

## TDDs tap sales tax, bypass voters, city

by [Chad Day](http://www.columbiabusiness-times.com/author/chad-day/) (<http://www.columbiabusiness-times.com/author/chad-day/>)

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**Also by Jacob Barker**

Almost every month, a handful of influential business leaders gather in City Hall for a public meeting. The subject: transportation projects around most of Columbia's largest shopping centers that are paid for by a special sales tax.

Typically, though, the public is absent from these meetings of Transportation Development District boards. TDDs have become a favored means for property owners to finance road improvements and other projects necessitated by large developments. All retail stores within such districts charge a half-cent sales tax to pay for those projects.

Over the past three years, Columbia shoppers have paid \$8.4 million to the TDDs and are quietly informed at the bottom of their receipts, which show a sales tax of 8.05 percent rather than 7.55 percent.

Since the first one was created in 2002, TDD records show that the districts have spent more than \$36 million widening roads, managing storm water and paying the lawyers, accountants and engineers necessary to establish and operate the public governmental entities. Shoppers will be picking up that tab over the next couple of decades.

But at no point does the public have any say about whether the sales taxes are imposed, whether the money is being spent wisely or whether the projects they finance are desirable.

State law allows the property owners and their district boards to make all those decisions.

Unlike tax increment financing or a community improvement district, TDD projects rely on the approval of a judge rather than the City Council.

High-ranking city and state officials find the situation disturbing. They worry that TDDs put too much authority – and too much tax money – into the hands of a few powerful businesspeople. They note that two TDDs in Columbia have collected sales tax for years and done nothing but pay lawyers and accountants with the revenue. And they criticize laws that give the state little power to oversee the districts and make TDDs ripe for abuse.

But TDD board members, and the attorneys who represent them, say TDDs have financed public street projects that might never have gotten off the ground otherwise. They say that not all TDDs abuse the law and that they are an important incentive for development.

"We have done what I think the law requires all TDDs to do," said Columbia attorney Craig Van Matre, who represents seven of Columbia's 13 TDDs. "We have collected the money, spent it on what it is supposed to be spent on, accounted for it, documented it, played the game by the rules."

But even Van Matre agrees that TDDs are imperfect.

“Is there room for increased regulation and oversight and scrutiny? Absolutely,” he said. “Do some people who set up these TDDs ignore the Sunshine Law, ignore the rules that govern them, appropriate funds that should be applied for public purposes or something that has some arguable public benefit and divert those funds to something that has a purely private benefit?”

“Absolutely, happens all the time.” Van Matre said it’s up to district boards and attorneys to comply with the law. “That’s the big flaw in the system – nobody is policing it.”

## **Objections to ‘developer subsidies’**

Fourth Ward City Councilman Jerry Wade, who also is a former chairman of the Planning and Zoning Commission, has disliked TDDs since the first one came to the city in 2002.

“It’s the subsidy of developers with taxpayer money, with no representation,” Wade said. “I mean, it’s the Boston Tea Party.”

Many residents agree that levying sales tax without their vote is troubling, even when the tax only amounts to 50 cents on every \$100 they spend.

“Nothing’s free,” said Ed Beaver, a shopper at Columbia Mall who was somewhat familiar with TDDs after hearing them discussed on the radio. “I’d rather pay a little extra to improve the roads and provide transportation for others.”

Still, Beaver said, he doesn’t think the owners of a development should charge tax without voters’ say-so.

“It should be voter-approved,” he said. “There’s a fine line between getting taxed and getting stuff shoved down your throat.”

A public opinion survey of Boone County residents in 2005 found most residents opposed the principle behind TDDs. Commissioned by Brian Treece, a partner in the Jefferson City lobbying firm TreecePhillips LLC, the survey asked 400 registered voters by telephone whether they supported retail sales taxes approved by judges for transportation improvements. Seventy-seven percent of the respondents did not.

Another survey commissioned by Treece posed the question again, but in slightly different terms. It asked whether residents supported sales taxes that help retailers such as Target and Walmart pay for transportation costs. Seventy-three percent opposed the idea.

“Regardless of the rationale of the (sales tax) increases, the poll demonstrates that voters overwhelmingly oppose judge-approved, retail sales tax increases that are levied without voter approval,” Treece wrote in an e-mail to the *Missourian*.

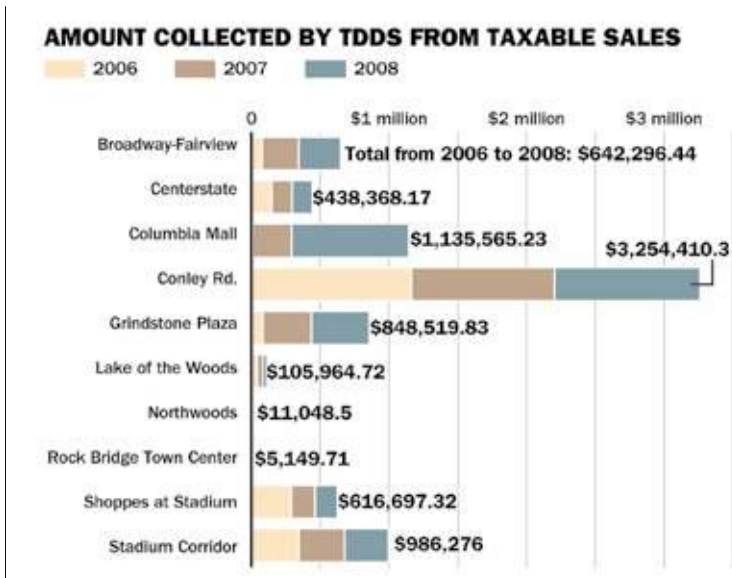
Proponents of the districts say people can simply shop elsewhere if they don’t want to pay the extra tax. Even then, they might benefit from the roadwork.

But it’s not easy to shop outside a TDD. Most of Columbia’s department stores, and all its Walmarts, are within them. Some grocers remain outside the districts, but the two new Hy-Vee stores will be within their boundaries.

Shops within TDDs are now required to post signs notifying shoppers of the additional tax. But those “signs” generally are cash register stickers smaller than an index card.

Overall, transportation development districts have done more good than harm, Van Matre said. He cited an agreement with the city of Columbia through which the Grindstone Plaza TDD financed the construction of two storm water detention basins that spared a nearby subdivision from frequent flooding.

“Does anybody ever say, ‘Sure was a good thing there was a TDD there to help build this so we don’t have to worry about water in our living rooms any more’?” Van Matre said. “No. Not one person has ever said that to me.”



## Spending but not building

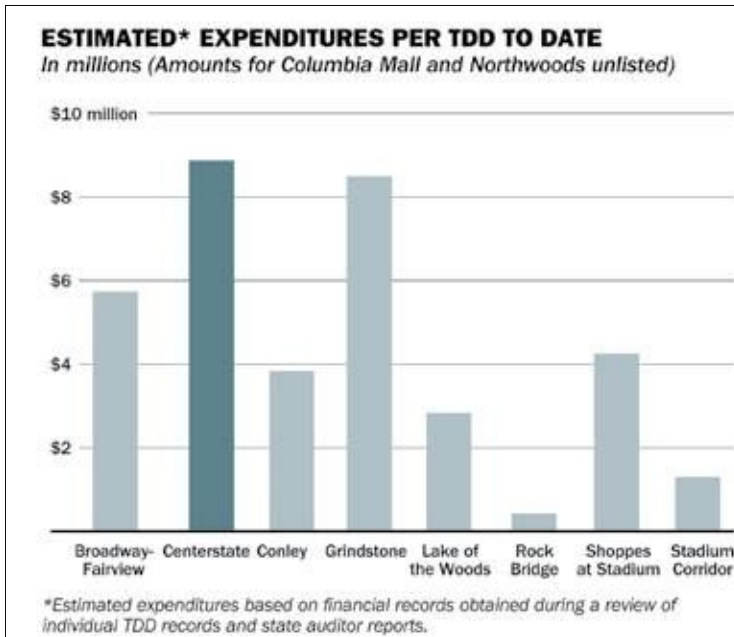
The congestion on Stadium Boulevard between Broadway and Interstate 70 has been a problem for years, and city officials decided to do something about it. They tried to negotiate an agreement, urging the formation of three transportation development districts to finance \$21 million worth of road projects, putting the prospects of future roadway needs in the hands of private developers.

The implementation of that agreement has stalled. But still the sales tax flows. Two of the TDDs in the Stadium area have been collecting the tax for years with no road projects to show for it.

Stadium Corridor TDD, established by developer Raul Walters in 2004, comprises three shopping centers on Stadium Boulevard: Crossroads Shopping Center, a strip mall anchored by Best Buy, and another anchored by the now-closed Circuit City store and Toys ‘R’ Us.

The district began collecting sales tax late in its first year but has yet to start physical construction of a single road project. It has spent more than \$1.3 million in sales tax proceeds on engineering, administrative and legal costs, according to documents obtained from the district.

Meanwhile, the Columbia Mall TDD has yet to begin any transportation projects despite collecting \$1.1 million in sales tax from its shoppers, according to city records. Eventually, the tax money will fund the expansion of the mall’s parking lot, according to its records.



Walters' Stadium Corridor TDD stalled progress on the agreement with the Columbia Mall TDD and the Shoppes at Stadium TDD, which was formed by Stan Kroenke, to fund road projects in the area. All three TDDs were established after the city agreed to support their formation on the condition that they later combine under a city-organized "master TDD."

Walters, who died last winter, paid for engineering plans for the master district, but its formation has been delayed by a dispute over whether to improve access to the Best Buy shopping center before the state builds other projects.

Craig Davis, an attorney for Stadium Corridor TDD, wrote in an e-mail on April 20 that the Missouri Department of Transportation and the district had agreed on the details of the construction plan. The Missouri Highways and Transportation Commission will review the projects for final approval at its next meeting on May 6.

Shoppes at Stadium decided not to wait for the other TDDs and paid MoDOT about \$1 million so it could start building. It completed construction of a right-in, right-out access on Worley Street for the recently opened Dick's Sporting Goods.

Although the districts hope to start on the more extensive joint road projects soon, it's unclear whether anyone – including the city or MoDOT – can compel them to do the work within a certain time frame.

Although most of the money the districts collect must be spent on transportation projects, there are costs for attorneys, accountants, engineers and other professional services that can run into the millions before any actual construction takes place.

And given that TDDs are required to go through a thorough review by the Missouri State Auditor's Office only once every three years, the lack of public involvement allows potential abuses to go unnoticed and uncorrected.

## Public subsidies for private developers

Most of the roadwork the districts finance is made necessary by the increased traffic the shopping centers generate. It comes down to a fundamental debate about what is an appropriate use of public money.

"It's very difficult for large retailers to come into Columbia without some kind of assistance," said Don Lairmore,

one of the Centerstate TDD's original board members. He noted that Columbia has few incentives aimed at attracting large businesses.

Councilman Wade, however, said public subsidies for private developments are inappropriate.

"I know what the argument is: that if they don't get that public subsidy, then they can't compete," Wade said. "Well, then maybe it's a development that shouldn't be built. That's what the marketplace is all about."

Wade worries about TDD openness and the inability of city governments to have a say in their decision making, but he is particularly bothered by the idea of subsidizing retail development.

"My concern goes into the fundamentals of economic development," Wade said, adding that incentives for businesses should focus on bringing wealth into the community.

"Commercial developments will take care of themselves," he said. "They are built out of the vitality of the economic base."

Maybe 20 years ago, Wade said, more development would have increased Columbia's regional draw and attracted consumers from outside the city. But now, as other mid-Missouri towns build commercial centers, Wade doesn't think additional development increases city or private revenue.

"I would argue that most retail developments simply become a shifting of what's here," Wade said. Building a Macy's or a Walmart or a Hy-Vee, in other words, doesn't cause people to buy more; it simply causes them to change where they shop.

Van Matre, however, said TDDs allow developers to keep up with the rising cost of complying with government regulations.

David Atkins, a local developer who set up the Blue Ridge Town Centre TDD that's managed by Van Matre's firm, agrees.

"Municipalities across the country are doing everything they can to shed their cost and push it out to the private market," Atkins said.

"So maybe a TDD is simply the response of the private market, saying, 'Hey, we're carrying a lot of this public load, so give us access to those sales tax dollars.' Overall, it's probably equitable."

Lairmore emphasized what he sees as the many benefits of TDDs. He noted, for example, that because the Bass Pro Shops at Centerstate is the only one in mid-Missouri, much of that district's tax revenue comes from people who drive into Columbia. The TDD ensures that the shoppers who use the roads are the ones who pay for the projects and that there's no burden on those who don't shop there. In addition, the districts attract new developments that pay property taxes.

"I don't know of any tax instrument, except possibly a gasoline road tax, that you are going to get out-of-town people to pay for infrastructure," Lairmore said.

## **Compliance complications**

TDDs began popping up at the beginning of the decade, a few years after the state statute was amended in 1997 to allow property owners to establish them. Before that, there wasn't a single TDD in the state.

From then until Dec. 31, 2006, 122 districts were established statewide to fund transportation projects totaling an estimated \$1.19 billion in costs, according to the 2008 state auditor's report. Those districts were projected to

collect about \$1.45 billion in tax revenue over their lifetimes. The districts in Columbia are projected to collect more than \$132 million.

It's up to the good will of developers to spend tax money appropriately, given the lack of enforcement mechanisms in state law, the auditor's report found.

That conclusion was nothing new. In 2006, then-State Auditor Claire McCaskill identified problems with oversight, accountability and transparency in the TDD statute. McCaskill's report took issue with districts collecting their own sales taxes instead of contracting for collection with the Missouri Department of Revenue or a local transportation authority.

In Columbia, nine of the 13 TDDs contract with the city to collect sales tax. Gans Road, Blue Ridge Town Centre and Crosscreek have collected no taxes yet. Stadium Corridor employs an accountant to collect the tax. The money then goes to a lockbox at the district's bank, with a form recording the amount collected going to the accountant, Craig Davis, Stadium Corridor's attorney, said. Eventually Stadium Corridor's sales tax will be collected and disbursed by the city.

Montee's administration highlighted similar problems.

Montee urged legislators to amend the statute to require that districts seek competitive bids for professional services necessary to establish TDDs because they can be repaid with sales tax. Such services include legal, accounting and engineering.

"What we're concerned with here is we don't want to create a situation that's ripe for abuse," Martin said, adding that the state is limited in its ability to rein in districts with questionable practices.

Case in point: TDDs are required to file annual financial reports with the state auditor as well as independent audit reports every three years. But the statute gives the state no recourse when TDDs don't do it.

Martin, of the auditor's office, found that that 29 districts in Missouri, including Stadium Corridor and Northwoods in Columbia, failed to file required annual financial reports as of Dec. 31, 2007. Northwoods failed to file in 2005, and Stadium Corridor in 2006. He said the statute should better define appropriate practices for districts and give the state an enforcement hammer.

A bill that has passed the state Senate and is pending in the House would fine TDDs not more than \$500 for failing to file financial reports with the auditor's office.

Another bill filed during the 2008 session of the General Assembly sought to address concerns about TDD oversight and the types of projects permitted. But it never made it out of the Economic Development, Tourism and Local Government Committee, despite being sponsored by its chairman, Sen. John Griesheimer, R-Washington.

Van Matre warned against going too far with restrictions.

"As a result of the fact that many people seem to be abusing it except for a few suckers, they're going to come out with something that's just going to take away the value of these things. I just know it," he said, referring to his TDDs as the exceptions rather than the rule.

Wade said more regulation would simply hold TDDs accountable.

"If accountability and transparency makes them unusable," the councilman said, "can you think of a better statement about their appropriateness?"

## **HOW DO TDDs WORK?**

Property owners file a petition in state court for the formation of a TDD, outlining projects, costs and lifespan of a district.

State and local transportation authorities respond to these petitions and a judge usually issues a ruling establishing the district.

Property owners then elect boards of directors that usually have five members but can have up to 15. The boards then approve ballot language to impose a sales tax and put it to a “vote” by property owners. All 13 TDDs in Columbia charge a sales tax of 0.5 percent.

Although TDDs’ sales tax revenue is primarily intended to pay for streets and other infrastructure, TDDs also use the tax money to cover administrative, legal and engineering fees and all the costs associated with forming the district.