick County official who had
attended a seminar on property valuation issues.

Whatever its provenance, even 15 years later the city was still citing the 40 percent decrease in value as a key cause of the need for prompt action. In 2004, as the city was arguing to extend the life of the Gilbert-Mosley TIF, the city’s economic development director reasserted the statistic, this time broadening its reach to claim that “Superfund sites around the country have fallen 40 percent in value” (Finger 2004b). This claim was almost certainly false. Estimates of the impact of Superfund listing on nearby housing values have yielded contradictory results, with some studies finding modest declines and others finding no effect at all, or even small positive impacts. Moreover, as in the case of Gilbert-Mosley, it is extremely difficult to distinguish the impact that Superfund might have on property values from the potential negative impact of the pollution itself (for a detailed review of this literature, see U.S. Environmental Protection Agency 2009).

This extended discussion of the cloudy origins of the “40 percent” value reduction claim may seem tangential and excessively esoteric, but it is important because Cherches’s original strategy for a TIF plan to clean up the Gilbert-Mosley site relied heavily upon that number of dubious origin (Cross 1990c). Calling this strategy a “tax decrement” financing mechanism, city leaders proposed that the 40 percent drop in value be legally certified through “a reappraisal of the properties within the Gilbert and Mosely [sic] site, taking into account the decrease in value due to the presence of the contamination and the resulting inability to obtain funding” (Tripp 1991, p 134). From there, the city’s certificate and release program would indemnify innocent property owners, thus easing banks’ anxiety about lending and thereby automatically restoring property values to their previous levels. The drop and subsequent restoration of property values would be essentially simultaneous, but they would provide a documented gap in aggregate
assessed value, “thereby establishing the increment used to pay unassigned cleanup costs associated with the Gilbert-Mosely [sic] site” (Glaser 1994, p. 349). In practice, like a traditional TIF, property owners within the affected area would pay the same total tax rate as those in the rest of the city, with a portion of the revenue generated in the district that would normally go to the city, the county, and the public school district redirected into a special fund dedicated exclusively to pollution remediation. At the end of the life of the district, all property in the district would return to the same tax rates as the rest of the city, fully restoring the contributions to all local taxing entities.

The Gilbert-Mosley TIF was originally projected to last 20 years, and though the city, the county, and the school district would face moderate reductions in tax revenues, proponents of the plan argued that those reductions would be less than what they would have faced if property values had indeed fallen by 40 percent or more in perpetuity as a result of the contamination. By restoring property values through prompt and efficient locally-directed remediation, the project would, in the long run, have a positive impact on tax revenues.

Indeed, when promoting this plan before the state legislature, Wichita’s finance director presented alternative scenarios projecting the impact on aggregate tax revenues. In his most optimistic projection, where “potentially responsible parties” (PRPs; i.e., polluters) would pay for 75 percent of the cleanup and the TIF would be relied upon for only 25 percent, he predicted that the tax impact would be $360,000 per year. Even in his most pessimistic projection, where PRPs paid for only 25 percent of the cleanup, and the TIF shouldered 75 percent of the burden, the tax impact would be only $1.44 million annually. By contrast, he warned, in the event of Superfund intervention and no TIF plan, property values would plummet by 40 percent, leading to an annual drop in tax revenues of $5.01 million (see Powell 1994). By that logic, it seemed to
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make perfect sense to move forward with the Cherches plan and avoid the threat of Superfund.

Notwithstanding the unsupported assumptions regarding Superfund, the vague descriptions of the mechanisms behind the supposed movement of property values, and the inability to predict how long the cleanup would take or how much money it would require from local taxpayers, the original Cherches plan did, in many ways, reflect a variant on the basic structure of TIF. Ultimately, however, this was not the financing mechanism that was adopted to address the groundwater pollution problem.

The Creation of a New TIF Statute

The state of Kansas had already had a TIF law on the books for more than a decade, though TIF had never before been implemented in Wichita. This rather standard TIF statute entailed establishing base year valuations and documenting increases in assessed value as improvements were implemented in order to determine the increment. Despite city officials’ regular warnings about the presumed decline in property values in Gilbert-Mosley, that decline was never actually documented; that is, the lower base-year valuations that would be necessary in order to generate the increment through the presumed revaluation of property caused by Wichita’s intervention was always merely theoretical. As a city lawyer explained,

[t]he appraised value of the property in the contaminated area had not been decreased by the county appraiser to reflect the loss in value it was thought the property had sustained and did not reflect the loss that would be sustained in the future if something was not done. That meant that a traditional tax increment finance approach as provided for under state law would not work. (Powell 1994)

The original proposal faced opposition from county appraisers, the Kansas Department of
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Revenue, and some members of the state legislature (Gossett 1991b). Among other concerns, the proposal violated the state’s “cash basis” law, which prevents cities from committing funds toward a long-term project if those funds are not currently available in the treasury, effectively prohibiting deficit spending.

Rather than abandoning the TIF strategy, or trying to adapt their plan to work within the confines of the existing TIF law, city officials set about to write a new law specifically tailored to the financing of Gilbert-Mosley. While leaving in place the existing Kansas TIF law, this bill (HB 2124) created a new statute providing a second manner for creating and administering TIF districts in Kansas.

Within a matter of weeks the new bill was working its way through the Kansas legislature. It, too, was controversial, particularly among some Wichita lawmakers who were concerned that the proposal might end up letting Coleman and other PRPs off the hook for their portion of the cleanup costs (Gossett 1991a). Despite some objections raised during legislative hearings, the bill passed smoothly through both chambers of the state legislature and was signed by the governor on May 9, 1991. One week later, the Wichita City Council approved the agreement that Cherches had reached with local banks to stop automatically refusing loans in the Gilbert-Mosley area, and two months after that the City Council approved the redevelopment plan, the certificate and release program, and the creation of the TIF district authorized under the new law (Comes 1991a).

The mechanisms of this TIF, however, were not the same as those envisioned in the original Cherches plan. Under the new statute created by HB 2124, a new form of TIF was permitted within an environmentally contaminated areas of a city if the city had entered into an agreement similar to the one that Cherches and his staff had engineered with Wichita banks. In
such circumstances, the new statute affirmed, the city could redirect a portion of the district’s total property tax revenue into a separate fund to pay for cleanup operations. “Each year’s increment,” the statute read, “shall not exceed 20% of the amount of taxes that are produced from the redevelopment district area in the year the redevelopment district is first established” (Kansas Statute 12-1771a).

That sentence in the statute became the cornerstone of the financing mechanism that would support remediation efforts over the next several decades, through the present day. In legislative hearings over HB 2124, “Cherches told the House Economic Development Committee . . . that the city thinks it will get 90 percent paid by companies that contributed to the problem, including Coleman Co.” (Gossett 1991b). Therefore, the city assured lawmakers, the TIF would be a funding source of last resort. Even so, the 20 percent clause specified that Wichita could draw, every year, an amount up to 20 percent of the property tax revenue generated within the Gilbert-Mosley district in its first year of existence (i.e., 1991). In that year, the mill levy was 128.855 mills, and the total assessed value within Gilbert-Mosley was $103,606,491 (Terrebonne 1994). The total tax collected that year was $13,350,214, and 20 percent of that figure is $2,670,043. Through the powers provided by Kansas Statute 12-1771a, then, the city was entitled to take $2,670,043 every year off the top of the property tax revenue generated within the Gilbert-Mosley district to pay for remediation efforts.

This was arguably a reasonable strategy for limiting the public burden for the cleanup to the areas most affected, and it was arguably a smart way to guarantee a steady stream of money to finance the environmental treatment activities. What it was not, strictly speaking, was an example of TIF.
Implementing the Gilbert-Mosley “Decrement” Plan

In practice, as elaborated by Sedgwick County staff during in-depth interviews, public funding for environmental remediation in Gilbert-Mosley operates in a relatively straightforward manner. The city establishes an annual budget for the Gilbert-Mosley remediation project. The tax revenue deemed necessary (up to the limit of $2.67 million) is requested by the city from the county, which collects and allocates property tax revenue to the various cities, school districts, and other taxing jurisdictions within the county. The county distributes those funds to the city for the cleanup, then reduces the city, county, and school district mill levies within the Gilbert-Mosley area in order to make the total mill levy assigned to that district match the total mill levy for the rest of the City of Wichita. There are several other traditional TIF districts layered on top of portions of the Gilbert-Mosley district, but Gilbert-Mosley funding comes off the top of all aggregate property tax revenue, before distributions are made to those TIF districts or other taxing entities.

Though Gilbert-Mosley is entitled to up to $2.67 million in property tax revenue annually, in the early years of the project a significantly lower amount of public funding was written into the district’s annual budgets. Figure 1 presents projected revenues for Gilbert-Mosley included in adopted city budgets every year since the district’s creation. As Figure 1 illustrates, from 1992 through 1999, TIF contributions to Gilbert-Mosley revenues were lower than $1 million each year, and in 2000 TIF revenue just barely exceeded $1 million. This was likely due to the fact (1) that the cleanup did not actually begin until 2001 (so the project’s expenditures were relatively low), and (2), that Cherches and other city leaders still hoped that responsible parties would bear most of the cost of the cleanup, leaving the TIF district as a funding source of last resort. Annual adopted city budgets bear this out. As Figure 1
demonstrates, city leaders expected millions of dollars to flow into the cleanup fund every year from legal settlements with polluters, and they built these expected settlement funds into the district’s annual budget. In eight of the 12 years between 1992 and 2003, the city’s expected annual settlement contributions exceeded $3 million (including an expected $7.6 million in 2003 alone), and in only one year (1997) did expected polluter contributions fall below $1 million.

The first several years after the approval of the Cherches plan were dedicated to conducting a feasibility study to formulate a strategy for cleaning the groundwater, a task that was contracted out to an outside consultant firm. The plan involved installing pumps across the affected area to pump groundwater to a treatment plant located in a park in southern Wichita, where air strippers would remove the solvents from the water and the treated water would be deposited into the municipal water supply. KDHE approved that plan in 1994, but several obstacles delayed its implementation. The final step in the proposed remediation process was the focus of protests from the “Mothers of Munchkins,” a group of women with young children who objected to the idea of formerly contaminated water being inserted into the city’s drinking water (Hays 2001a). The plan was thus amended so that the treated water would be redirected into the Arkansas River. Another change involved reducing the number of areas that were subject to remediation, after KDHE determined that some of the sites were contaminated by dry cleaning chemicals and could therefore qualify for remediation funded by a special state tax on dry cleaners (Hays 2001a).

Litigation, Settlements, and the Rising Reliance on Tax Revenue in Gilbert-Mosley

The major source of delays, however, was litigation. From the beginning the city’s
intense commitment to avoiding a Superfund declaration had been predicated largely on fears that EPA intervention via Superfund would trigger a cascade of lawsuits (Cross 1990c). Because EPA had the power under CERCLA to hold all property owners liable for the cost of the entire cleanup (including innocent parties and – most importantly, in the city’s formulation – banks holding the deeds to properties within the contaminated zone; see Terrebonne 1994, p. 20), city officials worried that “innocent PRPs that incur[red] cleanup costs [would be] encouraged to use third-party civil lawsuits to recover damages from RPs [i.e., responsible parties],” which could lead to a series of cross-litigation that would paralyze economic activity in the affected region (Glaser 1994, p. 346; see also Rosegrant [1992] 1996). Though EPA had that power in theory, in practice the agency rarely targeted innocent parties to collect on the cost of environmental remediation, and those involved in planning the city’s response to Gilbert-Mosley acknowledged that “recent administrative decisions by EPA indicate that it no longer intends to pursue financial institutions under the law; however, the option, and consequently the threat, remains” (Glaser 1994, p. 346; see also Terrebonne 1994, p. 23). By intervening quickly with a local strategy anchored by the certificate and release program and the TIF district, Cherches and his staff boasted that they had dodged the problem of widespread litigation.

Instead, settlements, litigation, and court cases dragged on for a decade as the city itself sought to identify and collect from the companies that they considered responsible for the pollution. In 1998, the city sued nearly 30 companies that it held responsible, and it began negotiating settlements with many of them (Finger 2004a). In response, those companies “in turn threatened to sue 738 other companies in an attempt to spread the blame and the cost” (Hays 2000b), precisely the scenario that Cherches’s staff had warned about when arguing against Superfund. That potential chain of litigation was rendered moot, however, when a federal judge
ruled that the City of Wichita was limited in how much money it could seek from PRPs because the city, by purchasing contaminated downtown property from Coleman in 1992, had rendered itself a PRP in the groundwater contamination. Federal law, the judge asserted, “limits the amount of money one ‘polluter’ can collect from another” (Hays 2000b). As a result of the ruling, Wichita could still sue PRPs, but only for the cost of the pollution that they could directly prove was caused by each PRP, which was generally difficult to ascertain.

By 2000, the cleanup had still not begun, and the *Wichita Eagle* reported that “[d]eciding who should pay $20 million or more to clean up the pollution in downtown Wichita [was] on the verge of turning into a legal free-for-all” (Hays 2000c). Though the city would frequently claim victory when companies agreed to settle, the monetary payments that Wichita received tended to be mere fractions of what city attorneys had sought. For example, the city had sued a sign manufacturing company for $135,596, but ended up settling for $7,500 (Hays 2000a), and they sued an auto repair shop for $359,614, but collected only $175,000 (Hays 2001b). By the end of 2001, the city had collected less than $5 million of the more than $30 million it was pursuing, while spending about $4 million in legal fees to win those settlements (Hays 2001c).

As the city continued to settle with companies for far lower sums than they had originally sought, the total amount of money needed for the cleanup remained distressingly high, and the number of remaining PRPs from whom the city could collect dwindled. As a result, the amount that the city demanded from each of the remaining PRPs continued to escalate. By the end of 2003, only four relatively small companies remained, and the city attempted to pin millions of dollars in responsibility on each of them. A federal judge was not persuaded by the city’s claims of these companies’ culpability, though, ruling that one company owed only $184,000 of the $7.3 million the city wanted, that another owed only $16,000 of the $4.48 million that the city
sued for, and that a third owed only $4,277 of the $82,000 in the original suit. A fourth company that Wichita had sued for $1.5 million was determined to owe nothing, as the judge found that the company “had spilled only two gallons of solvent on a concrete floor in the summer of 1994” (Finger 2004a).

The single most important PRP that the city targeted was Coleman. Indeed, the original settlement that the city had signed with Coleman and KDHE had been a cornerstone of the whole Cherches plan; without the commitment from Coleman to finance a major portion of the cleanup, state lawmakers would likely have opposed the city’s attempt to create the new TIF law in 1991. Despite this agreement, the city faced considerable difficulty in getting Coleman to pay its portion of the cleanup costs. By 1995, Coleman had shuttered the plant in Downtown Wichita that had caused so much of the groundwater pollution, relocating its production facilities to the outskirts of the city (Voorhis 2002). Though Coleman tried to sell the Downtown factory to developers hoping to convert it into fashionable downtown loft apartments, the poor condition of the building and the continued presence of pollution prevented any significant development from occurring on the site, and ultimately the county purchased the building and razed it to build a parking lot (Wistrom 2010).

In 1998, Coleman was sold to another company, Sunbeam Corp., which quickly found itself in debt and facing numerous lawsuits, and in 2001 Sunbeam filed for bankruptcy. Wichita, which claimed that it was owed nearly $7 million for Gilbert-Mosley and another $7 million for the NIC cleanup, sued to stop the bankruptcy proceedings lest the court free Coleman and Sunbeam from their obligation to the city (Hays 2001d). Through further negotiations, Coleman did begin paying several million dollars toward the cleanup fund (Bjerga 2006). Nevertheless, it was evident that, far from being the stopgap measure that it had originally been sold as, the TIF
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district would serve as the source of the overwhelming share of Gilbert-Mosley remediation finances.

Operating Gilbert-Mosley: Original Aspirations, Current Budgets, and Anticipated Revenues

The budget data portrayed in Figure 1 suggest that in the early years the city anticipated substantial settlements to minimize the need for TIF revenues. As those settlements failed to materialize in the magnitude that they expected, however, the city realized that it would be necessary to increase its reliance on TIF if it wanted to begin the groundwater remediation. Figure 2, which portrays the actual revenues collected annually from TIF and from PRP settlements, reveals the results of that realization. While the city anticipated (as shown in the adopted budget figures illustrated in Figure 1) that it would collect nearly $38 million from polluters between 1992 and 2003, in reality (Figure 2) they received less than $7 million over that period, and during four straight years over that period they received nothing at all. Thus, beginning in 2001, the city began drawing the maximum amount of TIF funds (or something very close to it) allowed by the TIF law that had been written for this purpose, $2.67 million.

[FIGURE 2 ABOUT HERE]

Since that time, Figure 2 indicates, the city has sporadically received large sums from PRPs during some years, but during most years the amount has been negligible, and over the past decade it has averaged about $160,000 annually. Meanwhile, around $2.67 million is injected annually into the Gilbert-Mosley fund by the county, drawing funds off the top of the property tax collections within the TIF district. Notably, in contrast to typical TIF arrangements in which the net revenue allocated for redevelopment reflects a growing increment made possible by rising property values, the amount taken by Wichita annually for pollution remediation (in most
recent years, $2.67 million) has had no relationship whatsoever with underlying assessed values within the Gilbert-Mosley district. As aggregate assessed values in Gilbert-Mosley have climbed (and, importantly, even in years when aggregate values have declined), the city’s collection for the groundwater project has remained constant.

TIF districts in Kansas must expire after 20 years, but they may be extended for a maximum of 10 additional years. The Gilbert-Mosley district was approved in 1991, and was set to expire in 2011. Over those 20 years, though, the full scope of the contamination problem became better understood, and though Cherches originally projected that the cleanup would take 10 years and cost $20 million (Lynn 1990), as the years dragged on it became evident that it would take much longer and cost much more. Moreover, as Figure 2 demonstrates, the city had collected a relatively small amount of money to go toward Gilbert-Mosley in the district’s first decade of existence. It is thus likely that the district’s impending expiration partially explains the city’s choice to maximize the amount of property tax money it requested every year beginning in 2001, and the impending expiration also likely explains the city’s decision to apply for a ten-year extension (i.e., until 2021), which it was granted.

Despite the ten-year extension, it was widely understood by early in the 2000s that the cleanup would have to continue long past the termination of the TIF district. The city’s strategy for meeting the needs of a long-term cleanup therefore shifted toward saving up for future expenditures. Figure 3 portrays the annual end-of-year balance in the Gilbert-Mosley fund. Throughout the 1990s, the balance tended to hover near zero, as the city would collect enough money to finance that year’s operations and then spend that money, and as the actual cleanup had not begun in earnest. Beginning in 2002, however – and reflecting the changing TIF collection strategy illustrated in Figures 1 and 2 – revenues for Gilbert-Mosley began to exceed annual
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expenses by over a million dollars annually. By the end of 2016, Wichita had saved up $13.4 million to pledge toward cleanup efforts in future decades, and by the time the district expires in 2021, the city anticipates that the account will contain over $21 million. Wichita officials are not reticent to acknowledge this strategy of maxing out property tax contributions annually until the district is terminated; indeed, the city’s budget expresses quite explicitly the expectation that “this balance will finance both ongoing and unexpected mitigation costs until remediation is complete and the TIF is closed” (City of Wichita 2017, p. 108).

City officials believe that the accumulated savings will be enough to fund remediation efforts for decades to come until all of the groundwater is successfully stripped of solvents, but in interviews, they acknowledged that there is no alternative funding mechanism ready to be deployed if further cleanup efforts are required after the depletion of that fund. If that were to come to pass, it is likely that additional remediation activities would be supported by Wichita city general funds.

Conclusion

When a toxic plume of solvents was discovered in the groundwater underneath Downtown Wichita and many of the residential neighborhoods south of downtown, it was understandably difficult to predict how long it would take to eliminate the problem and how costly it would be to do so. This uncertainty fueled Chris Cherches’s urgency in trying to devise a locally-sourced solution to the pollution problem, but it also underlay the flawed assumptions upon which that plan was based. As described above, to support their argument in favor of the TIF plan the city presented a range of hypothetical scenarios and the impact that they might have
on tax revenue. Under the most pessimistic scenario presented – one in which polluters paid for only 25 percent of the cleanup and tax revenue provided the remaining 75 percent – city officials claimed that the annual draw on tax revenue that would otherwise go to the city, the county, and the school district would be $1.44 million. This was an extremely conservative estimate, they asserted, as they expected that polluters would pay upwards of 90 percent of the cleanup costs.

In reality, however, the reliance on taxpayer dollars has proven more extreme than even the most pessimistic of the city’s projections. Between 1992 and 2016, the city collected $47.0 million in property taxes for Gilbert-Mosley, an average of $1.9 million per year, and since 2001 at least $2.6 million of property tax collections have been diverted to the project annually. As the city confirms that it will continue to draw $2.67 million each year through 2021, the total tax collection for Gilbert-Mosley will likely be over $60 million by the time the district is officially closed.

Over that same period, polluter contributions have accounted for $11.6 million; if annual collections continue at the same pace that they have, on average, over the past decade, total polluter contributions will total approximately $12.5 million at the close of the TIF district. In contrast to the city’s early claims that Coleman and other polluters would pay 90 percent of the cost (Gossett 1991b), over the life of the district through 2016 polluter contributions have accounted for merely 18 percent of the expenditures, while TIF funds have made up 71 percent. These figures are even more lopsided over the past decade – since 2006, TIF collections have represented over 90 percent of Gilbert-Mosley revenues, while PRP payments have contributed just 5 percent of the fund balance.

Despite this imbalance, the city’s approach to addressing the groundwater problem has, in many ways, been successful. The treatment is proceeding, and though the project is now
estimated to last several decades longer than initial estimates anticipated, it is currently on track to be completed adequately and, city officials believe, within the budgetary limits put in place by the TIF district’s expiration date. Downtown development is progressing, and though the city core remains relatively stagnant, proponents of the Cherches plan continue to evoke a variant of the counterfactual “but for” argument in its defense, frequently using the term “ghost town” to describe what Downtown Wichita would look like in the absence of the city’s action (see, e.g., Brewer et al. 2008). Finally, as confirmed in interviews with current city and county officials, the operation of Gilbert-Mosley runs smoothly: borrowers can obtain loans in the area, property owners have little trouble obtaining “certificates of release,” and there is no ostensible effect on the property tax rate paid by property tax owners (though Wichita taxpayers outside of Gilbert-Mosley do face a comparatively higher tax burden to fund the city, county, and school district).

In this way, Gilbert-Mosley does resemble a traditional TIF. Property owners do not notice the cost of the cleanup in their tax bills, because their levies for other taxing jurisdictions are lowered proportionally each year, with the difference offset either by spending cuts or by higher levies applied to all other taxpayers. This appearance of no-cost development, we have argued, is one of the essential elements making TIF such a popular finance mechanism across the U.S. over the past several decades, in conjunction with the vagueness and broad applicability of TIF. In the case of Gilbert-Mosley, we contend, Wichita city leaders made powerful new use of this vagueness, extending it to the very meaning of TIF itself. In effect, Wichita has created a special tax district to siphon off a constant and regular amount of property tax revenue from other taxing jurisdictions to support a dedicated special fund. A similar idea was initially floated in early discussions over how to deal with Wichita’s groundwater pollution (see Rosegrant [1992] 1996), but was ultimately abandoned because it was deemed too politically perilous
(Glaser 1994). By utilizing the vague veneer of TIF, though, Wichita has been able to pursue this strategy with only modest political opposition for nearly three decades.

As cities nationwide continue to face revenue challenges in the 21st century, creative strategies for generating revenue will continue to be appealing, and TIF, with its inherent flexibility, vagueness, and breadth, provides a useful vehicle for creative new solutions to urban fiscal problems. As the Gilbert-Mosley example illustrates, that creativity may extend even to altering the fundamental financial mechanisms that TIF is presumed to employ. This may be an effective way to generate easy revenue for important infrastructure projects with minimal political fallout, but it is not a reliable method for ensuring sound municipal fiscal management over the long run.

NOTES
1. Details on the Cherches plan to address the Gilbert-Mosley pollution problem are drawn from many sources, the most important of which include City of Wichita 1992; Glaser 1994; Glaser and Cherches 1992; Powell 1994 Rosegrant [1992] 1996; and Terrebonne 1994.

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1A.


Figure 1. Annual Projected Revenue for Gilbert-Mosley Fund from TIF and PRP Contributions in Adopted City Budget, 1992-2017

Source: Annual City Budget, City of Wichita, Kansas
Figure 2. Annual Actual Revenue for Gilbert-Mosley Fund from TIF and PRP Contributions, 1992-2016

Source: Annual City Budget, City of Wichita, Kansas
Figure 3. Annual End-of-Year Unencumbered Fund Balance for Gilbert-Mosley Fund, 1992-2016

Source: Annual City Budget, City of Wichita, Kansas