

MOVING ON: THE EAST PASSYUNK AVENUE BUSINESS IMPROVEMENT DISTRICT

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I. INTRODUCTION

The East Passyunk Avenue Business Improvement District is a business improvement district (BID) first designated by the City of Philadelphia in December 2002 for a seven-year term and renewed in September 2009 for ten additional years.¹ The district is a mixed-use community-commercial corridor in South Philadelphia encompassing 289 properties. The district's transforming commercial occupancy and current activities reflect the ongoing gentrification of the surrounding community. District management is the responsibility of the East Passyunk Avenue Business Improvement District, Inc. (EPBID), which commenced operations in May 2003² with an annual budget of \$125,000.³ The EPBID has also participated in Philadelphia's Main Street Program since 2006.⁴ Its program and administrative budget for the 2009 calendar year was about \$230,000.⁵

Once associated with former State Senator Vincent Fumo and his Citizens Alliance for Better Neighborhoods (CA),⁶ the EPBID now

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1. Phila., Pa., Ordinance No. 090128 (Sept. 17, 2009).

2. R. Jonathan Tuleya, *Making Broad Street More Stately*, S. PHILLY REV. (Feb. 5, 2004), <http://www.southphillyreview.com/news/71857337.html>

3. R. Jonathan Tuleya, *Taking a New Avenue*, S. PHILLY REV. (Nov. 20, 2003), <http://www.southphillyreview.com/news/71846932.html>.

4. For an explanation of the Main Street Program, see *infra* text accompanying notes 34–36.

5. E-mail from Renee Gilinger, Executive Dir., EPBID (Jan. 12, 2010) (on file with author).

6. The CA was established in 1991 by former State Senator Vincent Fumo and his associates, including an aide, Frank DiCicco, who is now Philadelphia's first district city councilman. Over the years, the CA attracted significant attention and contributions, such as a notorious \$17 million grant from the state-regulated utility company PECO Energy in the late 1990s and \$10 million from the Delaware River Port Authority. The CA has provided a range of community revitalization activities, including street cleaning and holiday decorating services for the catchment area of the EPBID. By 2006, Frank DiCicco's son, Christian DiCicco, was the chairman of the EPBID as well as the executive director of the CA, where he replaced Ruth Arnao that year. The CA fell into disarray and halted services when Fumo was convicted on official corruption charges in March 2009. As of July 2010, a court-appointed interim conservator had determined that the CA, although insolvent, has real estate and other assets that

faces a number of challenges and opportunities that will define its future and its contributions to the district in the wake of Fumo's March 2009 conviction on corruption charges.⁷ One key challenge is the need to find adequate resources to support ongoing activities, including replacement of the substantial in-kind contributions formerly made to the district's revitalization and management by the CA, which provided street cleaning services and holiday lighting displays for the district until April 2009. A related and continuing challenge in recent years has been the EPBID's relatively low collection rate for the BID assessments, with 15% of annual assessments reported as uncollected.⁸ Opportunities include improving perceptions of the organization's independence, building on the bottom-up governance model, and accessing grant funding associated with the EPBID's participation in the city's Main Street Program.

II. EAST PASSYUNK AVENUE GEOGRAPHY AND POLITICS

East Passyunk Avenue runs diagonally to Philadelphia's dominant grid, forming the commercial spine of South Philadelphia's Wharton and Passyunk Square neighborhoods. The stretch served by the EPBID covers about one mile of East Passyunk Avenue, from South Broad Street to Federal Street. The district is anchored at its southwest end by a number of bank branches and the Saint Agnes Continuing Care Center at South Broad Street, at the northeast end by the famous Pat's and Geno's cheesesteak sandwich shops at the intersection of South Ninth Street, and by a shopping center and Acme supermarket in between. While there are a handful of chain and franchise outlets, locally-owned "mom-and-pop" businesses predominate. Located about two miles from Center City, Philadelphia's central business district, and a short walk south from the

can, after some restructuring, enable the organization to play a future role in cooperation with the EPBID. See Fred Durso, Jr., *Eye of the Storm*, S. PHILLY REV. (Feb. 15, 2007), <http://www.southphillyreview.com/news/73730787.html>; Daniel Rubin, *Three Coins Won't Be Nearly Enough*, PHILA. INQUIRER, July 16, 2009, at B1; Amanda L. Snyder, *Citizens' Alliance Hopes to Start Anew*, S. PHILLY REV. (July 1, 2010), <http://www.southphillyreview.com/news/cover-story/Citizens-Alliance-hopes-to-start-anew-97525969.html>.

7. Rubin, *supra* note 6.

8. Calculated by the author from the EPBID's 2006, 2007, and 2008 IRS Form 990 filings. See EPBID, Short Form Return of Organization Exempt from Income Tax (Form 990-EZ) (Nov. 14, 2009) [hereinafter Form 990]. To illustrate the significance of this for the EPBID's finances, the \$25,650 uncollected by the EPBID in 2008 can be compared to a total of \$223,286 in other expenses for that year.

Ninth Street Italian Market⁹ area, the surrounding community is undergoing a gradual transition from a somewhat insular, blue-collar, Italian American neighborhood to one with an influx of young professionals and Asian immigrants.¹⁰ The evolving mix of businesses in the district, along with the array of civic organizations in and around the EPBID, reflects the increasingly diverse population in terms of education, income, and taste.

Data from the 2000 Census for four census tracts adjacent to the commercial strip reveal some marked differences between the community's 23,533 residents and the citywide averages for racial makeup, income, and education levels.¹¹ Although changes over the past nine years may have led to material changes in the local population since 2000, overall, the community in 2000 was considerably whiter, poorer, and less educated than Philadelphia as a whole. Most striking, the four tracts' population in 2000 was 75% white, compared to 45% in Philadelphia as a whole, and 14% Asian, versus 4.5% citywide. In a city that was 43% black or African-American in 2000, less than 7% of the EPBID community's population was black or African American. The average median 1999 household income across the four tracts was substantially lower, at \$25,426, than the citywide figure of \$30,746. Only 17% of the community's residents twenty-five years old or older held an associate's degree or higher, compared to 22% of the citywide population in 2000. Housing characteristics in this neighborhood of attached homes, small apartment buildings, and mixed-use buildings did not differ sharply from

9. The Italian Market is a popular stretch of South Ninth Street with a number of butcher shops, vegetable stands, cafes, and bakeries. See PHILLYITALIANMARKET.COM, <http://www.phillyitalianmarket.com/market/9thstreet.htm> (last visited Nov. 8, 2010).

10. See, e.g., Emily Clymer, *South Philadelphia: One Block, United by Gentrification*, PHILA. NEIGHBORHOODS (June 10, 2010), <http://sct.temple.edu/blogs/murl/2010/06/10/south-philadelphia-one-block-united-by-gentrification/>.

11. Tracts 28, 29, 39.01, and 40.01. All estimated demographical data for these tracts contained in this section can be found at the U.S. Census Bureau website. See *American FactFinder*, U.S. CENSUS BUREAU, <http://factfinder.census.gov/> (follow "Data Sets" hyperlink; then click "Census 2000" and follow "Quick Tables" hyperlink under "Census 2000 Summary File 1 (SF 1) 100-Percent Data"; then select "Census Tract" under "Select a geographic type"; then select "Pennsylvania" under "Select a state"; then select "Philadelphia County" under "Select a county"; then select tracts 28, 29, 39.01, and 40.01; then click "Add"; then click "Next"; then select "DP-1 Profile of General Demographic Characteristics: 2000" under "show all tables"; then click "Add"; then click "Show Result"). All estimated demographical data for Philadelphia as a whole contained in this section can be found at the U.S. Census Bureau website. See *id.* (under "Fast Access to Information," type "Philadelphia" in "City/Town, County, or Zip" and select "Pennsylvania" under "State" and click on "Go"; then follow the "Philadelphia City, Pennsylvania" hyperlink; then click on "2000" tab).

Philadelphia as a whole, with housing values and rents in 2000 only about 5% lower than the citywide figures.

With regard to public safety, the EPBID faces no greater challenges than the city in terms of overall reported crime rates or perceived safety, although there are some differences in certain categories of crime. Robbery rates in 2006 were substantially higher, at ten reported incidents per thousand residents, while rates of aggravated assault were lower, at three incidents per thousand residents, than the citywide figures of seven per thousand for each category. Serious property crime rates were somewhat lower than the citywide rates.¹² Perceptions of crime—more important for a commercial district's attractiveness than actual incidence—can be inferred to be no worse than actual incidence, since neither the EPBID's program of activities nor the public controversies surrounding the EPBID¹³ focuses prominently on actual or perceived crime.

Two areas of challenge and opportunity, which are closely related to each other and will be discussed at length below as central elements in the EPBID's current developmental moment, have to do with the EPBID's budget going forward and its relationships with other community organizations. Among the several neighborhood associations and other "community partners" listed on the EPBID's website is the now-inactive CA, which, prior to Fumo's conviction in March 2009, supported street and sidewalk cleaning, holiday decorations, and other activities for the East Passyunk commercial corridor.¹⁴ Now the EPBID is working to finance and provide those services by other means, with an assessment levy that has been frozen without adjustments for inflation or changing property taxes and values for the next decade. At the same time, Fumo's conviction and

12. Some of the numbers are stolen/recovered vehicles, at nine versus thirteen reported incidents per thousand residents, and burglaries, at five versus seven. *Phila. NIS CrimeBase*, U. PA. CARTOGRAPHIC MODELING LAB., <http://cml.upenn.edu/crimebase/> (click on "tables" under "Features"; then select "2000 Census Tracts" under "Choose a category"; then click "Next"; then select "2006, Robberies (300 series) Rate per 1,000 population" or "2006, Burglaries (500 series) Rate per 1,000 population"; then click "Add Element"; then click "Next") (last visited Nov. 8, 2010). Crime categories reviewed were: robberies (Uniform Crime Statistics 300 series), aggravated assaults (400 series), burglaries (500 series), all thefts (600 series), and stolen/recovered vehicles (700 series). The comparison is of 2006 crimes—the latest data available in late 2009—in the four adjacent census tracts versus citywide, using Census Bureau 2000 population data to calculate crime rates per thousand residents. *See American FactFinder*, *supra* note 11.

13. *See infra* text accompanying notes 51–63.

14. *See Community Partners*, EPBID, <http://www.visiteastpassyunk.com/partners.htm> (last visited Nov. 8, 2010); Mario F. Cattabiani, Craig R. McCoy & Emilie Lounsbury, *State Targets Fumo Charity on Spending*, *PHILA. INQUIRER*, Dec. 14, 2008, at A1.

the CA's inactivity present an opportunity for the EPBID to become known primarily for its ongoing and apparently successful revitalization work rather than for its past affiliations.

III. HISTORY

The EPBID was incorporated on April 26, 2002, with State Senator Vincent J. Fumo and First District City Councilman Frank DiCicco among the nine members of the initial board of directors.¹⁵ Together with Councilman-at-Large James F. Kenney and consulting firm The Atlantic Group, they were the lead actors in the August 2001 establishment of a steering committee to develop a BID proposal for East Passyunk Avenue.¹⁶ The EPBID was nominally established as a membership organization, with all owners of real property within the future BID boundaries designated as members.¹⁷ However, section 1.3 of the initial April 26, 2002, bylaws stated, "Members shall have no right to vote or to control the operations of the Corporation, but shall be called upon to share their ideas and suggestions for furthering the purposes of the Corporation."¹⁸

Councilmen DiCicco and Kenney sponsored Council Bill 020431 to designate the EPBID in June 2002.¹⁹ This district and the Port Richmond neighborhood improvement district were the first two designated under the 1998 Community and Economic Improvement Act, which provides for collection of the special assessments by municipal governments and management of the districts by nonprofit organizations, rather than by the specially created municipal authorities responsible for their own collections provided for by previous statutes.²⁰ The annual assessment levy was to be 20% of regular property taxes, collected by the city and turned over to the EPBID.²¹ The projected first-year levy was \$125,475, which was to be collected

15. Phila., Pa., Ordinance No. 020431 (Dec. 17, 2002).

16. See *Hearing on Bill No. 020431 Before the Comm. on Rules (Phila., Pa. Sept. 18, 2002)* [hereinafter *Hearing on Bill No. 020431*] (statement of Albert Masino, President, EPBID), available at <http://legislation.phila.gov/transcripts/Public%20Hearings/rules/2002/ru091802.pdf>.

17. Rubin, *supra* note 6; Telephone Interview with Renee Gilinger, Executive Dir., EPBID (Feb. 10, 2010).

18. Phila., Pa., Ordinance No. 020431 §1.3 (Dec. 17, 2002).

19. See PHILA., PA. CITY COUNCIL, LEGIS. FILE ID 020431 (2002), available at <http://legislation.phila.gov/detailreport/?key=2194>.

20. 53 PA. CONS. STAT. ANN. § 18104 (2010). See generally GÖKTUĞ MORÇÖL & PATRICIA A. PATRICK, *Business Improvement Districts in Pennsylvania*, in BUSINESS IMPROVEMENT DISTRICTS: RESEARCH, THEORIES, AND CONTROVERSIES 289 (Göktuğ Morçöl, et al. eds., 2008) (discussing Pennsylvania's multiple BID statutes).

21. Phila., Pa., Ordinance No. 020431 ex. A, at 5 (Dec. 17, 2002).

from the 296 taxable properties among the 300 designated as part of the EPBID.²² The EPBID boundaries included eleven large properties on South Broad Street at the southeast end of the district, which each had a levy liability at least three times greater than the district-wide average and collectively were liable for 21% of the total levy.²³

At a September 18, 2002, rules committee hearing on the bill, three members of the EPBID board and a handful of other affected property owners testified in favor of the bill and the proposed operating plan for the EPBID.²⁴ Councilman DiCicco noted in his remarks at the hearing that the EPBID proposal was unusual for Philadelphia BIDs because there was no significant opposition to its designation, although he prefaced that observation with remarks about anonymous fliers accusing him of raising property taxes on East Passyunk Avenue.²⁵ Subsequent committee and council hearings generated some controversies among council members and city staff over general issues concerning the mechanics of the EPBID assessment collections and the technical differences between BIDs and the special service districts (such as the Center City and Manayunk districts) enabled by previous statutes.²⁶ There was no evident controversy specific to the EPBID, however, and the bill was unanimously adopted on December 5 and signed by Mayor John Street on December 17, 2002.²⁷

EPBID operations began in May 2003.²⁸ In addition to funding "personnel and administration," the initial budget and operating plan emphasized improvements in cleanliness and appearance (\$34,500 of the \$125,475 total budget), promotional activities (\$25,000), and working with Councilman DiCicco to explore the feasibility of a Passyunk–Center City shuttle bus (\$15,000).²⁹ The initial executive director, Robert Ravelli, was replaced in April 2004 by a

22. *Id.*

23. *Id.* at ex. A2.

24. *Hearing on Bill No. 020431, supra* note 16 at 47.

25. *Id.* at 12.

26. *Hearing on Bill No. 020431 Before the Comm. of the Whole* 44–45 (Phila., Pa. Oct. 17, 2002) (statement of Frank DiCicco, Councilman, Phila. City Council), available at <http://legislation.phila.gov/transcripts/stated%20meetings/2002/sm101702.pdf>.

27. See PHILA., PA. CITY COUNCIL, LEGIS. FILE ID 020431 (2002), available at <http://legislation.phila.gov/detailreport/?key=2194>.

28. Regina Medina, *Along Passyunk Ave. There's a BID-ding War*, PHILA. DAILY NEWS, (June 3, 2009), at 7F.

29. See Phila., Pa., Ordinance No. 020431 ex. A2 (Dec. 17, 2002).

local promotions firm, Unlimited Dimensions.³⁰ Revisions to the EPBID's bylaws—"restated" August 7, 2007, but described as being effective in May 2004—made several technical changes, including removal of the explicit denial of members' authority over organizational decisions.³¹ There is no evidence that any substantive changes in the EPBID's governance practices were intended or resulted from these bylaws revisions. At some point between 2002 and 2006, the City handed over the responsibility for collecting BID assessments to the EPBID.³²

By 2006, the EPBID was led by a new executive director, Matthew Rader. Under Rader's direction, the EPBID applied successfully to participate in the Philadelphia's state-supported Main Street Program, which provides technical and financial support, including \$50,000 per year for salaries and \$25,000 for façade improvements,³³ to designated commercial revitalization organizations that adopt the four-point "Main Street model" for commercial revitalization.³⁴ The Main Street approach typically involves significant measures of bottom-up self-governance and volunteer activity by business operators and property owners in a commercial district. Each of the four points—organization, promotion, design, and economic restructuring—is overseen by an active committee of business volunteers who work closely with the organization's staff and board to formulate and execute revitalization strategies and activities over time.³⁵ This type of self-governing structure can mobilize a district's stakeholders to contribute more energy and ideas to the revitalization or-

30. Kevin M. Smith, *Passyunk Slow to Flow*, S. PHILLY REV. (June 17, 2004), <http://www.southphillyreview.com/news/features/79693547.html> (last visited Nov. 8, 2010).

31. See Phila., Pa., Ordinance No. 090128 ex. A-4 (June 3, 2009).

32. The original ordinance establishing the EPBID stipulated that the city was responsible for collecting the BID assessments. Phila., Pa., Ordinance 020431 §4(d) (Dec. 17, 2002). However, the EPBID's financial statements for the year ending Dec. 31, 2006, indicated that "[t]he organization has taken over the billing and collection process from the City." Form 990, *supra* note 8.

33. *Hearing on Bill No. 080901 and Bill No. 090128 Before the Comm. on Rules 13-28* (Phila., Pa. Apr. 8, 2009) [hereinafter *Hearing on Bill No. 080901*] (statement of Renee Gilinger, Executive Director, EPBID), available at <http://legislation.phila.gov/transcripts/Public%20Hearings/rules/2009/ru040809.pdf>; Telephone Interview with Jim Flaherty, Senior Manager, Econ. Dev. Initiatives, Phila. Commerce Dep't (Dec. 10, 2009).

34. See *About Main Street*, NAT. TRUST FOR HIST. PRESERVATION, <http://www.preservationnation.org/main-street/about-main-street> (last visited Nov. 8, 2010).

35. See *Main Street: Coordinating Programs*, NAT. TRUST FOR HIST. PRESERVATION, <http://www.preservationnation.org/main-street/about-main-street/the-programs/coordinating-programs.html> (last visited Nov. 8, 2010).

ganization and to operate their individual businesses in ways that complement the collective revitalization efforts.³⁶

From its inception, the EPBID coordinated its services and activities closely with the CA.³⁷ The CA provided personnel and facilities for street cleaning and hanging holiday lights along the East Passyunk strip, augmenting the services funded and provided directly by the EPBID.³⁸ As of early 2010, the CA and its for-profit development subsidiaries continued to control about a dozen properties in the East Passyunk district.³⁹ In an April 8, 2009, city council rules committee hearing on the renewal of the EPBID, Gilinger testified that the CA's abrupt cessation of activities in early April 2009 introduced significant operational and financial challenges for the EPBID.⁴⁰

In 2009, the EPBID came to a turning point with Fumo's conviction⁴¹ and the attendant collapse of the CA in April of that year.⁴² The EPBID subsequently entered an extended developmental moment, which continues at this writing. The developmental moment began with the EPBID's reauthorization—introduced before the council on February 26, 2009, passed unanimously on September 17, 2009, and signed by Mayor Michael Nutter on September 23, 2009—included the EPBID's success in adjusting to the CA collapse, and will continue with the work of repositioning the organization and East Passyunk Avenue.⁴³

36. See Jonathan B. Justice, *Business Improvement Districts, Reasoning, and Results* 354–56, 390 (2003) (unpublished Ph.D. dissertation, Rutgers University) (on file with author).

37. See Rubin, *supra* note 6.

38. See Form 990, *supra* note 8.

39. Telephone Interview with Renee Gilinger, *supra* note 17.

40. See *Hearing on Bill No. 080901*, *supra* note 33 (statement of Renee Gilinger, Executive Director, EPBID); Chris Brennan, *Citizens Alliance Soldiers On: But Future is Uncertain for Fumo-Founded Nonprofit*, PHILA. DAILY NEWS, July 14, 2009, at 7.

41. In March 2009, Fumo was convicted on 137 counts of corruption and sentenced to 55 months in prison. See Joseph A. Slobodzian, Emilie Lounsberry & Robert Moran, *Fumo Guilty on All Counts; Must Post \$2 Million Bail*, PHILA. INQUIRER, Mar. 16, 2009; Maryclaire Dale, *Fumo Gets Less Than 5 Years in Prison*, 6 ABC ACTION NEWS (July 15, 2009), <http://abclocal.go.com/wpvi/story?section=news/politics&id=6913871>.

42. See Emilie Lounsberry & Craig R. McCoy, *Longtime Fumo Aide Arnao Breaks With Boss*, PHILA. INQUIRER, July 17, 2009, at A1; Regina Medina, *Ex-Fumo Aide Departs Passyunk Board*, PHILA. DAILY NEWS, Apr. 16, 2009, at 5.

43. Phila., Pa., Ordinance No. 090128 (Sept. 23, 2009).

IV. THE DEVELOPMENTAL MOMENT

In repositioning itself for the future, the EPBID will encounter the specific challenges and opportunities associated with the perceived and actual political and organizational legacies of Senator Fumo, its status as one of Philadelphia's eight participating Main Street organizations, and its reauthorization. Some of the political and organizational challenges are evidenced in the transcripts of the two hearings before the Council's Rules Committee in 2009, in the text of the adopted reauthorization ordinance, Bill No. 090128, and in contemporary news coverage.⁴⁴

The first rules committee hearing on the EPBID's reauthorization, on April 8, 2009, was distinctly contentious, as evidenced by the transcript. Evidence of opposition to renewal of the EPBID among East Passyunk property owners and business operators was provided indirectly by Andy Frishkoff, the Philadelphia Commerce Department's Director of Neighborhood Economic Development, in response to questioning by City Council President Anna C. Verna.⁴⁵ Asked directly by Verna whether any affected property owners had objected to the continuation of the district, Frishkoff responded, "I have heard that they have. . . . I think that there have been communications to Council concerning both support and opposition."⁴⁶ More direct evidence came in the form of vehement testimony by five commercial stakeholders in the district opposed to the reauthorization. The 144 relevant pages of hearing transcript often note "[i]ndiscernible; parties talking over one another," and that a number of remarks drew applause.⁴⁷

The EPBID's opponents complained in their testimony about what they described as the EPBID's organizational secrecy, lack of democracy and accountability, and ineffectiveness. Some of their testimony was undercut by questioning and comments from Councilmen DiCicco and Kenney. For example, shoe store owner George Pasquarello complained that he got no value from the EPBID in return for his payments, but acknowledged in response to questioning by Councilmembers Verna, DiCicco, and Kenney that he had refused since the EPBID's inception to pay his \$300 annual special assessment bills, declined to participate actively in the Main Street

44. See, e.g., Medina, *supra* note 28.

45. *Hearing on Bill No. 080901*, *supra* note 33, at 6-9 (statement of Andrew Frishkoff, Director of Neighborhood Econ. Dev., Phila. Com. Dep't).

46. *Id.* at 8-9.

47. *Id.* at 79, 85, 87, 97, 99, 109, 112-14, 120, 127, 129-32.

committees, and that his operating hours were ill-adapted to his location.⁴⁸ Bicycle store owner Michael Miraglia suggested that he had been threatened by the EPBID director, Gilinger, and by Councilman DiCicco; he appeared to accuse Councilmen DiCicco and Kenney of political intimidation and inappropriately profiting from their involvement with the EPBID and the CA, but Miraglia became inarticulate in the face of aggressive questioning by the councilmen.⁴⁹

During the April hearing, Councilman DiCicco indicated his intent to propose an amendment that would “give protections as best we can” to property owners concerned that their assessments, set by ordinance at 20% of their regular tax bill, would be driven up by anticipated increases in property valuations and the general tax rate.⁵⁰ This amendment fixed the EPBID assessment levy at 20% of “the amount of the real estate tax bill that was sent out in December 2008 for all commercial and industrial properties within the proposed area.”⁵¹ This provision effectively froze the EPBID’s assessment revenue for the full ten-year renewal period, although by the end of that term, annual operating costs will likely have increased by 22–34%, assuming inflation averages 2–3% annually over the period. Adjusted for the effects of a successful tax appeal in 2009 by Saint Agnes Continuing Care, the total assessment levy will be about \$172,000 per year through 2019.⁵² This is less than the \$177,664 reported levy for 2008, but still well above the \$125,355 initial 2002 levy, even when adjusted for inflation to 2009.

At the June 3, 2009, rules committee hearing, Ed Kirlin, a resident of South Philadelphia and self-described “participant in an ad hoc committee on East Passyunk Avenue,”⁵³ offered testimony. Recounting what he described as a May 6 meeting of shop owners concerning EPBID bylaws, Kirlin offered several proposals for amendments, including the election of the board by members, elimination

48. *See id.* at 71–96.

49. *Id.* at 125–46.

50. *Id.* at 10, 38–40, 145.

51. *See* Phila., Pa., Ordinance No. 090128 ex. A-4, at 10 (Sept. 23, 2009).

52. Confirmation of the tax appeal was provided by Renee Gilinger. E-mail from Renee Gilinger, *supra* note 5. For one account of the astonishingly poor quality of tax assessments performed by Philadelphia’s Bureau of Revision of Taxes, see Anthony R. Wood & Dylan Purcell, *Real Estate Roulette*, PHILA. INQUIRER, June 22, 2008, at A1.

53. *Hearing on Bill No. 090128, Bill No. 090169, Bill No. 090170, Bill No. 090348, Bill No. 090349, Bill No. 090380, and Bill No. 090392 Before the Comm. on Rules 4* (Phila., Pa. June 3, 2009), (statement of Ed Kirlin, resident and ad hoc committee member), available at <http://legislation.phila.gov/transcripts/Public%20Hearings/rules/2009/ru060309.pdf>.

of one of the two city council representatives on the board, assurance of board representation for owners of the most highly assessed properties, and other seemingly not unreasonable modifications.⁵⁴ DiCicco quickly ended the matter by pointing out that Kirlin did not own property affected by the EPBID and could not document a formal role as the representative of one or more affected property owners.⁵⁵ The governance question was not further addressed at this or other hearings on the bill.

While fifty-five property owners had registered objections to the EPBID's renewal by June 3, 2009,⁵⁶ the July 20, 2009 deadline for filing apparently came and went with neither formal objections from a majority of property owners nor from the owners of the properties comprising a majority of the EPBID's assessed valuation. No further controversy concerning the EPBID's renewal arose between June 3 and the final adoption of the bill in September 2009.

V. CURRENT STATE OF AFFAIRS

In the words of a local news account, "Passyunk Avenue, revitalized with Fumo's help, is now moving on without him."⁵⁷ The commercial strip appears healthy, with few conspicuous vacancies. An attractive mix of old and new businesses includes both neighborhood-oriented establishments as well as restaurants and other businesses drawing trade from outside the immediate neighborhood.⁵⁸ One Philadelphia staff person who works closely with the EPBID recently described the EPBID organization as effective and well-managed with a motivated staff capable of "providing [the services] they were supposed to provide" in order to direct and revitalize the business district.⁵⁹ The immediate operational challenge presented by the CA's cessation of operations in April 2009 was met successfully, with the EPBID taking over the key services formerly provided by the CA.⁶⁰

The 2009 rules committee transcripts and news accounts do not indicate opposition—either in kind or extent—that is unusual for

54. *Id.* at 5–7.

55. *Id.* at 8–10.

56. *See* Medina, *supra* note 28.

57. *See* Brennan, *supra* note 40, at 7.

58. Based on the author's on-site observations in December 2009 and January 2010.

59. Telephone Interview with Jim Flaherty, *supra* note 33.

60. *See* E-mail from Renee Gilinger, *supra* note 5; *Hearing on Bill No. 080901*, *supra* note 33 (statement of Renee Gilinger, Executive Director, EPBID).

even successful BIDs of similar scale to the EPBID.⁶¹ The BID designation, with its promise of up to \$172,000 in annual assessment funds, has been extended to 2019, and the EPBID additionally enjoys the resources that come with its official Main Street status, including \$50,000 per year for salaries and \$25,000 for façade improvements.⁶² The four committees of the Main Street Program—organization, promotion, design, and economic development—maintain an active schedule of monthly meetings which are publicized on the EPBID website.⁶³

VI. EVALUATION

On balance, the opportunities presented by the current developmental moment are more salient than the challenges, although those will have to be addressed in time as well. With its operations and staffing now stable and functioning well, the EPBID has the opportunity to become known more for its revitalization work than for its perceived association with former State Senator Fumo, as well as the opportunity to enlarge stakeholder consensus and support through the Main Street organizational model. Three immediately evident challenges are financial in nature. The frozen assessment levy and the need to compensate for the loss of in-kind support from the CA are specific to the EPBID, while the relatively low collection rate for the assessment levy is likely a problem shared with Philadelphia's other BIDs as well as Philadelphia's municipal-authority BIDs.

The CA's inactivity has required the EPBID to assume greater responsibility for supplemental sanitation and beautification in the district. In the short term, this has been managed by finding "ways to save money" within the resources currently available.⁶⁴ Over time, however, it may require the EPBID to find additional resources in order to restore its full, pre-2009 level of revitalization activities. In the short term, the challenge may be further compounded by the effects of the current economic downturn on the availability of grants and other nonassessment contributions. Over the long

61. See Justice, *supra* note 36 (demonstrating similar cleavages between restaurateurs and merchants, between old-line retailers and newer business people, and among factions formed sometimes on the basis of personal preference in two member-governed and two municipally managed BIDs in New Jersey).

62. See E-mail from Renee Gilinger, *supra* note 5; *Hearing on Bill 080901*, *supra* note 33, at 17 (statement of Renee Gilinger, Executive Director, EPBID).

63. See *Volunteer*, EPBID, <http://www.visiteastpassyunk.com/volunteer.htm> (last visited Nov. 8, 2010).

64. E-mail from Renee Gilinger, *supra* note 5.

term, it will be exacerbated by the freezing of the assessment levy for the next decade at a level slightly less than that of 2008, even before taking into account inflation going forward.

Further, the EPBID has historically collected no more than 85% of its total assessment levy, with some property owners apparently never having paid their assessments.⁶⁵ News reports, documents, and interviews are inconclusive as to whether the historically closed governance structure and presumed close control of the EPBID by Fumo and his associates has been a cause of the relatively low assessment collection rate or the only thing preventing it from being even lower. There does not appear to be any strong prospect that the City will begin aggressively enforcing liens placed for nonpayment or resume direct responsibility for collecting the BID assessment.

These financial challenges are neither exceptional nor particularly threatening for the EPBID and its stakeholders, but they are likely to be sufficiently constraining that some thought should be given to addressing them. Certainly, a number of responses are available, such as accessing additional sources of non-assessment revenue and/or in-kind contributions to the EPBID's activities, revising the city council authorization for the EPBID to allow increases in the levy amount, and finding some means to increase levy collection rates. All of these might well be facilitated by pursuit of the available opportunities to improve external and stakeholder perceptions of the EPBID through ongoing revitalization work and to increase stakeholder engagement through continuing development of the volunteer-driven Main Street approach.

The recent suspension of the CA's activities may make seizing those opportunities not only necessary and appropriate as means to secure material support for the organization and its work, but also more feasible to the extent it has pushed the EPBID to operate autonomously. Certainly, it seems reasonable to expect that the organization's independence going forward could increase its legitimacy in the eyes of some potential external partners and resource contributors. Internally, the Main Street model of organization and resource mobilization, with its reliance on bottom-up self governance, has proven effective in a wide variety of settings where independent business owners are numerous, as in the EPBID.⁶⁶ The evidence

65. See *supra* note 8 and accompanying text.

66. For a variety of research findings and anecdotes of success, see *Main Street*, NAT. TRUST FOR HIST. PRESERVATION, <http://www.preservationnation.org/main-street/> (last visited Nov. 8, 2010).

suggests that the EPBID's original organizational model and governance structure made sense at the time when viewed from an instrumental perspective of advancing the interests of most, if not all, of East Passyunk Avenue stakeholders. In light of the changes of the past couple of years, now might be the best moment for the EPBID to move to a fully bottom-up governance model.

What cannot be determined with certainty, however, is whether the potential improvements to organizational legitimacy would actually result in greater compliance with assessment collections, external support, and involvement by holdouts in EPBID activities, let alone better revitalization results compared to a return to the status quo (if such a thing were possible). Further, given the EPBID's modest cost and lack of strong coercive authority, it is not obvious that the EPBID's former governance arrangements—however unappetizing they may seem to a proponent of developmental democracy—threatened district stakeholders' material interests or regard for the organization more than a "democratic" organization with a similar financing structure would have. Indeed, the stakeholder discontent shown in newspaper accounts,⁶⁷ and the rules committee hearings in 2009, do not seem significantly different from that displayed by stakeholders in some fully member-governed BIDs.⁶⁸

VII. CONCLUSION

The EPBID was created, and for several years operated, as an integral part of a famously powerful South Philadelphia political machine. Although a number of outsiders and stakeholders over the years criticized its governance arrangements and affiliations, it has been a constructive and cost-effective organization by the standards of similarly-situated neighborhood and Main Street-type BIDs. At least in terms of most commercial stakeholders' and the immediate neighborhood's material interests, the EPBID can be considered successful to date; it seems likely that alternative arrangements would have been, at best, difficult to devise and maintain, and no more effective. The commercial district and its revitalization organization both appear healthy today.

The current developmental moment began with two contemporaneous, but unrelated developments: the conviction of Senator Fumo,

67. See, e.g., Smith, *supra* note 30 (noting that "some business owners . . . view [the EPBID] as a disappointment and a waste of their money"); Medina, *supra* note 28 (noting that fifty-five property owners do not want the EPBID renewed).

68. See Justice, *supra* note 36.

and the shuttering of the CA, as well as the renewal of the BID designation. This convergence of events may present the EPBID and its stakeholders with an opportunity to reposition the organization as a way to ensure continuing success. Among business stakeholders, a vigorous focus on transparency and responsiveness might increase support for, and involvement with, the organization and its work. For at least some external constituencies, visible pursuit of progressive reform and banishing the influence of the political machine in favor of demonstrably “good” and “democratic” governance might similarly enhance support. What remains to be seen is whether this kind of visible reform, if adopted, will serve East Passyunk Avenue as effectively in the future as the EPBID and related efforts have served to date.