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MEMORANDUM FOR Pagosa Springs Urban Renewal Authority ("PSURA"), 551 Hot Springs Blvd., Pagosa Springs, CO, 81147

SUBJECT: Letter in Response - Declaratory Judgment (August 13, 2020)

1. This memorandum is regarding questions concerning Article 9, Section 9.19 of the Home Rule Charter, which reads as follows:

"ANY PROPOSAL BY THE TOWN COUNCIL OR BY THE PAGOSA SPRINGS URBAN RENEWAL AUTHORITY TO USE TAX INCREMENT FINANCING (TIF) MUST FIRST BE APPROVED BY THE TOWN ELECTORS WHENEVER THE TOTAL TIF REVENUES ARE EXPECTED TO EXCEED \$1 MILLION (\$1,000,000) OVER THE LIFE OF THE PROJECT."

2. Please refer to the attached memorandums 'Letter in Response – URA Petition Election' and 'Implications of Ordinance No. 932 – URA Voter Requirement' for background.

3. The PSURA has requested answers to multiple questions regarding Article 9, Section 9.19 of the Home Rule Charter that will be addressed in the following paragraphs.

a. Is it within the purview of the Town Council to initiate filing for a Declaratory Judgment on the legality of the language in Ballot Question A? Does there have to be a plaintiff?

i. Yes. Colorado Revised Statute ("C.R.S.") § 13-51-106, states that "Any person...whose **rights, status**, or other legal relations are **affected by** a statute, **municipal ordinance**, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder." C.R.S. § 13-51-106 defines "person" as "any person, partnership, joint stock company, unincorporated association, or society, or **municipal or other corporation** of any character whatsoever.

ii. Yes. Yes, there must be a moving party usually labeled as "plaintiff" or otherwise as "petitioner." However, it isn't always necessary that there be a plaintiff/petitioner moving against an adverse defendant/respondent, but there must be a resolvable controversy.

b. Or, since the Town Council is in possession of sufficient information to have a reasonable belief to question the validity of the ballot language, is that enough to proceed on its own?

See paragraphs a.i. and a.ii. above.

c. If it's true that a plaintiff is not needed and declaratory relief can be requested, are we correct in assuming that since this is now a question about the validity of an amendment to the

Town Charter, the PSURA does NOT have standing to pursue a Declaratory Judgement? It has to be the Town Council, right?

i. No. The PSURA does have standing as a body corporate and politic of the State of Colorado organized and existing pursuant to Colorado’s Urban Renewal Law §§ 31-25-101, et seq. The PSURA may also claim an interest in a declaratory judgment action concerning Article 9, Section 9.19 of the Home Rule Charter brought by a third-party pursuant to Colorado Rules of Civil Procedure (“C.R.C.P.”) Rule 57(j).

ii. No. If Town Council were the moving party for a declaratory judgment action concerning Article 9, Section 9.19, it would effectively establish the Town Council as both Plaintiff and Defendant. C.R.C. P. 57(j) states, “When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party and is entitled to be heard, and, if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and be entitled to be heard.”

d. Where in the process does the vote take place for TIF?

The vote takes place when the Town Council approves the URP in Phase 2, Step 7 of the PSURA Redevelopment Process. Please see ‘PSURA Redevelopment Process Overview’ document attached. NOTE: TIF is predominantly paid to developers in percentages of the increment, thus it isn’t usually possible to determine a fixed amount of TIF funding for a project.


e. Where can TIF money be spent? Can we get an exhaustive list of the public infrastructure opportunities?

i. TIF can be spent wherever an Urban Renewal Plan (“URP”) has been approved. A URP requires approval by the PSURA Board, Town Planning Commission, and Town Council.

NOTE: It is important to understand that TIF money is not a pot of money waiting to be spent. TIF is a future funding source made up of increases in ad valorem property taxes and/or municipal sales taxes within an URP area. Urban renewal projects lead to increased property value and business activity, which in turn causes a rise in property, sales and other taxes collected by taxing authority/local government. The increased revenue is known as the “increment,” and the revenue that was being generated prior to redevelopment is the “base.” The taxing authority continues to collect the base and the increment revenue is shared per agreement with the developer.

ii. Public infrastructure opportunities are those identified by PSURA and that are located in a URP area. The expense of redeveloping or building new public infrastructure is often preventative, as public infrastructure improvements usually involve large initial costs but generate long-term benefits. However, TIF allows for financing by capturing the long-term revenue often generated by public infrastructure. PSURA can use TIF to fund water, sewage, roads, and other public utilities within URP areas.

3. POC for this Memorandum is the undersigned at cbuchner@pagosasprings.co.gov.



Clayton M. Buchner, J.D.

Encls

1. PSURA – Redevelopment Process Overview
2. Letter in Response – URA Petition Election
3. Implications of Ordinance No. 932 – URA Voter Requirement