

Chapter 8

Private Governments or Public Policy Tools? The Law and Public Policy of New Jersey's Special Improvement Districts*

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* An earlier version of this chapter was published as Justice and Goldsmith (2006).

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Introduction

Business improvement districts (BIDs) are increasingly numerous and familiar worldwide. Their numbers have been increasing steadily since the early 1970s, in North America, where they originated, and elsewhere. In the United States alone more than 400 BIDs were documented in 1999, and the creation of BIDs has continued apace since then, spreading around the world to nearly every continent (Hoyt, 2003; Mitchell, 1999; Ratcliffe and Flanagan, 2004). In the United States, BIDs are now largely familiar, even taken for granted by commercial revitalization professionals and business people, while residents and visitors in the downtowns and neighborhoods of many large cities and hundreds of small towns experience BID-provided amenities and services. A conservative estimate would place the annual expenditures of U.S. BIDs at over \$100 million, based on our calculations using data reported by Mitchell (1999).

Even as they have become familiar and widely accepted, however, BIDs remain the subject of controversies concerning the appropriate natures and relationships of public and private institutions and interests. BIDs are often described by their proponents and critics as *private governments*—organizations that “in varying degrees and in ways circumscribed by the ultimate coercive sanctions of public governments...exercise power over both members and non-members, often in vital areas of individual and social concern” (Lakoff and Rich, 1973, p. 1). Some observers enthusiastically endorse BIDs and similar special-district forms as a responsive, nonbureaucratic, and private-sector-led approach to reinventing the provision of local public services (Baer and Marando, 2001; Levy, 2001b; Mac Donald, 1996; Walker, 2003). Others see in BIDs all that is alarming in the hollowing out of general-purpose local governments at the turn of the century (Gallagher, 1995; Krohe, 1992; Mallett, 1995; Stark, 1998; Zukin, 1995) or reserve judgment (Pack, 1992). Are BIDs private governments created to serve new demands for services that result from social and spatial restructuring (see Mallett, 1993; Ward, 2006), or

can they be better understood as *policy tools*—instruments employed by states and general-purpose local governments to mobilize a variety of tangible and intangible resources to advance public purposes (Salamon, 2002)?

In this chapter we use data from case law, case studies of local practices in four downtowns, and a statewide survey of New Jersey's special improvement districts (SIDs)* conducted by Downtown New Jersey (DNJ) in 2000–2001 and argue that New Jersey's BIDs can best be understood as genuine public–private *partnerships*† in that they serve simultaneously as policy tools through which state and local governments seek to advance general public interests and as self-help entities to further the more particular interests of local business communities. They take advantage of the complementarity of private and public interests in commercial revitalization. Business people's desires for greater business activity and property values are presumed to be advanced through enhancements to public space, and in turn to lead to improved government revenues and community access to goods and services, employment gains, and other amenities. Relevant New Jersey law facilitates this partnership by granting reasonable discretion to municipalities and their business sector partners in the formulation and pursuit of business district revitalization strategies.

We begin by reviewing briefly some of the literature about BIDs, taking note of various portrayals of the relationship of, and actual or apparent tensions between, private and public interests in the management of business districts. Next, we highlight selected provisions of New Jersey's enabling statute and present an overview of BIDs in New Jersey. Then, we discuss relevant case law that resolved questions concerning legislative intent and the balance of competing interests, costs, and benefits associated with BIDs in New Jersey. This is followed by a summary of case study research that examined the interplay of interests from the perspective of individual stakeholders in four New Jersey BIDs. BIDs in New Jersey are public–private partnerships that give significant, in many respects definitive, formal and practical authority to the local governments concerned. In this respect they are more genuine instruments of public policy than most other models of urban partnership. However,

* New Jersey's statute uses the terminology *special improvement district* (SID), but practitioners in New Jersey tend to use that state-specific terminology interchangeably with the more generic term *business improvement district* (BID). In this chapter we will usually use SIDs to refer to specific districts and legal provisions within New Jersey, and BIDs to refer to districts elsewhere and as a generic term for the category of districts that includes SIDs.

† By "partnerships" we mean cooperative arrangements of varying degrees of formality that "further the common interests of the partners beyond what is likely to be produced by the existing system or by each working independently" (Lichfield, 1998, p. 110). A preferred model of partnership is characterized by "mutual respect, equal participation in decision making, mutual accountability and transparency" between entities that cooperate to advance mutual interests but remain distinct and autonomous (Brinckerhoff, 2002, pp. 325–326). For present purposes, we draw a distinction between this mutual, balanced form of partnership and the "unequal partnerships" through which publicly assisted private redevelopment efforts have sometimes allocated costs and risks to one partner and benefits to another (Squires, 1989).

we cannot confidently generalize from our examples to the entire universe of BIDs in the United States or elsewhere. Nor does the current state of evaluation research make possible confident assertions about whether New Jersey's approach represents a normatively more desirable model than other states'. We conclude by identifying some directions for continuing research into the democratic as well as service performance of BIDs, based on our findings and the limitations of our research.

BIDs in the Eyes of the Beholders

In their legal form, BIDs combine elements of two more traditional entities: special assessments and special district governments (for a good, concise discussion, see Houstoun, 1997). Like special assessments, they raise revenue to fund local improvements that benefit spatially specific segments of the public from those specifically benefited segments. This in principle fosters efficiency and equity through *fiscal equivalence* (identified as a requisite for allocative efficiency by Olson, 1969, and described as a form of equity by Ostrom et al., 1993). Unlike traditional approaches to special assessments, they are used to fund recurring activities, not just one-time capital improvements such as roads, sidewalks, or sewers. They thus share with special districts the characteristic of being operating entities with narrow scopes of action.

In the United States, BIDs are typically created by municipal designation, pursuant to the authority granted by state-level enabling statutes. Specific provisions vary from state to state and among municipalities, but generally some evidence of property owners' and business operators' active interest or at least acquiescence is a political, if not legal, prerequisite for the formation and continuation of BIDs. Within the specified boundaries of a BID, special assessments are levied and the proceeds used to provide capital improvements and ongoing services designed to benefit the properties and businesses within the district. Ad valorem assessments on real property are the most common source of finance, although many states, including New Jersey, allow for a variety of bases for property assessments and the imposition of business license fees as sources of BID revenue. The services provided are almost always explicitly supplemental to general municipal services, and generally run the gamut of place management activities and physical improvements associated with the economic restructuring, organization, design, and promotional elements of a commercial revitalization effort.* In big cities particularly, BIDs have frequently focused on reducing visitor-detering perceptions of urban "crime and grime" (Traub, 1996). The archetypal although not universal (there are significant differences in the specific provisions of enabling statutes, even among the states in the United States) approach to BID governance is that the planning and management of BID-provided services is overseen by an incorporated entity governed by the payers of the assessment, typically the district's property owners, business operators, or both.

* For a description of the four points of the Main Street approach to commercial revitalization, refer to the website of the National Main Street Center (National Trust for Historic Preservation, 2002).

It is this combination of governance by private commercial actors with the compulsory special-assessment-based financing arrangement that is generally regarded as the cause of BIDs' presumed distinctive effectiveness in selecting and accomplishing revitalization goals. Compulsory finance prevents the free-riding behavior that would otherwise result in undersupply of the collective good of business district improvements. Self-governance has proved a useful organizational principle for collective action in experimental settings, as well as in the management of actual common resources (Ostrom, 1990; Ostrom et al., 1994; Ostrom and Walker, 1997), and revitalization practitioners tend to believe that business leadership makes BIDs more responsive to the needs of commercial districts than other forms of organization would be. This combination of coercion and business leadership is also the basis for the private government designation, and prompts both the most enthusiastic endorsements, such as Mac Donald's (1996), and the most alarmed criticisms of the BID approach, such as Krohe's (1992) and Gallagher's (1995). Is the form of partnership between local governments and business interests that distinguishes BIDs from other approaches to organizing and financing commercial revitalization efforts too private, too public, or just right? Unsurprisingly, strong opinions exist on all sides, while the most careful analytical and evidence-based reports tend to be the most moderate in their concerns and claims.

Advocacy, Alarm, and Analysis

For advocates, key aspects of the BID approach to organizing commercial district revitalization include BIDs' operational leadership by business stakeholders, their narrowness of purpose, and their potential as a way to generate resources for BIDs in light of the fiscal stress experienced by general-purpose municipalities in the United States since the 1960s. Different observers and analysts of the BID approach vary, however, in their emphases on and understandings of these elements.

Emphasizing the role of businesses in organizing and managing BIDs, some advocates, such as journalist Heather Mac Donald (1996) or property owner Peter Malkin (as quoted by Traub, 1996), suggest that BIDs make it possible for the forward-thinking and efficient private sector to compensate for the failings of intellectually, financially, and organizationally bankrupt local governments. Others suggest that BIDs are a valuable tool that local governments seeking to revitalize business districts can use to mobilize resources in the face of severe fiscal constraints (Alexander, 2003; Bradley, 1995; Colley, 1999). Practitioners involved in helping to create and manage BIDs tend to portray the arrangement as representing a partnership for the mutual advantage of local governments and business people, although they may emphasize the role of business participation as ensuring that decisions are viewed by business people as legitimate, incorporate "business sense," and allow BIDs to move "at the speed of business."

For those alarmed by BIDs, the leading role they afford for business interests leads to the potential privatization and commodification of public space, especially through the use of abusive practices to exclude from urban commercial areas or other highly valued parts of cities the poor or other "undesirable" people and activities that might inconvenience shoppers and office workers (Gallagher, 1995; Krohe, 1992; Lofland, 2002; Mallett, 1994; Zukin, 1995). Municipal officials with no direct experience of BIDs are often fearful that a BID, once created, will run amok, spending recklessly and bringing fiscal and political hardships to all concerned. From another perspective, some business people view BIDs with suspicion, seeing them as instruments by which local governments will extract additional revenue from them without providing commensurate benefits.

There is still relatively little systematic evidence of BID's *actual* effects in terms of costs and benefits and the distribution thereof, but Pack (1992) offers a good summary of some of the potential costs and benefits of BIDs. Potential virtues of BIDs include increased property values and the assurance of fiscal equivalence in allocations of costs and benefits. Potential pitfalls include possible uncompensated costs to businesses, the diversion of city services and attention either toward or away from the district, possible externalities such as the displacement of crime to or businesses from adjoining areas, and the potential for the loss of a larger sense of community.

The potential for the creation of a partnership in local policy formulation as well as in operational decisions and administration is another significant aspect of BIDs. For some BID advocates, their role in influencing or even directly formulating local development policies can be seen as unambiguously beneficial (Levy, 2001a, 2001b), whereas for other observers it is a cause for caution in adopting the U.S. BID model elsewhere (Alexander, 2003). The director of Philadelphia's Center City District BID argues that "in addition to providing services, BIDs are clearly exercising a vital leadership role in their communities, articulating strategic alternatives, forging coalitions for change, and successfully implementing entrepreneurial solutions to chronic urban problems" (Levy, 2001b, p. 130). As examples of this beneficial policy role for BIDs, he cites the work of the Alliance for Downtown New York in directing tax abatements to stimulate residential redevelopment of older office buildings and his own BID's involvement in improving city social welfare programs and advising city government on strategic directions for downtown, both directly and in its capacity of providing staffing to a business advocacy organization (Levy, 2001a, 2001b).*

* An anonymous reviewer for an earlier version of this chapter pointed out that an alternative arrangement employed in such places as Atlanta, Denver, Seattle, St. Louis, Houston, and Raleigh is for BID stakeholders to work through companion membership organizations to address policy issues, while keeping the BID organizations themselves nominally focused on day-to-day service and management activities such as security and sanitation. This practice is also found in the United Kingdom, where town center management companies often retain strategic and policy-oriented roles in partnerships for downtown (re-)development, while creating BIDs to focus on delivering supplemental services to specific subdistricts within city centers (Justice et al., 2006). It remains an open question whether this is a substantively meaningful or merely formal distinction.

In the New Jersey context, practitioners observe that “merchants don’t vote,” because it is common for commercial property owners and business operators not to be residents of the municipalities in which their business interests are located. One advantage attributed to BIDs by proponents is that they provide the organizational and financial resources needed to counterbalance businesses’ lack of influence over the operating environment for their businesses, as a number of New Jersey business people, local officials, and revitalization consultants pointed out in interviews conducted in 2002 and 2003. BIDs, these respondents asserted, were a valuable tool to help businesses respond to the electoral pressures on municipalities, which otherwise tend to foster neglect of investment in their business districts for the long run, in favor of short-term residential preferences. In the view of some critics, however, this enhancement of business influence is more worrisome or even downright undemocratic (Gallagher, 1995; *Why RiverCenter Should be Abolished*, 1999).

BIDs in New Jersey

Special improvement districts (SIDs) are enabled by New Jersey’s highly flexible statute, which was adopted in 1984 as an extensive amendment to earlier legislation that had enabled the creation of a special-assessment district to finance the construction of a pedestrian mall in the state capital, Trenton (District Management Act, 1999). The first SID was created in 1985, in the township of Cranford, and the number of SIDs in the state grew exponentially thereafter, with more than 50 SIDs documented by 2001 (Justice, 2003) and nearly 80 by mid-2006 according to a guesstimate by the trade association Downtown New Jersey (B. Lippman, personal communication, September 5, 2006). By 2001, the latest date for which extensive descriptive data is available, New Jersey’s SIDs in many ways were a microcosm of U.S. BIDs, in their range of sizes, governance structures, and services provided (see Table 8.1).

The provisions of the New Jersey statute make it possible to create SIDs that hew closely to the typical normative model of the BID, as well as forms that are quite different from that model. The statute empowers the state’s municipalities* to employ “the broadest possible discretion” in creating SIDs and designating and empowering district management corporations (DMCs) to receive the special-assessment funds in order to plan and provide services and improvements for the districts. Districts are defined by listing the property tax block and lot identification numbers of each parcel included in a district. While the statute does require certain findings as part of the local governing body’s rationale for creating a SID, there is no requirement that there be a formal referendum vote or petition in favor of designation (a positive stakeholder-approval test) or that municipalities drop SID proposals in the face of a certain

* New Jersey’s 566 incorporated municipalities collectively encompass the total land area of the state.

Table 8.1 Comparison of selected New Jersey SID and U.S. BID population characteristics

	<i>New Jersey SIDs, 2000–2001</i>	<i>U.S. BIDs, 1999</i>
Survey responses/total population	33/52 (63%)	264/404 (65%)
Average BID size in blocks	20 blocks	20 blocks
Median number of businesses in BID	250	Not reported
Median number of property owners	153	Not reported
Annual budget, minimum	\$45,000	\$8,000
Annual budget, median	\$214,000	\$200,000
Annual budget, maximum	\$3,972,074	\$15,000,000
BIDs providing marketing services	94%	94%
BIDs providing maintenance services	85%	85%
BIDs providing public security (New Jersey) or public space regulation (United States)	36%	79%
Smallest governing board	7 members	3 members
Median governing board size	15 members	15 members
Largest governing board	30 members	51 members

Source: Data for U.S. BIDs in 1999 is from a census and mail survey conducted and reported by Mitchell (1999). Data for New Jersey SIDs in 2000–2001 is from a mail survey designed and administered by Downtown New Jersey, Inc. (DNJ), for which the results were compiled by one of the authors.

number of objections (a negative approval test). A SID can thus—in legal principle, if not in usual political practice—be designated or dissolved entirely at the discretion of the municipality.* In practice, SIDs in New Jersey, like BIDs elsewhere, tend to be designated at least in consultation with and most often with the active involvement of or upon the initiative of interested property owners and business people.†

DMCs may be entities incorporated under New Jersey's nonprofit corporation law or "created by municipal ordinance." While the archetypal, self-governing form of DMC is prevalent in New Jersey, the statute also permits DMCs to take the form of

* This reliance on a discretion approval test rather than the more usual petition test, and without recourse in the form of an objection or remonstrance, makes the New Jersey statute somewhat atypical in the United States, as we discuss in the concluding section of this chapter.

† The case of Gloucester City's downtown SID illustrates this point. The municipal governing body designated a SID and DMC in August 2001. A group of business people who opposed the SID sought election to the DMC's board in 2002 and won enough seats to adopt a zero budget for the subsequent fiscal period. The city for a time contemplated designating another DMC, but in the end acquiesced in this effective dissolution of the SID rather than compel the operation of a SID in the face of vocal and determined opposition. This is to our knowledge the only SID created in New Jersey to date that is not still in operation.

municipal commissions or nonprofit corporations governed by municipally appointed boards. Of 36 New Jersey DMCs surveyed for governance characteristics in 2002 and 2003 by one of the authors, two-thirds were self-governing nonprofit corporations—15 were membership corporations with elected boards of trustees, and 9 were corporations governed by self-perpetuating boards. The other 12 DMCs included five nonprofits with boards controlled by municipal appointees, four municipal commissions, and three nonprofits with mixed forms of corporate governance. The statute does require that, regardless of the form of the DMC, at least one member of every DMC board must be a member of the municipality's governing body.

Municipalities may grant DMCs any or all of 17 enumerated powers encompassing a fairly broad range of place management, revitalization, and redevelopment activities (see Table 8.2). In designating districts, municipalities may also by ordinance adopt façade design standards for building façades within the districts, and the statute permits them to delegate to DMCs the authority to review and approve or deny applications for façade alterations. At least one municipality (Somerville) has delegated such responsibility to a subcommittee of its municipal-commission-form DMC. The statute also permits municipalities to delegate to DMCs the letting and supervising of contracts for work on streets or other municipal property, subject to design approval by the municipal engineer.

DMCs may fund services and improvements from a variety of sources, including contract revenue, loans, and grants, in addition to special assessments on properties within the designated district. The statute mandates a two-stage procedure for levying special assessments on properties within SIDs. First, the DMC's proposed budget for a fiscal year must be approved by the municipal governing body at an advertised public hearing, which provides opportunity for interested parties to present any objections they may have to the proposed budget. A governing body may adopt amendments to the budget proposed by a DMC, without additional hearings if the amendments are sufficiently small, or subject to an additional hearing requirement for more significant amendments. Then, the resulting special-assessment roll must be prepared by the municipal assessor and approved by the governing body at an advertised public hearing. The statute stipulates that the share of a SID's property assessments borne by each property must be reasonably proportionate to benefits received by that property (this will be further discussed below). In addition to or in lieu of property assessments, SID services and improvements may also be funded through the imposition of special license fees based on "floor area of licensable business space, or sales volume, or some other reasonable basis or combination of bases." After the end of each fiscal year, DMCs are required to submit audit reports and annual reports of their activities to the municipality and to the state's Division of Local Government Services.

Of the 31 DMCs responding to the relevant question in the 2001 DNJ survey, all used special assessments on real property as sources of funds, and one used a combination of property-based assessments and business license fees. Assessments and fees accounted for 76 percent of total DMC revenue, on average, ranging from

Table 8.2 New Jersey DMC powers

Section 40:56–83 empowers municipalities to confer certain powers, selected from a list of 17, on DMCs by ordinance.

- b. The district management corporation shall have all powers necessary and requisite to effectuate its purposes, including, but not limited to, the power to:
 - (1) Adopt bylaws...;
 - (2) Employ such persons as may be required, and fix and pay their compensation from funds available to the corporation;
 - (3) Apply for, accept, administer and comply with the requirements respecting an appropriation of funds or a gift, grant or donation of property or money;
 - (4) Make and execute agreements...including contracts with any person, firm, corporation, governmental agency or other entity;
 - (5) Administer and manage its own funds and accounts and pay its own obligations;
 - (6) Borrow money from private lenders...and from governmental entities...;
 - (7) Fund the improvement of the exterior appearance of properties in the district through grants or loans;
 - (8) Fund the rehabilitation of properties in the district;
 - (9) Accept, purchase, rehabilitate, sell, lease or manage property in the district;
 - (10) Enforce the conditions of any loan, grant, sales or lease made by the corporation;
 - (11) Provide security, sanitation and other services to the district, supplemental to those provided normally by the municipality;
 - (12) Undertake improvements...including, but not limited to, litter cleanup and control, landscaping, parking areas and facilities, recreational and rest areas and facilities, and those improvements generally permitted for pedestrian malls...pursuant to pertinent regulations of the governing body;
 - (13) Publicize the district and the businesses included within the district boundaries;
 - (14) Recruit new businesses to fill vacancies in, and to balance the business mix of, the district;
 - (15) Organize special events in the district;
 - (16) Provide special parking arrangements for the district;
 - (17) Provide temporary decorative lighting in the district.

Section 40:56–86 additionally provides that municipalities may by ordinance delegate to DMCs the contracting of work on streets or other public property, with plans and specifications subject to municipal approval.

as little as 22 percent to as much as 100 percent. Of the 31 DMCs, 16 reported using ad valorem property assessments, with 2 of the 16 assessing different rates for properties in different parts of the SID. Assessments were levied as a fraction of the applicable general tax rates in 11 SIDs, with one of this group imposing differential charges by location. Two SIDs' assessments were based on the street frontage of district properties, and another's on floor area. One SID levied varying property assessment rates for different categories of commercial property. Most SIDs excluded residential properties from their district designations or charged them only nominal annual assessment fees.

Morristown, New Jersey, Case Law Facts and Findings

Challenges to New Jersey SIDs, brought over the years by a number of assessment payers, have tested the validity of the special-assessment financing for SIDs, the use of property values as the basis for allocating assessment shares, the use of different rates of assessment for different properties within a SID, and the exclusion or exemption of residential properties from assessment. The challenge brought against the Morristown, New Jersey, SID in 1994 and subsequently carried to the New Jersey Supreme Court by two affected property owners raised all of these issues. The New Jersey Supreme Court's 1999 ruling in this case established securely that legislative intent granted broad discretion to municipalities to pursue general public policy ends related to business district revitalization through the SID mechanism, and that this grant of discretion was compatible with the state constitution (*2nd Roc-Jersey Assocs. v. Town of Morristown*, 1999).

Facts and Lower Court Rulings

The Morristown SID was created by local ordinance in December 1993. Morristown had been experiencing a gradual decline of its downtown for a number of years, and the catalyst for action was the 1993 closing of the downtown Macy's store. The ordinance was fairly typical of New Jersey SID ordinances, following closely the patterns of the ordinances of the approximately two dozen New Jersey SIDs that preceded it. A number of local property owners and business operators were active in organizing the SID effort, including the property manager for the Headquarters Plaza office complex across the street from the defunct Macy's. The ordinance provided for special assessments to be levied against commercial properties within the district in proportion to their assessed valuation (AV) for general property tax purposes (i.e., ad valorem), with residential properties and the residential portions of mixed-use properties exempted. Morristown Partners, Inc. (MPI) was designated as the DMC.

In response to the unpublished *Gonzalez v. Borough of Freehold* (1994) ruling by the Appellate Division of the New Jersey Superior Court (more details below),

Morristown amended its SID ordinance in October 1994 to exclude from the defined district, rather than exempt from the assessment, residential properties and the residential portions of mixed-use properties by altering the list of block and lot numbers that defined the district. The first special-assessment roll was approved by the town council at a public hearing on October 18, 1994, and bills were then mailed out to affected property owners. The several entities owning Headquarters Plaza (collectively referred to below as Roc-Jersey) filed their complaint on December 12, alleging that they had not been provided adequate notice,* and challenging the legality of the town's SID ordinance on the basis of its exclusion of residential properties, its reliance on AV for apportioning assessments, and its provision for assessing office buildings at the same rate as retail properties within the same sub-area of the SID. The trial judge dismissed the contentions of inadequate notice and stipulated that the central legal issues to be addressed were whether the local SID ordinance, as amended, violated the U.S. Constitution, the New Jersey Constitution, or the SID enabling statute.

The practical issues mainly turned around the basic fairness and property rights issues of whether adequate and proportionate benefits were being provided to justify the assessments. Because there were no proportionate benefits, the plaintiffs asserted, the assessments constituted a taking in contravention of the Fifth Amendment to the U.S. Constitution. Plaintiffs also asserted that the assessments were actually taxes, and that therefore the exemption of residential properties violated the uniformity clause of the New Jersey Constitution. In January, after an initial hearing, the judge ordered the town and MPI to produce a report concerning the fairness of the proposed assessment formula and whether the nonresidential portions of mixed-use properties should be assessed. Roc-Jersey also commissioned an expert report (Burchell-Listokin and Associates, 1995). After reviewing the reports and arguments, the judge ruled in favor of the town and MPI.

In accordance with the recommendations of the town's and MPI's expert reports, the assessment formula was subsequently adjusted by assessing commercial properties in a portion of the business district separated from the central portion by Interstate Route 287 at 75 percent of the rate charged to commercial properties in the main portion. The exemption of residential properties and the reliance on AV as the basis for determining assessment shares remained, however. Some mixed-use properties within the SID were also assigned assessment ratios based on their balance of commercial versus residential use. The logic underlying the updated

* The explanation for this apparent contradiction—the owners of the property claiming not to have received notice of the creation of a SID in the establishment of which their property manager played a leading role—appears to have been a lack of communication between the on-site property manager and the initiator of the lawsuit. Not all of the owners of Headquarters Plaza were involved in actively overseeing regular operations at the complex during the period when the on-site property manager was helping to organize the SID, and one key owner apparently was startled to receive the initial assessment bill.

formulae was that the location of a commercial property within one subarea of the district or the other was likely to be a significant enough distinction in terms of benefits enjoyed to serve as an appropriate basis for differential assessment rates, but that the precise nature of the commercial use (retail or office) within the same subarea was not.

The state's Appellate Division upheld the trial court's ruling, adding only some commentary concerning the core issues of local improvements' costs and benefits, based on the fundamental benefit principle underlying special assessments in general (economists might describe this as a form of fiscal equivalence). Benefits, the court noted, are anticipated to accrue from, but are not the same as, the (cost-creating) improvements themselves. The SID statute requires SIDs' costs to be apportioned in the same shares as benefits, and usually (but not always) the assessments should not exceed the costs. Although the highly complex assessment method described by the plaintiffs' expert report, based on techniques used to calculate the impact fees charged to land developers in many jurisdictions, might be theoretically more desirable, in practice the reliance on AV was good enough. Oral arguments before the Supreme Court were heard on September 28, 1998.

Issues Presented to the Supreme Court

The central issue, in the judgment of the New Jersey Supreme Court, was whether Morristown's SID ordinance (and so, by extension, dozens of nearly identical SID ordinances throughout the state) was constitutional. This issue turned primarily on the question of whether the SID charges are special assessments or taxes. The ruling, upholding the legality of the Morristown SID and its assessment formula, addressed (and dismissed) three central constitutional arguments, an issue of statutory interpretation, and a question of the validity of retroactive application of a curative statutory amendment.

First, the plaintiffs alleged that the charges imposed to fund the SID were taxes. Therefore, by assessing additional taxes against only a selection of the properties within the overall municipal jurisdiction, the SID violated the uniformity clause of the state constitution. The current provision was adopted by the 1947 New Jersey constitutional convention, largely in response to a long-standing history of what was deemed to be unfair preferential treatment granted to the properties of railroad companies. It stipulates that,

Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the state... shall be assessed according to the same standard of value...and...shall be taxed at the general tax rate of the taxing district in which the property is situated.

Second, if SID charges are taxes, then the exclusion of residential properties further violates the state constitutional provision that authorizes only general- or special-purpose exemptions from taxation: "Exemption from taxation may be granted only by general laws."

Third, the plaintiffs asserted that if the assessment were a special assessment rather than a general tax, the use of AV as a means for apportioning costs was insufficiently precise and accurate as an indicator of benefits received. Traditional special assessments used a comparison of the values of individual properties before and after the (one-time) improvements as the basis for determining benefit shares. The expert report commissioned by the plaintiffs indicated that an optimal means for apportioning SID assessments would use methodologies similar to those used to apportion development impact fees. Thus, "the methodology used by Morristown results in an assessment that is not proportional with the benefit conferred," according to the plaintiffs, and therefore the assessments were takings without just compensation, in violation of the New Jersey Constitution and the Fifth Amendment to the U.S. Constitution.

Fourth, based on the unpublished (and therefore persuasive but not binding precedent) *Gonzalez* ruling, plaintiffs claimed that the exemption of residential properties violated the statutory provision at section 66(b) that a SID is "an area in which a special assessment on property [interpreted as meaning *all* property] shall be imposed." The *Gonzalez* ruling also turned on the language of section 68(b)(2), which made the anticipation of benefits for "businesses, employees, residents and consumers" a necessary finding in support of a SID ordinance.

Fifth, although the state legislature amended section 66(b) of the statute in May 1995, in response to *Gonzalez*, so as to clarify that the exemption of residential properties was explicitly permitted, that amendment postdated the Morristown ordinance and so did not apply to it.

Holdings and Reasoning

On the first issue, the court found that established precedent in New Jersey (*McNally v. Township of Teaneck*, 1977) confirmed that special assessments are not taxes subject to the uniformity clause. So the question is whether the SID charges are taxes or special assessments in this particular case. The traditional definition of a special assessment is that it supports local improvements, is a one-time charge, and is related to a direct benefit that is special and local. Further, the benefit must be certain rather than speculative, although it can take place in the future. Citing precedents from other states, as well as the *Fanelli v. City of Trenton* (1994) SID case from New Jersey, however, the court determined that this definition had evolved and become more flexible. A special assessment now was more flexibly defined as one that "is used to provide a combination of services and improvements that are intended and designed to benefit particular properties and demonstrably enhance

the value and/or the use or function of the properties that are subject to the special assessment." The charges imposed by the Morristown SID were special assessments by this updated definition, rather than taxes.

Additionally, the court found that there were numerous precedents for using AV, which is readily available and easily applied, as the basis for apportioning special assessments. The issue of administrative feasibility renders impractical the use of methods that seek to be highly exact in determining the precise property-by-property benefit from a SID, which by its nature provides many benefits that are general and indirect in nature. Because SIDs' improvements are recurrent, as distinct from the one-time nature of traditional special-assessment-financed improvements, most means of apportioning benefit shares would be approximate, very cumbersome to compute, or both. AV takes into account locational, economic, and physical characteristics of properties, which would constitute bases for the apportionment of costs and benefits of this type of improvement anyway (Burchell-Listokin and Associates, 1995, p. 25), and there are already in place established procedures by which property owners can challenge what they believe to be inaccurate AV determinations. The annual review by the municipal governing body in public hearings of the SID's budget and assessment rolls provides a further assurance of transparency and fairness.

As to the constitutionality of exempting residential properties, the special assessments at issue here are not taxes. But, even if they were, the distinction made by exempting residential property is based on broad classifications of property use and zoning characteristics, rather than distinctions based on characteristics of the owner, or among different sectors of business activity. Therefore, the court found, "The SID legislation meets the exacting classification standards that are applicable to real property taxes" (*2nd Roc-Jersey Assocs. v. Town of Morristown*, 1999, p. 600). Exemptions upheld for historic properties are a similar example. As in *Fanelli*, the burden of proof here is on the plaintiff, and the municipal action is subject to minimum scrutiny, because "the SID ordinance is an economic regulation not affecting a suspect class" (p. 600).

With respect to the taking issue, the court concluded that as a matter of public policy, New Jersey, like many other states, seeks to address the problems of urban decay and suburbanization. SIDs are self-help and quasi-public attempts to do what municipal governments alone have been unable to do. All of the expert reports, including the plaintiffs', "furnish an evidentiary basis for the conclusion that SIDs offer benefits to commercial property" (p. 604). The court concluded on this point that "the SID provides sufficiently identifiable benefits to the subject properties and...that the special assessments are measured reasonably and fairly in proportion to the benefits conferred" (p. 604). This reflects "legislative purpose and intent and public policy" (p. 602). Therefore, the assessments do not constitute a taking.

On the question of the statutory permissibility of excluding residential properties from the list of properties defining the SID, the Supreme Court agreed with the Appellate Division that the May 1995 statutory amendment was clearly intended "to

remedy what the Legislature perceived as a misapplication of the law" in *Gonzalez v. Borough of Freehold* (1994). Generally, laws may be considered retroactively applicable rather than prospectively only, which is the normal case, under three circumstances, one of which is "where the legislation is ameliorative or curative" (p. 604). Therefore, "the 1995 amendment qualifies under the curative exception for retroactive application" (p. 605).

Discussion

In New Jersey, as elsewhere, state courts have upheld the BID form as a reasonable extension of both the special assessment and special district concepts. This reflects a U.S. tradition in local government law of blending public and private interests in creating entities to further local collective action (Briffault, 1999). The principle of fiscal equivalence inherent in special-assessment finance is important enough to justify or even dictate nonuniformity of assessment, even within a district, such as the exclusion or exemption of residential properties or the differential assessment of commercial properties of different types in different parts of a district. In light of the practical challenges of calculating precisely the benefits to individual properties of continuing-service improvements, as opposed to more traditional capital improvements, however, BIDs and their parent municipalities are granted significant leeway in making reasonable allocations of costs among beneficiaries.

In New Jersey specifically, this further reflects the court's judgment that legislative intent and the state constitution both support the exercise of considerable discretion by municipalities in this area. The court concluded that the legislature saw this as a matter of public policy responding to the need to preserve downtowns in the face of ongoing sprawl and the competition between traditional business districts and single-owner shopping centers and office parks. SIDs in this light are a necessary and appropriate means for organizing collective action that is expected to yield substantial private benefits for the owners and occupants of commercial properties in business districts in the course of pursuing public policies of downtown renewal. That is, notwithstanding the emphasis by many of the most vocal proponents and opponents of BIDs on the *private* sector leadership of BID management entities as a defining characteristic of the approach, New Jersey's legislature and courts view SIDs as fundamental means for the advancement of *public* policies by state and local governments.

Four Cases of Collective Action

The arguments considered in the Morristown litigation involved the effects of a municipality's exercise of discretion pursuant to a state grant of authority. While the Morristown SID was held by the court to have been an appropriate and appropriately

applied instrument of state and local public policy, its proximate origins were in the private initiative of concerned property owners and business operators. We now turn to a summary of relevant aspects of four 2002–2003 case studies of New Jersey SIDs reported in greater detail elsewhere (Justice, 2003), which help to illustrate the interplay and evolution of stakeholders' interests and actions in practice in the course of mobilizing material and cooperative resources for revitalization. Taken together, these cases indicate that New Jersey's SIDs might well be described as instruments of mutual exploitation by business people and local governments, with the latter presumably seeking to advance their residents' interests as well as their own "institutional self interest" (Sbragia, 1983), and self-exploitation by business people seeking to advance their private interests.

The analytic framework used for the case studies modeled business district revitalization as a collective action problem involving individual and organizational actors from the public and private sectors. Case study methodology and data sources (Yin, 2003) were used to investigate and compare the effectiveness of the four SIDs as means for mobilizing resources for the joint provision and production of viable business districts. Data—archival records, documents, 55 confidential semistructured interviews, and direct observations—was collected throughout 2002. Case-level sample selection was intentional and followed a quasi-experimental logic, seeking to focus on governance-related variables while controlling for a range of confounding factors. Accordingly, all four of the selected SIDs encompassed the downtown business districts of municipalities in the New York City metropolitan area, each was relatively close to the median size and budget of New Jersey SIDs (see Tables 8.1, 8.3, and 8.4), and the governance structures of the DMCs in the cases included two variants on self-governing membership corporations (Freehold and Red Bank), one municipal commission (Somerville), and one nonprofit with a municipally appointed board (Union Township). In all four cases, the "merchants don't vote" truism was largely accurate: relatively few of each SID's business operators and property owners currently lived in the municipalities, although many were former residents.* In each of the Freehold and Red Bank cases, however, one key leader of the initial effort to create a SID was a borough council member as well as a downtown business operator, while in Somerville local officials included at least one owner of a business located adjacent to the area designated for the SID.

Freehold Center Partnership, Freehold, New Jersey

Freehold's DMC, the Freehold Center Partnership (FCP), was organized by local business people in 1991 shortly before the Borough of Freehold designated its SID. In interviews in 2002, founders of the DMC indicated that they sought to organize

* Interestingly, in the case of Red Bank, a number of the DMC activists began moving into the borough in the late 1990s and early 2000s, from surrounding communities.

Table 8.3 Summary comparison of four New Jersey SIDs, selected characteristics

	Freehold	Somerville	Red Bank	Union Township
Date created	September 1991	June 1988	September 1991	June 1993
Date operational	July 1992	July 1988	September 1991	August 1993
Organizational form	Membership-controlled 501(c)(4)	Municipal commission	Membership corporation, 501(c)(3)	Governing body- appointed board, 501(c)(3)
Businesses in SID ^a	260	350	550	260
Total DMC budget, 2002	\$249,300	\$236,672	\$435,800	\$157,000
Assessment-funded share of budget, 2002	\$164,300	\$236,672	\$400,000	\$143,000
Assessment per business, 2002 ^b	\$619	\$676	\$727	\$550
Assessment per property, 2002	\$1,020	\$1,679	\$1,739	\$1,444
Assessment per \$100 of property value, 2002	\$0.239	\$0.269	\$0.268	\$0.254
Ratio of assessment to total general local property tax, 2000	8.7%	8.7%	13.2%	11%

Source: Justice (2003).

^a Statewide average SID size was 341 businesses, median 250, in 2000–2001 ($n = 28$).^b Statewide assessment/businesses ratios ranged from \$185 to \$2,313 and averaged \$678.

Table 8.4 Actual expenditures for four SIDs in 2001

	<i>Freehold</i> <i>July 2001–June 2002</i>	<i>Red Bank</i> <i>January–December 2001</i>	<i>Somerville</i> <i>January–December 2001</i>	<i>Union Township</i> <i>January–December 2001</i>
Marketing and promotion	\$106,609	\$67,853	\$15,507	\$53,193
Design and maintenance	18,904	53,046	126,773	35,088
Debt service		159,916	155,215	
Business development	31,173	2,013	242	
Staffing and organization	101,927	193,550	66,860	69,018
Total expenditures	\$258,613	\$476,378	\$364,598 ^a	\$157,299

Source: Justice (2003).

^a Expenditures for Somerville include an average of \$100,000 per year in matching grants for façade improvement projects, funded by a grant from Somerset County and not presented by the DMC in its budget as reported in Table 8.3. For 2001, these county-funded façade grants totaled \$111,890 and are included in the design and maintenance category of expenditures.

the SID as a way to maintain and continue the revitalization efforts begun by the borough at the instigation of local business operators and residents. As of 2002, the bylaws provided for a board with 13 voting members, 10 of them (4 property owners, 4 business operators, and 2 residents) elected by the membership (comprising all SID property owners automatically and all borough residents and SID business operators who elect to register for membership). Three other voting members were appointed by the borough and county governments (Freehold Borough is the seat of Monmouth County, and the county government has been extensively involved in the downtown revitalization efforts). Six nonvoting board members represented a range of local institutions, including major employers outside the SID and the regional chamber of commerce.

The FCP operates a revitalization program that emphasizes marketing and promotion of the central business district as a destination for dining, strolling, and shopping, with more than 20 activities and events per year organized by the volunteer-led marketing and restaurant committees of the DMC. These activities are largely self-supporting: of the \$106,609 spent on marketing and promotion in the fiscal year beginning in 2001, \$93,089 came from sponsorships and advertising sales rather than from assessment funds. Streetscape and parking improvements have been funded over the years by the borough and county governments, as have a variety of sanitation and maintenance services. FCP funds the purchase and installation of banners, planters, street cleaning equipment and services, improvements for tree wells, and other visual improvements. Volunteer labor is used to maintain plantings. A program of design assistance, small matching grants, and discounted loans from local lenders is meant to encourage attractive façade improvements. The SID has also produced a design manual and a guide to local permitting procedures, and provides related technical assistance to new and existing businesses.

The board and its several committees were active in formulating and executing the SID's improvement activities, and in mobilizing volunteers to help with special events and streetscape maintenance activities. For most of the SID's history, participants reported, the private and public representatives on the board maintained active communication, and the borough and DMC worked effectively in a balanced partnership to pursue shared goals. At the same time, private and public sector participants in the SID also reported some measure of contemporaneous discontent: some business people felt that the borough was insufficiently responsive to their needs, while some public representatives suggested that the business people sometimes forgot that the borough government's primary responsibility is to its residents. The research did not uncover evidence of significant concern by residents that the business district received an excessive share of public resources or attention. Critics of the SID within the local business community expressed their strongest objections not to the ad valorem special assessments, but to what they believed was the DMC leadership's unreasonable neglect of the aggrieved business people's suggestions for revitalization strategy. The DMC was described by participants and outsiders alike as primarily a business-led organization.

Somerville, New Jersey, District Management Corporation

The Borough of Somerville District Management Corporation (SDMC) is a municipal commission, created by the ordinance designating the Somerville SID in 1988. Like Freehold, Somerville is a county seat and was a significant regional retail and services center until the 1970s. Interviewees reported that a formerly cohesive local business community succumbed to infighting and disorganization in the 1960s, and local electoral politics were reported to be similarly combative. The borough government's desire in the 1980s to pursue physical improvements in the downtown business district without imposing the costs of the improvement on residential taxpayers was a central impetus to the designation of the SID, they reported (also see Herszenhorn, 1997). SDMC's board comprised nine voting members and a nonvoting (but influential) borough council liaison, all of whom were appointed by the council. The choice of the municipal-commission form appeared to reflect both the mimetic adoption of ordinance language from nearby Cranford, New Jersey (the state's first SID, designated in 1985), and the government-driven origins of the SID.

Somerville's program activities have been constrained by the need to dedicate about three-fifths of annual assessment revenue toward servicing the debt incurred for streetscape reconstruction (see Tables 8.3 and 8.4). Remaining funds have been devoted largely to general organizational expenses, maintenance of plantings in tree wells, sidewalk sweeping, and cooperation with the voluntary Somerville Business and Professional Association (SBPA). SDMC and SBPA share an executive director and have heavily overlapping memberships and boards, and participants describe the relationship between the two entities as beneficially "incestuous." SBPA organizes a variety of place-marketing and promotional activities and special events, funded through program revenues and member contributions. SDMC also administers a county government-funded program of matching grants for façade improvements, which typically allocates \$100,000 per year to three to five projects and is promoted by the county government as a model for the county's other downtown organizations to emulate.

The SDMC was chaired in 2002 by a resident of the borough who did not own property or work within the SID boundaries. The majority of the board's members were business operators and property owners, and the actual decision-making process both observably and reportedly balanced the concerns and priorities of the municipality and of the private business stakeholders quite well. The only standing committee of the SDMC was its Architectural Review Board (ARB), created by the SID ordinance to review proposed façade construction and alteration projects within the SID. Most active participants in the DMC as well as outsiders tended to describe the DMC as a creature of municipal government. As in Freehold, there was no evidence of strong concern among residents about misdirection of resources to favor business interests, and business sector discontent was oriented more to strategy selection and implementation than to the fact or amount of the special assessment.

RiverCenter, Red Bank, New Jersey

The special improvement district of Red Bank, New Jersey, Inc. (Red Bank RiverCenter), the DMC for Red Bank's SID, was initially incorporated by the members of an ad hoc advisory committee of local officials and business people who recommended the creation of a SID in 1991. The committee was appointed by the borough council as a business-led parking advisory group chaired by a council member who was also a downtown business operator, but quickly arrived at the recommendation for a more comprehensive revitalization strategy to be pursued through the SID mechanism. Early RiverCenter activists noted the compulsory finance as a particularly attractive feature, which allowed them to focus on revitalization activities rather than fund-raising. Corporate governance is nominally the responsibility of a board comprising 22 members elected by SID property owners, 5 public representatives appointed by the borough government, and 3 representatives of local institutions located outside the SID boundaries. In practice, however, most significant organizational decisions are made by an authoritative executive committee, which ranges from 5 to 13 members and generally includes the mayor or borough administrator.

RiverCenter has systematically pursued coordinated promotional and economic restructuring efforts, targeting the very-high-income residents of surrounding communities and recruiting businesses to serve them. Events and promotions include a jazz festival and street performers. The DMC spent \$45,000 on advertising and \$12,000 on promotional activities in 2001, offset by \$53,000 in related program revenues. As in Somerville, a major share of the district's assessment revenue is used to service the debt incurred for streetscape improvements, although in this instance the capital improvements extend through only a portion of the SID. A modest premium in assessment rates has been adopted for properties within the subarea of the SID in which the improvements were made. Sidewalk cleaning, holiday decorations, seasonal plantings, and other maintenance and visual improvements are funded through a combination of individual contributions and SID funds.

RiverCenter's board and committees have been very active and draw in significant numbers of local business people and residents for volunteer work. Positions as board members and committee chairs are used as incentives to encourage local stakeholders to contribute time and energy to the work of the organization. In interviews, RiverCenter board members emphasized the business-led nature of the DMC, and clearly believed they enjoyed a great deal of organizational autonomy. One SID property owner and RiverCenter activist even described the process of gradually socializing a skeptical borough official through repeated cooperative interactions, explaining, "He is now one of us, in the sense that he's been exposed to it enough...now he's sold." Outside Red Bank, however, it was reported that Red Bank's mayor effectively controlled the SID organization through force of personality and the shrewd deployment of official municipal authority.

Union Township, New Jersey, District Management Corporation

Union Township's "Union Center" SID encompasses the traditional central retail district of a suburban municipality, which also encompasses a number of large highway-oriented strip shopping centers on its fringe, as well as several other modest concentrations of commercial activity. The SID designation followed the recommendations of the township's chamber of commerce, which responded to a reportedly sudden and dramatic increase in the district's vacancy rate for commercial properties around 1993. The nonprofit DMC is governed by a board of nine trustees appointed by the township's governing body. Three SID property owners or employees of SID property owners, three proprietors or employees of SID business establishments, and two township residents without business interests in the SID are appointed to staggered three-year terms, and one member of the township committee (usually the mayor) is appointed annually. The DMC in 2002 had no active standing committees.

With the smallest budget among the four cases, Union Center minimizes administrative costs by sharing its two staff people with the township's economic development department. Major design-related activities include the purchase of sidewalk maintenance and cleaning services, holiday decorations, and decorative banners. Major capital streetscape improvements were funded by the township, which shares many of the maintenance and decoration costs with the SID as well. A program of matching grants for façade and signage improvements operated from 1995 through 2000, using funds from the federal community development block grant program. The DMC staff works actively to recruit suitable new businesses to the district, and to provide a range of technical assistance to new and existing businesses. Promotional activities include a number of special events, regular advertising of the district as a whole, and subsidized group advertisements keyed to seasonal sales and promotional events.

The DMC's business activists expressed considerable commitment to serving the interests of other business stakeholders, although the DMC's strategies and activities were largely driven by the staff. In interviews, local stakeholders portrayed the governing core of the organization as comprising an effective regime of township elected officials and staff, in a coalition with two particularly influential and economically significant business people in the finance and real estate sectors. As in the other cases, business stakeholders' expressions of discontent appeared to center more on SID strategy and implementation than on the monetary cost of the assessments. One central participant in the revitalization also reported that there was some concern among the township's elected officials and residents over the revitalization effort's apparent success in increasing the draw of shoppers from adjoining lower-income inner-ring suburban communities.

Private Government and Public Policy

On balance, the evidence from these cases tends to support the assertion that "business improvement districts don't fit our ordinary categories" of public and private (Walker, 2003). While New Jersey's SIDs in the eyes of the courts represent an incremental adaptation of the more familiar forms of special-assessment districts, and fit within a tradition of using incorporated forms to serve the purposes of specific publics (Briffault, 1999), in practice they tend to operate in the "twilight zone" (Collins, 1998) between the public (government) and private (for-profit business) sectors.

All four SIDs, regardless of the organizational forms of their DMCs, explicitly provided governing roles for representatives of SID business actors, local governments, and the larger jurisdiction's residents. In all cases, nominal governing control of DMC boards was in the hands of the business operators and property owners who were the direct payers of the special assessments. Evidence from meeting minutes, interviews, and observations indicated that borough residents other than SID business stakeholders were particularly influential in Somerville, and to some degree in Freehold as well, so that there was no obvious correspondence between the extent of resident involvement in decision making and the nominal forms of SID governance among the four cases. The initiative for SID formation in each of the four cases was taken either by the municipality (Somerville and Union) or jointly by the municipality and business people and with key individuals having a foot in both sectors (Freehold and Red Bank).

Business, government, and resident participants in DMC governance interviewed in all four cases described their beliefs that they had persuaded representatives of other sectors to become more sympathetic to their concerns at the same time as they described having acquired better understandings of those other sectors themselves. Simultaneously, their remarks indicated that the cooperation achieved through the SIDs was not so great as to eliminate all disagreements between public and private sectors. Municipalities had come through participation in SID planning and governance to be more helpful in many respects to business, but local officials in confidential interviews consistently highlighted the importance of attending to the needs of residents first. The stability of membership of most of the SIDs' core governing groups had the form of regime governance, but the limits of regime governance through the SIDs were apparent in the constraints on those regimes' abilities to influence public policies and resource allocations.

The cases also provide a gray-shaded perspective on the fears of exclusionary privatization of public space raised by some BID critics. In only one case among the four (Freehold) was fear of lower-income people or people of color by upper- and middle-income consumers explicitly identified as a concern by business people or other stakeholders interviewed. Their response to this problem, through the SID mechanism, was described by one participant as essentially a strategy of visual distraction.

We used to have...a problem with perception. Freehold was thought to be...a dangerous place to go....So I think we've overcome a lot of that, and we try to continue to work at that. And you do that through presentation, you know; presenting the town in a nice way, just like you would present your home, where you live, or your car. You keep it clean. That's what we try to do.

In fact, based on observations in Freehold and Somerville, pedestrians appeared to represent a broad range of races and income levels. The selection of businesses in both districts was quite broad as well, with expensive restaurants and sidewalk cafés sitting next to immigrant groceries, thrift stores, and the offices of bail bondsmen. In Union Center, the SID actually worked actively to increase the number of lower-income shoppers it drew, although improving higher-income residents' perceptions of cleanliness and safety was also an important priority.

Ironically, the only one of the cases in which concerns were raised about exclusion was the only one in which the anxieties of higher-income groups were never cited as having been a concern in the revitalization effort. The Red Bank SID had by 2002 come to be such a desirable location for businesses targeting very high-income consumers that, through the workings of the commercial real estate market, there was very little left that would attract lower-income residents and visitors. Concern among residents about having lost their downtown to the rich residents of surrounding McMansion developments was real, but was not the result of the kind of intentional exclusion feared by some BID opponents. Indeed, business participants in the revitalization effort tended to assert in interviews that their efforts were targeted at the areas in which their profit motives complemented residents' interests in having an attractive and vital central business district. They were evidently quite sincerely taken aback by some residents' vocal expressions of opposition to their activities and the presumed consequences of those activities.

The Red Bank and Freehold cases additionally offered evidence that the relationships fostered by nominally business-governed SIDs tended to generate a form of what might be described as "spatial capital" (Blau, 2000). While the SIDs served as vehicles for the advancement of businesses' self-interest, the interactions and active work of improving business districts through volunteer governance and labor led participants to form new or deeper attachments to place. This led to efforts by business interests in both places to contribute directly to the general welfare of the larger municipalities, through playground and park construction, involvement in local public schools, and other activities. Participants expressed loyalty to place and to other participants using language such as "camaraderie," "spirit," "community," or "hometown" (this last even among some who had never been residents of the towns in which their businesses were located) to describe their feelings and identifications.

Private Governments as Public Policy Tools

Are BIDs then private governments that threaten to undermine democratic control of municipal governments and public space and contribute to increasing social inequality as some pessimists fear (Garodnick, 2000; Krohe, 1992; Mallett, 1995)? Are they heroic private sector organizations rescuing cities and their public spaces in ways that their ineffective public governments cannot or will not (Mac Donald, 1996)? Or are they instead one more among the "tools of government" (Salamon, 2002) as the reasoning of the New Jersey Supreme Court in the *Roc-Jersey* case suggested? Another answer might be "None of the above, and all of the above." New Jersey's SIDs, like BIDs elsewhere, certainly qualify as private governments under the broad definition offered by Lakoff and Rich (1973), insofar as they have limited purposes and clienteles, are subordinate to public governments, and engage in activities that have consequences for nonmembers as well as members. But Lakoff and Rich's definition does not imply that such entities are necessarily good or bad for larger public interests; the details of context and implementation matter. (Indeed, professional associations and universities are among Lakoff and Rich's examples of private governments.)

With the proliferation of special-purpose governments and quasi-governmental entities in the United States and other parts of the world, it can plausibly be asserted that "what constitutes the public sector...is a contestable matter" (Ostrom, 1989, p. xv). Some respected scholars of public administration have in recent years argued that the legitimacy of administration and the reconciliation of efficiency and democracy can best be served by focusing on collective interests and the full range of instruments of collective action rather than on government organizations themselves as the central units of analysis for public policy and administration (Denhardt, 2000; Kirlin, 1996). Mallett's (1993) emphasis on BIDs as representing instruments of collective action developed to serve emergent group demands not satisfied by existing governments is not unlike some accounts of the formation of municipal corporations in the 19th and early 20th centuries (Karcher, 1998; Sbragia, 1996). Perhaps their path going forward will follow a similar pattern as well, resulting in their becoming more explicitly subject to control by superordinate governments as courts and other actors grow concerned with their public consequences.

From a collective action perspective, BIDs—at least as they have been implemented in New Jersey to date—appear to represent instances in which a subset of stakeholders—business operators and property owners—jointly provide some of the collective goods and services that lead to the creation and maintenance of public space and place, in addition to those provided by municipal governments. In terms of the logic of collective action (Olson, 1971), the analysis might be as follows. In the absence of a BID (or other compulsory finance mechanism), business stakeholders are subject to free riding in their efforts to provide the collective good of the public space that enables them to realize the greatest profit from their immobilized capital investments (Cox, 1993; Mallett, 1994). Once the BID exists, those

stakeholders are able to marshal the resources necessary to provide that collective good, which residents, employees, and visitors then enjoy as a positive externality. There is no altruism involved—business people seek to maximize profits, and the amenities of public space and place are merely instrumental or incidental to that profit maximization—but the gains to this subset of stakeholders are perceived by them to be great enough to motivate them to provide public goods enjoyed for free by others (for a critical perspective on this phenomenon, see Loffland, 2002). Thus, even a sharp critic of BIDs might note the irony that the apparent privatization of place management can foster the creation of public space, as demonstrated by the reclamation of Bryant Park in midtown Manhattan through BID-funded services that helped attract the general public and deter the petty crime and drug dealing that had once prevailed (Zukin, 1995). But these New Jersey cases also suggested a corollary effect: as business people became personally involved in local improvement planning and implementation, as active providers and producers, rather than merely consumers of place, they came increasingly to identify their private interests with the general public interest in public space and other local public goods.

In this sense, BIDs can be understood as being not just private governments, but also instruments of public policy. In the eyes of the New Jersey Supreme Court and state legislature, the state's SID statute and local implementations of SIDs are means to promote the general welfare of municipalities by exploiting the profit motivations of their (mostly nonresident) business people. From a collective action perspective, New Jersey's SIDs are institutional arrangements that facilitate the necessarily joint provision and production of the local public good of *place*, with statutory stipulations that promote reasonable fiscal equivalence without unduly constraining the ability of municipalities and business communities jointly to devise the institutional arrangements that most suit their particular and shared interests. This in turn is presumed to enhance business districts' levels of business investment, employment, property values, and property and sales tax revenues as well as the availability of goods and services for community residents.

Limitations and Caveats

Some cautions regarding the limitations of our analysis and conclusions are in order, however. First, the extension of the BID model to primarily residential rather than commercial areas and improvements in the form of "community benefits districts" (Baer and Marando, 2001) may be somewhat more troublesome. Part of what makes New Jersey's SIDs (and BIDs in general) as a model of municipal subdistricting relatively benign is that business districts by their nature serve private interests best when they attract people. This minimizes exclusionary tendencies and means that BIDs in advancing private commercial interests tend to create public space and other amenities as positive externalities. And, of course, given the truism that merchants do not vote, the doubling of narrow influence is avoided. Residential

associations, on the other hand, might be more likely to generate active exclusion of people deemed undesirable, negative rather than positive externalities, and effective secession by the wealthy.

Negative Externalities

Second, these case studies did not measure the actual economic and regulatory effects of the specific SIDs studied, and so they cannot address directly the potential for a range of negative externalities and other undesirable consequences potentially associated even with visitor-attracting BIDs. This includes a range of possible undesirable effects for businesses in BIDs, for residents of BIDs or areas near them, for users of public space, and for residents and businesses in other communities.

Possible consequences for businesses in BIDs include potential imbalances of BID costs and benefits, especially given the inevitable lack of precise knowledge of causality, costs, and benefits associated with BIDs. There is also the possibility that business tenants will be forced out of the district as a result of a BID's success in achieving increases in business activity, and therefore property values and rents, or in altering the demographic composition of a district's customer base. In fact, there may be some evidence that this has occurred in Red Bank, although it would be difficult definitively to attribute causality to the SID rather than to the workings of a capitalist property market responding to secular changes in the overall economy and in the demographics of the local trade area.

Commercial gentrification, whether occasioned by a BID or other causes, can also have implications for residents, as we have seen in the Red Bank case. Effects on residents can include the loss of particular businesses, goods, and services; the experienced loss of a sense of ownership of a business district; and the inconveniences, such as congestion, associated with busy commercial districts. These potential negative consequences of BIDs, of course, presume that their decision makers set out to achieve commercial gentrification and succeed in doing so.* Residents might also find themselves disadvantaged to the extent that BIDs succeed in overcoming the "merchants don't vote" balance of power over municipal government. At least one New Jersey BID consultant was explicit about his belief that a key purpose of SIDs in New Jersey's suburban towns is to create urban governing regimes, to "restore business dignity."

BIDs' success in regulating and marketing public space may also have consequences for residents and businesses of other areas. To the extent retail trade is drawn to one district, it may be drawn away from another, to the detriment of property owners and business operators in the losing area(s). Nonresident visitors to

* In at least one of the cases examined here, not even the first half of that presumption appears to be valid. To the extent the Union Center SID succeeds in drawing additional lower-income shoppers, that might also be viewed as a negative consequence by community residents.

a district may also be discouraged, not necessarily by the direct operation of BIDs' "security" services, but because the creation of environmental characteristics that enable an urban business district to attract higher-income suburbanites might as a by-product result in an environment experienced as unwelcoming by others.

Limited Generalizability

Finally, although New Jersey's SIDs overall are typical in many respects of the range of BID implementations in the United States in terms of size and budget, there are two ways in which the cases examined here may not be fully representative of BIDs in the United States. First, the SIDs examined here were intentionally selected to be comparable to one another in many dimensions and so encompassed a fairly narrow range of applications. They are all in relatively high-income areas in northern New Jersey, they are all in relatively small jurisdictions that are not central metropolitan cities, and in each case there was a degree of governmental involvement in the initial organizing efforts that may have been greater than is typical of U.S. BIDs in general. There is some reason to believe that larger "corporate" BIDs serving larger numbers of larger businesses in the central business districts of major cities may differ from these cases of "Main Street" BIDs in their institutional characteristics and effects (see Rogowsky and Gross, 2000, for an explanation of this typology). None of the SIDs examined here, for instance, employed or contracted for the uniformed greeters, ambassadors, or security personnel common to corporate BIDs, and none of them had a budget large enough to permit complete professionalization of its management decisions and operations. More professionalized BIDs, independently of the nature of their service programs, may well be less likely to promote the spatial capital discernable among active participants in BID governance and activities.

Second, these cases of SIDs in New Jersey were Main Street BIDs that all were populated predominantly by locally based, mom-and-pop businesses. Businesses with a strictly local scope may be more locally dependent (Cox, 1993), as are property owners. Business districts dominated by chain stores may have a business constituency less attached to a particular place. Further, in at least two of these cases there were a significant number of business operators who also owned the properties in which their businesses were located, which may also have contributed to a greater commitment to a specific place as well as to more cohesive relationships among business operators and property owners. Certainly the ranks of SID activists in all four cases included large proportions of property owners, including property-owning business operators.

Finally, as we have described here, SIDs in New Jersey are all creatures of an enabling statute and case law environment that explicitly reserves discretion and authority mainly to conventional general-purpose municipalities empowered by the state government. Anonymous reviewers of an earlier version of this chapter

suggested that this sets New Jersey apart from most other states. Although we have not completed a comprehensive review of all the BID statutes in all the states,* there is some support for this assertion. At least 18 states and the District of Columbia provide for the creation of BIDs only in response to an affirmative petition by property owners, business operators, or both, of which four additionally make provisions for (disconfirmation) by means of referenda or remonstrance petitions. Of the (at least) 21 states that allow for local governments to take the initiative for designating BIDs, 6, including New Jersey, provide solely for discretionary designation without provision for remonstrance petitions, 6 provide only for municipal initiative but also provide for referenda or remonstrance, and 11 allow for BID creation by property owners' petition or by local government discretion, with 7 of these 11 including remonstrance provisions. Thus, a plurality of these 40 BID statutes appear to intend (and a majority to allow) that property and business owners—or organizations representing their interests—assume a leading role in BID formation, as does the legislation recently adopted for England and Wales (for more information concerning BIDs in the UK, see the chapters by Blackwell and by Lloyd and Peel in this volume). This is consistent with, if not strong evidence for, Mallett's (1993) private government thesis.

Even so, many of the characteristics of New Jersey's SIDs that help to bring about the complementarity of private government and larger public interests are precisely those that are generic to the form. They are created under the authority of and subject to the laws of the sovereign states, generally cannot employ coercive authority, or even collect the revenues they need to operate, except on the sufferance of the general-purpose municipalities which created and can dissolve them, and can both in theory and in practice be held accountable by officials of those municipalities.† Subject to a variety of disclosure and procedural requirements as they are, BIDs at worst have no greater potential as instruments for redistributing power and wealth to business elites than do a variety of longer-standing forms of redevelopment partnerships (Squires, 1989), routine "privatism" (Barnekov and Rich, 1989; Warner, 1968), growth machines (Logan and Molotch, 1987), and urban governing regimes (Stoker, 1995; Stone, 1989), in spite of (or perhaps in part because of) being more explicitly oriented to serving business interests specifically

* See Morçöl and Patrick's chapter in this volume for an illustration of why a complete survey is a challenging task. Pennsylvania, the subject of their chapter, is not the only state with multiple BID statutes; states use a variety of names to describe BIDs, and the provisions in those statutes covering BID creation and governance can be very complex. Even a preliminary review indicates that states vary widely both in their specific provisions and in the category of entities or local improvements/services that served implicitly or explicitly as precedents. We thank Eric Finkelstein, a summer associate at Grenbaum Rowe, Davis and Himmel, for his efforts in summarizing selected provisions of 40 U.S. BID statutes during July and August 2006.

† The reorganization of New York City's large, and by all accounts politically powerful and highly successful, Grand Central Partnership under pressure from Mayor Rudolph Giuliani in the late 1990s illustrated this in practice (see Bagli, 1998; Pristin, 1998, 1999).

than are those more familiar institutions of urban governance. In fact, BID's distinctive—and actively sought—visibility may tend to render them somewhat less useful as engines of appropriation. And at best, by facilitating the enhancement of shared places, they can serve to further public purposes in the course of advancing private interests.

Directions for Continuing Research

The limitations of this research, like the relative dearth to date of large-scale evaluation research on the economic effects of BIDs, indicate some directions for continuing research into the governance and effects of BIDs, not only in the United States, but in the other countries to which they have spread, often patterned explicitly on the U.S. model.* One set of questions, of course, has to do simply with economic outcomes: whether BIDs do in fact cause increases in economic activity within their territories, and if so, whether that comes at the expense of diminished economic activity in competing commercial areas. At present, it is unclear whether and when adequate data will be available to draw firm conclusions on either of these accounts, although there has been some work by researchers at New York University examining the effect of BIDs on property values in New York City (Ellen et al., 2006).

Data might be more feasibly obtained, however, for numerous questions raised by this and other contributions to this volume, about BIDs' service performance and outputs, their consequences for public space and its users, and their governance and "democratic performance" (Skelcher, 2006). Data on service outputs and performance measures is spotty to date, but performance measurement is increasingly a matter of interest in the United States (see Caruso and Weber in this volume) and abroad. For instance, BIDs in the U.K. have been fairly systematic in designing performance measures, and may generate a wealth of output measures over the next few years. Comparisons to non-BID models of town center management (TCM) there may become feasible, because some of the TCM organizations also collect performance data (for more on TCM, see Reeve in this volume). Similarly, hypothesized external economies may be difficult to measure and tie definitively to BIDs as causes, but it may be more feasible to identify alterations in municipal service efforts associated with BID activities (such as the diversion of police attention in Times Square observed by Vindevogel [2005]).

* Or on what is portrayed as the U.S. model. The variety of statutes in the BID suggest that there is not anything that could be presented as a model beyond the frequent, albeit not universal, combination of special-district, special-assessment, and self-governing features. For an account of how narrowly policy designers in the U.K. interpreted the American experience of BIDs, see Ward's (2006) claim that they used midtown Manhattan as a proxy for the entire United States. (We would note, however, that many of the features of the U.K.'s BIDs law are not found in New York's, but can be found in other states' laws. See Blackwell's and Lloyd and Peel's chapters in this volume.)

Although corporate BIDs were not a majority of U.S. BIDs at the time of Mitchell's (1999) survey, they are prevalent in the major central business districts that by their nature influence particularly large numbers of people. One line of inquiry should be to examine their service performance and the democratic performance in comparison to smaller Main Street or community BIDs: Are they really qualitatively different, and if so, is it their money, their autonomy, their different production technology, or all or none of those characteristics that makes them so? Is there support for our hypothesis that the visitor-seeking character of business districts makes them less likely than residential special-benefit districts to practice successful exclusions and effective enclosure of public space? The nascent proliferation of community benefits districts may provide opportunities for comparison.

More examination of alternative statutory provisions and the effects of BIDs operating with different legal frameworks is also warranted. Returning to the question we posed at the outset, how and to what extent does statutory design influence the behavior and consequences of BIDs? We concluded that New Jersey's SIDs can be seen as policy tools as much as, if not more than, private governments, and that they appear relatively benign by comparison with other familiar partnership models for urban redevelopment. Is this the result of New Jersey's distinctive statutory design, or of other elements? Do similar legal designs generate similar results in other social, economic, and legal contexts? Or might we see less benign results from the same design in other places or at other times? Will BIDs, like municipal corporations before them, eventually be deemed sufficiently threatening to individual and minority-group rights and liberties that they will be subjected to a 21st-century equivalent of Dillon's rule? In view of the continuing diffusion of BIDs and similar institutional arrangements in the United States and elsewhere (Baer and Marando, 2001; Hoyt, 2003; Mallett, 1995), a better understanding of the implications of their diverse institutional characteristics could usefully be employed in designing arrangements for the future. The BID phenomenon, because of its international diffusion as well as its huge range of variations in the United States alone, presents abundant opportunities for comparative analysis of institutional design features and their consequences for governance.

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