

December 16, 2021

MEMORANDUM

To: Commissioners of the Pagosa Springs Urban Renewal Authority (PSURA)

From: Jeff Posey, PSURA Commissioner
Greg Schulte, PSURA Commissioner and Vice-Chair

Re: Town of Pagosa Springs Charter Amendment Options and Recommendation

Background: At the October 11 PSURA meeting, there was discussion as to whether a ballot measure regarding the PSURA should be placed on the April 2022 municipal election in an attempt to resolve the likely illegal status of the 2020 Charter Amendment requiring that any project over \$1 million in tax increment financing (TIF) have approval of the project by the Town electorate. Several approaches were discussed, and there was a general consensus to explore possible revisions to the 2020 Charter Amendment with the proponents of said amendment. Commissioners Shari Pierce and Jeff Posey volunteered to initiate contact and report back to the full URA Board.

At the November 18 PSURA meeting, Commissioners Pierce and Posey reported they had not had the opportunity to reach out to the Amendment proponents and that due to future commitments Commissioner Pierce would be unable to assist with this effort in the near term. Commissioner Greg Schulte volunteered to partner with Commissioner Posey to document the options and endeavor to meet with the 2020 Charter Amendment proponents to determine if a middle ground could be found on a proposed ballot question in the April 2022 election. At the next PSURA meeting (December 16), the PSURA may consider making a recommendation to the Pagosa Springs Town Council regarding the placement of a ballot question related to the URA on the April 2022 municipal election.

After reviewing the information, we feel there are four possible approaches. A discussion of the four options, including a description and a pro and con analysis, is as follows:

Option #1 – Do Nothing

This option keeps the status quo with no recommended ballot question for the April 2022 municipal election.

Pros:

- Path of least resistance.
- No direct financial costs.
- No staff work implications.
- Implies the URA will wait for a plaintiff to solve the illegal 2020 Charter Amendment.

Cons:

- Doesn't address or solve the fundamental issue that the 2020 Charter Amendment is most likely illegal.
- Because of the lengthy process of using TIF, the very low dollar threshold embedded in the 2020 Charter Amendment, and the requirement of a vote of the general electorate to approve a TIF project, any project (including workforce housing) of meaningful size will continue to be deterred.
- The PSURA as a useful entity for the Town and greater community is greatly diminished.

Option #2 – Direct Legal Counsel to Seek Declaratory Relief

This option is to recommend that the Town Council direct the Town Attorney to file a motion for Declaratory Relief in regard to the Charter Amendment of 2020. Based upon the *Longs Peak Metropolitan District vs City of Wheat Ridge* decision and the nearly identical language in the 2020 Charter Amendment, there is a credible and reasonable belief that the Charter Amendment of 2020 is not legal. Seeking Declaratory Relief would ask our District Court Judge to render an opinion as a matter of law, one way or the other, as to the Charter Amendment's legality.

Pros:

- Quickest and cleanest way of answering the Charter Amendment's legality question.

Cons:

- Most expensive option, as it would require payment of legal fees to prepare and file the motion.
- Politically difficult for the Town Council as it would be portrayed as seeking to overturn a charter amendment approved by the electorate.
- This option would most certainly be opposed by the 2020 Charter Amendment proponents.

Option #3 – Placing a Ballot Question to Rescind the Charter Amendment of 2020

This option would be to recommend to the Town Council to place a ballot question at the April 2022 municipal election to simply rescind the Charter Amendment of 2020 in its entirety.

Pros:

- Quickest way of returning the powers and specified processes to the PSURA, as is intended by state statute.
- Reinstates certainty and predictability to the processes of approval and financing of TIF projects that would likely include workforce housing.

Cons:

- A significant and concerted effort would be required to communicate to the electorate as to why it's being suggested to overturn a Charter Amendment that was passed just two years earlier.

- Consequently, it would be necessary to support an organized campaign to educate the electorate and counter the false narrative provided by the original 2020 Charter Amendment proponents. This includes the probable illegality of the current Charter Amendment and that the illegal provisions of the 2020 Charter Amendment serve as deterrents to provide value to the Town and its residents through the statutorily intended powers of a URA.
- Misinformation during the campaign could serve as a distraction for mayor and council aspirants.
- This option would also most certainly be opposed by the 2020 Charter Amendment proponents.

Option #4 – Amending the 2020 Charter Amendment

The goal for this option, as first discussed at the Oct. 11 meeting, would be to put forth a new ballot question before the electorate that amends and revises the 2020 Charter Amendment in such a manner to remove the illegal requirements regarding the dollar amount threshold and project approval by a vote of the electorate. The new amendment would require projects availing themselves of tax increment financing to have community priority specified goals (e.g., workforce housing) incorporated into said project.)

Pros:

- The New Charter Amendment would direct community policy in a manner that requires projects that take advantage of TIF to provide the community benefit of expanded workforce housing or other specified community goals.
- The proposed New Charter Amendment has the potential of incentivizing the expansion of workforce housing, whereas the 2020 Charter Amendment *disincentivizes* projects of any material size, including workforce housing.
- The New Charter Amendment would be consistent with the desires expressed by our business community as well as our community anchor institutions (e.g., Town of Pagosa Springs, Archuleta County, Archuleta School District Joint 50, Pagosa Springs Medical Center, and others) that we all need to partner to expand and incentivize workforce housing.
- It would solve the question of the probable illegality of the current 2020 Charter Amendment.

Cons:

- It would require a clear communication campaign to educate the public as to the dual aspect of the New Charter Amendment. First, a clear and definitive statement that there is the belief that the 2020 Charter Amendment is not legally valid and needs to be rescinded and, at the end of the day, does not encourage workforce housing projects. Second, the New Charter Amendment has language that actually will be more likely to encourage the expansion of workforce housing which, after all, is what we *all really agree upon* and want to achieve. Let us be loud and clear: Without the PSURA Board and Town Council taking a clear and public stand and getting this message out with persistence, this effort will likely fail.
- It will cost some incremental fees for the Town Attorney to craft the new ballot question.
- Crafting the New Charter Amendment involves some significant policy questions about what kind of workforce housing component would be required. This would be a discussion that needs

to occur with the Planning staff, most likely the Town Planning Commission, and the various workforce housing advocates. All of that takes time, and the window for getting the ballot language finalized, approved by the Town Council, and off to the printers for the ballots is rapidly closing.

- Despite the fact that this approach would resolve the existing legal questions regarding the 2020 Charter Amendment, and that the New Charter Amendment would channel efforts in a more productive way for workforce housing, the 2020 Charter Amendment proponents may decide to oppose the New Charter Amendment.
- It's always an interesting philosophical question as to what is important to embed into the Town Charter, essentially the Town's Constitution, to settle an issue that might not be as relevant or pressing in future years. In the event that workforce housing is not as much of an issue in future years (seems hard to believe), then you have a requirement embedded in the Charter that may be hard to change.