

District Court Invalidates Wheat Ridge Anti-TIF Initiative

On September 8, 2017, a Jefferson County District Court ("Court") essentially struck down Ballot Question 300 ("BQ300"), approved by the Wheat Ridge ("the City") voters on November 3, 2015.

The ballot question was an amendment to the City Charter which required that any agreement to share tax increment revenues must be ratified by the Wheat Ridge City Council at a regularly scheduled public hearing, and, if the amount exceeds \$2.5 million, must be ratified by Wheat Ridge voters.

A challenge to the initiative was brought in the form of a declaratory judgment action by the Long's Peak Metropolitan District ("District"), which is a party to a Cooperation Agreement with the Wheat Ridge Urban Renewal Authority ("Authority"). The Cooperation Agreement included a pledge by the Authority to the District of incremental tax revenues. The District alleged that the measure could have the effect of invalidating its existing Cooperation Agreement, as well as make it more difficult, time consuming and costly to negotiate an additional agreement, which it is actively seeking. Both parties filed Motions for Summary Judgment, on which the Court ruled on September 8, 2017.

The Court first addressed the question of standing, and found that the District did properly allege an injury-in-fact to a legally protected interest sufficient to demonstrate standing. The Court also found that the matter was sufficiently "ripe" for it to enter judgment.

Most notably, the Court found that the fundamental subject matter at issue, namely the remediation of urban blight, was a matter of mixed local and state concern. The Court went on to conclude that, because BQ300 required additional procedures for approval of tax increment financing ("TIF") that are not required by the statute, BQ300 was in conflict with state law, and therefore invalid – at least to the extent it required the additional procedures.

The City argued that BQ300 only addressed the issue of "internal financial controls of the City," which is a matter of strictly local concern, not urban blight and TIF arrangements. The Court disagreed, and noted that "local ordinances which require an additional layer of local government and/or voter approval with regard to TIF deposited into the urban renewal authority's special fund necessarily restrict (and potentially eliminate) that authority's access to the funds intended to combat slums and blight." The Court noted the risk of a ripple effect, in which developers, seeking a receptive community in which to invest, might relocate a planned project from one community to another, thus triggering additional restrictions.

Ultimately, the Court found a clear operational conflict between the requirements of BQ300 and the specific language in the Urban Renewal Law, C.R.S. 31-25-101 et seq., which provides that urban renewal authorities have the power to enter into contracts, execute instruments, and take a broad variety of actions in furtherance of the goals of an urban renewal plan.

The Court allowed to stand the portion of BQ300 which required that an urban renewal plan be adopted in a public hearing before the City Council, because that requirement is consistent with a requirement that already exists in

September 19, 2017

the Urban Renewal Law. And the Court stopped short of declaring that the entirety of BQ300 was valid and unenforceable.

Of note, a group of citizens in Arvada are currently collecting signatures on a petition to place a measure before Arvada voters that is very similar to BQ300. The Arvada measure includes the same requirement that both City Council and voters approve TIF Agreements of more than \$2.5 million, with the additional requirement that neither the City nor the Authority may sell or transfer property, the appraised value of which is more than \$1 million, unless ratified by City Council and a vote of the people.

It is unclear how the Court's recent decision will affect the Arvada measure. To the extent the Arvada measure is the same as BQ300, however, it is likely to be found similarly invalid.

Carolynne C. White

Shareholder

cwhite@bhfs.com

303.223.1197

Kim Seter, of Seter and Vander Wall, represented the District in successfully prosecuting this litigation.

This document is intended to provide you with general information regarding Jefferson County District Court's ruling on Ballot Question 300. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.