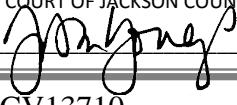


IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

FILED
DIVISION 6
28-Sep-2016 15:12
CIRCUIT COURT OF JACKSON COUNTY, MO
BY  DCA

IN THE MATTER OF:

KANSAS CITY MAIN STREET RAIL)
TRANSPORTATION DEVELOPMENT DISTRICT,)

GIBSON "GIB" KERR, et al.,)

Petitioners,)

v.)

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

Respondents.)

Case No. 1616-CV13710

Division 6

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND JUDGMENT

This matter having come before the Court on the Second Amended Petition For The Formation of a Transportation Development District filed in this matter (the "**Second Amended Petition**" or "**Petition**"), and the parties of record having appeared through counsel, and after consideration of the parties' pleadings (including Stipulations of Fact agreed to by the parties and the Affidavit of David Johnson, all as previously submitted to the Court), the public comments at the public hearing held by the Court, and the provisions of the Missouri Transportation Development District Act, §§ 238.200 – 238.275, RSMo, as amended (the "**Act**"), and other applicable law, the Court makes the following findings of fact and conclusions of law, and enters the following Judgment, Decree and Order.

I. PROCEDURAL BACKGROUND

Petitioners commenced this case on June 8, 2016 by the filing of a Petition for the Formation of a Transportation Development District (the “**District**”) pursuant to section 238.207.1 of the Act. By Order of the Court dated June 13, 2016, the Court set a public hearing for September 15, 2016 at 9:00 a.m. as permitted by section 238.212.2 of the Act (the “**Public Hearing**”) and an evidentiary hearing for September 16, 2016 (the “**Evidentiary Hearing**”). Notice was published in The Daily Record once a week for four consecutive weeks, on June 16, 2016, June 23, 2016, June 30, 2016 and July 7, 2016, notifying the public of the filing of the Petition, advising of the dates set for the Public Hearing and the Evidentiary Hearing, and advising to join in or file their own petition supporting or answer opposing the creation of the District and requesting a declaratory judgment that such petition is defective or the District or its funding method is illegal or unconstitutional, no later than August 8, 2016.

On July 15, 2016, prior to any Respondents having filed a responsive pleading, Petitioners filed their First Amended Petition for the Formation of a Transportation Development District. On August 4, 2016, Respondents, with leave of Court, filed their Second Amended Petition.

Timely responsive pleadings were filed by Respondents Missouri Highways and Transportation Commission (“**Commission**”), Kansas City Area Transportation Authority (“**KCATA**”), City of Kansas City, Missouri (“**City**”) and Port Authority of Kansas City, Missouri (“**Port Authority**”) (collectively, the “**Respondents**”). None of the Respondents oppose the formation of the District. No other pleadings were filed in response to the Petition.

On August 19, 2016, the Court held a scheduled on-the-record Status Conference at which the Court and counsel present discussed whether the Evidentiary Hearing was necessary in

light of the provisions of section 238.210.2 of the Act, and whether the Court should issue an order setting procedures for the Public Hearing. On August 23, 2016, the Court issued its Order cancelling the Evidentiary Hearing as permitted by section 238.210.2 of the Act on the basis that no objections to the Petition had been filed. On September 9, 2016, the Court issued its Order Establishing Rules and Procedures for Public Hearing (the “**Procedures Order**”).

The Public Hearing was conducted on the record by the Court on September 15, 2016. In accordance with the Procedures Order, the Court placed a “sign-in sheet (the “**Sign-In Sheet**”) outside the Courtroom¹. Thirty-seven (37) individuals placed their names on the Sign-In Sheet. Of those, twenty-three (23) persons represented on the Sign-In Sheet that they were “for”, twelve (12) persons represented that they were “against”, one (1) person noted himself as “neither” and one person made no representation at all. Four (4) of the thirty-seven (37) individuals on the Sign-In Sheet did not speak.²

It is important to note that the role of the Court in this proceeding is set out in the Act. It is not the function of the Court under the Act to take a position regarding the merits of the Project proposed by the District, but rather to determine whether the specific criteria set out in section 238.210 of the Act have been met by the Petitioners so that certain questions can be submitted to the Qualified Voters. Accordingly, many of the comments made at the Public Hearing – both “for” and “against” – are simply not proper matters for consideration by the Court. Nevertheless, the Court has considered the substance of certain statements made at the

¹ The Sign-In Sheet is a part of the record in this matter.

² In addition, the Court received an e-mail on September 20, 2016 from a resident stating his opposition to the granting of the relief requested by Petitioners. This e-mail was returned to the resident that same date along with correspondence indicating that the Court was prohibited from considering it.

Public Hearing as they relate to the legal issues before the Court, and has discussed them below as appropriate.

On September 19, 2016, Petitioners filed their Motion for Judgment on the Pleadings, accompanied by the Affidavit of Petitioner David Johnson and submitted a Proposed Judgment for the Court's consideration. In accordance with section 238.210.2 of the Act, and based upon the pleadings before it, the Court now makes the following findings of fact and conclusions of law and enters the following Judgment certifying the questions regarding District creation, project development, and proposed funding for consideration by the Qualified Voters.

II. FINDINGS OF FACT

1. Each of the sixty-four (64) Petitioners were, at the time of the filing of the Petition, residents of Jackson County, Missouri, and their respective voting residences were stated in the Petition.

2. Respondent Commission is the state agency constitutionally responsible for constructing and maintaining the Missouri highway system, and is a required respondent to the Petition by virtue of § 238.207.5(3)(c) of the Act.

3. Respondent KCATA is a political subdivision of the State of Missouri and an "Interstate Transportation Authority" within the meaning of § 92.400, RSMo, as amended, and is an affected local transportation authority within the meaning of the Act.

4. Respondent City is a political subdivision of the State of Missouri and is an affected local transportation authority within the meaning of the Act.

5. Respondent Port Authority is a political subdivision of the State of Missouri and is an affected local transportation authority within the meaning of the Act.

6. A specific description of the District's boundaries, and a map illustrating such boundaries, are attached to the Petition as Exhibit A-1 and Exhibit A-2, respectively, and incorporated herein by this reference. The area of the District is contiguous within the meaning of the Act.

7. Petitioners propose that the District will undertake, or cause to be undertaken, and may obtain, participate in, or otherwise assist in (including without limitation by use and/or pledge of its revenues) the financing and/or refinancing of, all or any portion of the following transportation project (the "**Project**"):

The design, construction, ownership and/or operation of a fixed rail streetcar and/or light rail system, and all elements thereof, including without limitation maintenance facilities, constituting a "public mass transportation system" as such term is defined in the Act. The Project will include (a) the initial 2.1 mile (+/-) starter line running generally along Main Street from River Market to Union Station (the "**Starter Line**"), initially developed and initially funded by the existing Kansas City Downtown Streetcar Transportation Development District (the "**Starter Line District**"), and (b) an extension route of such fixed-rail system connecting to the Starter Line and running south from Union Station generally along Main Street with a terminus in the general vicinity of the University of Missouri – Kansas City's Volker campus as generally depicted on Exhibit B, attached to the Petition and incorporated herein, but with specific design and engineering as finally determined by the City (the "**Extension Route**"), all to be owned and operated by one or more entities other than the District. The specific terminus (which may be closer to or farther from the Extension Route's terminus as depicted on Exhibit B) and the specific location of embark/disembark points, remain subject to refinement or alteration following further design and engineering; provided, however, that the

Extension Route would not extend further than the general vicinity of the University of Missouri – Kansas City’s Volker campus.

8. The District is intended by Petitioners to eventually replace the existing Starter Line District, and to assume any financial obligations of the Starter Line District.

9. Petitioners’ Funding Proposal (the “**Funding Proposal**”) is set out in section 78 of the Petition, which is incorporated herein by reference.

10. The Court takes judicial notice of the fact that the total ad valorem real property tax levy rate for commercial property (including the Merchant’s and Manufacturer’s Inventory Replacement Tax levy, which applies only to commercial real property) within the boundary of the District for tax year 2015 is \$9.4243 per \$100 of assessed value. Applying that levy rate to a commercial property with a market value of One Million Dollars (\$1,000,000) for ad valorem real property tax purposes would result in a real property tax liability of Thirty Thousand One Hundred Fifty-Seven and 76/100 Dollars (\$30,157.76), and an effective tax rate of approximately three percent (3%). Applying the maximum rate of the Commercial Property Assessment proposed by the Petition to a commercial property with a market value of One Million Dollars (\$1,000,000) for ad valorem real estate tax purposes would result in a Commercial Property Assessment of One Thousand Five Hundred Thirty-Six and 00/100 Dollars (\$1,536.00) and an effective special assessment rate of approximately fifteen one-hundredths of one percent (0.15%).

11. The Court takes judicial notice of the fact that the total ad valorem real property tax levy rate for residential property within the boundary of the District for tax year 2015 is \$7.9873 per \$100 of assessed value. Applying that levy rate to a residential property with a market value of Two Hundred Thousand Dollars (\$200,000) for ad valorem real estate tax

purposes would result in a real property tax liability of Three Thousand Thirty-Five and 17/100 Dollars (\$3,035.17), and an effective tax rate of approximately one and one-half percent (1.5%). Applying the maximum rate of the Residential Property Assessment proposed by the Petition to a residential property with a market value of Two Hundred Thousand Dollars (\$200,000) for ad valorem real estate tax purposes would result in a Residential Property Assessment of Two Hundred Sixty-Six and 00/100 Dollars (\$266.00) and an effective special assessment rate of approximately thirteen one-hundredths of one percent (0.13%).

12. The Court takes judicial notice of the fact that properties that are Exempt are not subject to ad valorem real property tax. Applying the maximum rate of the Tax Exempt Property Assessment proposed by the Petition to a Tax Exempt Property with a market value of Five Hundred Thousand Dollars (\$500,000) for ad valorem real estate tax purposes would result in a Tax Exempt Property Assessment of Two Hundred Fifty-Six and 00/100 Dollars (\$256.00) and an effective special assessment rate of approximately five one-hundredths of one percent (0.05%). Applying the maximum rate of the Tax Exempt Property Assessment proposed by the Petition to a Tax Exempt Property with a market value of One Million Dollars (\$1,000,000) for ad valorem real estate tax purposes would result in a Tax Exempt Property Assessment of Eight Hundred Ninety-Six and 00/100 Dollars (\$896.00) and an effective special assessment rate of approximately nine one-hundredths of one percent (0.09%).

13. The Court takes judicial notice of the fact that properties that are City Property are not subject to ad valorem real property tax. Applying the rate of the City Property Assessment proposed by the Petition to a City Property with a market value of One Million Dollars (\$1,000,000) for ad valorem real estate tax purposes would result in a City Property Assessment of Three Thousand Three Hundred Twenty-Eight and 00/100 Dollars (\$3,328.00) and an

effective special assessment rate of approximately thirty-three one-hundredths of one percent (0.33%).

14. The Court takes judicial notice of the fact that applying the maximum rate of the Surface Parking Assessment proposed by the Petition to a Surface Pay Parking Lot with fifty (50) Pay Parking Spaces would result in a Surface Parking Assessment of Two Thousand Seven Hundred Thirty-Seven and 50/100 Dollars (\$2,737.50), which is the same amount that would be payable if there were an improvement on such Surface Pay Parking Lot that was subject to the Commercial Property Assessment with a market value for ad valorem tax purposes of One Million Seven Hundred Eighty-Two Thousand Two Hundred Twenty-Six and 56/100 Dollars (\$1,782,226.56).

15. The Court takes judicial notice of the record in two prior proceedings in this Circuit, specifically *In the matter of Kansas City Downtown Streetcar Transportation Development District, City Council of the City of Kansas City, et al v. Kansas City Area Transportation Authority, et al, Case No. 1216-CV02419* (the “**2012 Proceeding**”) and *In the matter of Kansas City Urban Rail Transportation Development District, City Council of the City of Kansas City, et al v. Kansas City Area Transportation Authority, et al, Case No. 1416-CV02152* (the “**2014 Proceeding**”), both of which the Court has before it, and both of which were proceedings under the Act proposing transportation development districts that included funding proposals substantially similar, if not identical, to the Funding Proposal in this proceeding. In particular, the Court takes judicial notice of the Findings of Fact, Conclusions of Law and Judgment Relative to Conducting Formation Election entered in the 2012 Proceeding by the Hon. Charles Atwell, presiding (the “**2012 Decision**”) and the Order and Judgment Nunc Pro Tunc entered in the 2014 Proceeding by Hon. Marco Roldan, presiding (the “**2014**

Decision”). In both the 2012 Proceeding and the 2014 Proceeding, testimony was presented to support the finding that the respective fixed rail projects being proposed in those proceedings would afford the type of specially applicable benefit to real property adequate to support the imposition of the real property special assessments proposed in those proceedings. In the case of the 2014 Proceeding, that testimony was subjected to intense cross-examination by counsel for opposing parties therein. The Real Property Assessments proposed in this proceeding are identical in all material respects to those proposed in the 2014 Proceeding, in that they are identically geographically limited and are proposed at the same maximum rates upon the same classes of real property³. The Court is persuaded by the 2012 Decision and the 2014 Decision, and the record in those two proceedings, that the Project, if developed, provides a specialized benefit to real property within proximity to the fixed rail streetcar line⁴.

16. Publication as required by § 238.212 of the Act has been made, as evidenced by the affidavits of publication filed in this matter.

17. There is at least one (1) registered voter residing in the District.

18. The Project proposed to be undertaken by the District is not intended to be merged into the state highways and transportation system under the jurisdiction of the Commission.

³ In fact, the real property special assessments proposed in the 2012 Proceeding, which are currently imposed by the Starter Line District, extend further than the generally-applicable one-third (1/3) mile geographic limit proposed for within this District.

⁴ Reverend Gary Ziuraitis of Redemptorist Church, which is located within the District, stated at the Public Hearing that the Real Property assessment would not benefit the Church. Another speaker countered that assertion, stating that the Project could be seen to benefit parishioners of the Church, or persons using the Christo Rey School located on Church property. The Court takes note of the provisions of section 238.230.1(2) of the Act, which provides that “Improvements which may confer special benefits within a district include but are not limited to improvements which are intended primarily to serve traffic originating or ending within the district, to reduce local traffic congestion or circuitry of travel, or to improve the safety of motorists or pedestrians within the district.”

19. The District is located wholly within Kansas City, Jackson County, Missouri.

III. LEGAL ANALYSIS AND CONCLUSIONS OF LAW

Section 238.210 of the Act requires the Court to make certain determinations and findings as a precondition to calling the formation election sought in the Petition (the “Formation Election”), specifically:

- (a) that the Petition is not legally defective;
- (b) that the proposed district is not illegal or unconstitutional;
- (c) that the Respondents have been duly served with process in this action;
- (d) that the proposed funding methods and mechanisms are neither illegal nor unconstitutional; and
- (e) that the proposed district is not an undue burden on any owner of real property within the District and is not unjust or unreasonable;

The Court will address each of these preconditions individually, and will address Petitioners’ request that the Formation Election be conducted as a mail-in election as permitted by section 238.216 of the Act.

1. The Petition is not legally defective

As noted previously, this Petition was filed pursuant to section 238.207.5 of the Act. Section 238.207.5(2) of the Act provides that the proposed district area must be contiguous (and recognizes expressly that “property separated only by public streets, easements or rights-of-way...shall be considered contiguous”). Review of the proposed boundary of the District, as contained in the Petition and its exhibits, shows that this requirement is satisfied.

Section 238.207.4 of the Act lists the contents required of a petition. Those requirements are listed below verbatim from the Act, along with the corresponding paragraph(s) of the Petition that satisfies each such requirement in parentheses and bold italics:

The petition shall set forth:

- (1) *The name, voting residence and county of residence of each individual petitioner, or, if no persons eligible to be registered voters reside within the proposed district, the name and address of each owner of record of real property located within the proposed district, or shall recite that the petitioner is the governing body of a local transportation authority acting in its official capacity (See paragraphs 1 through 64 of the Petition);*
- (2) *The name and address of each respondent. Respondents must include the commission and each affected local transportation authority within the proposed district, except a petitioning local transportation authority (See paragraphs 65 through 68 of the Petition);*
- (3) *A specific description of the proposed district boundaries including a map illustrating such boundaries (See paragraph 71 and Exhibit A-1 and Exhibit A-2 of the Petition);*
- (4) *A general description of each project proposed to be undertaken by the district, including a description of the approximate location of each project (See paragraph 72 and Exhibit A-2 of the Petition);*
- (5) *The estimated project costs and the anticipated revenues to be collected from the project (See paragraph 73 of the Petition);*
- (6) *The name of the proposed district (See paragraph 74 of the Petition);*
- (7) *The number of members of the board of directors of the proposed district (See paragraph 74 of the Petition);*
- (8) *A statement that the terms of office of initial board members shall be staggered in approximately equal numbers to expire in one, two or three years (See paragraph 74 of the Petition);*
- (9) *If the petition was filed by registered voters or by a governing body, a request that the question be submitted to the qualified voters within the limits of the proposed district whether they will establish a transportation development district to develop a specified project or projects (See paragraph 76 of the Petition);*

(10) A proposal for funding the district initially, pursuant to the authority granted in sections 238.200 to 238.275, together with a request that the imposition of the funding proposal be submitted to the qualified voters within the limits of the proposed district; provided, however, the funding method of special assessments may also be approved as provided in subsection 1 of section 238.230 (*See paragraphs 78 and 82 of the Petition*);

(11) A statement that the proposed district shall not be an undue burden on any owner of property within the district and is not unjust or unreasonable (*See paragraph 83 of the Petition*); and

(12) Details of the budgeted expenditures, including estimated expenditures for real physical improvements, estimated land acquisition expenses, estimated expenses for professional services and estimated interest charges (*See paragraph 81 and Exhibit C of the Petition*).

2. The proposed district is not illegal or unconstitutional

None of the Respondents, and none of the speakers at the Public Hearing, have asserted specifically that the District itself is illegal or unconstitutional. However, several speakers in opposition at the Public Hearing expressed the view that the question of moving forward with the Project should be presented to the voters of the entirety of the City, and/or that the boundary of the District was unlawfully “gerrymandered” in order to ensure a successful vote. Again, while not matters which were properly raised in pleadings filed in opposition to Petitioners’ request for relief, the Court addresses these and other issues herein.

a. City-Wide Vote

The question of moving forward with the Project *could* be presented for consideration by the voters of the City as a whole. However, the Act clearly provides for a project such as this one to be pursued under the auspices of a transportation development district that encompasses less than an entire municipality. Specifically, section 238.207.3 of the Act provides: “The proposed district area shall be contiguous and *may contain all or any portion of one or more municipalities and counties*” (emphasis added). The Act specifically contemplates that the

decision of whether to propose a TDD may be made by those residing within the proposed district, or by the owners of real property in the proposed district when there are no registered voters residing therein. *See* § 238.207 of the Act.

A determination by the governing body of a municipality to appropriate municipal funds to all or a portion of the cost of the development, construction and/or maintenance of a public improvement is a power vested in the municipality's legislative powers, and does not require, in each instance, a vote of the public. That the City may determine to apply otherwise lawfully available municipal funds to the Project is legally no different from the City determining to construct or widen a public street, or improve an intersection. The fact that such public improvement may be constructed in a portion of the City in Platte County and may or may not be "used" by a resident of a portion of the City in Jackson County does not require a vote of all of the electorate of the City. Such potential appropriation of otherwise lawfully available municipal funds for the Project by the City does not render the District illegal or unconstitutional.

b. Unlawful Gerrymandering

The Court is not persuaded that the District is illegal or unconstitutional as a result of the claim by some speakers at the Public Hearing that the boundary of the District was "gerrymandered" so as to increase the likelihood that the boundary creates a pool of Qualified Voters more likely than not to vote to approve the formation of the District and the Funding Proposal.⁵ Gerrymandering is defined as: "The practice of dividing a geographical area into electoral districts, often of highly irregular shape, to give one political party an unfair advantage by diluting the opposition's voting strength." *Black's Law Dictionary* (10th ed. 2014); *see also*,

⁵ Again, it bears repeating that this claim was not raised by any individual or entity in response to the filing of Petitioners' Petition in this action.

Vieth v. Jubelirer, 541 U.S. 267, 124 S.Ct. 1769, 158 L.Ed.2d 546 (2004). Drawing districts in a manner that results in racial or ethnic discrimination in violation of the Fourteenth Amendment of the United States Constitution, or Article I, Section 2 of the Missouri Constitution or a violation of the Federal Voting Rights Act of 1965 is also unlawful. See, generally, 25 Am. Jur. 2d Sec. 38; *See also, Johnson v. State*, 366 S.W.3d 11, 26-27 (Mo. banc 2012).

There is simply no evidence before the Court, nor does the Court conclude on its own, that the boundaries of the District are irregular or have otherwise been proposed in a manner that constitutes unlawful gerrymandering as that phrase has been defined under Missouri law.

3. The Respondents have been duly served with process in this action

The Court record includes Affidavits of service on each Respondent. All Respondents have appeared through counsel and filed responsive pleadings, none of which challenges service of process.

4. The proposed funding methods and mechanisms are neither illegal nor unconstitutional

a. Lack of a Right to Vote for Non-Resident Property Owners

Some individuals who testified at the Public Hearing in opposition to the Petition claimed that it is unlawful to levy a special assessment based only on the approval of registered voters residing in the District without also allowing nonresident landowners to have a vote in their capacity as landowners. This is incorrect. The United States Supreme Court has repeatedly made clear that “a government unit may legitimately restrict the right to participate in its political processes to those who reside within its borders” and that such a restriction does not violate the Equal Protection Clause of the U.S. Constitution. *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 68–69 (1978). In *Holt*, the Supreme Court considered an equal protection claim brought

against a city by nonresidents who were not allowed to vote in the city's elections but were subject to some of the city's regulations and fees. The Court observed:

From [our earlier] voting qualifications cases a common characteristic emerges: The challenged statute in each case denied the franchise to individuals who were physically resident within the geographic boundaries of the governmental entity concerned. No decision of this Court has extended the "one man, one vote" principle to individuals residing beyond the geographic confines of the governmental entity concerned, be it the State or its political subdivisions. On the contrary, our cases have uniformly recognized that a government unit may legitimately restrict the right to participate in its political processes to those who reside within its borders.

Id. at 68-69. The holding in *Holt* was consistent with earlier cases finding that states and municipalities "have the power to require that voters be bona fide residents of the relevant political subdivision." *Dunn v. Blumstein*, 405 U.S. 330, 343 (1972); *see also Evans v. Cornman*, 398 U.S. 419, 422 (1970); *Kramer v. Union Free School District No. 15*, 395 U.S. 621, 625 (1969); *Carrington v. Rash*, 380 U.S. 89, 91 (1965).

Because nonresident property owners have no fundamental right to vote derived from their status as nonresident landowners, their exclusion must only have an arguable rational basis to be legitimate. *See Holt*, 439 U.S. at 69. Courts routinely uphold such parameters. *See, e.g., Neilson v. City of California City*, 133 Cal.App.4th 1296, 1317 (Cal. App. 2005) (restricting the vote on a flat-rate parcel tax measure to city residents, to the exclusion of nonresident property owners, had a rational basis because the "City could have determined that the residents are most knowledgeable and interested in all aspects of local affairs, on both the revenue and expenditure side of its ledger"); *Massad v. City of New London*, 652 A.2d 531, 539 (Conn. 1993) (restricting the vote on a city budget and tax rate ordinance to city residents, to the exclusion of nonresident property owners, was "tailored to legitimate governmental concerns and [wa]s not overridden by the interests of persons owning taxable property in the town who prefer to live elsewhere");

Givorns v. City of Valley, 598 So.2d 1338, 1340 (Ala. 1992) (finding a rational basis for restricting a municipal annexation election to residents of the area to be annexed, to the exclusion of nonresident property owners).

There are a number of rational bases that support the Missouri Legislature's enactment of a voting regime that does not extend to nonresident property owners the power to vote with respect to the formation of the District and eventually its revenue sources, even if nonresident property owners may be affected by the outcome. District residents "have a greater individual interest in the development and welfare of the [District] than do nonresidents. They have a greater personal knowledge of the [District's] conditions, and, as inhabitants, they have a greater personal stake in the [District's] welfare and progress..." *Massad*, 652 A.2d at 538. District residents will tend to have a "greater knowledge and interest in local affairs," while nonresident property owners may "mainly be interested in lower taxes." *Foothill–De Anza Community College Dist. v. Emerich*, 158 Cal.App.4th 11, 25 (Cal. App 2007); *see also Neilson*, 133 Cal.App.4th at 1317. Whether these considerations reflect local circumstances within the District is irrelevant to this analysis. Because a transportation development district is purely a creature of statute, the Missouri Legislature had the power to decide whether and on what basis, if any, to extend to nonresident property owners an opportunity to vote on a particular question in regard to transportation development districts, and lawfully chose not to do so.

b. Property Assessments Against City-Owned Property

In the City's Answer to the Petition, the City notes that the District may not levy special assessments against City Property⁶. Petitioners appear to recognize this in light of language in

⁶ See sections 5 and 11 of the City's Answer to the Petition.

the Funding Proposal⁷ stating that the City “will contractually agree to pay [the Real Property Assessments against City Property], subject to annual appropriation, pursuant to a Cooperation Agreement to be entered into...” If given a strict reading, this component of the Funding Proposal could be found to be illegal, because the City may in fact not agree to enter into such a Cooperation Agreement. One could read Petitioners’ language in section 78(a)(iii) of the Petition as being permissive rather than mandatory, referencing as it does a Cooperative Agreement “to be entered into”, and the Court concludes that to be the intent of Petitioners. Section 238.210.2 of the Act provides: “If the court determines that any proposed funding method is illegal or unconstitutional, it shall enter its judgment striking that funding method in whole or part.” In order to address this potential illegal aspect of the Funding Proposal, the Court will in part strike that funding method by modifying the language of the Funding Proposal to instead read, in pertinent part: “...the City may contractually agree to pay, subject to annual appropriation, pursuant to a Cooperation Agreement that may be entered into...”

5. The proposed district is not an undue burden on any owner of real property within the District and is not unjust or unreasonable.

In analyzing whether an assessment constitutes an “undue burden,” Missouri courts look at whether a property owner’s burden is grossly disproportionate to that of other property owners, or whether a single property owner bears the entire burden of a project that benefits many in common. Two early cases on this subject are instructive.

In *Mound City, ex rel. and to Use of Kee, v. Melvin*, 205 S.W. 254 (Mo. App. 1918), the court stated that it would be an “undue burden” for a property owner to pay the entire cost of an assessment that benefitted all in common. *Id.* at 257 (finding no undue burden and stating that

⁷ See section 78(a)(iii) of the Petition.

“if by reason of circumstances, it costs more to build a walk in front of a particular lot than in front of others of the same width, this particular excess is distributed throughout all of the tracts benefited by the continuous improvement as a whole, instead of making one property owner bear an undue burden in paying for an improvement that was beneficial to all in common.”). *Fay v. City of Springfield*, 94 F. 409 (W.D. Mo. 1899), emphasized the same principle, stating: “The whole burden of such tax cannot be placed upon a single lot on the ground that the whole is not greater than the betterment of such lot, unless the other lots on the street derive no benefit therefrom.” *Id.* at 421.

In contrast, this Court is not presented with a Funding Proposal that would impose on a single property owner the entire burden of a project that benefits all, nor is this a situation where it can be said that the burden is distributed in a grossly disproportionate manner. This assessment will be borne ratably by property owners in proportion to their properties’ values, and for that reason it does not impose an undue burden on any property owner.

In addition, the components of the Funding Proposal include sources other than the Property Assessments and the Surface Parking Assessments to pay costs of the Project. The Funding Proposal includes District revenue generated by the proposed Sales Tax. In addition, section 77 of the Petition references a need to obtain capital funding sources in addition to what could be derived by District revenue in order to make construction of the Project feasible. According to the Affidavit of David Johnson, the approximately half of the capital costs of the Project are intended to be derived from sources other than District revenue. Based on the applicable case law interpreting the phrase “undue burden,” the Funding Proposal does not violate this requirement of the Act.

The Court must also determine whether the Funding Proposal is “unjust or unreasonable.” Considering the effective rates of the proposed Property Assessments, which range from approximately five one-hundredths of one percent (0.05%) of tax market value to approximately thirty-three one-hundredths of one percent (0.33%) of tax market value, the Court is not prepared to conclude that the Property Assessments are unjust or unreasonable. The owner of a commercial property valued at One Million Dollars (\$1,000,000) would pay approximately One Thousand Five Hundred Forty Dollars (\$1,540) per year if the maximum rate were to be applied. Both the Residential and Tax Exempt Property Assessments have effective rates lower than that for the Commercial Property Assessment and thus the same conclusion pertains to those Property Assessments.

The Court has noted the comments at the Public Hearing of Reverend Ziuraitis of Redemptorist Church in this regard (See Fn 3). The Court concludes, however, that the imposition of a special assessment against property that is exempt from ad valorem real property tax has previously been held to be lawful. *See, e.g., Crittendon v. Reed*, 932 S.W.2d 403, 405 (Mo. banc 1996) (“The charitable purpose exemption negates general taxation, but not ‘special assessments to pay the cost of local improvements.’”); *Lakewood Park Cemetery Association v. Metropolitan St. Louis Sewer District*, 530 S.W.2d 240, 245 (Mo. banc 1975) (citing *Mullins v. Mt. St. Mary’s Cemetery*, 239 Mo. 681, 144 S.W. 109, 110 (1911)).

Moreover, the Court takes judicial notice of the fact that, according to the public records of the Jackson County, Missouri Assessor, the current market values of the four parcels of real property owned by the Redemptorist Church within the District are \$3,731,283, \$162,000, \$25,071 and \$35,368, which would result in an annual Real Property Assessment of \$4,392.05 if assessed in 2016. The Court cannot conclude that such an assessment is unjust or unreasonable.

The Surface Parking Assessment, which is applicable only to Surface Pay Parking Lots, is intended by Petitioners to account for the lower Property Assessments attributable to Surface Pay Parking Lots. The dollar amount of that Surface Parking Assessment is not unjust or unreasonable, and shifting some reasonably small portion of the costs of the Project that would otherwise be borne by improved properties to these underutilized parcels creates a more equitable distribution of the costs of the Project.

6. A Mail-In Election is Not Unduly Burdensome.

Some speakers at the Public Hearing stated that certain procedures associated with a mail-in election, particularly the requirement of applying for a ballot, and of having a ballot notarized as a condition of validity, create burdens not found in a “live” election involving traditional polling places.

Section 238.216 of the Act specifically allows for the Formation Election to be conducted as a mail-in election. Rather than incorporate provisions of Missouri’s general election laws found in Chapter 115, RSMo, including Missouri’s Mail Ballot Election Act contained in that chapter, the Legislature saw fit to establish specific procedures to be followed for a mail-in election under the Act. Such an election is to be conducted by the Circuit Court itself, and not through the local election authority.

The Court notes that requirements to apply for a ballot and to have a voted ballot notarized are not unique to a mail-in election conducted under the Act. Section 115.279, RSMo, requires that a person desiring to cast an absentee ballot must similarly make application for that ballot. Likewise, under section 115.283 RSMo, a return ballot cast by an absentee voter must also be notarized.

The Court acknowledges that a mail-in election involves processes not associated with a “live” election at traditional polling places. However, it is also true that a “live” election imposes requirements not found in a mail-in election. For example, a person desiring to vote at a polling place must travel to the polling place to vote, and in many cases, must have a means of transportation to get to the polling place. A live election occurs only on the specific election day, which is for most everyone also a work day, and polling places are open only during limited hours. It is not uncommon for voters to find themselves in waiting lines to vote. And in order to receive a ballot at a live election, a person desiring to vote must present certain forms of identification set out in Section 115.427, RSMo. The Court cannot conclude that a mail-in election conducted as authorized by the Legislature in the Act is so burdensome as to prevent its use.

Accordingly, and in keeping with the issues that the Court is obligated to determine as part of this proceeding, the Court concludes as follows:

1. Jurisdiction is proper in this Court pursuant to Section 238.207.1 of the Act.
2. Venue is proper in this Court pursuant to Section 238.207.1 of the Act, in that the District lies entirely within Jackson County, Missouri.
3. The Court hereby finds and certifies that:
 - (a) All Respondents in this action have been duly served with process;
 - (b) The Petition is not legally defective and the proposed district is not illegal or unconstitutional;
 - (c) The District is not an undue burden on any owner of property within the District and is not unjust or unreasonable; and

(d) As partially stricken and modified by the Court in section III.4.b., above, neither the Funding Proposal nor any part thereof is illegal or unconstitutional.

IV. ORDER, DECREE AND JUDGMENT

THEREFORE, pursuant to § 238.210.2 of the Act, it is hereby **ORDERED**,
DECREED AND ADJUDGED THAT

1. The Court certifies the Petition for voter approval, and pursuant to § 238.216 of the Act, calls for the Formation Election, which shall be conducted as a mail-in election as further ordered herein.

2. The revenue sources of the District as described in the Funding Proposal shall not be collected until (a) the Starter Line District is abolished, terminated or dissolved, or merged with or into the District, or its revenue sources reduced to zero by action of the Board of Directors of the Starter Line District or otherwise, in accordance with then applicable law, and (b) the Board of Directors of the District determines that there are sufficient funds to be derived from sources other than revenue of the District in order to make the construction of a substantial portion of the Extension Route financially viable when aggregated with revenue of the District.

3. Approval of the Project shall vest exclusively with the City, which has jurisdiction over and will become owner of the Project, subject to the District or the City entering into all necessary agreements with the Commission and acquiring from the Commission all necessary permits to provide for the construction, maintenance and ownership of the portions of the Project, if any, that will be located on the surface and airspace of the right of way that is within the state highway system and subject to the District and the City developing the Project in a manner compatible with the current operation and maintenance and future development of the state highway system.

4. The Court Administrator of the Circuit Court of Jackson County, Missouri (the “**Court Administrator**”) shall cause to be submitted by mail-in ballot to the “Qualified Voters” (as defined in the Act) within the limits of the District, in accordance with the schedule and procedure set out in section 3 below, the questions regarding district creation, project development, and proposed funding, which shall be submitted to the Qualified Voters through the ballot question (the “**Ballot**”) in the form attached hereto as **Exhibit A** and incorporated herein by reference.

5. The election called by this Order (the “**Formation Election**”) shall be conducted in accordance with the following schedule and procedures:

(a) Individuals that are Qualified Voters at the time of application for a Ballot shall have until 5:00 p.m. on May 2, 2017 to apply to the Court Administrator for a Ballot. Application for a Ballot shall be conducted in accordance with § 238.216.2 of the Act using the form of Application attached hereto as **Exhibit B** and incorporated herein by reference, with blanks therein completed by the Court Administrator;

(b) The Court Administrator shall give notice of the Formation Election, substantially in the form attached hereto as **Exhibit C** and incorporated herein by reference, with blanks therein completed by the Court Administrator, by publication in a newspaper of general circulation, three (3) times between April 4, 2017 and April 25, 2017, each at least five (5) days apart;

(c) Ballots shall be mailed by the Court Administrator via United States first class mail, postage prepaid, on May 30, 2017 to Qualified Voters who timely and validly applied for a Ballot;

(d) Voted Ballots shall be returned to the Court Administrator's office by mail or hand delivery no later than 5:00 p.m. on July 11, 2017;

(e) The Court Administrator shall transmit all voted Ballots to a team of at least four (4) judges, with an equal number from each of the two major political parties (the "**Election Judges**"). Prior to July 11, 2017, the Court shall by subsequent Order select the Election Judges from lists compiled by the election authority, after the parties to this matter have been provided notice and an opportunity to be heard thereon. Upon receipt of the voted Ballots, the Election Judges shall verify the authenticity of the Ballots, canvass the votes, and certify the results. Certification by the Election Judges shall be final and shall be immediately transmitted to the Court. Any Qualified Voter who voted in such election may contest the result in the same manner as provided in chapter 115, RSMo;

(f) The Court Administrator shall maintain a list, updated weekly, of the name and address of each individual that has applied for a Ballot (the "**Application List**"), and shall after review of such application note on the Application List whether such individual's application satisfied the requirements of section 238.216 of the Act. The Court Administrator shall also note on the Application List those Qualified Voters who have returned purportedly-voted Ballots. The Application List shall be an open record under Chapter 610, RSMo; and

(g) The costs of the Formation Election shall be borne by the Petitioners, subject to reimbursement from the District, in the event the District is organized through the Formation Election.

5. In the event that the Election Judges certify that the Ballot was approved through the Formation Election, then the Court shall, upon motion of the Petitioners, enter an Order that the District be deemed and considered properly, duly and lawfully organized, and the name of the District will be The Kansas City Main Street Rail Transportation Development District.

IT IS SO ORDERED.

September 28, 2016

Date



J. DALE YOUNG, Circuit Judge

Notice of the entry of the above Order/Judgment was provided to counsel of record via the Court's electronic filing system.

Chesney Thompson, Law Clerk, Division 6

EXHIBIT A

FORM OF BALLOT QUESTION

(See Attached)

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

IN THE MATTER OF:)
KANSAS CITY MAIN STREET RAIL) **Case No. 1616-CV13710**
TRANSPORTATION DEVELOPMENT DISTRICT)

BALLOT QUESTION

Shall a transportation development district, to be known as the “Kansas City Main Street Rail Transportation Development District” (the “District”), be organized in that part of Kansas City, Jackson County, Missouri generally between State Line Road on the west to Campbell Street on the east, and from the Missouri River on the north to 53rd Street on the south (but the specific legal description below will control), for the purpose of developing the transportation project described below (the “Project”) operating with the boundaries of, or serving and benefiting, the District, which Project is hereby approved, and to have the power to fund the Project upon separate voter approval by any or all of the following methods in any combination, each of which are, subject to approval at one or more future elections, approved as potential funding methods?

YES

NO

Summary of the Project:

The design, construction, ownership and/or operation of a fixed rail streetcar and/or light rail system, and all elements thereof, including without limitation maintenance facilities, consisting of (a) the initial 2.1 mile (+/-) starter line running generally along Main Street from River Market to Union Station (the “Starter Line”), initially developed and initially funded by the existing Kansas City Downtown Streetcar Transportation Development District (the “Starter Line District”), and (b) an extension route of such fixed-rail system connecting to the Starter Line and running south from Union Station generally along Main Street with a terminus in the general vicinity of, but not further south than the general vicinity of, the University of Missouri – Kansas City’s Volker campus, with specific design and engineering as finally determined by the City (the “Extension Route”).

Specific Description of the Proposed Funding Methods:

(a) Sales Tax: Imposition of a sales tax, not in excess of one percent (1%), and for a period no longer than thirty (30) years from the date such sales tax is first collected, on all retail sales made in the District that are subject to taxation by the State of Missouri pursuant to the provisions of Sections 144.010 through 144.525, RSMo, except such transportation development district sales tax shall not apply to the sale or use of motor vehicles, trailers, boats or outboard motors nor to all sales of electricity or electrical current, water and gas, natural or artificial, nor to sales of service to telephone subscribers, either local or long distance.

(b) Real Property Assessments: Levy of special assessments, for no more than twenty-five (25) consecutive “Assessment Years” (as defined below), upon real property within the District that is specially benefitted by the Project as determined by the Board of Directors of the District, and that is located (x) within the boundary of the existing Starter Line District, or (y) within an area no further than one-third mile (or greater, if determined by the Board of Directors of the District to be appropriate in order to include the entirety of a block otherwise partially included within such one-third mile distance, or to include the remainder of a recognized cohesive commercial, institutional or mixed-use area partially within such one-third mile distance) of either side of, or the terminus of, the Extension Route (the “Real Property Assessments”), based upon the following schedule:

- (i) *Residential Property*: With respect to real property categorized on January 1 of any Assessment Year by the “County Assessor” (as defined below) as residential real property or agricultural or horticultural real property for ad valorem tax purposes under applicable Missouri law (“Residential Property”) (unless subject on January 1 of the applicable Assessment Year to an “Exemption”, as defined below, in which event the provisions of subsection (b)(iv) below shall apply), the Real Property Assessment may be imposed for each applicable Assessment Year, in an annual amount not to exceed the sum obtained by (x) multiplying the market value of such Residential Property, as determined by the County Assessor as of January 1 of the applicable Assessment Year, by 0.0019 (such product being referred to as the “Residential Assessable Value”), and then (y) multiplying the Residential Assessable Value of such Residential Property by a rate established from time to time by the Board of Directors of the District, such rate not to exceed Seventy Cents (\$0.70) with respect to any Assessment Year (the “Residential Property Assessment”).
- (ii) *Commercial Property*: With respect to real property categorized on January 1 of any Assessment Year by the County Assessor as utility, industrial, commercial or railroad for ad valorem tax purposes under applicable Missouri law, and all other real property not included in subclasses (1) and (2) of class 1 within the meaning of Article X, Section 4(b) of the Missouri Constitution, Rev. 2006, as amended (“Non-Residential Property”) (unless subject on January 1 of the applicable Assessment Year to an Exemption, in which event the provisions of subsection (b)(iv) below shall apply), the Real Property Assessment may be imposed for each applicable Assessment Year, in an annual amount not to exceed the sum obtained by (x) multiplying the lesser of (A) One Hundred Fifty Six Million Sixty Thousand and 00/100 Dollars (\$156,060,000.00) increased by two percent (2%) cumulatively commencing on January 1, 2017, and continuing on each second January 1 thereafter, and (B) the market value of such Non-Residential Property, as determined by the County Assessor as of January 1 of the applicable Assessment Year, by 0.0032 (such product being referred to as the “Commercial Assessable Value”), and then (y) multiplying the Commercial Assessable Value of such Non-Residential Property by a rate established from time to time by the Board of Directors of the District, such rate not to exceed Forty-Eight Cents (\$0.48) with respect to any Assessment Year (the “Commercial Property Assessment”).
- (iii) *City Property*: Notwithstanding the provisions of subsections (b)(i) and (b)(ii) above, with respect to real property that on January 1 of an Assessment Year is “City Property”, as

defined below, the City may contractually agree to pay, subject to annual appropriation, pursuant to a Cooperation Agreement that may be entered into between the District and the City, alone or with others (the “Cooperation Agreement”), a Real Property Assessment for each such Assessment Year, in an annual amount equal to the sum obtained by (x) multiplying the market value of such City Property, as determined by the County Assessor as of January 1 of the applicable Assessment Year, by 0.0032 (such product being referred to as the “City Assessable Value”), and then (y) multiplying the City Assessable Value of such City Property by One and 04/100 Dollars (\$1.04) (the “City Property Assessment”); provided, however, that in no event shall the total of the City Property Assessment and any annually recurring supplemental financial contribution on the part of the City provided for in the Cooperation Agreement exceed Two Million Thirty Nine Thousand and 00/100 Dollars (\$2,039,000.00), excluding any portion of the City Property Assessment paid by tenants, lessees or other occupants of “Nominally Owned Property”, as defined below.

(iv) *Tax Exempt Property*: With respect to real property subject on January 1 of any Assessment Year to an Exemption (“Tax Exempt Property”), the Real Property Assessment may be imposed for each applicable Assessment Year, in an annual amount not to exceed the sum obtained by (x) multiplying the “Tax Exempt Property Market Value” (as defined below) as of January 1 of the applicable Assessment Year by (A) 0.0032 in the case of Tax Exempt Property that is Non-Residential Property, and (B) 0.0019 in the case of Tax Exempt Property that is Residential Property (such product being referred to as the “Tax Exempt Assessable Value”), and then (y) multiplying the Tax Exempt Assessable Value of such Tax Exempt Property by a rate established from time to time by the Board of Directors of the District, such rate not to exceed Forty Cents (\$0.40) with respect to any Assessment Year (the “Tax Exempt Property Assessment”).

(c) Surface Pay Parking Lot Assessment: In addition to the Commercial Property Assessment, the Residential Property Assessment, the City Property Assessment, and the Tax Exempt Property Assessment, the levy of special assessments, for no more than twenty-five (25) consecutive Assessment Years, upon real property within the District that is (i) subject to the Real Property Assessment, and (ii) used as a “Surface Pay Parking Lot” (as defined below) during the applicable Assessment Year, in an annual amount not to exceed for any Assessment Year the sum of Fifty-Four and 75/100 Dollars (\$54.75) multiplied by the number of “Pay Parking Spaces” (as defined below) located on each such Surface Pay Parking Lot during such Assessment Year (the “Surface Parking Assessment”). A Surface Pay Parking Lot shall be exempt from the Surface Parking Assessment if it is in, under or otherwise a part of a multi-story structure, or if it shares common or affiliated ownership with, and primarily exists to serve the employees or patrons of, a business enterprise or place of interest such as (by way of example and not as a limitation) a museum, train station, or theater, which business enterprise or place of interest is located on the same or a neighboring property as the parking area under consideration.

For purposes of this ballot question, the following terms have the following meanings:

(A) “Assessment Year” means each respective period from January 1 through December 31 while the Real Property Assessment is in effect.

- (B) “City Property” means real property owned by the City or a City Agency, which is otherwise exempt from the imposition of an ad valorem real property tax, but which is not “Nominally Owned Property” on January 1 of the applicable Assessment Year.
- (C) “City Agency” means the Tax Increment Financing Commission of Kansas City, Missouri, the Planned Industrial Expansion Authority of Kansas City, Missouri, the Downtown Economic Stimulus Authority of Kansas City, Missouri, the Industrial Development Authority of the City of Kansas City, Missouri or the Land Clearance for Redevelopment Authority of Kansas City, Missouri.
- (D) “County Assessor” means the Director of Records for Jackson County, Missouri (or any successor officer with the same or similar duties in the event the office of Director of Records for Jackson County, Missouri is abolished).
- (E) “Exemption” means an exemption from ad valorem taxation (1) on the basis that such real property is not held for private or corporate profit and used exclusively for religious worship, for schools and colleges, for purposes purely charitable, for agricultural and horticultural societies, or for veterans’ organizations, or (2) on the basis that such real property is owned by The University of Missouri or the Curators thereof, all according to the official records of the County Assessor as of January 1 of the applicable Assessment Year.
- (F) “Nominally Owned Property” means real property which on January 1 of the applicable Assessment Year is owned by the City or a City Agency but actually occupied or used, or being constructed, reconstructed, redeveloped, rehabilitated or renovated to be actually occupied or used, for private commercial, industrial or residential purposes pursuant to, or in the furtherance or implementation of, a plan or project under (1) the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865 of the Revised Statutes of Missouri, as amended, (2) the Planned Industrial Expansion Law, Sections 100.300 to 100.620 of the Revised Statutes of Missouri, as amended, (3) the Missouri Downtown and Rural Economic Stimulus Act, Sections 99.915 to 99.1060 of the Revised Statutes of Missouri, as amended, (4) Sections 100.010 to 100.200 of the Revised Statutes of Missouri, as amended, (5) the Land Clearance for Redevelopment Authority Law, Sections 99.300 to 99.660 of the Revised Statutes of Missouri, as amended, or (6) Sections 23(a), 27 or 27(b) of Article VI of the Missouri Constitution, as amended.
- (G) “Pay Parking Space” means an off-street parking space on a Surface Pay Parking Lot for which a fee (whether hourly, daily, weekly or monthly, or some multiple thereof) is charged for the ability to park a motor vehicle thereon.
- (H) “Surface Pay Parking Lot” means an off-street place, parcel of ground, or yard that is made available in whole or in part for the parking of motor vehicles on the surface thereof and for which a fee (whether hourly, daily, weekly or monthly, or some multiple thereof) is charged for the ability to park a motor vehicle thereon.

- (I) “Tax Exempt Property Market Value” means that portion, and only that portion, of the market value of such Tax Exempt Property, as determined by the County Assessor as of January 1 of the applicable Assessment Year that is (1) equal to or less than Fifty Two Million Twenty Thousand and 00/100 Dollars (\$52,020,000.00) increased by two percent (2%) cumulatively commencing on January 1, 2017, and continuing on each second January 1 thereafter, but (2) greater than Three Hundred Thousand and 00/100 Dollars (\$300,000.00).

The revenue sources of the District shall not be collected until (a) the Starter Line District is abolished, terminated or dissolved, or merged with or into the District, or its revenue sources reduced to zero by action of the Board of Directors of the Starter Line District or otherwise, in accordance with then applicable law, and (b) the Board of Directors of the District determines that there are sufficient funds to be derived from sources other than revenue of the District in order to make the construction of a substantial portion of the Project financially viable when aggregated with revenue of the District.

Specific legal description of the District:

All that territory in the corporate limits of Kansas City, Jackson County, Missouri, described as follows:

Beginning at a point where the Western boundary line of the State of Missouri intersects the center line of the main channel of the Missouri River, said intersection being the “Point of Beginning” for the boundary of the Transportation Development District and the same point as the Point of Commencement referenced in Ordinance No. 10349, passed September 3rd, 1946; Thence South along the Western corporate limits line of the City of Kansas City, Missouri, said line also being the Western boundary line of the State of Missouri, to a point where the center line of the right of way of 46th Street, as now established, intersects the Western corporate limits line of the City of Kansas City, Missouri; Thence Easterly and Southerly along said center line of the right of way of 46th Street to a point where it intersects the center line of the right of way of Holly Street, as now established; Thence South along said center line of the right of way of Holly Street to a point where it intersects the center line of the right of way of Ward Parkway, as now established; Thence Southwesterly along said center line of the right of way of Ward Parkway to a point where it intersects the center line of the right of way of Westwood Road, as now established; Thence Southeasterly along said center line of the right of way of Westwood Road to a point where it intersects the center line of the channel of Brush Creek; Thence Northeasterly along said center line of channel of Brush Creek to a point where it intersects the center line of the right of way of Roanoke Parkway, as now established; Thence Southeasterly along said center line of the right of way of Roanoke Parkway to the point where Roanoke Parkway becomes Summit Street; Thence continuing along Summit Street to a point where it intersects the center line of the right of way of West 50th Street, as now established; Thence Easterly and Northeasterly along said center line of the right of way of West 50th Street to the intersection of the center line of the right of way of Wornall Road, as now established; Thence South along said center line of the right of way of Wornall Road to a point where it intersects the center line of the right of way of West 53rd Terrace, as now established; Thence Easterly along the center line of

said right of way of West 53rd Terrace to a point where it intersects the center line of the right of way of Brookside Boulevard, as now established; Thence Southerly along said center line of the right of way of Brookside Boulevard to a point where it intersects the center line of the right of way of East 54th Street, as now established; Thence Easterly and Southeasterly along said center line of the right of way of East 54th Street to a point where it intersects the center line of the right of way of Locust Street, as now established; Thence Northeasterly along said center line of the right of way of Locust Street to a point where Locust Street becomes Cherry Street; Thence continuing along Cherry Street to a point where it intersects the Westerly prolongation of a line that is Eighty (80.00) feet to the South of and parallel to the South line of Lot 2, Block 4, Southwood Park; Thence Easterly Three Hundred (300.00) feet along said line to a point where it intersects the West line of Lot 4, Block 4, Southwood Park; Thence Southerly Twenty (20) feet along said line to a point One Hundred (100) feet North of the South line of Lot 4, Block 4, Southwood Park; Thence Easterly along a line parallel to the North line of Lot 4, Block 4, Southwood Park to a point where it intersects the center line of the right of way of Holmes Street, as now established; Thence Northerly along said center line of the right of way of Holmes Street to a point where it intersects the center line of the right of way of East 53rd Street, as now established; Thence Easterly along said center line of the right of way of East 53rd Street to a point where it intersects the center line of the right of way of Troost Avenue, as now established; Thence Northerly along said center line of the right of way of Troost Avenue to a point where it intersects the center line of the right of way of Emanuel Cleaver II Boulevard, as now established; Thence Westerly along said center line of the right of way of Emanuel Cleaver II Boulevard to a point where it intersects the center line of the right of way of Harrison Street, as now established; Thence Northerly along said center line of the right of way of Harrison Street to a point where Harrison Street becomes Gillham Road; Thence continuing Northerly and Northwesterly along the center line of the right of way of Gillham Road to a point where it intersects the center line of the right of way of Campbell Street, as now established; Thence Northerly along said center line of the right of way of Campbell Street to a point where it intersects the center line of East 34th Street, as now established; Thence Northwesterly along said center line of the right of way of East 34th Street to a point where it intersects the center line of the right of way of Campbell Street, as now established; Thence Northerly along said center line of the right of way of Campbell Street to a point where it intersects the center line of the right of way of East 33rd Street, as now established; Thence Westerly along said center line of the right of way of East 33rd Street to a point where it intersects the centerline of the right of way of Campbell Street, as now established; Thence Northerly along said center line of the right of way of Campbell Street to a point where it intersects the center line of the right of way of Linwood Boulevard, as now established; Thence Easterly along said center line of the right of way of East Linwood Boulevard to a point where it intersects the center line of the right of way of Campbell Street, as now established; Thence Northerly along said center line of the right of way of Campbell Street to a point where it intersects the center line of the right of way of East 31st Street, as now established; Thence Westerly along said center line of the right of way of East 31st Street to a point where it intersects the center line of the right of way of Campbell Street, as now established; Thence Northerly, Northwesterly, Northeasterly, and again Northerly along said center line of the right of way of Campbell Street to a point where it intersects the South line of vacated Campbell Street; Thence Westerly along the South line of vacated Campbell Street to the point where it intersects the West line of vacated Campbell Street; Thence Northerly along the

West line of vacated Campbell Street to the point where it intersects the North line of vacated Campbell Street; Thence Easterly along the North line of vacated Campbell Street to the point where it intersects the East line of the right of way of Campbell Street, as now established; Thence Northerly, Easterly and Northerly along the East line of the right of way of Campbell Street to the point where it intersects the center line of the right of way of East 19th Street, as now established; Thence Westerly along the centerline of the right of way of East 19th Street, as now established, to the point where it intersects the centerline of the right of way of Campbell Street, as now established; Thence continuing along said center line to a point where it intersects the center line of the right of way of Eastbound East Truman Road, as now established; Thence Easterly along said center line of the right of way of Eastbound East Truman Road to a point where it intersects the center line of the right of way of Southbound US-71/I-29, as now established; Thence Northerly, Northeasterly, and again Northerly along said center line of Southbound US-71/I-29 to the center line of the main channel of the Missouri River; Thence Westerly, with the meanderings of the center line of the main channel of the Missouri River, to the Point of Beginning,

SAVE AND EXCEPT the following described territory: All that part of the NE $\frac{1}{4}$ of Section 32 and the NW $\frac{1}{4}$ of Section 33, in Township 50 North, Range 33 West, Kansas City, Jackson County, Missouri, being generally located Northerly and Easterly of the Northerly right-of-way line of the Burlington Northern and San Francisco Railroad (BNSF RR), Southerly of the Missouri River levee property and Westerly of the Westerly right-of-way line of Interstate Highway I-29/35/US 71, being described as follows: commencing at the SE corner of said NE $\frac{1}{4}$ of Section 32; thence N02°17'26"E, along the common line between said Sections 32 and 33, 626.40 feet to the Northerly right-of-way line of said BNSF RR and the point of beginning of the tract of land herein described; thence S86°00'08"W, along said Northerly right-of-way line, 35.30 feet, to a point of curvature; thence continuing along said Northerly right-of-way line, on a curve to the left, tangent to the last described course, with a radius of 2914.94 feet, a central angle of 3°31'34", an arc distance of 179.39 feet; thence S62°28'34"W, continuing along said Northerly right-of-way line, 716.01 feet, to a point of curvature; thence continuing along said Northerly right-of-way line, on a curve to the right, tangent to the last described course, with a radius of 409.28 feet, a central angle of 22°05'01", an arc distance of 157.75 feet; thence S78°35'42"W, continuing along said Northerly right-of-way line, 1092.04 feet, to a point of curvature; thence continuing along said Northerly right-of-way line, on a curve to the right, tangent to the last described course, with a radius of 578.80 feet, a central angle of 66°02'17", an arc distance of 667.11 feet; thence N78°28'12"E, continuing along said Northerly right-of-way line, 3.04 feet; thence Northwesterly, continuing along said Northerly right-of-way line, on a curve to the right, with an initial tangent bearing of N44°02'56"W, a radius of 444.28 feet, a central angle of 12°06'47", an arc distance of 93.93 feet, to said Southerly line of the Missouri River levee property; thence N61°08'23"E, along said Southerly line, 1208.01 feet; thence N79°31'07"E, continuing along said Southerly line, 210.92 feet; thence N45°59'42"E, continuing along said Southerly line, 258.82 feet; thence S88°36'12"E, continuing along said Southerly line, 173.91 feet; thence N60°59'52"E, continuing along said Southerly line, 133.00 feet; thence N7°03'44"E, continuing along said Southerly line, 113.81 feet; thence N61°11'54"E, continuing along said Southerly line, 1142.11 feet; thence N82°47'57"E, continuing along said Southerly line, 102.11 feet; thence S15°00'26"E, continuing along said

Southerly line, 40.27 feet; thence N $75^{\circ}31'52''$ E, continuing along said Southerly line, 111.57 feet; thence N $12^{\circ}42'22''$ W, continuing along said Southerly line, 110.22 feet; thence N $61^{\circ}29'57''$ E, continuing along said Southerly line, 688.25 feet, to said Westerly right-of-way line; thence S $19^{\circ}45'19''$ E, along said Westerly right-of-way line, 64.97 feet; thence S $5^{\circ}25'58''$ E, continuing along said Westerly right-of-way line, 293.02 feet; thence S $00^{\circ}11'29''$ W, continuing along said Westerly right-of-way line, 201.18 feet; thence S $74^{\circ}41'16''$ W, continuing along said Westerly right-of-way line, 192.31 feet; thence S $66^{\circ}16'07''$ W, continuing along said Westerly right-of-way line, 194.04 feet; thence S $38^{\circ}33'17''$ W, continuing along said Westerly right-of-way line, 297.35 feet; thence S $51^{\circ}26'43''$ E, continuing along said Westerly right-of-way line, 148.11 feet; thence N $39^{\circ}40'48''$ E, continuing along said Westerly right-of-way line, 248.48 feet; thence N $87^{\circ}34'34''$ E, continuing along said Westerly right-of-way line, 190.52 feet; thence S $31^{\circ}18'54''$ E, continuing along said Westerly right-of-way line, 178.01 feet; thence S $22^{\circ}11'24''$ E, continuing along said Westerly right-of-way line, 266.30 feet, to said Northerly right-of-way line of the Burlington Northern and San Francisco Railroad (BNSF RR); thence S $74^{\circ}52'29''$ W, along said Northerly right-of-way line, 198.28 feet, to a point of curvature; thence continuing along said Northerly right-of-way line, on a curve to the left, tangent to the last described course, with a radius of 1492.69 feet, a central angle of $8^{\circ}52'21''$, an arc distance of 231.15 feet; thence S $66^{\circ}00'08''$ W, continuing along said Northerly right-of-way line, 920.82 feet, to the point of beginning, containing 78.67 acres more or less.

EXHIBIT B

FORM OF APPLICATION

(See Attached)

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

IN THE MATTER OF:)
KANSAS CITY MAIN STREET RAIL) Case No. 1616-CV13710
TRANSPORTATION DEVELOPMENT DISTRICT)

OFFICIAL APPLICATION FOR BALLOT

This completed application must be received before 5:00 p.m. CDT on May 2, 2017 by the Jackson County Circuit Court Administrator and must be submitted by hand delivery or U.S. mail to Jackson County Circuit Court Administrator, Attn: TDD Ballot Application, 415 East 12th Street, ____ Floor, Room ___, Kansas City, Missouri 64106, or by facsimile transmission to (816) 881-____. No applications for a ballot will be accepted after 5:00 p.m. CDT on May 2, 2017.

Last Name	First Name	Phone # (w/ Area Code)
Address 1	Address 2	email (optional)
City	County	State
		Zip code

Mailing Address of Voter (if different)

Address 1	Address 2	
City	State	Zip code

I hereby declare under penalties of perjury that I am qualified to vote in this election

Printed Name:

You must include proof of voter registration from the election authority when returning the application

IMPORTANT: You must be a registered voter residing within the boundary of the proposed Transportation Development District in order to submit an application for a ballot. A map of the boundary of the District may be obtained at the Jackson County Courthouse, 415 East 12th Street, Kansas City, Missouri 64106, Third Floor, Room 303, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except legal holidays, or view the map online at <http://www.16thcircuit.org/streetcar>. Contact the Kansas City Board of Election Commissioners at (816) 842-4820 if you wish to register to vote. Proof of voter registration includes a copy of the applicant's official Voter ID card, or a written statement from the Kansas City Board of Election Commissioners confirming voter registration status of the applicant, or go to www.kceb.org to print proof of registration using the "Check Your Voter Status" box. Voter registration will be confirmed prior to mailing of ballots.

Questions should be addressed to (816) 881-_____.

EXHIBIT C

NOTICE OF FORMATION ELECTION

(See Attached)

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

IN THE MATTER OF:)
)
KANSAS CITY MAIN STREET RAIL) Case No. 1616-CV13710
TRANSPORTATION DEVELOPMENT DISTRICT)

NOTICE OF ELECTION AND REQUIREMENT TO APPLY FOR BALLOT IN ADVANCE

TAKE NOTICE that by Order of the Circuit Court of Jackson County, Missouri, Hon. J. Dale Youngs, an election by mail-in ballot has been called for the purpose of considering the question of formation of a Transportation Development District (the "District") in that area specifically described in the Second Amended Petition in this proceeding on file in the office of the Court Administrator of the Circuit Court of Jackson County, Missouri and located generally (but the specific legal description controls) between State Line Road on the west to Campbell Street on the east, and from the Missouri River on the north to 53rd Street on the south, for the purpose of developing and funding the following transportation project: **the design, construction, ownership and/or operation of a fixed rail streetcar line between River Market and the vicinity of the UMKC Volker campus (including specifically an extension of the existing streetcar line further south from its current terminus at Union Station), and all elements thereof**, including without limitation a maintenance facility, operating within the boundaries of, or serving and benefiting, the proposed District, and to have the power to fund the proposed project upon separate voter approval by certain specified potential funding methods subject to approval at one or more future elections.

In order to vote in this mail-in election, you must

- Reside within the boundary of the District
 - Apply for a ballot, beginning on April 5, 2017
 - Be a registered voter at the time you apply for a ballot
 - Provide proof of voter registration at the time you apply for a ballot as discussed below
 - Return the application for a ballot no later than 5:00 p.m. CDT on May 2, 2017

Applications for a ballot will be available between April 5, 2017 and May 2, 2017, as follows:

- Download from <http://www.16thcircuit.org/streetcar> (internet access required), or
 - Pick up at the Jackson County Courthouse, 415 East 12th Street, Kansas City, Missouri 64106, _____ Floor, Room ___, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except legal holidays

You will not receive a ballot unless

- you submit a valid application in accordance with the instructions on the application, and
 - your application is received by the Circuit Court Administrator's office before 5:00 p.m. CDT on May 2, 2017

Ballots will be mailed on May 30, 2017, only to those who have timely and validly applied for a ballot. Ballots will be due for return no later than 5 p.m. CDT on July 11, 2017 in accordance with instructions on the ballot.

IMPORTANT: You must be a registered voter residing within the boundary of the proposed District in order to submit an application for a ballot. A map of the boundary of the District may be obtained at the Jackson County Courthouse, 415 East 12th Street, Kansas City, Missouri 64106, ____ Floor, Room ____, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except legal holidays, or view the map online at <http://www.16thcircuit.org/streetcar>. Contact the Kansas City Board of Election Commissioners at (816) 842-4820 if you wish to register to vote. You must include proof of voter registration from the election authority when returning the application. Proof of voter registration includes a copy of the applicant's official Voter ID card, or a written statement from the Kansas City Board of Election Commissioners confirming voter registration status of the applicant, or go to www.kceb.org to print proof of registration using the "Check Your Voter Status" box. Voter registration will be confirmed prior to mailing of ballots.

Questions should be addressed to (816) 881-_____.