

Curly Haugland  
PO Box 1473  
Bismarck ND 58502

February 26, 2010

Mayor John Warford  
PO Box 5503  
Bismarck ND 58506-5503

**Re: Approval of Proposed 6<sup>th</sup> Street Parking Ramp**

Dear Mayor Warford:

I am writing to express my concerns over the proposed use of Tax Increment Finance funds for the proposed 6<sup>th</sup> Street Parking Ramp project. As is set forth below, I do not believe the City has followed the appropriate legal steps for the use of TIF funds to be used for this project.

Bismarck City Ordinance Chapter 7-08 creates a local Renaissance Zone Authority and also attempts to create "an urban renewal agency" as defined by N.D.C.C. § 40-58-16. (Code of Ordinances, City of Bismarck ("Code") § 7-08-02.) In that regard, the Code provides:

The Bismarck Renaissance Zone Authority shall act as an urban renewal agency as defined by NDCC Section 40-58-16 for the purpose of holding public hearings as required by NDCC Section 40-58-06. The Bismarck Renaissance Zone Authority may consider renewal plans submitted to it pursuant to the North Dakota Century Code or applications for CORE Incentive programs established by the Board of the City Commissioners. All decisions of the Bismarck Renaissance Zone Authority acting as an urban renewal agency must be approved by the Board of City Commissioners and are subject to the appeal provisions of Section 7-08-01(2).

This provision was adopted by the City Commission on December 8, 2009.

The Bismarck Renaissance Zone Authority, however, cannot act as a renewal agency because it has too many members. The Century Code mandates a renewal agency have five members. (N.D.C.C. § 40-58-16(2) "the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency which must consist of five commissioners.") According to the minutes of the most recent Renaissance Zone Authority meeting, the Renaissance Zone Authority has more than five members.

The Bismarck Renaissance Zone Authority also cannot act as a renewal agency because the City has failed to properly appoint renewal agency commissioners according to North Dakota Law. The City Commission minutes indicate that the City Commission only approved the appointment of Mr. George

Keiser and Mr. Chuck Huber (for three year terms). By statute, the term for commissioners on the renewal agency is one year. N.D.C.C. § 40-58-16(2). It does not appear that any other renewal agency commissioners were appointed or approved since the City adopted the new ordinance. The statute requires that a "certificate of the appointment or reappointment of any commissioner must be filed with the clerk of the municipality . . ." N.D.C.C. § 40-58-16(3). If such certificates have in fact been issued, please send me a copy.

More importantly, the renewal agency is not authorized to conduct notice and hearings on behalf of the City Commission for purposes of amending the City's Urban Renewal Plan. N.D.C.C. § 40-58-06(3) provides:

The governing body shall hold a public hearing on a development or renewal plan or substantial modification of an approved plan, after public notice of the hearing is provided by publication in a newspaper having a general circulation in the area of operation of the municipality. The notice must describe the time, date, place, and purpose of the hearing, generally identify the development or renewal area covered by the plan, and outline the general scope of the development or renewal project under consideration.

The Ordinance indicates the Renaissance Zone Authority ("urban renewal agency") is created "for the purpose of holding public hearings as required by NDCC § 40-58-06." The notice and hearing requirements of N.D.C.C. § 40-58-06(3), however, cannot be delegated to an urban renewal agency. An urban renewal agency may only exercise "urban renewal project powers." N.D.C.C. § 40-58-15(1). The statute specifically indicates that the notice and hearing requirements are not "urban renewal project powers" that can be delegated by the City. N.D.C.C. § 40-58-15(2) provides:

As used in this section, the term "urban renewal project powers" includes the rights, powers, functions, and duties of a municipality under this chapter, except the following:

- a. The power to determine an area to be industrial or commercial property or a slum or blighted area or combination thereof and to designate the property or area as appropriate for a development or renewal project;
- b. The power to approve and amend development or renewal plans and to hold any public hearings required with respect to those plans;
- c. The power to establish a general plan for the locality as a whole;
- d. The power to formulate a workable program under section 40-58-04;
- e. The powers, duties, and functions referred to in section 40-58-18;
- f. The power to make the determinations and findings provided for in sections 40-58-03 and 40-58-05 and

- subsection 4 of section 40-58-06;
- g. The power to issue general obligation bonds; and
- h. The power to appropriate funds, to levy taxes and assessments, and to exercise other powers provided for in subsection 8 of section 40-58-07.

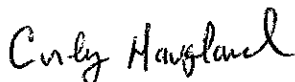
(Emphasis added.)

It is my understanding that the renaissance Zone Authority met on January 13, 2010, and purported to hold a public hearing on the proposed 6<sup>th</sup> Street Parking Ramp Project and on February 10, 2010, to amend the Urban Renewal Plan. As indicated above, the Zone Authority is not authorized to “approve and amend development or renewal plans” or “to hold any public hearings required with respect to those plans.” N.D.C.C. § 40-58-15(2).

It appears that the City Commission has now voted to approve the Zone Authority’s actions without holding a properly noticed public hearing as required by North Dakota law. As such, it is my belief that the urban renewal plan has not been properly amended to add the parking ramp project.

I urge you to review this matter and take the necessary steps to comply with all applicable legal requirements.

Sincerely,



Curly Haugland

c: City Commissioners:  
Parrell Grossman  
Steve Schwab  
Mike Seminary  
Connie Sprynczynatyk

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