Solutions to an Urban Public Goods Problem: Business Improvement Districts in New Haven, Connecticut

Nancy L. Jacobson
Yale Law School

Follow this and additional works at: http://digitalcommons.law.yale.edu/student_legal_history_papers

Recommended Citation
http://digitalcommons.law.yale.edu/student_legal_history_papers/38
Solutions to an Urban Public Goods Problem:
Business Improvement Districts in New Haven, Connecticut

Nancy L. Jacobson
Urban Legal History
Professor Robert C. Ellickson
May 5, 2000
In downtown New Haven, the newest color is green. Festive green banners flutter from the lamp posts, welcoming visitors downtown. Along sidewalks, in window boxes, and in vest-pocket parks, trees and plants flourish, with green leaves and bouquets of blossoms. On the sides of municipal buses, green placards boast the excited message “Do Downtown!” Members of a “Clean Team,” dressed in distinctive fluorescent green jackets, sweep and steam-clean the sidewalks. Green bags covering parking meters on Saturdays and Sundays advertise free parking to weekend shoppers. The downtown is awash in glorious green.

Yet, downtown New Haven of the early 1990s had few of these “green” amenities present today. Long-time resident, Jane Snaider, described New Haven of the early 1990s as “having a low self-esteem, with no energy anymore, and with people holding a negative perception of the city.” Kathleen Etkin, a local developer and former city hall worker, concurred. “I look at New Haven – it’s beautiful, with a beautiful downtown and fabulous architecture,” Etkin commented. “But it looked like people didn’t care.” Snaider and Etkin are two among many who have taken the initiative to reawaken downtown New Haven, and two of the parties responsible for the burst of green downtown today. Snaider is the president, and Etkin, the vice-chairman, of New Haven’s newest Business Improvement District, the Town Green Special Services District.

Like other Business Improvement Districts in New Haven and elsewhere, the Town Green Special Services District has sought to change the city by improving the local cityscape. In doing so, they have provided what I have termed cityscape goods, those goods that promote increased use of the downtown, in New Haven or elsewhere, by making it more attractive to potential users. Cityscape goods include clean and sufficiently wide sidewalks; well paved,
swept, and snow-plowed streets; a sense of safety; aesthetically appealing signs, banners, and decorations; a mix of complementary merchants and vendors; and the absence of graffiti, debris, and aggressive panhandlers. Advertising and marketing the city is also a cityscape good.

Downtown New Haven's insurgence of green is the result of an improved cityscape - - more flowers and plants, cleaner sidewalks, and decorative banners, among other changes. In New Haven and elsewhere, cityscape goods are public goods in the sense that their consumption is non-rivalrous and their benefits spill-out into the city as whole.3

In addition to the Town Green Special Services District (Town Green BID), an array of other local New Haven institutions have worked to improve New Haven's cityscape, making it greener, or in some cases, bluer4 or purpler.5 This paper will focus on quasi-private institutions - - Yale University6 and Business Improvement Districts (BIDs)7 - - that have taken on the task of supplementing the City of New Haven's provision of cityscape goods. The paper will also touch

---

2 See interview with Kathleen Etkin, Vice Chair of the Town Green Special Services District, Project Manager in the Ninth Square Project Ltd. Partnership, and former Board Member of the defunct Ninth Square Special Services District, at the Office of the Ninth Square Project Ltd. Partnership, New Haven, Conn. (Mar. 15, 2000).
3 For a more sophisticated treatment of the theory of public goods, see generally HARVEY ROSEN, PUBLIC FINANCE, 62-76, 322-26, 509-513 (2d ed. 1988).
4 Yale University, discussed infra IV, has hung navy blue, Yale's school color, banners and signs.
5 The Chapel West BID, discussed, supra III.B.2, has hung purple banners throughout its district.
6 I contend that Yale is a quasi-private actor. While Yale is a private university, it operates as a public entity in several respects. First, Yale receives significant public funding from the federal and state government. Second, Yale is tax-exempt, but this tax-exempt status carries multiple requirements to which Yale must adhere. Third, Yale is immobile in the sense that it would face tremendous costs in relocating outside New Haven; this immobility results in an incentive to improve the surrounding area. Fourth, Yale's purpose of education has a public tenor. Thus, while Yale University is a private institution, it has many qualities akin to a public one, and thus I have described Yale as a quasi-private actor.
7 The Connecticut statute enabling the creation of BIDs uses the name "special services districts," (SSDs). CONN. GEN. STAT. ANN. § 7-339 (West 1999). However, other states, including New York, use the term employed in much of the literature on this topic "business improvement district" (BID). N.Y. GEN. MUN. LAW § 980 et. seq. (McKinney Supp. 1988). Names used by other states include "commercial district management authority," Md., Ann. Code art. 23A 2(35) (1998); "special improvement district," N.J. Stat. Ann. § 50:56-66b (West 1998); Ohio Rev. Code Ann. § 1710 (West 1998); "economic improvement district," Or. Rev. Stat. § 223.114 (1993); et. al. This paper uses BID to describe districts of this type in general, without the intention of drawing distinction between BIDs and SSDs. For additional discussion of the definition of an BID, see infra II.A. The New Haven SSD enabling statute, CONN. GEN. STAT. ANN. § 7-339 (West 1999), however, relevantly differs from that of New York, N.Y. GEN. MUN. LAW § 980 et. seq. (McKinney Supp. 1988), in several ways that are not related to the nomenclature. For a discussion of these differences, see infra V.C.2.
briefly on one private institution that has improved New Haven’s cityscape, the Schiavone Realty and Development Corporation.

The City of New Haven provides a useful case study of cityscape improvers because of the presence of a large university situated in the downtown with a vested interest in the city and the existence of several BIDs with varying missions, budgets, and life-spans. In particular, the Town Green Special Services District, established in 1997, serves as a good subject for in-depth analysis of the functioning of BIDs. Further, cityscape improvers in New Haven have taken various approaches, transforming New Haven into virtually a test lab for cityscape experiments, with institutions from formal to informal, from large to small, and from collectively run by constituents within their geography to solely managed by an institution.

Part I of this paper will argue that, although cities are a natural candidate to provide cityscape goods, other institutions may outperform the city in improving the cityscape. Part II will define and discuss BIDs, their quasi-private nature, and their success in supplementing cities’ provision of cityscape goods. In Part III, the discussion will focus on New Haven, providing details about and analysis of the three existing and one defunct BIDs in New Haven, with the most extensive treatment given to the largest and newest of the New Haven BIDs, the Town Green BID. Part IV will keep the lens on New Haven, but shift away from BIDs to a discussion of how Yale University has improved New Haven’s cityscape in commercial properties adjacent to the University. The part will explore Yale’s role in the Broadway area and College-Chapel corner8 and include a brief treatment of the involvement of a private developer, the Schiavone Realty and Development Corporation in the latter neighborhood. Part V assesses BIDs and land assemblers, such as Yale University, as cityscape improvers from the standpoint

---

8 See app. A1.2 for maps of the relevant areas.

Nancy L. Jacobson, *BIDs in New Haven*
of efficiency, externalities, and equality. The discussion on equality includes implications for New Haven’s BIDs following the Second Circuit’s decision in Kessler.9

Readers unfamiliar with the geography of New Haven may wish to consult maps of the relevant area in appendices A1 and A2. Section B of appendix contains financial statements of each of New Haven’s BIDs, including a comparative summary table. Section C of the appendix provides selected documents related to New Haven’s Town Green BID.

I. Going beyond the city to improve the cityscape

Cities themselves are natural candidates to provide cityscape goods; cities often provide other types of public goods such as education, sanitation, a system of streets and sewers, policing, and other public amenities including parks. Cities also provide a base level of cityscape goods, such as street cleaning, sidewalk and street maintenance, and police beat patrols. One reason cities are a logical provider of public goods, including cityscape goods, is because cities have the power of mandatory taxation and can thus force constituents who would otherwise free-ride to contribute to the provision of the public goods they enjoy.10

However, city constituents seeking to increase the level of cityscape goods above the base level provided by cities may find that cities are not the best providers of these supplemental goods. While natural candidates, cities may under-perform other institutions for at least five reasons: idiosyncratic preferences of city constituents, capture by interest groups, signaling interference, monitoring constraints, and inefficiency bias.

First, idiosyncratic preferences of groups of city constituents can result in their desiring a level of service beyond what the majority would elect. Under this view, the level of cityscape goods provided by the city can be considered a majoritarian default, in that it is the level the

---

10For a more sophisticated treatment of the free-rider problem, see generally WALTER NICHOLSON, MICROECONOMIC THEORY, 567, 753, 824 (6th ed. 1995).
majority of constituents would elect were they to specifically contract with the city on the issue. The idiosyncrasy of preferences, derived from the heterogeneity of the city, can result in minority groups who would choose to contract for higher levels of services but face high transaction costs in doing so. For example, the minority constituents may be willing to pay increased taxes to the city to improve the cityscape in their neighborhood, but have difficulty arranging a special agreement or monitoring the city’s work. The city may also face problems in allocating overhead expenses or staving off complaints from constituents outside the minority group who may view the improved cityscape in the minority’s area as unfair favoritism.

Second, special interest groups are sometimes able to capture the decision making process in the city to influence the level of service provided and the cost of its provision. Under this view, the level of cityscape goods provided by the city is not a majoritarian default, but a minority determined outcome. Thus, even the constituents in the majority may prefer a higher level of service but be unwilling to pay for it because of the inflated cost of service caused by the interest group capture, a special interest “tax.” Special interest groups can build barriers to reaching the majoritarian default by such tactics as raising legal challenges, mounting public protests, or using strong bargaining positions to influence outcomes.

Third, the constituents wanting more cityscape goods may face signaling interference in that they are unable to effectively communicate their preferences to the city. Professor Clayton P. Gillette describes the constituents’ attempts to vote in city elections for increased service levels as “opaque signals of electoral markets, clouded by multidimensional choices, [failing to signify] that there is constituent dissatisfaction with the background level of service.”

---

11 For more in depth treatment of service levels as majoritarian defaults, see Clayton P. Gillette, Opting Out of Public Provision, 73 Deny. U. L. Rev. 1185, 1187-98 (1996).

12 See id.; see also Robert C. Ellickson, New Institutions for Old Neighborhoods, 48 Duke L.J. 75, 89 (1998) (describing the vulnerability of cities to capture by rent-seeking groups such as unions, lobbies, political machines, and special interests).

13 Gillette, supra note 11, at 1202.

Nancy L. Jacobson, BIDs in New Haven
Fourth, the city may not be a good provider of additional cityscape goods because those paying for the goods may have difficulty monitoring the use of funds and provision of service. The breadth of city services and departments can befuddle the would-be watchdog.  

Fifth, the legal constraints on city actors may lead to inefficiencies. As Professor Robert C. Ellickson describes, "state law and a city’s charter may dictate complex procedures for public hiring, bidding for public contracts, sale of public assets, and so on. While these procedural safeguards may stem corruption, they also make municipal bureaucracies relatively sluggish." Further, budgetary or political constraints to paying private sector wages can hamper a city’s effort to attract highly competent managers.

Given the multiple impediments to cities’ providing supplemental cityscape goods, city constituents may turn to private or quasi-private institutions such as large property owners or BIDs. While unhampered by the many problems faced by a city in supplementing cityscape goods, private and quasi-private institutions lack one key advantage of a city: the ability to avoid the free rider problem through mandatory taxation. This paper will explore two ways in which non-city institutions have surmounted the free rider problem: land assemblage and acquisition of coercive power. First, institutions have assembled a large amount of property and other interests such that they are able to capture a sufficient share of the cityscape public goods they provide to make investment in the goods worthwhile. Second, institutions have acquired coercive powers, for example, by employing mandatory lease provisions on owned properties or statutorily receiving the use of the city’s mandatory taxation power. These coercive powers enable the institutions to mandate participation in provision of the public goods and thus avoid free-riding.

\[14 \text{See Ellickson, supra note 12, at 89 (arguing that the large size of a city weakens constituents’ incentives to monitor as compared to smaller institutions).} \]
\[15 \text{See id. at 89.} \]

Nancy L. Jacobson, BIDs in New Haven
II. Business Improvement Districts: quasi-private providers of cityscape goods

When land assemblers dominate a neighborhood, their scale enables them to improve the cityscape directly without losing the lion’s share of the benefit to free-riders. In neighborhoods without a dominant property owner or strong social norms, however, small property owners and merchants face a coordination problem in improving the cityscape. Without a sufficiently large personal stake and without the power to coerce others to join their efforts, small players who attempt to effect change often will lose most of the benefits of their labors. BIDs avoid this coordination problem by enabling a group of property owners to elect to tax themselves in order to improve the cityscape in their neighborhood. State legislatures have granted BIDs a key advantage held by the city in providing public goods, the power of coercive taxation. While BIDs overcome free-riding by holders of taxable property, other members of the community, including holders of tax-exempt properties, can continue to free-ride. For additional discussion of free-riding by tax-exempt property holders within BIDs, see infra section V.B.1.

A. Defining BIDs

BIDs are territorial subdivisions within a city, established under enabling state legislation, in which property owners have elected to tax themselves a special assessment to purchase cityscape goods beyond the level provided by the city and to pay for the administration of the district. BIDs are primarily funded by mandatory special assessments on holders of taxable property, collected by the city on behalf of the district and then transferred to the district. As the name “Business Improvement District” suggests, the districts are usually

---

18 See Briffault, supra note 17, at 369.
located in commercial, rather than residential neighborhoods, although they may include residential properties.¹⁹

Typically, including in Connecticut, state law requires a referendum among holders of taxable property to establish the BID.²⁰ In Connecticut, to establish a BID, the referendum must pass by a double majority, that is, a majority of owners of taxable property in the proposed district whose property has assessed values totaling a majority of the total assessed value of taxable property in the district.²¹ After double majority approval of the BID in a referendum, a municipality may establish the BID by ordinance, in keeping with local procedures.²² The BID can then ask the municipality to impose a special assessment on its behalf.²³ The municipality collects the special assessment with other taxes, and treats delinquency in payment of the special assessment as any other delinquency. All owners of taxable property in the BID must pay the special assessment, regardless of whether they voted in favor of the BID in the referendum.

BIDs typically focus on providing cityscape goods that are traditional municipal activities, most commonly sanitation and security.²⁴ BIDs also often engage in beautification activities, such as landscaping and gardening, the installation of banners, and the hanging of seasonal decorations. Further, some BIDs market and promote their district or entities within, for example, through publishing brochures or organizing street fairs.²⁵

¹⁹ See id. at 369.
²⁰ See, e.g., CONN. GEN. STAT. ANN. § 7-339p (West 1999).
²¹ CONN. GEN. STAT. ANN. § 7-339p(1).
²² See, e.g., CONN. GEN. STAT. ANN. § 7-339p; in New Haven, the BIDs are approved by the Board of Aldermen.
²³ See, e.g., CONN. GEN. STAT. ANN. § 7-339m(e).
²⁴ See Briffault, supra note 17, at 368. A survey of six BIDs in New York City revealed that all six had sanitation and security programs, but there was no other activity in which all six were engaged. See Lawrence. O. Houston, Jr., Gotham Gets Civil, URB. LAND 84 (Oct. 1997).
²⁵ See Briffault, supra note 17, at 368.

Nancy L. Jacobson, BIDs in New Haven
B. The Success of BIDs

Compared to cities, BIDs have distinct advantages in improving the cityscape. BIDs are less likely than the city to fall prey to special interest group capture,26 and face fewer legal constraints in operations, such as complex procedures for hiring or the sale of assets.27 The small size and limited scope of the BID facilitate monitoring28 and preference signaling.29 Further, the small size of BIDs arguably enables more effective shaping of local social norms.30

The media have anecdotally recorded the successes of BIDs. Professor Griffault summarizes the depiction of BIDs in the popular press:

"News stories regularly trumpet the successes of BIDs in tackling crime, grime, and social disorder. BIDs are more effective than government, efficient, innovative, and trailblazers in solving urban quality-of-life problems. BIDs are credited with playing an important role in restoring urban morale and making older downtowns more attractive places to shop, visit, do business, and seek entertainment."

The Bryant Park BID in New York City, for example, has been credited with transforming its namesake rundown, drug-infested park into a popular destination for enjoying lunch and even outdoor movies on summer evenings.32

Potentially the most telling indicators of the success of BIDs are trends in property values within BIDs overtime and between properties within BIDs and neighboring properties outside the districts. The benefits of BIDs should become capitalized into the properties it contains, resulting in higher property values, all other things equal. However, "all other things equal" is

26 See supra note 12.
27 See supra note 15.
28 See supra note 14.
29 See supra note 13.
30 See supra note 16. Consider the role of local social norms in the Bryant Park Business Improvement District; lightweight, movable chairs are located in the park, but only a couple of the 2,200 chairs are stolen each year. See, e.g., Julia Vitullo-Martin, The Private Sector Show How to Run a City, WALL ST. J., May 20, 1998, at A14 (quoting Bryant Park BID president, Daniel Biederman, as asserting "[k]eeping the chairs is a daily measure of our social control."
31 See Griffault, supra note 17, at 371.
32 See, e.g., Kennedy, supra note 17, at 283 (describing the credit given to the Bryant Park BID); Vitullo-Martin, supra note 30 (praising the Bryant Park BID's turnaround of the park).
particularly problematic in the context of assessing property value changes because of the
difficulty in isolating the effect of the BID on property values from that of other economic
forces, including, but not limited to, general economic trends, urban improvement projects by the
city or state, or the entrance or exit of a major institution or property owner from the area.
Further, the infrequency of official property value assessment\(^{33}\) and the politics involved in that
process, make accurate trend assessment difficult.\(^{34}\) Despite the problems of isolating the effect,
BIDs are generally recognized to have a positive effect on property values.\(^{35}\)

Barring sound economic proof of property value increases, perhaps the strongest
evidence in support of BIDs is their continued existence. While there is no exact tabulation of
the total number of BID\(s\) in the United States, more than 1000 are estimated.\(^{36}\) Further, there are
few reports of BID\(s\) disbanding\(^{37}\) and much evidence of BID\(s\) expanding their programming and
increasing their assessments.\(^{38}\)

**C. BID\(s\) as a public/private hybrid**

BID\(s\) have facets characteristic of public and private entities. Concerning the former,
most BID\(s\) require enabling state legislation and a public referendum to come into existence.\(^{39}\)
BID\(s\) rely on the city government to authorize special tax levies through which they obtain the
bulk of their funds, and the city exacts the assessments on behalf of the BID\(s\) through their tax

---

33 New Haven, for example, assesses property values only once every ten years. Further, large property owners
often contest the assessed value of their properties, leading to reassessments. Smaller property owners may be less
likely to request reassessments than large property owners, resulting in the appearance of a depressed value of
properties owned by a large land assembler as compared to a small property owner. See, e.g., interview with Edwin
V. Selden, Senior Vice President of the New Haven Chamber of Commerce, at the New Haven Chamber of
Commerce (Mar. 29, 2000).

34 No study known to the author has succeeded in isolating the effect of BID\(s\) on property values.

economic benefit from [a BID’s] activities, . . . plainly accrues to the property owners, who will enjoy an increase in
the value of their property.”)

36 See Lawrence. O. Houston, Jr., *Are BID\(s\) Working?*, URB. LAND §8 (Jan. 1997) [hereinafter Houston, *Are BID\(s\)
Working*].

37 The International Downtown Association (IDA) reports only one half-dozen incidents of BID\(s\) disbanding. *Cited
in id.* at 57. While directionally useful, the IDA’s figures are not comprehensive. For example, they have no record
of the disbanding of the Ninth Square Special Services in New Haven.

38 See id. at 58.
collection mechanism.\textsuperscript{40} City officials interact frequently with BIDs, often sitting on the BIDs’ boards of commissioners or requiring BIDs to report to the city on a regular basis.\textsuperscript{41}

BIDs, however, are private entities in the sense that they empower self-help for businesses and property owners. The funds for BIDs come almost entirely from private property owners, and although the property owners pay the special assessment as an add-on to their tax bill, they have specifically elected to do so.\textsuperscript{42} Further, BIDs employ private managers who are not civil servants. Critics of BIDs argue that BIDs “privatize in the sense that they . . . transfer power to the private sector.”\textsuperscript{43} However, one can argue the private nature of BIDs is also what accounts for their success in efficiently and effectively improving the cityscape.\textsuperscript{44}

\textbf{III. New Haven’s Business Improvement Districts}

Downtown New Haven has three operating and one defunct Business improvement Districts. Several BIDs in the New Haven area can trace their roots to community organizations funded through Federal Community Development Block Grants (CDBG).\textsuperscript{45} As CDBG funding to these groups declined in the early 1980s, the groups sought other sources of income to continue their neighborhood improvement efforts.\textsuperscript{46} While some community organizations, in Westville and the Grand Avenue neighborhood, for example, raised funds through membership dues, others sought a source of funding less dependent on voluntary and revocable donations.\textsuperscript{47} In 1983, the Whalley Avenue Special Services District was the first group in New Haven to

\begin{footnotesize}
\textsuperscript{39} See Briffault, supra note 17, at n 7.
\textsuperscript{40} See id. at 470-71.
\textsuperscript{41} See id.
\textsuperscript{42} Although note that property owners who vote against establishing the BID must still pay the assessment, as discussed supra III.A.
\textsuperscript{43} See Briffault, supra note 17, at 470 (describing the privatization critique of BIDs but arguing it is overstated, with critics failing to take into account the public elements of BIDs). For further discussion of this criticism in the context of New Haven’s BIDs, see infra part V.C.1.
\textsuperscript{44} See supra II.B.
\textsuperscript{45} See 42 U.S.C.S § 5304-05; and electronic correspondence interview with Sheila Masterson, Executive Director of the Whalley Avenue Special Services District (Mar. 1, 2000) (explaining the origin of New Haven’s BIDs).
\textsuperscript{46} See id.
\textsuperscript{47} See id.
\end{footnotesize}
establish itself as a BID, under Connecticut’s Municipal Special Services District legislation. The Ninth Square and Chapel West Special Services Districts followed shortly thereafter in 1985 and 1986, respectively. More than ten years later, in 1997, the Town Green Special Services District emerged, subsuming the Ninth Square Special Services District. This section will provide an overview of the operations and governance of each of New Haven’s BIDs, with the most extensive treatment given to the newest and largest of the BIDs, the Town Green Special Services District.

A. New Haven’s neighborhood BIDs

1. The Chapel West Special Services District

The Chapel West neighborhood is a cheerful, ethnic-feeling part of downtown New Haven, roughly west of Yale’s campus. Small shops, cafés, a Korean grocery, and ethnic restaurants - - Thai, Indian, Middle Eastern, Chinese, Mexican, Vietnamese, and Italian - - line the main thoroughfare of the area, Chapel Street. The neighborhood includes three of New Haven’s small hotels, include the quaint bed and breakfast, Five Chimneys Inn. Four small art galleries and an arts supply shop contribute to the urban bohemian atmosphere. Small apartment houses, perch atop of the store fronts and on the side streets off Chapel Street, making the neighborhood a bedroom community for Yale students and some downtown workers.

The Chapel West Special Services District (Chapel West BID), established in 1986, primarily provides supplemental cleaning services to the mixed-use area. The Chapel West BID employs approximately three full-time-equivalents who wash and sweep the streets, empty trash,
and perform other maintenance-related tasks.\textsuperscript{53} Maintenance expenses — salaries, benefits, and supplies — total $40,000 per annum, 34\% of the total budget.\textsuperscript{54} Overhead expenses account for 57\% of the $117,000 annual budget.\textsuperscript{55} The district expends the remaining 9\% of the budget, totaling $11,000, on marketing, including a brochure listing the major businesses in the area.\textsuperscript{56} The Chapel West BID hangs decorative banners with the organization’s logo throughout the district.\textsuperscript{57} The annual assessment on holders of the roughly 160\textsuperscript{58} properties within the district is 2.5 mills.\textsuperscript{59}

The board of commissioners of the Chapel West BID has nine members, serving three-year terms, who are divided into two classes. The six class A commissioners must be holders of record of real property in the district, whereas the three class B commissioners operate businesses, lease real estate, or reside in the district but do not qualify as class A commissioners.\textsuperscript{60} Evelyn Schatz, president of Chapel West BID, oversees the operations of the district on a daily basis.\textsuperscript{61}

\textsuperscript{53} See interview with Jonathan Daigle, Director of Asset Management for Yale University, Office of University Properties, and ex officio member representing Yale University on the Advisory Committee of the Chapel West Special Services District, at Yale University’s Office of University Properties, New Haven, Conn. (Mar. 24, 2000).
\textsuperscript{55} See id.
\textsuperscript{56} See id. See also CHAPEL WEST SPECIAL SERVICES DISTRICT, supra note 50.
\textsuperscript{57} See interview with Jonathan Daigle, supra note 53.
\textsuperscript{58} At the time of establishment, the district contained 163 properties. Owner-occupants of 1,2, or 3 family homes had the option to exclude themselves from the district but are included in the property count. The 163 count includes non-taxable properties which would not be subject to the levy. See NEW HAVEN, CONN., SPECIAL LAWS AND GENERAL ORDINANCES vol. II, ch. 35 § 7.
\textsuperscript{59} See Order Imposing a Levy as Municipal Tax Levy in the Chapel West Special Services District, in the New Haven Board of Aldermen Records, 1999, vol. 23, 90. The mill rate is defined as “a tax applied to real property whereby each mill represent $1 tax assessment per $1000 of the property’s assessed value.” BLACK’S LAW DICTIONARY 1009 (7th ed. 1999).
\textsuperscript{60} See NEW HAVEN, CONN., SPECIAL LAWS AND GENERAL ORDINANCES vol. II, ch. 35 § 3(c).
\textsuperscript{61} See interview with Jonathan Daigle, supra note 53.
2. The Whalley Avenue Special Services District

Whalley Avenue is a commercial thoroughfare a long-walk or short drive north-west of Yale’s campus. A shopper’s district designed to be visited by car, the area includes several “big-box” stores such as Staples, Rite-Aid, and Shaw’s Supermarket. Many of the other merchants are low-end retailers, including a check-cashing outlet, mattress store, and rubber foam store. The area has a large minority, particularly African-American, population.

The Whalley Avenue Special Services District (Whalley Avenue BID), established in 1983, focuses its efforts on business development within the district. The Whalley Avenue BID pro-actively contacts developers and retailers to encourage business development and collects and makes available information of potential use to developers. The Whalley Avenue BID also serves to integrate an array of retail projects in the area, having Whalley Avenue BID representatives advise or serve on the board of other organizations. In addition to retail development work, the Whalley Avenue BID also works with several local crime and homelessness related organizations. The Whalley Avenue BID directly provides limited

---

62 See app. A1 for map.
63 See WHALLEY AVENUE SPECIAL SERVICES DISTRICT, 1998 ANNUAL REPORT, 1-2.
64 NEW HAVEN, CONN., SPECIAL LAWS AND GENERAL ORDINANCES vol. II, ch. 33, editor’s note.
65 See WHALLEY AVENUE SPECIAL SERVICES DISTRICT, 1998 ANNUAL REPORT, 1-2; see also interview with Sheila Masterson, supra note 45.
66 Whalley Avenue BID maintains a database on lot sizes and information about current owners. See WHALLEY AVENUE SPECIAL SERVICES DISTRICT, 1998 ANNUAL REPORT at 1. Whalley Avenue BID also provides assistance in solving zoning related problems and developing marketing programs for local businesses. See interview with Sheila Masterson, supra note 45.
67 The Whalley Avenue BID lies within an Empowerment Zone, and operates in the same geography as the Greater Dwight Development Corporation, a local organization instrumental in the opening of a Shaw’s Supermarket franchise within the district in 1998. See WHALLEY AVENUE SPECIAL SERVICES DISTRICT, 1998 ANNUAL REPORT.
68 Whalley Avenue BID has a seat on the board of the Greater Dwight Development Corporation. The treasurer of the Whalley Avenue BID is the contact person at the local Citizens Bank for obtaining loans with relaxed credit requirements. See id. at 2.
69 A representative from the Livable Cities Initiative works with the Whalley Avenue BID in the Neighborhood Sweeps program to identify code violations and possible crime spots. Whalley Avenue BID jointly runs the Citizen’s Project, a collaborative venture with Columbus House and ACCESS on providing services to the homeless. The Citizen’s Project is also working with Marrakech and Easter Seals in developing a welfare-to-work transition program for potential employees and employers. Further, Whalley Avenue BID organized a housing fair and holiday party in collaboration with the Neighborhood Housing Services. See id. at 1-4.
supplemental maintenance, lighting, and street beautification for the district. The district spends around $4000 per annum in marketing.

The smallest of the New Haven’s BIDs by budget and number of taxable properties within its boundaries, the Whalley Avenue BID operates on an annual budget of $60,000, derived almost entirely from the special assessment paid by the holders of the approximately 110 holders of property. The overall small size of the budget results in a large proportion of total funds being used toward overhead rather than programming. Administrative salaries and benefits account for 56% of the budget, other operating expenses account for 17%, leaving 27%, or $15,400 for programming.

A thirteen member board of commissioners governs the Whalley Avenue BID, comprised of a mix of property owners and tenants in the district, who serve for no more than three consecutive two year terms. Sheila Masterson, the executive director of the Whalley Avenue BID, runs the district on a day-to-day basis.

---

70 The district budget provides $10,000 and $1000 for maintenance and lighting programs, respectively. See app. B3. Whalley Avenue BID also hangs decorative banners and purchased street furniture which the City of New Haven has subsequently moved to city parks as part of an agreement with the district. See WHALLEY AVENUE SPECIAL SERVICES DISTRICT, 1997 ANNUAL REPORT, 3.


72 At the time of formation, the boundaries of Whalley Avenue BID included 111 properties, some of which may be tax-exempt properties which are not required to pay the special assessment. See NEW HAVEN, CONN., SPECIAL LAWS AND GENERAL ORDINANCES vol. II, ch. 33 § 7.

73 The Town Green and Chapel West Special Services Districts, discussed infra, have budgets twice and eight-times the budge of Whalley Avenue BID, respectively. See app. B1 for comparative financial statements of New Haven’s BIDs.

74 Calculated as three year averages using 1997 and 1998 actual figures and 1998 projected budget. See app. B3. Overhead expenses may include some programs conducted on an ongoing or ad hoc basis by the Whalley Avenue BID, such as contacting developers.

75 See NEW HAVEN, CONN., SPECIAL LAWS AND GENERAL ORDINANCES vol. II, ch. 33 § 3(b)-(c); see also interview with Sheila Masterson, supra note 45.

76 See interview with Sheila Masterson, supra note 45.

Nancy L. Jacobson, BIDs in New Haven
3. The Ninth Square Special Services District

The so-called Ninth Square neighborhood earned its name because it was the ninth and last of New Haven’s downtown squares to be redeveloped. The southernmost, and thus the closest to New Haven’s harbor, of the original nine squares of New Haven, the Ninth Square thrived from the colonial period through the Second World War, when businesses and residents began exiting the city for the suburbs. The urban renewal craze that swept New Haven in the 1950s and 1960s did not reach the Ninth Square; old buildings fell into disrepair as demand for commercial and residential space in the neighborhood declined. A redevelopment project, begun in the 1980s, has transformed parts of the Ninth Square into a residential community with a spattering of new shops and restaurants. Visions of enlivening the Ninth Square with farmers’ markets, artists’ lofts, and pedestrian malls remain, but the Ninth Square continues to be redevelopment in progress rather than a fait accompli.

Long-time area property owners formed the Ninth Square Association in the early 1980s to draw customers to the neighborhood and facilitate rehabilitation. The Association was instrumental in forming and became the agent of the Ninth Square Special Services District (Ninth Square BID), established with overwhelming support in 1985. The principle purpose of the Ninth Square BID was to protect the interests of then-existing 160 property owners and

---

78 Id.
79 Id.
80 Id.
81 Id.
82 Thus the names Ninth Square Special Services District and Ninth Square Association are often used interchangeably. See, e.g., THE NINTH SQUARE ASSOCIATION, NEWSLETTER, June 1991, (reading “Ninth Square Association: Municipal Special Services District” in the letterhead).
83 In the referendum to establish the Ninth Square BID, only 3.1% of property owners voted against the district; 77.5% voted to affirm, and 19.4% did not vote. See Janet Koch, Ninth Square Levy OK’d, NEW HAVEN REGISTER, June 13, 1985 at 13.
84 See NEW HAVEN, CONN., SPECIAL LAWS AND GENERAL ORDINANCES vol. II, ch. 34 editor’s note.
85 See app. A1,2 for map.
86 At the time of formation, the boundaries of Ninth Square Association included 163 properties, some of which may have been tax-exempt properties which were not required to pay the special assessment. See NEW HAVEN, CONN.,
their tenants during the phase of substantial redevelopment. The Ninth Square BID worked to increase parking capacity, although the organization accomplished this through lobbying and interacting with developers and the City of New Haven, rather than by financing and constructing the parking facilities directly. The Ninth Square BID also expended $30,000 per annum on other programs for the district, including marketing.

The budget of the Ninth Square Special Services District, $152,000 and $156,000 in 1995 and 1996, respectively, dropped significantly by 44% in 1997 to $109,000. The decrease was due to a reduction of the mill rate from 3.9 to 2.6. The 1997 proposed budget accommodated the reduced revenue through decreasing salary and benefit expenditure from $88,000 to $49,000 while preserving a constant level of funds for programming.

A board of ten commissioners conducted the business of the Ninth Square BID. The board consisted of nine voting commissioners, six of whom were designated class A and were holders of record of real property in the district. Three commissioners were designated class B and operated a business, leased real estate, or resided in the district but did not classify as class A commissioners. The president of the district served as a non-voting commissioner.

---

SPECIAL LAWS AND GENERAL ORDINANCES vol. II, ch. 34 § 7. See also Mark Zaretzky, 9th Square Group Is Dissolved, NEW HAVEN REGISTER, July 13, 1996 at A1 [hereinafter Zaretzky, 9th Square Group] (reporting 127 property owners were eligible to vote in the dissolution of the district).

See interview with Kathleen Etkin, supra note 2 (describing the main task of the Ninth Square Association, the agent of the Ninth Square Special Services District as “mak[ing] sure the developer behaved himself.”) See also THE NINTH SQUARE ASSOCIATION, BROCHURE, New Haven Public Library Local History Resource Room, Ninth Square File, undated (listing “monitoring development contracts and agreements” first in a list of the activities in which the Ninth Square Association was engaged).

See interview with Kathleen Etkin, supra note 2 (citing parking as a major goal of the Ninth Square Association); see also THE NINTH SQUARE ASSOCIATION, BROCHURE, supra note 87 (naming “increased parking capability in the District” as a key objective of the organization).


See NEW HAVEN, CONN., SPECIAL LAWS AND GENERAL ORDINANCES vol. II, ch. 34 § 3(c).

Nancy L. Jacobson, BIDs in New Haven
The formation of the Town Green Special Services District, which encompasses the entire area included in the Ninth Square Special Services District, spurred the dissolution of the older organization beginning in 1996. As required by the ordinance of the Ninth Square Special Services District, the Board of Commissioners held a referendum on the dissolution of the district. The property owners easily met the requirement of an affirmative vote for dissolution by a majority of property owners with 91 of 127 property holders voting for dissolution in July, 1996. In addition to the strong support from property owners for the dissolution of the district to make way for the Town Green BID, the leadership of the Ninth Square Special Service District advocated dissolution with the intention of becoming part of the new larger organization, then in formation. The interconnection of the fates of the two districts culminated with the official dissolution and subsumption of the older and smaller district into the newer and larger one in the ordinance establishing the Town Green BID, in 1997.

B. New Haven’s Downtown BID: The Town Green Special Services District

The Town Green Special Services District, established in 1996, dwarfs New Haven’s other BIDs in its budget and geographic size. The average annual budget of the Town Green

93 See Mark Zaretsky, Ninth Square Vote May End Neighborhood Association, NEW HAVEN REGISTER, June 2, 1996 at A3 (characterizing the referendum to dissolve the Ninth Square Special Services District as linked to the Town Green Special Services District, then in the process of formation); Zaretsky, 9th Square Group, supra note 86, at A1 (quoting Kathleen Etkin, a board member of the Ninth Square BID, as voting for dissolution because she was “looking ahead to the proposed Town Green Special Services District.”)

94 Dissolution of the Ninth Square Special Services District required an affirmative vote of either the majority of holders of taxable interest in real property or holders of interest in real property, whether or not a majority, whose interests totaled more than half of the total assessments of taxable interests in the district. See NEW HAVEN, CONN., SPECIAL LAWS AND GENERAL ORDINANCES vol. II, ch. 34 § 11(a). The dissolution referendum in July 1996 satisfied the first option with a the majority of all holders of taxable interests in real property voting to dissolve, and may have also satisfied the second option of those votes comprising a majority of the value of assessments. See Zaretsky, 9th Square Group, supra note 86, at A1 (reporting on satisfaction of the first option but not commenting on the second option).

95 See Zaretsky, 9th Square Group, supra note 86, at A1 (quoting two board members of the Ninth Square Association of favoring dissolution and the subsequent integration into the Town Green Special Services District); and interview with Kathleen Etkin, supra note 2 (asserting that people active in the Ninth Square Special Services District favored dissolution so that the neighborhood could become a part of the then-forming Town Green BID).

96 See NEW HAVEN, CONN., SPECIAL LAWS AND GENERAL ORDINANCES vol. II, ch. 36 § 16.

97 See id. n. at 922.27.
BID for the most recent three years is $911,000, nearly three times the total budget of the combined budget of Whalley Avenue BID, Chapel West BID, and defunct Ninth Square BID. The Town Green BID has 381 taxable and 114 tax-exempt properties within its boarders, more than the total number of properties in the New Haven’s three smaller BIDs combined.

The Town Green BID takes its name from New Haven’s historic Green in the center of the downtown. The Green has had varied uses throughout the history of New Haven, including as a grazing area for animals, a marketplace, a training grounds for local militia, and a cemetery. The New Haven Green has been the sight of many political events in the City’s history, including the 1840 Amistad trial and protests during the trial of members of the Black Panthers. Today the Green serves as a large urban park, with paths lined with benches and trees, connecting Yale, to the northwest; Chapel Street to the southwest; the central business district to the southeast; and the public buildings to the northeast. New Haven historian Elizabeth Mills Brown writes that “[w]hat has distinguished the New Haven Green is that it never became any one thing - never just downtown, never just a government center, never just a residential park, never just a grove of academe.” While frequented by city residents, workers, and Yale students during the day for a game of frisbee, picnic lunches, or quiet time on the benches, the park has a share of urban problems, such as loitering, panhandling, and strewn litter, and is largely empty at night.


99 See supra parts IIIA-C; supra nn. 54, 74, 89. For detailed budgets, see app. B.

100 See NEW HAVEN, CONN., SPECIAL LAWS AND GENERAL ORDINANCES vol. II, ch. 36 § 16.

101 See supra nn. 58, 72, 86.

102 See ELIZABETH MILLS BROWN, NEW HAVEN: A GUIDE TO ARCHITECTURE AND URBAN DESIGN, 100-03 (1976).

103 See YALE: A GUIDE TO YALE AND NEW HAVEN, Publication of Yale University (1999), 133.

104 See app. A1,2 for map.

105 BROWN, supra note 102, at 103.
The Town Green BID encompasses six of New Haven’s original nine squares, including the historical Green, and the squares to the south, east, and west. The area within the perimeter of the Town Green BID contains several distinct neighborhoods.\(^{105}\) Thus, while this paper has characterized the Chapel West, Whalley Avenue, and Ninth Square BIDs as neighborhood BIDs, the Town Green BID is decidedly broader than a neighborhood, and thus characterized as a more expansive downtown BID. Walking on Chapel Street, on the southwest side of the Green, one visits New Haven’s high-end theater and boutique district,\(^{107}\) dotted by trendy restaurants with favorable reviews from The New York Times’ restaurant critics\(^{108}\) and equally fashionable clientele. Two blocks further toward State Street, the visitor will notice a dramatic change in the neighborhood, marked by a prominently featured no-questions-asked check-cashing outlet and an array of discount and everything’s-ten-dollars stores scattered among several vacant retail-fronts. Around the corner on State Street, the visitor will find New Haven’s legal assistance office nestled among cleared plots used as parking lots. At the south-eastern base of the New Haven Green, several office tours rise above the city, home to multiple financial firms and other businesses. The BID also includes the redeveloping Ninth Square neighborhood, discussed \textit{supra} III.A.3.

1. \textit{Five steps to forming the Town Green BID}

The initial impetus for the formation of the Town Green BID came from the Down Town Council, an organization of property owners and other individuals with an interest in downtown New Haven.\(^{109}\) The New Haven Chamber of Commerce and the Office of the New Haven Mayor

\(^{105}\) See app. A2 for a map of the Town Green BID and areas within.

\(^{107}\) The Shubert Theater, a Broadway caliber theater, and the Palace Theater, a concert venue, are on College Street between Chapel and Crown Streets.

\(^{108}\) See, \textit{e.g.}, \textit{Roomba}, N.Y. TIMES, Connecticut Section, Apr., 2000 (receiving “good” rating); and \textit{Samarai}, N.Y. TIMES, Connecticut Section, Apr., 1994 (receiving “good rating”). Other restaurants in the area including Zinc and Café Adulis have also been favorably reviewed in N.Y. TIMES.

DeStefano strongly encouraged the Down Town Council's efforts. The Office of the Yale University's Secretary, Linda Koch Lorimer, also supported the formation of the BID. C. Newton Schenck, a major property owner in the district and Edwin V. Selden, a resident active in local organizations, spearheaded the efforts. Creation of the district entailed five steps: drawing the boundaries, drafting the bylaws and charter, obtaining approval from the Board of Aldermen, campaigning, and holding the referendum.

Selden identified several factors that influenced the drawing of the boundaries of the district. First, the district organizers sought to include taxable properties of sufficient number to generate substantial revenues for operations, leading to the inclusion of 27 blocks of downtown New Haven and 1.38 million square feet of retail space. Second, the organizers excluded residential neighborhoods where possible to keep the focus of the district on the commercial part of the downtown. Third, the organizers sought to encompass New Haven's several arts

the idea of forming the Town Green BID to the Regional Leadership Council, whose membership may have overlapped with that of the Down Town Council).

110 See id.; see also John DeStefano Jr., C. Newton Schenck, Special Services District Will Strengthen Downtown Revival, NEW HAVEN REGISTER, Sept. 21, 1996 at A12 (offering support of the district from the mayor, DeStefano).
111 See interview with Edwin V. Selden, supra note 33.
112 See id.; see also DeStefano and Schenck, supra note 110 (characterizing Schenck as a major property owner within the district).
113 At the time of the formation of the Town Green BID, Selden worked at Southern Connecticut University and as an independent consultant on business development in New Haven. He is currently the vice president of the New Haven Chamber of Commerce. Selden received no monetary compensation for his work in organizing the Town Green BID See interview with Edwin V. Selden, supra note 33.
114 See id.; see also DeStefano and Schenck, supra note 110 (identifying Schenck as the chair of the Organizing Committee for the Town Green BID); and McClendon, Downtown OKs, supra note 109 (describing Selden as "staff for the district's organizing committee.")
115 See interview with Edwin V. Selden, supra note 33.
116 See TOWN GREEN SPECIAL SERVICES DISTRICT, PLACES TO GO, ROOM TO GROW, leaflet (Nov. 1998). Compare to 400,000 and 119,000 square feet of retail space in the Whalley Avenue BID and the Broadway area, respectively. Id.
117 See interview with Edwin V. Selden, supra note 33. For example, the district does not extend to Trumbull Street on its northern border because of the residential nature of the neighborhood. See id. For a map of the area discussed in this note, see app. A2.
intensive neighborhoods so that the district could market itself as an arts/cultural center, leading to the inclusion of Audobon Street.\footnote{See interview with Edwin V. Selden, supra note 33. The organizers of the district all along had planned to include the arts-intensive area on College Street and Chapel Street and added the Audobon neighborhood, home to several arts institutions, in the planning process. See id.} The Town Green BID organizers drafted the bylaws and charter of the district to involve and accommodate the concerns of city constituents.\footnote{See \textsc{New Haven, Conn., Special Laws and General Ordinances} vol. II, ch. 36 § 11(c).} First, the organizers included a sunset provision requiring a referendum to sustain the district within 42 months of its inception.\footnote{See interview with Edwin V. Selden, supra note 33. At any time after the establishment of the district, the Town Green BID could be dissolved by referendum if the majority of owners of taxable property in the district and/or the persons holding the majority of the assessed value of taxable properties voted for dissolution. \textsc{New Haven, Conn., Special Laws and General Ordinances} vol. II, ch. 36 § 11(a). The sunset provision effectively shifts the burden of funding the referendum and risk of loss from would-be opponents of the BID to the BID itself.} The sunset provision accommodated the concern of city constituents that anyone opposing the district after its inception would face the large barrier of having to finance and mount a campaign to dissolve the Town Green BID.\footnote{See \textsc{New Haven, Conn., Special Laws and General Ordinances} vol. II, ch. 36 § 3.} Second, the organizers of the district established four classes of commissioners to serve on the 15 member Town Green BID board.\footnote{See id. For additional discussion of the board of commissioners of the Town Green BID, see \textsc{supra} III.B.2.} The class structure ensured representation of large and small property owners, non-property owning merchants, and other organizations that voluntarily elected to contribute to the district.\footnote{See interview with Edwin V. Selden, supra note 33.} The several classes of commissioners helped to ensure support of the district in the referendum.\footnote{Conn. Gen. Stat. Ann. § 7-339 (West 1999).} The Connecticut Special Services statute requires approval of the local governing body before the organizers of a proposed BID may conduct a referendum to establish a new district.\footnote{See David McClendon, \textit{Aldermen give nod to special tax district}, \textsc{New Haven Register}, Sept. 4, 1996 at A1.}

The Board of Aldermen of New Haven voted to approve the Town Green BID in late August or early September of 1996, thereby giving the go-ahead for the organizers to hold a referendum among property owners.\footnote{Nancy L. Jacobson, \textit{BIDs in New Haven} 22}
After drawing the boundaries and drafting the bylaws and charter, the organizers of the Town Green BID conducted a campaign to bolster support for the district.\textsuperscript{127} As discussed \textit{infra} section II.A, establishment of BIDs in Connecticut requires an affirmative vote by a double majority of property owners.\textsuperscript{128} Holders of interest in taxable property who did not vote were to be counted as votes in opposition to the formation of the district.\textsuperscript{129} The organizers ran a campaign with three major elements: the use of block captains to bolster support at the block level,\textsuperscript{130} one-on-one discussions,\textsuperscript{131} and the holding of informational meetings.\textsuperscript{132} At the informational meetings, members of the Down Town Council and the Chamber of Commerce presented the proposed budget, activities, and mil rate for the Town Green BID.\textsuperscript{133} Organizers also wrote at least one letter to the editor to encourage affirmative votes in the Town Green BID referendum.\textsuperscript{134}

The final step in the formation of the Town Green BID was the holding of the mail-in referendum, which concluded on October 1, 1996.\textsuperscript{135} Two hundred sixty-nine holders of interest in taxable property voted affirmatively for the creation of the district,\textsuperscript{136} 37 voted negatively,\textsuperscript{137} and approximately seventy-five did not vote.\textsuperscript{138} The 300 affirmative votes constituted a majority of total votes, and the property held by those voters comprised at least half of the assessed value of taxable property in the district.

\textsuperscript{127} See interview with Edwin V. Selden, \textit{supra} note 33.
\textsuperscript{128} See NEW HAVEN, CONN., SPECIAL LAWS AND GENERAL ORDINANCES vol. II, ch. 36 § 2(c).
\textsuperscript{129} See id.
\textsuperscript{130} See interview with Edwin V. Selden, \textit{supra} note 33.
\textsuperscript{131} Selden met personally with district property owners to encourage their affirmation of the district. See id.
\textsuperscript{132} See id.; and Mark Zaretsky, \textit{Attendance sparse on district proposal}, NEW HAVEN REGISTER, Mar. 8, 1996 at A1 [hereinafter Zaretsky, \textit{Attendance sparse}] (reporting four meetings were held by Town Green BID organizers to explain the Town Green BID and answer questions).
\textsuperscript{133} See Zaretsky, \textit{Attendance sparse, supra} note 132.
\textsuperscript{134} See, e.g., DeStefano and Schenck, \textit{supra} note 110.
\textsuperscript{135} See McClendon, \textit{Downtown OKs, supra} note 109.
\textsuperscript{137} See id.
\textsuperscript{138} The district included 381 taxable properties, the holders of each entitled to one vote per property, see note 100; the estimation of abstentions was based on the total number of potential votes less those votes reported as received, see nn. 156, 137. \textit{But Cf.}, McClendon, \textit{Downtown OKs, supra} note 109 (reporting the distribution of 377 ballots, and the receipt of 300 affirmative votes in an informal count); McClendon, \textit{DeStefano rips SNCT, supra} note 136.
of taxable property in the district, thereby satisfying the double majority requirements for establishing the Town Green BID. Notably, Southern New England Telephone (SNET), one of downtown New Haven’s largest property owners, did not cast ballots, in keeping with a corporate policy against voting for special service districts.

2. Governance of the Town Green BID: a place for every voice

The Board of Commissioners of the Town Green BID has 15 members, at minimum, and 18 members, at present. The Board has four classes of commissioners. The six class A commissioners, the small property owners, are holders of taxable interests in real property who are not among the twenty largest holders of taxable property in the district. The five class B commissioners, the large property owners, separately are among the 20 largest holders of taxable interests in real property in the district. The four class C commissioners, merchants and tenants, operate a trade or business or lease real estate in the district but are not holders of taxable interests in real property in the district. The class D commissioners, ex officio institutional representatives, are representatives of institutions that have contributed at least $100,000 to the Town Green BID in the previous fiscal year, through mandatory tax levy, voluntary contribution, or a combination. Class D commissioners have equal voting rights as

---

(reporting 171 abstentions, which would inflate the total number of votes and abstentions to more than the number of ballots distributed).

139 See McClendon, Downtown OKs, supra note 109.
140 See McClendon, DeStefano rips SNET, supra note 136. However, the organizers of the Town Green BID succeeded in involving SNET in the district, convincing SNET officials to contribute to the district above the amount mandated by the mil rate and occupy an ex officio Class D seat on the board of commissioners. See interview with Edwin V. Selden, supra note 33; see also Town Green Special Services District Board of Commissioners (July, 20, 1999) [hereinafter Town Green BID Board] (listing a SNET representative as a Town Green BID commissioner); Communication to Board of Aldermen, Apr. 19, 1999 in Report of the Finance Committee, May 17, 1999, New Haven Board of Aldermen Records, 1999, vol. 23, 91 (recording SNET’s voluntary contribution for 1999 at $55,000). For SNET’s voluntary contribution to the Town Green BID in prior years, see app. B5.
141 See NEW HAVEN, CONN., SPECIAL LAWS AND GENERAL ORDINANCES vol. II, ch. §36(3)(a).
142 See Town Green BID Board, supra note 140. For a list of board members, see app. C3.
143 See §36(a)(1).
144 See §36(a)(2).
145 See §36(a)(3).
146 See §36(a)(4).

Nancy L. Jacobson, BIDs in New Haven
the other commissioners\textsuperscript{147} and can vary in number. At present, representatives of Yale University, SNET, and the City of New Haven serve as Class D commissioners.\textsuperscript{148}

Only holders of taxable property within the Town Green BID are eligible to vote in the election of Class A, B, and C board members.\textsuperscript{149} The institutions that qualify for Class D ex officio institutional board membership, appoint their own representatives. Note that the Class C commissioners, who are merchants and tenants, are elected by a vote of property owners.\textsuperscript{150} The Town Green BID nominating committee presents a slate to fill vacancies, usually nominating only one person for each board seat.\textsuperscript{151} Write-in candidates are permitted, but none have been proposed in elections to date, and thus the candidates chosen by the nominating committee have been the presumed winners.\textsuperscript{152}

The Board of Commissioners elects its own officers,\textsuperscript{153} and a majority of commissioners constitute a quorum for the transaction of business at any meeting.\textsuperscript{154} The Board also has the authority to appoint committees, including an executive committee of seven or more of its members with representatives from each class who may act for the Board in between meetings in

\textsuperscript{147}See id.

\textsuperscript{148}See Town Green BID Board, supra note 140. The developers of the proposed New Haven Galleria at Long Wharf will also be offered an ex officio Class D commissioner seat upon the developers' receipt of certificate of occupancy and payment of $100,000 to the Town Green BID, a provision of the deal between the city and the developers. See interview with Edwin V. Selden, supra note 33; and interview with Charles Terrell, Chairman of the Board of Commissioners of the Town Green BID and President, Treasurer, and CEO of the New Haven Savings Bank, at the New Haven Savings Bank, New Haven, Conn. (Mar. 15, 2000).

\textsuperscript{149}See NEW HAVEN, CONN., SPECIAL LAWS AND GENERAL ORDINANCES vol. II, ch. \S 36(5)(a)(7).

\textsuperscript{150}Since property owners, rather than merchants and tenants, vote for Class C commissioners, the merchant/tenant commissioners are not necessarily those who would be chosen by the merchants and tenants, themselves. Merchant and tenant representation is premised upon an interest, rather than an agency theory, in that the merchants and tenants as a whole do not consent to have the chosen Class C commissioners to act as their agents. This voting structure could create a "yes man" mentality, whereby merchants and tenants elected to the board favor policies of the board at large and not necessarily what the merchants and tenants as a whole would support. However, despite the possibility for this problem, sources familiar with the Town Green BID did not believe the problem had occurred.

\textsuperscript{151}See interview with Lisa Drazen, Class B Board Member of the Town Green BID, Chair of the Town Green BID nominating committee, and Property Manager of the Taft Apartments, at the Taft Apartments, 265 College St., New Haven, Conn. (Mar. 30, 2000).

\textsuperscript{152}See id.

\textsuperscript{153}See NEW HAVEN, CONN., SPECIAL LAWS AND GENERAL ORDINANCES vol. II, ch. \S 36(3)(g)(2).

\textsuperscript{154}See \S 36(3)(g)(1).
certain circumstances. The members of the Board are not compensated for their service but may be reimbursed for expenses incurred on behalf of the Town Green BID.

The Town Green BID has six committees, one dedicated to nominating Board members, and five dedicated to issues addressed by the Town Green BID programs - hospitality, maintenance, marketing, parking, and retail recruitment. A member of the Board chairs each committee, but membership in the committees is open to the public. While large in number, 10 for hospitality, 9 for maintenance, 20 for marketing, 16 for parking, and 23 for retail recruitment, each committee has a small core of regular attendees with other members attending only sporadically, resulting in committees that insiders describe as being of manageable size.

3. Staff of the Town Green BID: in-bringing local managers, outsourcing contracts

The Town Green BID employees three full-time staff members: Jane Snaider, president; Scott Healy, business manager; and Marsha Stein, marketing manager. Two have strong New Haven connections: Snaider, as a New Haven native and former member of the New Haven City Plan Department, in the 1960s, and Director of the New Haven Convention and Visitors Bureau, in the 1980s, and Healy, as a graduate of Yale College. Snaider has also served as executive director of the Yankee Heritage Tourism District, credited with popularizing assets of

---

155 See §36(3)(g)(3). The executive committee may act only if the action is required prior to the next full Board meeting and that failing to act will disadvantage the district. §36(3)(g)(3).
156 See §36(3)(g)(6).
157 TOWN GREEN SPECIAL SERVICES DISTRICT, 1999 ANNUAL REPORT (Feb., 2000) [hereinafter, TOWN GREEN ANNUAL REPORT].
158 See id.; §36(3)(g)(3).
159 See interview with Jane Snaider, supra note 1.
160 See TOWN GREEN ANNUAL REPORT, supra note 157.
161 See interview with Kathleen Etkin, supra note 2; and interview with Jane Snaider, supra note 1. Several insiders report meetings of the marketing committee to be sometimes unwieldy due to large numbers of committee members in attendance.
162 See TOWN GREEN ANNUAL REPORT, supra note 157, bck cvr.
164 See TOWN GREEN SPECIAL SERVICES DISTRICT, DOWNTOWNER, vol. 1, num. 1 (Fall 1997).
165 See id. vol. 1, num. 4 (Fall 1998).

Nancy L. Jacobson, BIDs in New Haven
Norwalk, Connecticut, and executive director of the Coastal Fairfield County Convention and Visitors Bureau. Stein previously served as marketing director of the Greater Waterbury Classics Concerts and was an associate professor of marketing and director of fashion merchandising at Teikyo Post University in Waterbury, Connecticut. The Town Green BID also has hired two part-time employees to work on a retail retention program.

The Town Green BID makes significant use of outsourcing, contracting for day-to-day services and strategic planning. The Town Green BID contracts with SpectaGuard Security for its hospitality program and Prichard Events for its maintenance program. The Board has also hired two consultancy firms: Square Foot, to develop, coordinate, and implement a retail recruitment and retention strategy, and Ernst & Young LLP, to develop a broader downtown strategy.

4. Programs of the Town Green BID: improving New Haven's cityscape

The two principle activities of the Town Green BID are providing supplemental sanitation and maintenance services and running a private hospitality and security program, in short making the Town Green BID "Clean and Safe." Other Town Green BID programs include beautification, marketing, and retail recruitment.

---

166 See Sommer, supra note 163.
167 See TOWN GREEN SPECIAL SERVICES DISTRICT, DOWNTOWNER, vol. 1, num. 4 (Fall 1998).
168 See interview with Jane Snaider, supra note 1.
169 Outsourcing of maintenance and hospitality workers may enable the Town Green BID to avoid labor issues that have hindered the operations of other BIDs. For example, some New York City BIDs were sued for violation of minimum wage law in their hiring of workers through job-training and welfare-to-work programs. See, e.g., BIDS Failed to Pay Minimum Wage, 4 CITYLAW 38, (1998).
170 See TOWN GREEN ANNUAL REPORT, supra note 157, at 6.
171 See David McClendon, Hospitality, cleanup staff on the case, NEW HAVEN REGISTER, May 7, 1997 at A3 [hereinafter, McClendon, Hospitality, cleanup].
172 See TOWN GREEN SPECIAL SERVICES DISTRICT, DOWNTOWNER, 164, vol. 2, num. 4 (Fall 1999).
173 See TOWN GREEN SPECIAL SERVICES DISTRICT, CREATING A CLEAN SAFE & VIBRANT DOWNTOWN. Available in the office of the Town Green BID, 129 Church Street, Suite 709, New Haven, Conn. Town Green BID chair, Charles Terrell, asserted "Clean and Safe" is the first priority of the Town Green Special Services District. See interview with Charles Terrell, supra note 148. Vice-chair Kathleen Etkin confirmed, "Clean and Safe" comes into play in achieving our goal." See interview with Kathleen Etkin, supra note 2. President Jane Snaider concurred, "safety and cleanliness are first priorities for the Town Green Special Services District." See interview with Jane Snaider, supra note 1.
The Town Green BID expends $220,000 per annum, 25% of the budget, on the Maintenance Program,\textsuperscript{174} for which the district employs eight maintenance officers, the “Clean Team.”\textsuperscript{175} The Clean Team members dress in distinctive uniforms with the Town Green BID logo, but the uniforms defer from those of the Hospitality Officers.\textsuperscript{176} An agreement between the Town Green BID and the City of New Haven outlines the minimum maintenance responsibilities of each party,\textsuperscript{177} but is not legally binding.\textsuperscript{178} The Outline of the General Duties, requires the Department of Public Works (DPW) of the City to empty trash receptacles in the district daily and sweep streets five times per week.\textsuperscript{179} The DPW must also maintain street lighting, repairing light bulbs within five business days of a reported outage and light fixtures within one month.\textsuperscript{180} The DPW retains responsibility for snow removal.\textsuperscript{181} The Department of Parks, Recreation, and Trees is responsible for maintenance of the New Haven Green.\textsuperscript{182} The Department of Traffic and Parking is responsible for repairing bus shelters and for the maintenance of traffic signs, signals, and meters.\textsuperscript{183}

The maintenance responsibilities of the Town Green BID include daily litter removal; maintaining and cleaning, but not repairing, bus shelters; sidewalk cleaning, including steam


\textsuperscript{177} See TOWN GREEN ANNUAL REPORT, supra note 157, 8.

\textsuperscript{176} See id. at 8 (showing photograph of the Clean Team dressed in baseball caps and pull-over jackets bearing the Town Green BID logo). Compare with McClendon, Hospitality, cleanup, supra note 171 (containing photograph of the Hospitality Officers dressed in cowboy hats and zip-down jackets bearing the Town Green BID logo).

\textsuperscript{175} See Outline of the General Duties, Responsibilities, and Relationships Between the City of New Haven and the Town Green Special Services District, (Apr., 1997), [hereinafter, Outline of the General Duties]. For the full text of the Outline of General Duties, see app. C2.

\textsuperscript{177} The City and the Town Green BID has originally planned to submit the Outline of the General Duties to the Board of Aldermen. See interview with Edwin V. Selden, supra note 33. However, representatives of the City made clear their intended resistance to such submission, and the document was never presented to the Board of Aldermen, although it was signed by the Town Green BID and a city representative. See id. Sources conflict as to who from the City signed the document. See id. (submitting the Chief Administrative Officer of the City signed on behalf of the City). But see David McClendon, City district reminds officials of their duties, NEW HAVEN REGISTER, Jan. 2, 1997 at A3 (reporting Mayor John DeStefano Jr. signed the document).

\textsuperscript{178} Outline of the General Duties, supra note 177, at 1.

\textsuperscript{179} Id. at 1.

\textsuperscript{180} Id. at 1.

\textsuperscript{181} Id. at 1.

\textsuperscript{182} Id. at 1.

Nancy L. Jacobson, BIDs in New Haven
cleaning; and the removal of unauthorized posters and graffiti. Further, the Town Green BID is responsible for weeding and maintaining grass in common spaces, excluding the New Haven Green; and caring for botanicals in street flower boxes. Respondents to the Town Green BID’s 1999 annual survey evaluated the Clean Team’s trash removal and the overall sense of cleanliness in the district as meeting or exceeding expectations.

The Town Green BID expends $250,000 per annum, 29% of the budget, on the Hospitality Program. Hospitality Officers patrol the district in distinctive uniforms from 8 a.m. to 10 p.m. or later. Hospitality Officers are unarmed but carry two-way radios or cellular phones to report suspicious or confrontational behavior to the New Haven Police. In addition to their crime deterring function, the Hospitality Officers assist downtown visitors, for example by distributing copies of the Downtown Guide, giving directions, or providing an escort.

The Town Green BID expends $17,000, 2% of the budget, on beautification of the district. Beautification activities include the maintenance of flower boxes and colorful banners bearing the Town Green BID logo and advertisements of local merchants.

Marketing and retail programs account for 14% of the budget, or $124,000. On the retail side, the Town Green BID, with partial funding from the Carolene Foundation.

183 Outline of the General Duties, supra note 177, at 1.
184 Id. at 2.
185 Id. at 2.
186 Respondents were asked to evaluate the Town Green BID on a five point scale with the following designations: 1, significantly exceeds expectations; 2, exceeds expectations; 3, meets expectations; 4, is below expectations; and 5, is significantly below expectations. Trash removal and overall cleanliness received scores of 2.3 and 2.4 respectively, in 1999. TOWN GREEN ANNUAL REPORT, supra note 157, 12.
187 See note 174.
188 See note 176.
189 See interview with Jane Snaider, supra note 1.
190 See TOWN GREEN ANNUAL REPORT, supra note 157, at 6.
191 Lt. Joe Polio of the New Haven Police Department explains the Hospitality Officer’s crime deterring effects: “it’s their physical presence in the downtown area - - now people know that they are being watched. Plus, the Hospitality Officers have radios. If you are a thief, you don’t want to run into anyone with communication ability.” Quoted in, TOWN GREEN SPECIAL SERVICES DISTRICT, DOWNTOWNER, 164, vol. 1, num. 1 (Fall 1997).
192 THE TOWN GREEN SPECIAL SERVICES DISTRICT, DOWNTOWN GUIDE. See app. C3.
193 See interview with Jane Snaider, supra note 1.
194 See note 174.
separately hired Ernst & Young and Square Foot to develop a retail strategy. The Town Green BID has also employed two part-time coordinators to work on the retention program.

The Town Green BID has embarked on a marketing campaign, including advertisements on buses and in downtown common spaces such as office building lobbies. The Town Green BID has targeted people who are already downtown -- employees in downtown office buildings and at Yale University, patients at the Yale New Haven Hospital, and residents -- by posting placards in lobbies and central spaces and distributing copies of the Downtown Guide. Further, the Town Green BID has sponsored the “Do Downtown” program of lunch-time performances.

The future scope of the marketing program is unclear. Insiders disagree if the Town Green BID should market merchants within the BID or the BID as a whole without reference to specific merchants. Decorative banners hung throughout the district display evidence of this tension. Half of the banner promotes the downtown generally, displaying the logo of the Town Green BID and graphics representing the cultural, social, and recreational aspects of the city, such as a gourmet chef’s hat or an artist’s palette. The other half of the banners prominently feature the logos of particular merchants. In addition to the discord about the nature of marketing as merchant-based or general, plans for a marketing body separate from the BID may

---

195 Merchants pay $300 per annum to have their logo featured on a banner. See interview with Jane Snaider, supra note 1.
196 See note 174.
197 The Carolene Foundation is associated with the family of Anne Tyler Calabresi, New Haven resident, benefactor, and member of the Town Green BID Retail Committee.
198 See discussion of the consultants supra III.B.3.
199 See discussion supra III.B.3.
200 See interview with Jane Snaider, supra note 1.
202 See interview with Jane Snaider, supra note 1; TOWN GREEN SPECIAL SERVICES DISTRICT, DOWNTOWNER, vol. 2, num. 3 (Summer 1999).
203 See interview with Lisa Drazen, supra note 151.

Nancy L. Jacobson, BIDs in New Haven
result in a substantial decrease in marketing efforts by the Town Green Special Services District.\textsuperscript{204}

5. Informal Role of the Town Green BID: switchboard for the city

In addition to formal programming, the Town Green BID also serves to connect city constituents to others with similar cityscape-related interests and problems. President Jane Snaider described this aspect of the Town Green BID's role as one of "an engine bringing people together, raising the issue, and then getting the right people in contact to solve it."\textsuperscript{205} The Town Green BID has played this role on the issue of parking. While the Town Green BID does not finance any substantial parking programs,\textsuperscript{206} it has a parking committee that provides a forum for parking-concerned city constituents to work on the problem.\textsuperscript{207} The head of Traffic and Parking for the City of New Haven and a representative of the New Haven Parking Authority attend the committee meetings, and the group has successfully lobbied for parking rule changes, such as free parking on Saturdays.\textsuperscript{208}

Further, the Town Green BID fields telephone calls from people within the BID to register complaints about conditions within the district, even those for which the BID bears no responsibility, such as illegal trash dumping or poor lighting in a garage.\textsuperscript{209} Healey, business manager of the Town Green BID, aggregates these complaints and presents them to the proper

\textsuperscript{204} Members of the leadership of the Town Green BID have been involved in the creation of a new entity, Market New Haven, a joint venture of the City of New Haven, Yale University, and business leaders, including the Town Green BID Chair, Charles Terrell. Market New Haven will conduct marketing activities similar to those currently undertaken by the Town Green BID, but on a greatly expanded budget, estimated to be one million per annum devoted entirely to marketing and advertising. The Town Green BID may contribute the entirety of its current marketing budget to Market New Haven in the coming fiscal year, thereby eliminating the marketing function of the BID. \textit{See id.}

\textsuperscript{205} Interview with Jane Snaider, \textit{supra} note 1.

\textsuperscript{206} The Town Green BID has the power to construct, buy, or lease a parking facility within or adjacent to the district and to enter into agreements which reduce the costs of parking in the district. \textit{See NEW HAVEN, CONN., SPECIAL LAWS AND GENERAL ORDINANCES} vol. II, ch. §36(5)(a)(8)-(11). However, the Town Green BID does not fund any parking programs at present. \textit{See e.g., TOWN GREEN ANNUAL REPORT, supra} note 157, 10.

\textsuperscript{207} \textit{See, e.g., TOWN GREEN ANNUAL REPORT, supra} note 157, 10 (describing the Parking Committee as a "forum for making parking safe and convenient").

\textsuperscript{208} \textit{See id.}

\textsuperscript{209} See interview with Jane Snaider, \textit{supra} note 1.

Nancy L. Jacobson, \textit{BIDs in New Haven}
responsible body. Vice Chair of the Town Green BID, Kathleen Etkin, fittingly described the Town Green BID as "helping to solve the day to day problems of downtown."

IV. Yale University and Schiavone Management as landowners and cityscape improvers

Yale University owns large portions of the commercial real estate in two of the shopping districts adjacent to the Yale campus: Broadway and the Chapel/College corner. The Broadway area is surrounded on three sides by the Yale campus, and caters largely to the student population, as home to the Yale Bookstore, several shops selling clothing bearing Yale's logo, and many coffee shops filled with Yale students socializing or reading. The area has undergone substantial change in recent years, with widened sidewalks, improved lighting, and new merchants. Construction of a new building is underway which will house an Urban Outfitters store and several smaller merchants beginning late 2000. The Chapel/College corner is diagonally across from the southern most edge of Yale's main campus and opposite the New Haven Green. Chapel/College is perhaps the most upscale neighborhood of downtown New Haven, discussed infra section III.B, with a collection of trendy and pricey boutiques and restaurants. The Shubert and Palace theaters attract concert and theater goers for pre- and post-theater shopping and dining. The upper floors of buildings in the neighborhood, including those of the old Taft Hotel, now converted to apartments, house many Yale students and young New Havenites. Particularly popular among Yale students, many of these rental residences have waiting lists.

Beginning in the late 1970s, New Haven real estate developer and former night-club impresario Joel Schiavone, assembled and developed the group of properties now owned by Yale in the Chapel/College corner. However, after the failure of Schiavone's partner in 1992, the Federal Deposit Insurance Corporation (FDIC) took over the properties and subsequently sold

---

210 See id.
211 See interview with Kathleen Etkin, supra note 2.

Nancy L. Jacobson, BIDs in New Haven
them to the University. 213 This section will first address the ways in which Schiavone, as a dominant land owner, was able to provide cityscape goods to the Chapel/College corner in the 1980s and 1990s. The section will then explore Yale University’s efforts to improve the cityscapes on Broadway and the Chapel/College corner. Yale provides cityscape goods in the adjacent commercial neighborhoods in two ways. First, Yale mandates tenants of its properties to participate in neighborhood organizations through lease provisions, thereby avoiding the free riding which could otherwise plague these groups. Second, as a dominant landowner with a vested interest in the city, the University garners significant benefit from public goods and thus directly provides them.

A. Joel Schiavone: private land assembler as public good provider

New Haven real estate developer Joel Schiavone, through the Schiavone Realty and Development Corporation, began assembling the Chapel/College corner in 1977. 214 By the early 1980s, Schiavone 215 had acquired, with the intent to rehabilitate and develop, 14 properties in the Chapel/College corner that comprised the majority of the area. 216 Through a two-phased project, Schiavone renovated the properties, funded partially through assistance from the City of New Haven, the federal government, and Yale University. 217

Having assembled the land, Schiavone influenced the provision of cityscape goods in two ways: bargaining for the increased provision of public goods in broader negotiations with the City of New Haven and direct provision of the public goods. First, as part of a multi-faceted deal, Schiavone negotiated commitments from the City of New Haven to enhance sidewalks and

212 See app. A1,2 for map containing the relevant areas.
215 Hereinto, I will not distinguish between Schiavone and the Schiavone Realty and Development Corporation.
216 See, e.g., Semel, supra note 214; Capot, supra note 214.
217 See, e.g., Semel, supra note 214.
improve streets adjacent to his properties. Second, Schiavone undertook to provide public goods directly whose benefit would be centered near the Chapel/College corner but spill over into the downtown as a whole. For example, Schiavone coordinated the tenant mix within the properties to bring in complementary high-end retailers and produced and distributed marketing materials.

After the collapse of Schiavone’s partner, First Constitution Bank, in 1992, the FDIC took over the Chapel/College properties. However, the FDIC appointed the Schiavone Management Company (SMC), an entity owned Schiavone’s family, to continue managing the properties. SMC continued to provide cityscape goods beyond the level provided by the city, including cleaning, maintenance of the street and common areas, landscaping, and marketing.

Further, Yale contracted SMC to provide management services on Broadway and York Street in 1996. Schiavone has asserted it is his “conviction that the only reason Chapel Street works well is because the buildings are managed by one entity.”

While this paper focuses on quasi-private solutions to the cityscape goods problem, Schiavone’s success in improving the Chapel/College corner reminds that private land assemblers may voluntarily and effectively provide public goods. The remainder of this section

\[\text{Note:}\]

\[\text{218} \text{ Other elements of the commitments made by Schiavone and the City of New Haven include agreements about renovating or rehabilitating the three theaters - the Shubert, the Hyperion, and the Roger Sherman - located in or near the Chapel/College corner; Schiavone’s affirmed intent to continue rehabilitating other properties in the Chapel/College corner; and the City’s expeditions of proceedings to grant Schiavone a 7-year tax deferral on the properties in the area. For a more in depth treatment, see Semel, supra note 214, at 7-11.}\]

\[\text{219} \text{ See Capot, supra note 214, at A1 (quoting Matthew Nemerson, then president of the New Haven Chamber of Commerce, as praising Schiavone’s store arrangements).}\]

\[\text{220} \text{ See, e.g., SCHIAVONE MANAGEMENT CORP., CRÈME DE LA CRÈME: COLLEGE AND CHAPEL, on file in the New Haven Public Library, Local History Room (1989).}\]

\[\text{221} \text{ See, e.g., Walsh, supra note 213.}\]

\[\text{222} \text{ See Capot, supra note 214 at A1.}\]

\[\text{223} \text{ See, e.g., Walsh, supra note 213 (enumerating the services provided by SMC); SCHIAVONE MANAGEMENT CORP., THERE'S SOMETHING DIFFERENT IN NEW HAVEN: COLLEGE AND CHAPEL, advertisement published in N.Y. TIMES, Dec. 14, 1997.}\]

\[\text{224} \text{ See Walsh, supra note 213 (citing Yale University Secretary Linda Lorimer as confirming Yale’s selection of SMC for a management services contract).}\]

\[\text{225} \text{ Regina Lords, New Haven’s Future, According to Joel Schiavone, YALE HERALD, Feb. 23, 1996, at 3.}\]
will discuss Yale’s role as a quasi-private land assembler\textsuperscript{226} in providing commercial cityscape goods.

**B. Mandatory participation in local associations: Yale University’s use of lease provisions**

The cityscapes on Broadway and the Chapel/College corner are well maintained, with clean sidewalks, a good tenant mix, coordinated holiday decorations, and flowers in the warmer weather. Further, the tenants in both neighborhoods benefit from coordinated marketing campaigns. On Broadway, part of the strength of the cityscape can be attributed to a neighborhood group, the Broadway Merchants Association. This neighborhood group avoids large-scale free riding that typically plagues merchant’s association\textsuperscript{227} in a simple way. Yale University owns approximately 70% of properties in the neighborhood and, through lease provisions, requires the merchant tenants to participate in the neighborhood group.\textsuperscript{228} Thus, the group is assured of at least 70% participation, sufficient to avoid wholesale free-riding. By way of lease provisions, Yale requires merchant tenants in these properties to pay an annual dues fee of $.75 per square foot which averages around $2000 per merchant per year.\textsuperscript{229} These dues and contributions from merchants in properties not owned by the University total around $30,000 per annum. Yale matches the funds by providing the group with an additional $30,000 for a total annual budget of $60,000.\textsuperscript{230} A five member annually elected board of directors, on which Yale has a permanent ex officio seat, runs the organization.\textsuperscript{231}

The Broadway Merchants Association provides the cityscape goods of neighborhood beautification and coordinated marketing of the area. The association displays seasonal banners

---

\textsuperscript{226} For discussion of Yale’s quasi-private nature, see infra note 6.
\textsuperscript{227} See, e.g., Briffault, supra note 17, at 369.
\textsuperscript{228} See interview with Jonathan Daigle, Director of Asset Management for Yale University, Office of University Properties, and ex officio member representing Yale University on the Advisory Committee of the Chapel West Special Services District, at Yale University’s Office of University Properties, New Haven, Conn. (Mar. 24, 2000).
\textsuperscript{229} See id.
\textsuperscript{230} See id.
\textsuperscript{231} See id.

Nancy L. Jacobson, *BIDs in New Haven*
and decorations on an ongoing basis and is working to coordinate signage. The Broadway Merchants Association organizes and funds annual neighborhood events including a back-to-school program and a summer time children’s fair. Further, the organization employs one part-time staff member who reports to the board of directors and organizes the logistics of the Broadway Merchant Association’s affairs.

In the Chapel/College corner, the story is quite similar. The Chapel Company is a wholly owned subsidiary of Yale University providing marketing and beautification efforts for the neighborhood on the southwest corner of Chapel Street and College Streets, catty-corner to Yale’s campus. Yale owns a contiguous stretch of buildings in the neighborhood, and, as in the Broadway area, requires payment into the neighborhood level organization through lease provisions in the University owned properties. The merchants who pay into the Chapel Company operate within the boundaries of the Town Green Special Services District, discussed supra section III.B. Thus, the Chapel Company has limited functions compared to the Broadway Merchants Association because the Town Green BID can provide to these merchants many of the goods coordinated by the Broadway Merchants Association in the Broadway neighborhood. The Chapel Company has a budget of $15,000, one-quarter the size of the Broadway Merchants Association. The operations of the Chapel Company are limited to Christmas decorations, a marketing brochure, and one-off advertising. Further, Yale, rather than a board of directors, runs the Chapel Company.

---

232 See id.
233 See id.
234 See id.
235 See id. See app. A1, 2.
236 See interview with Johnathan Daigle, supra note 228.
237 See id.
238 See id.
C. University as dominant land owner: Yale’s direct provision of public goods

In addition to using lease clauses to avoid free riding, Yale improves adjacent New Haven neighborhoods by directly providing cityscape goods. Yale is able to capture a sufficiently significant benefit from the public goods it provides to make provision worthwhile despite Yale’s inability to exclude others from the benefits. Yale’s substantial benefit capture stems from scale and the ongoing nature of Yale’s relationship with the city. First, Yale holds commercial property adjacent to its campus at a sufficiently large scale that Yale can benefit directly and substantially through increased property values resulting from the public goods provided. Second, Yale is highly immobile and thus values long term effects on the adjacent commercial properties more highly than would mobile residents. Yale has ongoing relationships with other constituents in the city including the city government and the city populace as a whole, and thus goods that benefit these other players also benefit Yale indirectly by improving the long-term relationships. Further, the improved city image resulting from providing additional public goods benefits Yale in its ability to attract and retain students, faculty, and staff.

Yale provides two types of cityscape goods in neighborhoods adjacent to the campus: physical maintenance and coordinated property management. First, in the Broadway area, Yale entirely funds Broadway Area Maintenance, an organization that provides security and sanitation services to an area co-terminus with that covered by the Broadway Merchants Association. Through an agreement with the city of New Haven, Broadway Area Maintenance maintains light poles, empties trash receptacles, cultivates gardens on traffic islands, and provides security through Yale’s police force. Property owners in the Broadway area other than Yale do not contribute to Broadway Area Maintenance.

---

239 See id.
240 See id.
241 See id.

Nancy L. Jacobson, *BIDs in New Haven*
The second way in which Yale directly provides cityscape goods in the adjacent commercial neighborhoods is through coordinated property management. In the Broadway area and the Chapel/College corner Yale uses its power as landlord to optimize tenant mix, ensure adequate lighting and building maintenance, and promote esthetically pleasing signage.242 Further, Yale uses lease provisions to coordinate store hours to increase night-time traffic in businesses in the Broadway neighborhood.243

Through direct methods, such as the sanitation services of Broadway Area Maintenance, and indirect methods, such as using lease clauses to require participation in the Chapel Company and the Broadway Merchants Association, Yale University improves the cityscapes in the New Haven neighborhoods adjacent to its campus.

V. Evaluation of New Haven’s cityscape experiments: efficiency, externalities, equality

As discussed supra II.A.B, changes in property values, perhaps the best measure of the success of cityscape experiments, proves to be an unreliable source of information. Yet even if the change in property values provided a good measurement of success, it would be only one of several criteria upon which to evaluate the overall merit of local institutions that improve the cityscape. This section will comment on New Haven’s cityscape experiments in regards to three evaluative criteria: efficiency, externalities, and equality. Where possible, the discussion compares the various institutions detailed in section III, the BIDs, and section IV, the land assemblers. At times, the discussion focuses on a unique aspect of only one of the institutions.

A. Efficiency: scale economies or bureaucracy?

BIDs and land assemblers face the problem of finding an optimal scale, in terms of geography and budget.244 While a larger operation tends to benefit from scale economies, with

---

242 See id.
243 See id.
244 Geographic and budgetary scale are related, in that the more properties included in the district, the more revenue available to the district - - provided the properties are not tax-exempt. However, a small district with highly valuable

Nancy L. Jacobson, BIDs in New Haven 38
size comes difficulty in management. The Town Green BID has realized operating efficiencies compared to New Haven’s other BIDs. The Town Green BID, with an average operating budget for the last three years of $911,000 dwarfs New Haven’s smaller neighborhoods BIDs -- Chapel West, Whalley Avenue, and Ninth Square -- with budgets of $117,000, $60,000, and $139,000, respectively. The smaller BIDs expend the majority of their budgets on overhead, 57%, 73%, and 82% for the Chapel West BID, Whalley Avenue BID, and Ninth Square BID, respectively. By contrast, the Town Green BID expends only 29% of the budget on overhead and is able to devote 71% of its budget toward programs. Lower administrative personnel expenses, on a percentage basis, principley account for the difference. In addition to operating efficiencies associated with a large budget, the Town Green BID probably benefits from additional scale economies unavailable to the smaller BIDs, for example, purchasing discounts.

While scale may provide benefits to the Town Green BID, it also causes problems. With geographic and financial scale has come heightened bureaucracy at the Town Green BID. The geographic and financial expansiveness of the Town Green BID has attracted the attention of several of the major players in New Haven, including Yale, the City, the Chamber of Commerce, and SNET, who have representatives on the Town Green BID board and can exercise significant sway. Town Green BID board member Lisa Drazen noted that while the BID is

---

245 For comparative financial statements of New Haven’s BIDs, see app. B1. For details on financial figures for particular BIDs in New Haven, see app. B2-5.
246 Numbers are three year averages for the most recent three years available. See app. B for additional detail.
247 The Whalley Avenue BID conducts its principle function, business development, discussed supra section III.A.2 and supra note 74, on a largely ad hoc basis, rather than through specific programming. Thus, the overhead expenditures probably include a portion of this substantive function.
248 Includes personnel expenses for the staff running the BID but not for the maintenance or security officers hired by the BID, directly or through contracts. Due to data unavailability, the author has allocated the benefits expenditure for administrative staff on a pro-rata basis, informed by the comparable ratio for the Chapel West BID.
249 The Town Green BID expects only 22% of the budget on personnel expenses, which includes salaries, benefits, and related taxes, whereas salaries paid by the Chapel West, Whalley Avenue, and Ninth Square districts account for 46%, 56%, and 54%, respectively.
“supposed to be apolitical and not dictated to by the mayor or any other factions, [there has been]
a] "sense of someone dictating to the Board."\textsuperscript{251}

\textbf{B. Externalities}

1. \textit{Overcoming free-riding: solutions to the problem of tax-exempt properties?}

BIDs and land assemblers overcome the free-rider problem in providing cityscape goods in three ways. First, these institutions may acquire coercive power to mandate participation in providing the goods. For example, through statute, BIDs have use of the city’s power of mandatory taxation, and land assemblers can force participation through lease provisions, as Yale does in the Broadway area and the Chapel/College corner. Second, land assemblers, such as Yale and Schiavone, can amass a significant share of property and have a strong interest in that area’s success such that they realize the lion’s share of the benefit of the goods they provide despite free-riding by other constituents. In short, land assemblers overcoming the free-riding problem by buying out many of the potential free-riders. Third, local institutions such as BIDs and dominant property owners, can help to shape local norms by instilling an ethos of public-mindedness and pride-in-place and establishing behavioral standards in their neighborhoods.

Considering the first approach, the mandatory taxation power employed by BIDs, has a distinct deficiency in its ability to overcome free-riding: the inability to require participation by tax-exempt property owners. In New Haven, two large property owners hold significant tax-exempt properties within or adjacent to the Town Green BID: Yale University and the City of New Haven. The founders of the Town Green BID devised an innovative solution to mitigate free-riding by these institutions: Class D commissioners.\textsuperscript{252} As discussed \textit{supra}, III.B.2, institutions that contribute at least $100,000 through mandatory tax levy, voluntary contribution, or a combination of two to the Town Green BID are entitled to designate an institutional.

\textsuperscript{250} See app. B.
\textsuperscript{251} See interview with Lisa Drazen, \textit{supra} note 151.

Nancy L. Jacobson, \textit{BIDs in New Haven}
representative who serves as a full voting member of the board of commissioners. At present, representatives of Yale University, SNERT, and the City of New Haven serve as Class D commissioners. The provision for Class D commissioners gives an incentive for tax-exempt property owners to contribute to the district rather than free-ride. Voluntary contributions to the Town Green BID from organizations with Class D commissioner seats total $272,000, or nearly 30% of the total budget, with donations from the City of New Haven, Yale University, and SNERT of $140,000, $77,000, and $55,000, respectively.

While Class D commissioners have succeeded in reducing free-riding by tax-exempt institutions, they could pose problems in the Town Green BID or other BIDs. First, while an inducement to participation, Class D contributions are purely voluntary, and thus, may not always be sufficient to overcome free-riding. Second, persons serving as Class D commissioners may exert stronger influence than other commissioners because only they can credibly threaten to withdraw funding from the BID if they are dissatisfied with a decision of the organization. Third, while having the benefit of bringing key players of the city into the decision process of the BID, such involvement could have unintended negative consequences, such as increased politicization or bureaucratization. Fourth, the presence of Class D commissioners, who presumably represent large property owners, dilutes the voice of the tenants and small property owners.

252 See interview with Edwin V. Selden, supra note 33.
253 See supra notes 146 to 148.
254 Figures are from the 1999 budget. See Communication to Board of Aldermen, Apr. 19, 1999 in Report of the Finance Committee, May 17, 1999, New Haven Board of Aldermen Records, 1999, vol 23, 91. For additional detail on the Town Green BID budget, see app. B5. Yale University is subject to the mandatory tax on its commercial but not its academic properties. Yale and SNERT's contributions totaled at least $100,000 each when the voluntary contributions were aggregated with the mandatory levy. See interview with Edwin v. Selden, supra note 33.
255 Multiple insiders in the Town Green BID expressed concern about politicization of the Town Green BID due to the involvement of major players in the city, particularly the office of the Mayor.
256 For example, the three current Class D commissioner -- Yale, SNERT, and the City of New Haven -- and one proposed Class D commissioner - - the developers of the pending Long Wharf Mall project - - are large property owners.
owners. Finally, “selling” seats on a board of directors could be viewed as undemocratic, particularly for a public/private hybrid organization.  

Given the potential problems of schemes like the Town Green BID’s Class D commissioners, another solution to free riding by tax-exempt property owners could be preferable. One potential solution would be for state legislation to decline to extend tax-exempt status for these property owners to special assessments to fund BIDs. While the tax-exempt property owners would continue to benefit from exemption from general property taxes, they would be required to chip in to funding the BID at the same mil rate as other property owners. Such a requirement would achieve much the same effect as a Class D commissioner scheme while avoiding many of the problems. Adopting this legislation would probably necessitate two other changes to BID law. First, the voters eligible in the referendum to approve or dissolve BIDs should probably be expanded to include the tax-exempt property owners. Second, the ordinances and bylaws establishing BIDs should probably include designated seats for tax-exempt property owners or allow tax-exempt property owners to serve in seats previously reserved exclusively for taxable property owners. Legislatures ought to consider this potential solution to eliminating free-riding by tax-exempt property holders.

2. Physical externalities: improving the city or merely relocating problems?

Providing cityscape goods reduces cityscape woes. For example, the work of BIDs or other local institutions may result in decreased reports of crime within the districts. First, would-be criminals, may be deterred by the presence of security officers. Second, increased pedestrian traffic resulting from BIDs’ or other institutions’ efforts to improve sidewalks, lighting, and safety, augments the presence of the patrolling security officers, resulting in more crime-

---

257 Tenants and small property owners have 4 and 6 seats, respectively, on the Town Green BID board. See infra III.B.2. As the total number of commissioners increases with the addition of Class D members, tenants and small property owners will necessarily occupy a smaller percent of total seats.
deterring "eyes on the street." Third, under the "broken window" theory of crime, the
general disrepair of a neighborhood, such as trash on the sidewalks, graffiti, and the proverbial
broken window signals criminals of areas in which law enforcement is more likely to be lax.
Conversely, a BID or other local institution that improves the physical appearance of a
neighborhood sends a signal to would-be criminals that the neighborhood is secure and thus,
probably a less desirable target.

The optimist’s take on this story is that the would-be criminals, deterred by the efforts of
the BID or other local institution, restrain themselves to pursuing legal activities. Under this
view, the presence of BIDs and local institutions in any part of a city would reduce crime rates of
the city as a whole. By contrast, the pessimist’s perspective is that BIDs and other local
institutions do succeed in reducing the crime rate within their district, but that the criminals
simply migrate to another part of the city. Under this view, the total crime rate of the city would
remain constant, with crime spilling over to other neighborhoods.

The analysis extends beyond crime to other nuisance behaviors such as littering, loitering,
posting signs, or aggressively panhandling. While BID supporters may claim that the districts
succeed in reducing crime and nuisance rates within their districts, the effects on the city as a
whole are less clear and require further study. As with property values, discussed supra II.B,
disaggregating the effect of BIDs and other institutions on crime and nuisance rates proves
problematic.

---

258 For discussion of the potential legal consequences of an undemocratic board of commissioners voting system, see infra IV.C.2.
theory, see Ellickson, supra note 12, at 84.
260 For a more detailed discussion of the “broken windows” theory of crime, see Ellickson, supra note 12, at 78-79.
261 See, e.g., Houston, Are BIDs Working?, supra note 36 (attributing lower crime rates to the work of BIDs, while
acknowledging the difficulty in distilling the effect).
262 For example, the economy and unemployment rate, changes in the city’s law enforcement efforts, variations in
the criminal penal code, and many other factors could influence the crime and nuisance rates.

Nancy L. Jacobson, BIDs in New Haven
3. Civic externalities: diminishing civic participation or building social capital?

BIDs have a spill-over benefit not shared by land assemblers who provide cityscape goods in that BIDs are “incubators of social capital,”\(^{263}\) providing an opportunity for constituents to participate in local governance. Professor Ellickson argues that small scale institutions akin to BIDs provide substantial opportunities for community governance, for example, through participation in debates, office-seeking, and voting.\(^{264}\) Community members would likely have a shorter wait to speak at meetings, and be less intimidated by the setting because of the familiarity with issues, locale, and people present at BID meetings as compared to that of general city government.\(^{265}\) The open committee structure, such as that used by the Town Green BID, discussed supra III.B.2, facilitates such community involvement by providing multiple forums for public participation centered around issues. Professor Davies describes BIDs as “a forum for citizens to deliberate about the public realm.”\(^{266}\)

While promoting participation in public life, broadly defined, BIDs may have the consequence of reducing involvement in the local government process, what could be called the civic forum. Community members may choose to devote time to serving on BID committees rather than attending town hall meetings or otherwise participating in city government. Former Secretary of Labor Robert B. Reich characterizes this effect of BIDs as “secession of the successful.”\(^{267}\) The more successful members of the community can opt-out of civic participation generally while still engaging in public sphere in their local BID.

While the opportunity to participate in BID activities may draw constituents out of the specific civic sphere into the broader public sphere, there is no reason to assume that total

\(^{263}\) See Ellickson, supra note 12, at 84.
\(^{264}\) See id. 84-85.
\(^{265}\) See id.
\(^{266}\) See Davies, supra note 16.
\(^{267}\) Robert B. Reich, Secession of the Successful, N.Y. TIMES, Jan. 20, 1991, s 6 (Magazine), at 16 (meaning the exodus of the highly paid form the public sphere) (quoted in Kennedy, supra note 17, at 306).
participation in public life will decline. Rather, individuals may devote more time and resources
toward local participation in BIDs than they would to broader city government activities because
of the more customized nature of issues addressed or greater ease in participation. Further, civic-
participating individuals may continue their involvement in the local government and also
participate in BID activities. Thus, BIDs may increase total public participation and thereby
build, rather than destroy, social capital.

4. Fiscal externalities: changing the fiscal status quo?

The presence of BIDs or other local organizations, such as merchant groups, can distort
the signals sent by constituents to the city government about the level of cityscape services.
First, BID constituents who, prior to the creation of the local district, would lobby the city for
improved cityscape services, may stop doing so, either because the BID has increased services to
a level with which they are content, or because they are focusing their lobbying efforts on
swaying the BID management team rather than city hall. Thus, city hall may receive fewer
complaints about service levels, and could wrongly conclude that satisfaction with service levels
had improved citywide. Second, property owners within BIDs may be less tolerant of higher
general taxes,268 and thus object to fiscal changes to which they would have consented, absent the
BID. BID critics argue that constituents in upscale districts insulate themselves from the effects
of urban decline by forming BIDs to provide services unavailable to the larger city.269 Signal
distortion could aggravate this problem.

Further, bonds issued by BIDs may compete with municipal bonds, thereby impeding the
ability of the city to raise funds.270 However, this critique of BIDs is less relevant in New Haven
because the Connecticut BID enabling statute271 limits the extent to which BIDs can issue debt

268 See Kennedy, supra note 17 at 307 (1996).
269 See id. at 220 (quoting BID critic Michael J. Sandel).
270 See Kennedy, supra note 17 at 307 (1996).
271 CONN. GEN. STAT. ANN. § 7-339 (West 1999).
that competes with municipal debt. BIDs in Connecticut must discharge all debts within a year of their incurrence.\textsuperscript{272}

\textbf{C. Equality: distributive and constitutional concerns}

\textit{1. Wealth distributive effects: promoting or hampering inter local equality?}

Local efforts to improve a cityscape, by definition, affect one part of a city more than others. Thus, local institutions that improve cityscapes face the criticism of contributing to "inter local inequality."\textsuperscript{273} Certainly, BIDs or land assemblers, such as Yale, who increase sanitation or security services or plant flowers in certain parts of the city, cause those parts of the city to be cleaner, safer, and bedecked with more botanicals than other parts of the city. BIDs and other institutions have specifically elected to provide services above the level provided otherwise by the city, so, by design, they often have this affect of creating cleaner, safer, prettier neighborhoods. Yet, criticizing local institutions for promoting inequality in service levels myopically ignores the broader equality that they can foster.

First, BIDs may be located in poorer or run-down parts of cities to try to rehabilitate the area and put it on more, rather than less, equal footing with other parts of the city. New York City’s BIDs in Times Square and Bryant Park arguably have this function. The Times Square BID contributed to turning an area replete with ill-reputed adult entertainment venues and cheap souvenir shops to a family-friendly collection of theme restaurants and theaters.\textsuperscript{274} Likewise, the Bryant Park BID, discussed supra II.B, transformed a drug-dealers’ hangout into an attractive city park. New Haven’s Whalley Avenue BID serves a similar function. The Whalley Avenue BID is located in what would certainly not be described as one of New Haven’s more affluent

\footnotesize{\textsuperscript{272} \S 7-339n.}

\footnotesize{\textsuperscript{273} See Mark S. Davies, supra note 16, at 220 (citing critiques of BIDs with which he disagrees).}

\footnotesize{\textsuperscript{274} While some may bemoan the loss of local character, few could credibly argue that the current Times Square is inherently less equal to other parts of the city in its current state than in its former, as the rarified red light district.}

Nancy L. Jacobson, \textit{BIDs in New Haven}
areas,\textsuperscript{275} illustrating by existing that BIDs are not constrained to the already affluent areas. The Whalley Avenue BID, discussed supra III.A.2, focuses on business development within the district and participates in an array of community programs, some of which are particular to less affluent areas, such as welfare-to-work training sessions.

Second, BIDs can reduce inequalities by embracing large geographies with neighborhoods of distinct socioeconomic character. For example, New Haven's Town Green BID includes several distinct neighborhoods of quite different character, discussed supra, III.B.\textsuperscript{276} Rather than further the divisions among these neighborhoods, the Town Green BID provides services to them all, and visually unifies the area by hanging banners throughout, creating a sense of common place. Further the Town Green BID provides a common forum for constituents from these varied neighborhoods to interact.

Third, land assembling institutions, such as Yale or other universities, can integrate their campuses with the larger city, blurring the boundaries of the city and campus and encouraging interaction between the university and city communities. By improving the cityscape in the Broadway area, surrounded on three sides by Yale's campus, the University encourages students to frequent the city neighborhood and reduces the dichotomy between the campus and its surrounds.

Thus, the efforts to improve the cityscape by New Haven's BIDs and Yale University have arguably promoted, rather than hampered equality in New Haven. In New Haven and elsewhere, BIDs and other local institutions, can overcome the near-sighted critique of creating unequal cityscape service levels, with the broader effect of promoting equality, in a broader sense.

\footnotesize{\textsuperscript{275} For example, the Whalley Avenue neighborhood has services that cater to a lower income population, such as welfare to work programs and job training programs.  
\textsuperscript{276} See app. A2 for map with the various neighborhoods indicated.}

Nancy L. Jacobson, \textit{BIDs in New Haven}
2. Life after Kessler: can New Haven’s BIDs survive equal protection challenges?

In Kessler, the Second Circuit held that the election of directors to the board governing New York City’s Grand Central Business Improvement District (Grand Central BID) did not violate the one-person-one-vote requirement of the Equal Protection Clause of the Fourteenth Amendment.\(^{277}\) A group of non-property owning residents of the Grand Central BID challenged the process for election of the District’s board, whereby they were entitled to vote in the election of only one of the four classes of directors.\(^{278}\) While the court’s general support of one of New York City’s BID bodes positively for New Haven’s BIDs, two distinctions between the New Haven districts and their Kessler counterpart give cause for contemplation, if not concern, for the future of New Haven’s BIDs in the post-Kessler court. This section will describe the Kessler framework applied to the Grand Central BID and then discuss the implications of that framework for New Haven’s BIDs.

The Supreme Court first held that the one-person-one-vote interpretation of the Equal Protection Clause that applies to state legislatures\(^{279}\) also holds at the local government level in the 1968 decision Avery v. Midland County.\(^{280}\) However, the court carved out what has become known as the Sayler-Ball\(^{281}\) exception to the one-person-one-vote requirement, holding, as

---


\(^{278}\) The number of board seats which the Class C voters could elect varied. At the time of the action, only one of the 52 commissioners of the Grand Central BID had been elected by Class C voters. See id. 96.

\(^{279}\) Reynolds v. Sims, 377 U.S. 533, 12 L. Ed. 2d 506, 84 S. Ct. 1362 (1964) (announcing the constitution requires that seats in a state legislature be apportioned on the basis of population).

\(^{280}\) Avery v. Midland County, 390 U.S. 474, 20 L. Ed. 2d 45, 88 S. Ct. 1114 (1968). In Avery, while requiring one-person-one-vote in elections for “units with general governmental powers,” the Supreme Court recognized the possibility that one-person-one-vote may not apply for special-purpose governmental units. 390 U.S. at 485-486.

\(^{281}\) Elaborating on the potential exception to the Avery one-person-one-vote rule, the Supreme Court announced, in a pair of decisions, what has become known as the Sayler-Ball exception. In Sayler Land Co. v. Tulane Lake Basin Water Storage District, 410 U.S. 719, 35 L. Ed. 659, 93 S. Ct. 1224 (1973), the Court held that elections for a water storage district board were not subject to the one-person-one-vote requirement by reason of the district’s “special limited purpose and of the disproportionate effect of its activities on landowners as a group.” 410 U.S. at 728. 410 U.S. at, 728. Moreover, the Court adopted a deferential standard, that the election procedures need only not be “wholly irrelevant to the achievement of the regulation’s objectives.” 410 U.S. at 728 (internal quotation marks omitted). In Ball v. James, the Court reiterated the two-prong Sayler test and articulated a reasonable relationship standard for assessing those election procedures to which the one-person-one-vote rule did not apply. 451 U.S. 355,
summarized by the Second Circuit in *Kessler*, "that entities with a special limited purpose and a disproportionate effect on certain constituents are exempt from [the one-person-one-vote] requirement, and may use voting schemes that need only be reasonably related to their purposes."

In assessing whether the Grand Central BID satisfies the limited purpose prong of the *Sayler-Ball* exception, the *Kessler* court emphasizes that the BID-enabling New York statute authorizes the Grand Central BID to provide services that supplement, but do not supplant those of the City. Writing for the *Kessler* court, Judge Karse remarks, "[t]hus the City itself has - - and by law must retain - - the primary responsibility for providing security, sanitation, and social services in the Grand Central BID."

---

282 68 L. Ed. 2d 150, 101 S. Ct. 1811 (1981) (finding the election process of the board of the water storage district at issue to fall outside the one-person-one-vote requirement of the Fourteenth Amendment).

283 *Kessler* 158 F.3d at 103 (internal quotations omitted).

284 The court looks to many factors in discussing the limited purpose prong of the *Sayler-Ball* exception, among them, the lack of sovereign powers of the Grand Central BID, the necessity of the city’s involvement in running the district, and the nature in which the services provided by the Grand Central BID overlapped with services actually or traditionally provided by the City. The main text focuses on the last of these three factors. This note discusses the first two. First, the *Kessler* court inquired into the sovereign powers of the Grand Central BID, concluding that the Grand Central BID lacked such power for three reasons: its inability to directly levy or collect taxes, its lack of authority to enact or enforce laws governing the conduct of persons within the district, and the impotence of the private security guards of the district in performing law enforcement functions. 158 F.3d 92, 104-105. Second, the *Kessler* court assesses New York City’s oversight of the Grand Central BID, noting the necessity of the City’s role in the collection and disposition of taxes for the District and the City’s supervisory authority in reviewing budgets. 158 F.3d at 106-107. Third, the *Kessler* court concludes that while the services provided “are the types of services that are often provided by local governments . . . the fact that the [Grand Central BID] also provides them is insufficient to subject it to the one-person-one-vote requirement . . . ” 158 F.3d at 107.


286 In analyzing the nature of the overlap of services, the court looked to three factors: the comparative magnitude of the District and City’s services, the qualitative differences in the District and City’s activities, and the nature of the District’s services as supplementary or supplanting. First, the *Kessler* court notes that the services provided by the Grand Central BID overlapping with those of the City “are quantitatively dwarfed by those of the City.” 158 F.3d at 105. The Court compares the Grand Central BID’s 63 security officers to the 3 City precincts which operated within the District and the one Grand Central BID homeless person outreach program to the City’s department devoted to that area. 158 F.3d at 105. Second, the Court notes that the Grand Central BID’s services “are qualitatively different from core municipal functions.” 158 F.3d at 105. For example, the maintenance activity of the Grand Central BID primarily improves the physical appearance of the District whereas, the City’s sanitation department primarily removes trash to promote public health. 158 F.3d at 105. For discussion of the third element of the overlap analysis, supplementary or supplanting nature of services, see main text.

286 158 F.3d 92, 105.
Turning to the second prong of the Sayler-Ball exception, disproportionality of effect, the Kessler court concludes that, although the non-property owning residents of the Grand Central BID probably benefit from the activities of the District, the “principle economic benefit from [the District’s] activities, however, plainly accrues to the property owners, who will enjoy an increase in the value of their property.” Finally, the Kessler court applies the Sayler-Ball deferential standard to the Grand Central BID and upholds the voting regime as bearing a “reasonable relationship to the purposes of the [District].”

The implications of Kessler for New Haven’s BID are threefold. First, the generally positive tenor of the Kessler decision suggests the Second Circuit has a favorable disposition to BIDs. The Kessler court, for example, interprets the Sayler-Ball exception broadly to include BIDs even though the activities of BIDs are certainly broader than those of the water storage districts at issue in Sayler and Ball. Further, the Court offers dicta about the complexities of urban governance and the need for flexibility in seeking solutions.

Second, despite the positive tenor, a potential problem could arise for the New Haven BIDs because of their express authority to supplant, rather than merely supplement City services. The Kessler court emphasizes the statutory limitation on the Grand Central BID in providing supplementary but not supplanting services. In marked contrast to the New York BID enabling

287 The court looks to the costs of running the District and the benefits received. The Court writes that the mandatory assessments on property owners result in the property owners bearing the larger burden in funding the BID. While the Court acknowledges that property owners may pass along those costs to tenants, a repeated criticism of the decision, Judge Kearse dismisses the potential pass through as insufficient to substantially shift the burden of funding the District onto the tenants. Kessler, 158 F.3d at 107,108. For criticism of the Kessler court’s treatment of pass-through, see 158 F.3d 92, 105, 127 (J. Weinstein, dissenting) (objecting to the Court’s failure to factor in pass-through more heavily, argues “there is no reason to believe that a large portion of the assessments levied for the [Grand Central BID] are not being passed on to the residential and commercial tenants of the district through rents”); Briffault, supra note 17, at 435-36 (arguing, “landowners may be able to pass along at least part of the cost of BID assessment to their tenants. If BID activities cause property values to rise in the district relative to the city as a whole, landowners at some point ought to be able to charge their tenants a higher rent.”)

288 158 F.3d 92, 107,108.

289 Id.

290 See supra note 281.
statute which prohibits supplanting services, the Connecticut BID enabling statute expressly permits the provision of some or all of the services which the municipality is authorized to provide therein. Further, the ordinances separately establishing each of New Haven’s BIDs permit the BIDs to supplant the City’s services within their respective districts. Additionally, while the *Outline of General Duties* sets minimum standards for the provision of services by the City of New Haven within the Town Green BID, it is neither legally binding, nor do the levels stated in the *Outline* necessarily coincide with what the City would provide absent the Town Green BID. While no evidence suggests that any of the New Haven BIDs currently supplant City services, the BIDs lack the legal protection against supplantion relied upon by the *Kessler* court in meeting the limited function requirement of the *Sayler-Ball* exception. Thus, the New Haven BIDs could meet greater difficulty than did the Grand Central BID in overcoming an Equal Protection challenge.

Third, the board of commissioner election schemes for the New Haven BIDs are arguably less democratic than that of the board of the Grand Central BID, which could test the deference of the Court. The non-property owning residents of the Grand Central BID were designated Class C voters and elected a varying number of commissioners to the board. By contrast, the three existing BIDs in New Haven permit only holders of interest in taxable property to vote in

---

291 See 158 F.3d 92, 103 (opining, "[g]iven the typically greater complexity and novelty of the problems facing urban areas, the need for governmental creativity to address those problems is to be expected in the urban areas more frequently.").
293 Conn. Gen. Stat. Ann. § 7-339n (West 1999) (authorizing the District to “provide, within such district, some or all of the . . . services which [the] municipality is authorized to provide therein”); Conn. Gen. Stat. Ann. § 7-339t (West 1999) (expressly permitting the municipality to “enter into a contract with such district in which the city is excused from providing within such district . . . some or all of the services which such district is authorized to provide.”)
294 See *New Haven, Conn., Special Laws and General Ordinances* vol. II, ch. §36(5)(a)(7) for the Town Green BID provision; § 35(5)(a)(7) for the Chapel West BID; § 33(5)(a)(7) for the Whalley Avenue BID.
295 *Outline of the General Duties, supra* note 177.
296 See supra note 178.
297 See supra note 278.
board elections.\textsuperscript{298} The Town Green BID and Chapel West BID reserve seats for a class of commissioners who are residents or tenants not owning taxable property in the district, but in the elections to fill these seats, only holders of interests in taxable property may vote.\textsuperscript{299} The Whalley Avenue BID does not reserve seats by class but rather allows holders of interest in taxable property in the district to directly elect to the board any property owners or tenants of the district, in no set proportion.\textsuperscript{300} Thus, while the residents of the Grand Central BID are guaranteed the opportunity to participate in the board elections as Class C voters, albeit only to fill a limited number of seats, residents of the New Haven BIDs do not vote at all. Further, the Class D commissioners of the Town Green BID, discussed \textit{supra} IV.A.2, are appointed by the organizations they represent. Neither property owners nor tenants may vote in their selection. In evaluating the voting the scheme, the \textit{Kessler} court exhibited deference, applying only a “reasonable relationship” test.\textsuperscript{301} While the New Haven BID board election voting schemes arguable bear reasonable relationships to the purposes the respective districts, the complete lack of a vote for residents and tenants and appointment, rather than election, of Class D commissioners of the Town Green BID, could test the deference of the Court.

\textbf{Conclusion}

New Haven land assemblers - - Yale University and Schiavone - - and BIDs have succeeded in improving the local cityscape. As quasi-private actors, or a purely private actor in Schiavone’s case, they have taken local initiative to effect meaningful change by augmenting the

\textsuperscript{298} See \textit{NEW HAVEN, CONN., SPECIAL LAWS AND GENERAL ORDINANCES} vol. II, ch. §36(3)(c) for the Town Green BID provision; § 35(3)(c) for the Chapel West BID; § 33(3)(b) for the Whalley Avenue BID. For discussion of the dynamic of property owners voting to fill the tenant/merchant seats on the Town Green BID Board of Commissioners, see \textit{supra} text accompanying note 150.

\textsuperscript{299} In the Town Green BID, owners of taxable property directly vote to elect the Class A and Class B commissioners, discussed \textit{supra} notes 143, 144. The Class A and B commissioners, who are holders of interests in taxable property, then elect the Class C commissioners who are merchants and tenants, discussed \textit{supra} note 145. See \textit{NEW HAVEN, CONN., SPECIAL LAWS AND GENERAL ORDINANCES} vol. II, ch. §36(3)(c). In the Chapel West BID, holders of record of taxable interest in real property in the district directly elect Class A and B commissioners, property owners and tenants respectively. See § 35(3)(c).

\textsuperscript{300} See § 33(4)(c).
base-level of cityscape services provided by the city. Certainly, the city itself could provide many of the same services that Yale, Schiavone, or the BIDs offer, for example, by stepping up police beats or training municipal employees to cultivate flower boxes. Yet, to effect change, the city would have to overcome such barriers as interest group capture, legal constraints, and monitoring problems, discussed supra section I. Further, special treatment for one city neighborhood, even if the property owners therein foot the bill and then some, could pose political problems aplenty.

Thus, members of a neighborhood seeking, and willing to pay for, cleaner and safer streets and blooming flowers, do well to turn to local quasi-private institutions. If they are small property owners, BIDs are an excellent vehicle through which to effect change. If they are dominant property owners, they may assemble enough land to make it worth their while to sweep the streets and plant the flowers themselves, as Yale has done. Agile in their freedom from the barriers that stymie the city, the quasi-private local institutions can outperform city government to more rapidly effect neighborhood-level change.

For a land assembler, such as Yale, BIDs and go-it-alone strategies have relative merits. When land assemblers provide public goods directly, they exercise significant discretion about the type of goods provided and can act independently, for the most part,\(^{302}\) without having to subject decisions to committee votes or a series of approvals. Thus, for example, in the Broadway Area, Yale can act rapidly and decisively to effect change. However, BIDs have a distinct advantage over go-it-alone strategies in that they prevent free riding by taxable property owners in the area. Further, BIDs free the land assembler from bearing the full administrative burden of organizing the provision of the public goods. Thus, in the Chapel/College corner, Yale

---

301 See supra note 288.
302 When affecting public land, such as streets, land assemblers probably would need approval from the local government. For example, Yale has an agreement with the city of New Haven regarding the provision of cityscape goods in the Broadway neighborhood. See supra IV.C.

Nancy L. Jacobson, *BIDs in New Haven*
has much less control over the provision of cityscape goods than in the Broadway area, because
the decision locus is in the Town Green BID rather than the University, but Yale also bears a
smaller percent of the costs. As Yale, universities nationwide are often dominant landowners,
and thus can improve commercial areas adjacent to the campus through participation in BIDs or
go-it-alone strategies, choosing between the two by the criteria above.

In New Haven, Yale and the BIDs have created cleaner, safer, and more inviting
cityscapes; they have succeeded in making neighborhoods in the city more attractive places to
live or visit, in bringing out the local “green.” They are well on their way to restoring a sense of
pride in place, what Town Green BID president, Snaider, describes as “getting people to feel
good about New Haven because it’s a great city.” 303

303 See interview with Jane Snaider, supra note 1.

Nancy L. Jacobson, BIDs in New Haven
Appendix
Appendix A: Map of downtown New Haven, with BIDs and relevant neighborhoods marked.
Appendix A2: Detailed Map of the Boundaries of the Town Green BID.
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>TSSD</td>
<td>2.5</td>
<td>1.5</td>
<td>N/A</td>
<td>117</td>
<td>60</td>
</tr>
<tr>
<td>N/A</td>
<td>N/A</td>
<td>46%</td>
<td>72%</td>
<td>7%</td>
<td>1%</td>
</tr>
<tr>
<td>54%</td>
<td>111</td>
<td>111%</td>
<td>111%</td>
<td>111%</td>
<td>111%</td>
</tr>
<tr>
<td>82%</td>
<td>106</td>
<td>106%</td>
<td>106%</td>
<td>106%</td>
<td>106%</td>
</tr>
<tr>
<td>18%</td>
<td>114</td>
<td>114%</td>
<td>114%</td>
<td>114%</td>
<td>114%</td>
</tr>
<tr>
<td>% of Total Expenditure (dollars, thousand per annum)</td>
<td>% of Programming</td>
<td>% of Operating</td>
<td>% of Personnel</td>
<td>% of Total Budget</td>
<td>% of Mill Rate</td>
</tr>
</tbody>
</table>

New Haven BIDS Financial Comparisons

Appendix B1

Dollars, thousands, per annum

3-year averages unless otherwise noted
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total expenditures</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transportation</td>
<td>5.4%</td>
<td>5.6%</td>
<td>5.9%</td>
<td>7.0%</td>
<td>7.2%</td>
</tr>
<tr>
<td>Health insurance, workers compensation, unemployment compensation, payroll taxes, etc.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expenditures</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total revenues</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other income</td>
<td>0.3%</td>
<td>0.2%</td>
<td>0.3%</td>
<td>0.3%</td>
<td>0.2%</td>
</tr>
<tr>
<td>Total revenue</td>
<td>117.4</td>
<td>117.2</td>
<td>117.0</td>
<td>117.0</td>
<td>117.2</td>
</tr>
<tr>
<td>Total assets</td>
<td>123.7</td>
<td>123.7</td>
<td>123.6</td>
<td>123.6</td>
<td>123.7</td>
</tr>
<tr>
<td>Net change</td>
<td>(6.3)</td>
<td>(6.1)</td>
<td>(6.6)</td>
<td>(6.6)</td>
<td>(6.1)</td>
</tr>
</tbody>
</table>

Note: Fiscal year runs July to June.

APPENDIX B2
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Expenditure</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
</tr>
<tr>
<td>Total Revenues</td>
<td>9%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
</tr>
<tr>
<td>Revenues and Grants</td>
<td>9%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
</tr>
<tr>
<td>Expenditures</td>
<td>9%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
</tr>
</tbody>
</table>

Additional notes and context can be provided if needed.
<table>
<thead>
<tr>
<th>Year</th>
<th>Total Expenditures (million)</th>
<th>Education</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>General Fund</td>
</tr>
<tr>
<td>1996</td>
<td>1280</td>
<td>89.0</td>
</tr>
<tr>
<td>1997</td>
<td>1300</td>
<td>90.0</td>
</tr>
<tr>
<td>1998</td>
<td>1320</td>
<td>92.0</td>
</tr>
<tr>
<td>1999</td>
<td>1340</td>
<td>94.0</td>
</tr>
</tbody>
</table>

Appendix B5

Town Green District Services District Financial Analysis
Article: Annual Report of the Town Green Special Services District, 1999

The Trustees of the Town Green Special Services District

Appendix C: Town Green BID Board and Committee Members
Source: Outline of General Duties, Responsibilities, and Relationships Between the City of New Haven and the Town Green District

The Town Green District is an area within the City of New Haven that is dedicated to public open space. It is managed by the Town Green District Commission, which is composed of representatives from the City of New Haven, the Town of New Haven, and the Town Green District. The Commission is responsible for the maintenance and protection of the area, as well as for the development of programs and activities that promote the use of the Town Green District by the public.

The City of New Haven is responsible for providing the necessary infrastructure and services to support the Town Green District. This includes the provision of water, sewer, and electric services, as well as the maintenance of roads and sidewalks.

The Town of New Haven is responsible for providing services to the Town Green District that are not provided by the City of New Haven. This includes the provision of police and fire services, as well as the maintenance of parks and recreation areas.

The Town Green District Commission is responsible for the development and implementation of programs and activities that promote the use of the Town Green District by the public. This includes the development of programs for children, families, and seniors, as well as the coordination of events and festivals that take place in the area.

Appendix C: Outline of General Duties
Appendix C2: Outline of General Duties - continued