

# **Rolling the Dice on the Taxpayers' Dime**

*The Case for Reform of Nevada's  
Redevelopment Model*

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## **Executive Summary**

Over the past three decades, local governments in Nevada have recognized that extensive use of onerous zoning and other restrictions have had the unintended consequence of discouraging private developers from investing in downtown areas. To overcome these government-imposed obstacles, local governments have established redevelopment agencies with the charge of revitalizing urban areas. Redevelopment agencies attempt to lure private investment back into city centers by offering taxpayer-funded incentives through a method known as tax-increment financing.

Tax-increment financing systematically channels tax dollars away from school districts, police departments and fire departments, for example, and into redevelopment agencies. Redevelopment agencies use those tax dollars to make payments on bonds that have been issued in order to construct elaborate public facilities or to provide financial incentives for private developers to invest in city centers.

This approach has incurred a new and potentially worse set of unintended consequences. It exposes taxpayers within redevelopment zones, who are often low-income families, to burdensome amounts of debt in order to subsidize large-scale developers. It further creates opportunities for corruption by making public officials responsible for taxpayer funds that are explicitly designated for disbursement to private developers. Moreover, redevelopment agencies in Nevada are designed to endow local officials with powers that are not legally vested in them by the voting public and can insulate the actions of local officials from public scrutiny.

These impacts are particularly egregious given the fact that they are completely unnecessary for the purpose of

encouraging investment in city centers. City officials in Anaheim, Calif., have recently demonstrated that redevelopment can be accomplished much more effectively and without adverse consequences simply by easing the barriers which have impeded development in the first place.

State lawmakers owe it to their tax-paying constituents to review the laws governing redevelopment in Nevada and determine where Anaheim-style reforms can be made.

## **Introduction**

Nevada state law provides for an urban redevelopment model that is openly hostile to private property rights, unnecessarily burdens taxpayers, fosters corruption and often fails to achieve its goals. This redevelopment model wagers taxpayer dollars in order to subsidize large-scale real estate developers. This wager is based on unrealistic assumptions about perpetually increasing property values.

Urban revitalization is often a goal worth pursuing. However, the tools which local governments in Nevada have employed to achieve this goal historically have trampled property rights, imposed far too high a burden on taxpayers and penalized developers who do not accept government subsidies. Nevada needs a new approach to redevelopment that respects the value of freedom. Policy tools are available that would enable urban revitalization without resorting to government intrusion and central planning. Other localities have instead chosen to eliminate government-imposed obstacles to development. In addition to protecting the rights of individual citizens and taxpayers, this approach has also been extremely successful in accomplishing its goals.

When local authorities witness deterioration and blight in city centers, they are typically witnessing the unintended consequences of previous government intrusion. Unfortunately, their response in Nevada has been to rely on even more government intrusion to address these problems – incurring a new and potentially worse set of unintended consequences. When government is the problem it can rarely be the solution. The most appropriate solution for urban revitalization in Nevada is to remove the barriers that have impeded development in the first place.

## Problems with the Current Model

*“If We Build It, They Will Come”*

Nevada is world-renowned for its gaming industry. Tourists travel to Nevada from all over the world to benefit from the legal status that the gaming industry enjoys. Nevada even allows its local authorities to gamble with taxpayers’ money by issuing municipal bonds to engage in speculative real estate investment. Local authorities who form community redevelopment agencies gain the power to do this in order to leverage potential private investments with tax dollars.

Redevelopment agencies use a unique financing method called tax-increment financing (TIF). This method allows the agency to issue public bonds to borrow the capital they need to make improvements within a redevelopment zone. In theory, the public investment made in the redevelopment zone encourages private developers to invest in the area as well. When this occurs, property values in the redevelopment zone increase – allowing the government to collect higher property tax revenues. The increment of tax revenue supposedly beyond what would have been collected had not development occurred is diverted to pay the debt on the bonds. Thus, *if* the public investment is successful in attracting an adequate amount of private investment, the redevelopment agency can proclaim that the publicly funded investment imposed no burden on taxpayers. However, those proclamations are frequently untrue.

The City of Las Vegas Redevelopment Agency (LVRDA) has made extensive use of TIF and continues to do so at an accelerating pace despite recent economic woes. As recently as November 2008, the Las Vegas City Council proposed to issue \$105 million in general obligation bonds on behalf of the

LVRDA to finance construction of a performing arts center in the redevelopment zone.<sup>1</sup> At the November meeting, the City Council also agreed to take \$80 million out of the city's Sanitation Enterprise Fund to finance LVRDA projects,<sup>2</sup> and proposed to issue bonds worth \$267 million to finance the construction of a new city hall in the redevelopment zone.<sup>3</sup>

The City Council's willingness to force such high levels of new debt onto taxpayers at a time when the city has experienced declining revenues and has struggled just to maintain operating costs<sup>4</sup> has drawn harsh criticism.<sup>5</sup> City officials have defended their actions by promising that the public investment would draw enough private investment to the area to raise property tax revenues and pay off the debt.<sup>6</sup> Skeptics have highlighted the fact that the city and the LVRDA are leaving taxpayers on the hook to cover these large debts if adequate levels of private investment don't materialize, noting that large-scale investment in the Las Vegas Valley is increasingly unlikely to continue given the recent downturn of the state, national and global economies.<sup>7</sup>

City officials have explicitly acknowledged the risk that they are forcing on taxpayers, saying that if the city's projects don't spur adequate levels of private investment, "we would have a problem making the payment."<sup>8</sup> Such a scenario would likely require the city to raise tax rates in order to keep up with the payment schedule. Las Vegas Mayor and LVRDA Chairman Oscar Goodman even compared the city hall gamble to a simple roll of the dice – wagering taxpayer money. "It's worth the dice on this one," he said.<sup>9</sup>

## *Even Winning is Losing*

Even if local authorities win the TIF gamble and generate an adequate amount of private investment to repay the debt on TIF bonds, taxpayers may still find themselves on the hook for higher taxes. As a practical matter, redevelopment agencies typically set taxes by first determining the amount of property taxes that property owners within the redevelopment zone paid for the year in which the agency was created. The agency then assumes that the value of these property taxes would never rise if the agency did not provide TIF subsidies – not even due to inflation!<sup>10</sup> Based on this assumption, the agency attributes all increases in property tax revenue to the impact of TIF subsidies and dedicates the increase to pay off the bonds.<sup>11</sup>

In reality, the nominal value of property taxes within the redevelopment zone almost certainly would increase, due to inflation at least. Failing to account for this fact means that, in real terms, local governments increasingly have less property tax revenue available to fund essential government services as a larger share of tax revenues are diverted to pay off the TIF bonds. Hence, in order to maintain the same level of services, government will have to make up these lost revenues by increasing taxes in some other way.

It is equally dubious to assume that property values would never increase without government action. Supply and demand are the forces that assign value to all goods and services, including property. In a market economy, therefore, property values in a given district are not solely determined by government, as redevelopment agencies pretend to be the case. The amount by which property tax revenues would increase absent TIF subsidies is an unknown that should not be omitted in local officials' calculations. It is an amount that would otherwise be available to fund education, road construction,

police protection and other services, for example. Despite claims by redevelopment officials, public investments in the form of TIF *do* impose real costs on taxpayers by requiring them to compensate for tax revenue that is diverted to service the debt on TIF bonds.

### *The Corporate Welfare Boondoggle*

Redevelopment agencies regularly recognize that issuing debt to pay for publicly owned facilities such as a new city hall will be insufficient to attract private investment to a redevelopment area. In order to salvage these failed wagers and lure private investment, redevelopment agencies also make regular use of public money to directly subsidize the cost of privately owned facilities.

The LVRDA, for example, has established an ever-widening redevelopment zone in downtown Las Vegas. In an effort to try to lure private investments there, the agency has spent millions of dollars to build public facilities such as the Lloyd D. George Federal Courthouse and the Regional Justice Center, in addition to the proposed Smith Center for the Performing Arts and the new city hall. At the same time, the LVRDA has subsidized construction of the Fremont Street Experience, the Fremont East Entertainment District, the Las Vegas Premium Outlet Malls, the World Jewelry Center and the World Market Center. Tenants benefitting from these subsidies include large high-end retailers such as Calvin Klein, Ralph Lauren, Jones New York, Tommy Hilfiger and Dolce & Gabbana.<sup>12</sup>

Table 1 reveals that the LVRDA has issued nearly \$50 million in TIF subsidies within the Las Vegas Redevelopment Zone for privately owned projects that have completed construction within the last five years. As a result of these subsidies and financing costs, property owners within the redevelopment



**Table 1**  
City of Las Vegas Redevelopment Agency Tax Increment Financing Commitments

Notes Issued										
<u>Project Name</u>	<u>Address</u>	<u>Month &amp; Year Completed</u>	<u>Square Footage</u>	<u>Type of Development</u>	<u>Total Project Cost</u>	<u>TIF Note Amount</u>	<u>TIF Note Term</u>	<u>Annual Payment</u>		
Chelsea Premium Outlet (Phase 1)	Grand Central & Bonneville	August-03	435,000 sq ft	Retail	\$85,000,000	\$1,837,360	June 2005 to June 2016	\$219,842		
PH GSA LLC / Molasky	F & Ogden	December-04	89,000 sq ft	Office	\$18,000,000	\$995,510	June 2006 to June 2026	\$93,960		
World Market Center (Phase 1) #1	Grand Central & Bonneville	June-05	1,250,000 sq ft	Warehouse	\$175,000,000	\$1,696,622	June 2005 to June 2025	\$173,706		
World Market Center (Phase 1) #2	Grand Central & Bonneville	June-05	-	-	-	\$8,725,545	June 2006 to June 2025	\$890,977		
Chelsea Premium Outlet (Phase 2)	Grand Central & Bonneville	June-08	109,000 sq ft & 6,616 space parking garage	Retail	\$55,700,000	\$756,095	June 2008 to June 2016	\$126,622		
World Market Center (Phase 2) #3	Grand Central & Bonneville	June-07	1.8 million sq ft	Warehouse	\$160,000,000	\$14,268,157	June 2008 to June 2025	\$1,511,897		
Allure Phase 1	Las Vegas Blvd & Sahara	June-08	427 Condos with 35k sq ft retail	Residential	\$221,000,000	\$20,912,094	June 2008 to June 2028	\$2,114,117		

**Table 2**

**City of Las Vegas Redevelopment Agency Tax Increment Financing Commitments**

Under Contract/Construction – Note Not Issued

<u>Project Name</u>	<u>Address</u>	<u>Month, Year Completed</u>	<u>Square Footage</u>	<u>Type of Development</u>	<u>Total Project Cost</u>	<u>TIF Note Amount</u>	<u>TIF Note Term</u>	<u>Annual Payment</u>
World Market Center (Phase 3)	Grand Central & Bonneville	Approx July 2008	435,000 sq ft 2.1 million sq ft & 3,500 space parking garage	Warehouse	\$270,000,000	\$15,831,000	June 2009 to June 2025	\$1,575,622
World Market Center (Phases 4 thru 8)	Grand Central & Bonneville	N/A	7 million sq ft & 3,500 space parking garage	Warehouse	\$750,000,000	\$88,782,000	? to June 2025	\$8,836,310
Allure Phase 2	Las Vegas Blvd & Sahara	N/A	428 Condos	Residential	\$236,000,000	\$35,167,295	20 years	\$3,500,116
World Jewelry Center	Grand Central & City Parkway	N/A	815,229 sq. ft. office, 139,052 sq. ft. residential, 225,000 sq. ft retail	Mixed use	\$927,185,033	\$ 74,780,620	20 years	\$ 7,639,257
Pulse	Charleston & Commerce	N/A	6,000 Hotel Rooms, 3 casinos, 2,000 residential units, arena, 550,000 sq. ft. retail	Mixed use	\$1 billion	\$264,932,074	20 years	\$27,064,288

zone will be responsible for paying nearly \$100 million worth of higher property taxes over the next 20 years.

Table 2 shows that the LVRDA has also contracted to provide nearly a half-billion dollars for privately owned projects that are either currently under construction or in planning. Once financing costs are included, the total payoff for projects in the planning or construction phase approaches one billion dollars. The additional property taxes that residents within the redevelopment zone would be responsible for generating each year if all of these projects are completed is around \$53.7 million.

These expenditures are in addition to the \$130 million worth of TIF revenue bonds that the LVRDA issued in August 2008 to subsidize the construction of a 61-acre development known as Union Park.<sup>13</sup> According to a report published by the LVRDA:

Union Park is to include a mix of commercial, civic and residential projects. It will comprise a total of 9.4 million square feet of development – all of which, except for the Smith Center for the Performing Arts and Union Park’s connecting roadways, will be private.<sup>14</sup>

### *Losing the Bet*

Taxpayers are forcibly exposed to possible failure whenever local authorities use public money to make real estate or other business investments. Taxpayers within Henderson’s Lake Las Vegas local improvement district recently became subject to such a failure. The city had assisted the construction of Lake Las Vegas by issuing over \$100 million worth of municipal revenue bonds that were to be paid off by a special *ad valorem* tax to be assessed against property owners – a scheme very

similar to TIF.<sup>15</sup> In July 2008, Lake Las Vegas filed for Chapter 11 bankruptcy.<sup>16</sup>

The Lake Las Vegas bankruptcy was due, in large part, to the recent collapse of the real estate market in the Las Vegas Valley. According to Applied Analysis, a Las Vegas business consulting firm, land sale prices in the Las Vegas Valley fell by 73.9 percent between the third quarter of 2007 and the third quarter of 2008.<sup>17</sup> The recent decline in property values within the valley has led to an associated decline in property tax revenues. As a result, the tax revenue stream in the Lake Las Vegas improvement district that had been dedicated to pay off the bonds became insufficient to make the payments. The improvement district quickly became delinquent on payments to the City of Henderson totaling more than \$2.2 million.<sup>18</sup> The outstanding balance remaining on all revenue bonds associated with Lake Las Vegas is near \$80 million.<sup>19</sup>

The collapse of the Las Vegas real estate market has also adversely impacted TIF projects within the downtown Las Vegas redevelopment zone. Project *Pulse* (aka Project Neon Lights) was a project intended for a 73-acre plot of land that lies between the north end of the Las Vegas Strip and the downtown area. The project was intended to include three casinos, 2,000 residential units, 550,000 square feet of retail floor space and a 22,000-seat arena that was to be built in the speculative hope of luring an NBA franchise.<sup>20</sup>

The LVRDA had committed to provide \$265 million in tax money through TIF to help finance the construction of *Pulse*.<sup>21</sup> (A website maintained by the developer actually claims that the developer had secured \$600 million in TIF.<sup>22</sup>) According to an analysis done by the LVRDA,<sup>23</sup> \$265 million in financing was necessary because the annual cost of debt service for the project was projected to exceed the project's operating income.

In other words, the LVRDA agreed to lend money into a project that it already had determined would be a loser. Despite the LVRDA's generosity toward the project, the developer had difficulty securing an adequate amount of financing. These difficulties combined with the collapse of the real estate market to cause the project to be suspended indefinitely in 2008. TR Las Vegas, the real estate group that assembled the site, is now listing the site for sale at "50% below January 2007 appraised value."<sup>24</sup> (Notably, while other cities have used tax dollars to finance construction of sporting arenas, they've typically done so *after* a professional franchise has agreed to relocate to that arena.)

The turmoil experienced by these projects underscores a central fallacy of TIF. Policymakers who promote the use of this kind of tax-based financing implicitly assume that property values will always rise. They count on an increase in property values to pay off the debt incurred by development. However, as recent financial crises in Nevada, the nation and around the world have clearly demonstrated, this presumption is unrealistic. If nothing else, the recent market corrections in Nevada property values should warn policymakers who are considering further use of TIF.

### *Eminent Domain: The Right Arm of Redevelopment*

Redevelopment agencies exist to plan and finance new development. A necessary prerequisite for this has been to dispose of the old development. To accomplish this task redevelopment agencies have traditionally wielded a second policy tool – the power of eminent domain.

In 2005, the United States Supreme Court greatly expanded the power of local authorities to seize property through eminent

domain. In the case of *Kelo v. City of New London*, the Court decided that economic development is a suitable reason for government to deploy the eminent domain power.<sup>25</sup> This decision gave local authorities the legal rationale to seize property from homeowners and transfer it to private developers – authorities need only believe that the land could generate more tax revenue as the site of new development.

Nevada’s community redevelopment law was explicitly tailored to facilitate these kinds of takings. It declares state policy to be:

That whenever the redevelopment of blighted areas cannot be accomplished by private enterprise alone, without public participation and assistance in the acquisition of land, in planning and in the financing of land assembly, in the work of clearance, and in the making of improvements necessary therefore, it is in the public interest to employ the power of eminent domain, to advance or expend public funds for these purposes, and to provide a means by which blighted areas may be redeveloped or rehabilitated.<sup>26</sup>

Case law in Nevada has traditionally upheld this expansive view of eminent domain power. In *Las Vegas Downtown Redevelopment Agency v. Pappas*, a historic 2003 case, the majority decision of the Nevada Supreme Court declared:

Both the United States and Nevada Constitutions allow the taking of private property for public use provided just compensation is paid to the private property owner. The Nevada Legislature has clearly defined economic redevelopment as a public purpose. And, the United States Supreme Court has concluded that when a legislative body decides that a need for redevelopment

serves the public, its decision is “well-nigh conclusive.”<sup>27</sup>

This case involved January 1994 eminent domain takings by the LVRDA as a part of the Fremont Street Experience project. The LVRDA seized 32 parcels of private property to build a parking garage to complement the project. The garage was to be owned and operated by a consortium of casinos associated with the project. Three of the parcels taken were owned by Carol Pappas, a 65-year-old storeowner, and her family.

A Clark County District Court found that the LVRDA violated the law by seizing the Pappas’ property without a condemnation hearing and that the taking was not for a “public use.” Instead, the taking was for the explicit benefit of private parties. The District Court’s decision was reversed by the state Supreme Court, which deferred to the Legislature’s definition of the term “public use.” Moreover, the Supreme Court upheld that condemnation proceedings are unnecessary for the LVRDA to prove that “blight” exists on the property if the property is within the redevelopment zone. Inclusion in the redevelopment zone is sufficient to mean that the entire area suffers from blight (and is subject to eminent domain takings) even if individual parcels do not.

What is notable about this decision is that the Court deferred to the judgment of the Legislature while affirming that a judicial body cannot question what constitutes a “public purpose” if the Legislature has already made that determination. This is a level of judicial deference rarely seen in modern jurisprudence. Certainly, the Court should have addressed the question of whether the Legislature’s definition of “public purpose” conflicts with the definition of “public purpose” used in the Nevada Constitution.

A notable dissenting opinion in this case was written by Justice Myron Leavitt. He found that property owned by the Pappas family was not blighted and that the LVRDA had given no sufficient evidence to prove that conditions of blight existed. In his opinion, the seizure of the property was not necessary for effective redevelopment of the area; it was only desirable for the LVRDA. He concluded:

The appropriation of a private citizen's property by eminent domain proceedings must be for a "public use" within the meaning of those words in the Constitution. The government's taking of property and giving it to another for a private use is unconstitutional and void.<sup>28</sup>

### *Punishing the Poor*

Property owners whose land is acquired through eminent domain or purchased under the threat of eminent domain are often forced to accept lowball offers for their property. Challenging an eminent domain proceeding is cost-prohibitive for victims who do not have the resources that the Pappas family had at its disposal. Many are low-income families and are unable to bear the legal costs of challenging the government. Having to accept whatever is offered, low-income families may find themselves in the position of losing some of the value of the assets in their possession.

Even the Pappas family faced such threats. After trying to lowball Carol Pappas on the price for her property, former Las Vegas Mayor Jan Jones is reported to have threatened her by saying, "Take our offer, or we will use eminent domain."<sup>29</sup> Jones later reportedly told Pappas, "Mrs. Pappas, you've had your property long enough. Time to give it up."<sup>30</sup> Certainly other property owners within redevelopment zones have faced



similar threats but have not had the financial resources necessary to challenge a redevelopment agency in court. Hence, they have been forced to accept lowball offers.

The Nevada electorate recently made strides to curb these abuses by voting in favor of a constitutional amendment to protect private property rights and limit economic development takings.<sup>31</sup> This is a step in the right direction. It will limit the power of redevelopment agencies to infringe upon the rights of citizens in one respect.

Yet this measure should not be regarded as an adequate reform to Nevada's redevelopment model. Taxpayers will still bear the risks associated with TIF unless this issue is addressed at the state level and reforms are enacted. The current redevelopment model still confers dangerous amounts of power on local authorities by enabling them to impose undue risk on taxpayers, and this issue should be addressed independently.

### *Forcing Taxpayers to Subsidize Risk*

TIF allows local authorities to dole out public funds to large private developers with minimal supervision. The reason why these subsidies are necessary is not because private investors are unable to invest within a redevelopment zone; it is because they have judged these investments to be unprofitable or overly risky. Public expenditures made through TIF are intended to incentivize private developers to make investments they have already judged as not viable.

The Clark County Redevelopment Agency says it best: “[Redevelopment agencies] are also especially important because often the private sector is unwilling to accept the added risk of investing in a redevelopment area without the cooperation and assistance of the public sector.”<sup>32</sup>

The LVRDA further highlights the burden that TIF places on taxpayers for the benefit of private developers: “Through the Office of Business Development and the Redevelopment Agency, the city of Las Vegas provides a variety of financial incentives and resources to developers. It’s more than support – it’s a real partnership.”<sup>33</sup> Note that use of the word partnership (often referred to explicitly as a “public/private partnership”) implies that the public is party to any possible failure of subsidized business ventures.

### *Penalizing the Unsubsidized*

Among the unintended consequences of Nevada’s redevelopment model is that it discourages privately funded development inside and outside of the redevelopment zone. Subsidized developments enjoy a competitive advantage that allows their occupants to keep prices artificially low. This allows occupants of the subsidized facility to take business from unsubsidized competitors that consumers otherwise would favor.

In Las Vegas, for example, consumers have clearly chosen the Strip as the preferred destination for tourism and gaming. This has prompted large-scale private development in the area. The City of Las Vegas, however, specifically touts the competitive advantage over privately funded developers that developers “partnering” with it and building in the subsidized redevelopment area would have.<sup>34</sup> This is simply a way of penalizing competent developers who have financed their own investments as well as the consumers who those developers are serving.

Famed Las Vegas real estate mogul Irwin Molasky highlighted this point in a 2001 interview with the *Las Vegas Sun*'s Jon Ralston:

Molasky said there is no level playing field downtown because his building must compete with other developers who have gained financial help from the city. Molasky's building [the Bank of America building] has funneled more than \$90,000 annually through taxes into the redevelopment fund for 16 years, he said, which is being turned over to other developers for competing projects.

"To compete against someone who's using city funds against private enterprise isn't fair," he said.<sup>35</sup>

Molasky was later quoted as saying, "As a taxpayer I resented them wasting my money by building things with the mentality that if you build it they will come."<sup>36</sup>

Lesa Coder, director of the city's department of business development, reportedly responded to Molasky's comments by saying, "Some businesses are more fortunate than others, and can make it on their own. Others can come in with a little bit of help."<sup>37</sup> Coder's comments never disputed Molasky's assertion that it "isn't fair" for redevelopment agencies to arbitrarily declare winners and losers by selecting favored developers to receive public support.

Molasky's criticisms were silenced after he was approached by Las Vegas Mayor and LVRDA Chairman<sup>38</sup> Oscar Goodman, who offered Molasky taxpayer-financed support for his own project in the redevelopment zone.<sup>39</sup> Goodman's LVRDA selected Molasky (who attends church with Goodman<sup>40</sup>) to build the IRS building in downtown Las Vegas and

unanimously approved<sup>41</sup> about \$1 million worth of taxpayer support for the project.<sup>42</sup> Shortly after, Molasky – now a convert to practices he’d earlier characterized as unfair – said, “It’s the perfect example of the private sector and government entities working together to create something exciting and worthwhile.”<sup>43</sup>

Changing his tune since receiving taxpayer support for his own project, Molasky has been quoted as saying, “You can’t just make redevelopment happen. You have to prime the pump. You have to do all the psychological cheerleading. The city made a lot of mistakes early on, but they’ve figured things out now, and the mayor deserves the kudos.”<sup>44</sup> Goodman has even appointed Molasky to head a blue ribbon panel that focuses on attracting businesses to the Las Vegas redevelopment zone.<sup>45</sup>

The fact that Molasky changed his tune after receiving city support for his own project in no way diminishes the validity of his initial argument. Almost certainly, other property owners are now complaining of the tax money they have to pay to subsidize Molasky’s project.

### *Redevelopment – The Petri Dish of Corruption*

One of the great dangers of Nevada’s redevelopment model is that membership on the board of a redevelopment agency allows elected officials to assume powers unto themselves that are not vested in them by the voting public. As is the case with the LVRDA,<sup>46</sup> the officers who sit on the board of a redevelopment agency are typically the exact same officials who populate the city council or county commission.

Forming a redevelopment agency can simply be a way for city council members or county commissioners to take actions that would otherwise be considered illegal in their capacity as

elected officials. The Clark County Redevelopment Agency has acknowledged that “Redevelopment Agencies possess unique tools which are legally unavailable to county government.”<sup>47</sup>

Acting in the capacity of a redevelopment agency, local officials have the power to issue debt beyond the amount that is provided for in the city or county budget. Local officials in Las Vegas, for instance, are proposing to spend \$267 million that will not appear in the city’s planned budget in order to build a new city hall. Because the financing of the new city hall will be done under the guise of the LVRDA, it will not require the approval of taxpayers. In this way, local officials can use a redevelopment agency to finance any public building they want without getting the approval of taxpayers.

Forming a redevelopment agency also allows local officials to select favored developers to participate in “public/private partnerships.” It is noteworthy that the private partner’s role in a public/private partnership is basically to receive the benefits of large sums of taxpayer money. To accomplish this, the private partner must gain the favor of the stewards of this taxpayer money – the elected officials on the board of a redevelopment agency.

This model of governing certainly invites corruption as it empowers political officials to dole out public money to favored developers. Indeed, the fact that the LVRDA was showering tax dollars onto those of his competitors who were favored by the LVRDA was a central theme of Irwin Molasky’s complaints – before he became a recipient of public money himself.

Nevada’s community redevelopment laws are particularly egregious because they do not even require redevelopment

agencies to limit this type of spending to the area within the redevelopment zone. Instead, the law explicitly permits redevelopment agencies to pay for private development *outside* of the redevelopment zone. It says:

An agency may, with the consent of the legislative body, pay all or part of the value of the land for and the cost of the construction of any building, facility, structure or other improvement and the installation of any improvement which is publicly or privately owned and located within or without the redevelopment area.<sup>48</sup>

The only check on the power of a redevelopment agency that the law gives in this regard is its requirement for “the consent of the legislative body.” However, the legislative body referred to is the city council or county commission. In other words, the members of a redevelopment agency can have the power to allocate public funds to pay for any private development in any part of the city as long as they consent to their own action. In a state that has been plagued by corruption, Nevadans can ill afford to continue under a redevelopment model structured in this way.

## **Recommendations for Reform**

In recognition of all the unintended consequences that redevelopment models such as Nevada’s are known to generate, policymakers in other locales have begun to turn toward development strategies that rely on the power of markets. This approach recognizes that government land use and licensing restrictions are impediments to development that depress land values. In order to spur growth, the most appropriate response is to remove or ease the burden that these obstacles create – moving government out of the way so private individuals can lead. This approach respects private

property rights, eases the burden on taxpayers, benefits low-income homeowners, eliminates opportunities for corruption, and propels private investment.

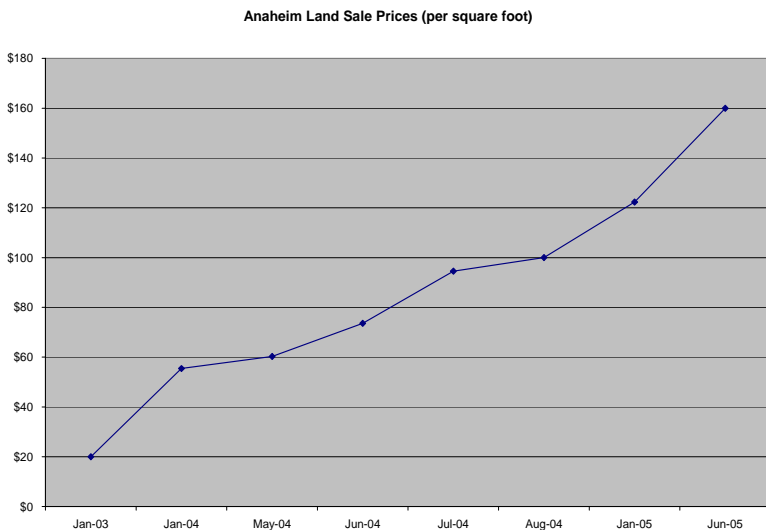
### *The Anaheim Experience*

Local authorities in Anaheim, Calif., tried for decades to revitalize Anaheim's downtown area using a redevelopment model similar to the one currently used in Nevada. They met limited success. In 2004, they recognized the need to reform their redevelopment model. Mayor Curt Pringle engineered a model of redevelopment that would not rely on taxpayer subsidies or eminent domain. Instead, Mayor Pringle and the city council began to identify specific obstacles that impeded private actors from investing in the redevelopment zone. They identified a host of ways in which the government itself was *preventing* private investment in the redevelopment zone. Then they developed ways to remove those government obstacles to development.

*Zoning.* The city council recognized that city zoning ordinances restrict the purposes for which land can be used. By limiting the usefulness of a parcel of land, zoning ordinances artificially make the parcel less valuable and depress demand for it. To address this problem, the Anaheim city council introduced overlay zoning, which establishes additional zoning layers on top of existing layers. Property owners can continue using land in its present use, but a wider range of possible uses are opened up for the property.

Overlay zoning can overcome a significant government impediment to development. When property owners can employ their land in a greater array of uses, the value of that land instantly increases. Easing zoning requirements can maximize the value of land use because it allows the market to

assign land to its highest value use. Between January 2003 and June 2005, land sale prices in the Anaheim redevelopment zone (which has been renamed the Platinum Triangle) increased from \$20 per square foot of land to \$160 per square foot of land.<sup>49</sup>



As the price of land in the redevelopment zone increases, existing property owners are increasingly willing to supply their land to developers. In this way, policymakers in Anaheim were able to facilitate the transfer of land from private home or business owners to developers without resorting to eminent domain or subsidies.

If such a model were employed in Nevada, an important beneficiary would be low-income homeowners who would receive the full value for their land and who would be able to sell on their terms. Redevelopment done in this way could net many low-income homeowners a healthy return on their property and allow them to accumulate higher-valued assets.



*Streamlining.* The city council also recognized that a major cost of construction that developers must incur is the often lengthy process of acquiring permits and determining how to meet local building requirements. In some localities this legal process can delay construction for years and can be complicated because the requirements of different agencies can conflict directly with one another.<sup>50</sup>

To address this obstacle, the Anaheim city council began consolidating and simplifying the permitting process. As the council found, in many localities the permitting process can be streamlined substantially simply by eliminating not only conflicting, but also duplicative requirements.

One innovative approach that the city council adopted was to broaden the areas referenced by regulatory requirements so that developers would have maximum flexibility. For example, the city normally sets restrictions on the maximum housing units allowed per parcel of land. For the redevelopment zone, however, the council simply set a maximum housing unit cap for the area as a whole.

The council was similarly able to lower the costs of creating state-required Environmental Impact Reports. In lieu of requiring these on a parcel-by-parcel basis, the city created a “broad-based EIR” that could be modified by developers based on the specific impacts of individual projects.

*Eliminating Mandates.* The city council also recognized that government mandates on development limit the usefulness of land and deprive developers of flexibility. For example, mandates such as inclusionary zoning – a requirement that a certain percentage of housing within the area be made available to families of particular income classes – were eliminated for

the redevelopment zone. Also, mandates restricting the ratio of commercial to residential development were eliminated.

### *Lessons Learned*

The Anaheim redevelopment model is an example of how local government can spur development simply by removing the obstacles government habitually creates. The Anaheim model has been studied extensively by county and municipal leaders across the country. It has also received praise from real estate developers and executives throughout the industry. One industry executive is reported to have said, “Mayor Pringle is a god in our world. He gets it. He understands the regulatory issues and some of the impediments to development.”<sup>51</sup>

### **Conclusion**

Urban revitalization is quite often a worthwhile goal. However, the approach that has been taken in Nevada to achieve this goal has generated numerous unintended and destructive consequences. The state’s redevelopment model has trampled private property rights, unnecessarily put taxpayers at risk and created opportunities for corruption. Even so, Nevada’s approach has frequently been unsuccessful in spurring the very development that officials have sought to achieve. And in the more constrained economy that Nevada now faces, that lack of success appears likely to increase.

Local authorities in Nevada could learn much from the Anaheim redevelopment model. This model does not rely on taxpayer subsidies such as TIF. Instead, it removes government-imposed hobbles and frees the private sector to drive development. This approach is not particularly innovative – it simply identifies the impediments to

development and removes them. Its success, however, cannot be ignored.

Policymakers in Nevada owe it to their taxpaying constituents to reexamine Nevada's redevelopment laws and see where Anaheim-style reforms can be made.

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<sup>1</sup> City of Las Vegas. City Council Resolution No. R-66-2008. November 19, 2008.

<http://www5.lasvegasnevada.gov/sirepub/cache/2/s20dwi33dzs3c545tpkoue55/167436911202008043511337.PDF>.

<sup>2</sup> City of Las Vegas. City Council Resolution No. R-67-2008. November 19, 2008.

<http://www5.lasvegasnevada.gov/sirepub/cache/2/s20dwi33dzs3c545tpkoue55/167437211202008050949870.PDF>.

<sup>3</sup> City of Las Vegas. City Council Resolution No. R-65-2008. November 19, 2008.

<http://www5.lasvegasnevada.gov/sirepub/cache/2/s20dwi33dzs3c545tpkoue55/167436711202008040912189.PDF>.

The Redevelopment Agency has since been advised to use an alternative financing mechanism for the proposed city hall known as a lease-purchase agreement. A lease-purchase agreement would allow construction to be completed more quickly and would hinge on a land-swap agreement with the developer.

<sup>4</sup> Jeff Pope. "County Weighs Budget Cuts." *Las Vegas Sun*. October 17, 2008. <http://www.lasvegassun.com/news/2008/oct/17/county-unlikely-cut-budget/>.

<sup>5</sup> Michael Mishak. "Mayor Gives Culinary a Piece of His Mind." *Las Vegas Sun*. November 20, 2008.

<http://www.lasvegassun.com/news/2008/nov/20/mayor-gives-culinary-piece-his-mind/>.

<sup>6</sup> Alan Choate. "Downtown Project: Union Protests LV City Council." *Las Vegas Review-Journal*. November 20, 2008.

<http://www.lvrj.com/news/34796149.html>.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

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<sup>9</sup> *Ibid.*

<sup>10</sup> Clark County Redevelopment Agency. "Economic Feasibility Study." November 4, 2003.

[http://www.accessclarkcounty.com/depts/comprehensive\\_planning/redevelopment/Documents/EconomicFeasibilityFinal010804.pdf](http://www.accessclarkcounty.com/depts/comprehensive_planning/redevelopment/Documents/EconomicFeasibilityFinal010804.pdf).

<sup>11</sup> *Ibid* (p. 9).

<sup>12</sup> Las Vegas Premium Outlets. "Store Listings." Accessed November 21, 2008. [http://www.premiumoutlets.com/outlets/store\\_listing.asp?id=58](http://www.premiumoutlets.com/outlets/store_listing.asp?id=58).

<sup>13</sup> City of Las Vegas Redevelopment Agency. "Fiscal Year 2009 Final Budget." June 2, 2008.

[http://www.lasvegasnevada.gov/files/LVRA\\_Final\\_Budget\\_2009\\_with\\_Cover.pdf](http://www.lasvegasnevada.gov/files/LVRA_Final_Budget_2009_with_Cover.pdf).

<sup>14</sup> City of Las Vegas Redevelopment Agency. "It All Begins at the Center." <http://www.lasvegasnevada.gov/files/BeginsAtTheCenter.pdf>.

<sup>15</sup> Open Records Request fulfilled by City of Henderson, 2008.

<sup>16</sup> Henry Brean. "Lake Las Vegas: Bankrupt Project Still Alive." *Las Vegas Review-Journal*. August 3, 2008.

<http://www.lvrj.com/news/26219079.html>.

<sup>17</sup> Hubble Smith. "Land Prices Tumble 73.9 Percent from a Year Ago." *Las Vegas Review-Journal*. November 5, 2008.

<http://www.lvrj.com/business/33887184.html>.

<sup>18</sup> *Op cit.*, note 16.

<sup>19</sup> *Op cit.*, note 15.

<sup>20</sup> City of Las Vegas Redevelopment Agency. "Analysis of the Public Purpose and Benefits of the Pulse Project." June 2007.

<http://www5.lasvegasnevada.gov/sirepub/cache/2/s20dwi33dzs3c545tpkoue55/39452411202008055406400.PDF>.

<sup>21</sup> Open Records Request fulfilled by City of Las Vegas, 2008. See Table 2.

<sup>22</sup> Vegas Today and Tomorrow. "Project Neon Lights News." Accessed November 21, 2008. <http://www.vegastodayandtomorrow.com/pulse.htm>.

The \$335 million discrepancy in financing between what the developer claims to have secured and what the LVRDA claims to have promised is certainly a cause for concern and likely warrants further investigation.

<sup>23</sup> *Op cit.*, note 20.

<sup>24</sup> *Op cit.*, note 22.

<sup>25</sup> *Kelo v. City of New London*, 125 S. Ct. 2655 (2005) at

<http://laws.findlaw.com/us/000/04-108.html>.

<sup>26</sup> Nevada Revised Statutes § 279.424.2. <http://www.leg.state.nv.us/Nrs/>.

<sup>27</sup> *Las Vegas Downtown Redevelopment. Agency v. Pappas*, 76 P.3d 1 (Nev. 2003).

<sup>28</sup> *Ibid.*

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<sup>29</sup> Steve Miller. “Pappas Property Settlement Expected Soon.” *Las Vegas Tribune*. July 12, 2000.  
<http://www.stevemiller4lasvegas.com/PappasPropertySettlementExpectedSoon.htm>.

<sup>30</sup> *Ibid.*

<sup>31</sup> State of Nevada. “Initiative Petition: Nevada Property Owner’s Bill of Rights.”  
<http://sos.state.nv.us/elections/initiatives/pdf/2008/2006EminentDomain.pdf>.

<sup>32</sup> Clark County Redevelopment Agency. “Report by the Clark County Redevelopment Agency to the Clark County Board of County Commissioners on the Proposed Clark County Redevelopment Plan.”  
[http://www.accessclarkcounty.com/depts/comprehensive\\_planning/redevelopment/Documents/ReporttoCountyCommission110403.pdf](http://www.accessclarkcounty.com/depts/comprehensive_planning/redevelopment/Documents/ReporttoCountyCommission110403.pdf).

<sup>33</sup> *Op cit.*, note 14.

<sup>34</sup> *Ibid.*

<sup>35</sup> Diana Sahagun. “’02 Could be Downtown LV Turning Point.” *Las Vegas Sun*. December 28, 2001.  
<http://www.lasvegassun.com/news/2001/dec/28/02-could-be-downtown-lv-turning-point/>.

<sup>36</sup> Judy Odierna. “Downtown Still Priority for Goodman.” *Las Vegas Sun*. January 15, 2003.  
<http://www.lasvegassun.com/news/2003/jan/15/downtown-still-priority-for-goodman/>.

<sup>37</sup> *Op cit.*, note 35.

<sup>38</sup> City of Las Vegas website. “City Council.” Accessed November 21, 2008. <http://www.lasvegasnevada.gov/Government/council.htm>; City of Las Vegas Redevelopment Agency website. Accessed November 21, 2008. <http://www.lvrda.org/>.

<sup>39</sup> *Op cit.*, note 36.

<sup>40</sup> Sam Skolnik. “Temple Becomes Tiny Battleground.” *Las Vegas Sun*. October 22, 2008. <http://www.lasvegassun.com/news/2008/oct/22/temple-becomes-tiny-battleground/>.

<sup>41</sup> City of Las Vegas Redevelopment Agency. “Redevelopment Agency Meeting Agenda.” January 22, 2003.  
<http://www.lasvegasnevada.gov/files/agendas/2003-01-22-Minutes-RA.pdf>.

<sup>42</sup> Open Records Request fulfilled by City of Las Vegas, 2008; See Chart 1 (PH GSA LLC).

<sup>43</sup> *Op cit.*, note 36.

<sup>44</sup> J.M. Kalil. “In Promoting Redevelopment in Las Vegas, Mayor Goodman Zealously States his Client’s Case.” *Las Vegas Review-Journal*.

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December 19, 2004.

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<sup>45</sup> The Molasky Group of Companies. *Development News*. “New Downtown’s First Office Building Comes on Line.” Spring 2005. <http://www.molaskypacific.com/company/newsletters/MGC-Nwsltr-Spring05.pdf>.

<sup>46</sup> *Op cit.*, note 38.

<sup>47</sup> *Op cit.*, note 32.

<sup>48</sup> Nevada Revised Statutes § 279.486. <http://www.leg.state.nv.us/Nrs/>.

<sup>49</sup> The Urban Land Institute. “Anaheim’s Platinum Triangle: A Model for Land Use Change or a Once in a Lifetime Opportunity?” Accessed November 21, 2008.

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<sup>50</sup> Institute for Justice. *Perspectives on Eminent Domain Abuse*. “Simplify, Don’t Subsidize: The Right Way to Support Private Development.” <http://www.castlecoalition.org/images/publications/perspectives-simplify.pdf>.

<sup>51</sup> Steven Greenhut. “The Anti-Kelo: A Heavy Government Hand isn’t Necessary for Economic Development.” *The Wall Street Journal*. April 6, 2006. <http://www.opinionjournal.com/cc/?id=110008189>.

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