



Iowa General Assembly

2016 Legal Updates

Legislative Services Agency – Legal Services Division

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Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

URBAN RENEWAL TAX INCREMENT FINANCING

Filed by the Iowa Supreme Court

April 22, 2016

Concerned Citizens of Southeast Polk School District v. City of Pleasant Hill

No. 14-1362

http://www.iowacourts.gov/About_the_Courts/Supreme_Court/Supreme_Court_Opinions/Recent_Opinions/20160422/14-1362.pdf

Background and Procedure. In 1994, the Pleasant Hill City Council (City) established an urban renewal area (URA) commonly referred to as the “Copper Creek URA” and an urban renewal plan (Plan) for the Copper Creek URA. The Plan generally provided it would remain in effect for 20 years. The City also passed an ordinance for tax increment financing (TIF) purposes within the Copper Creek URA. In 1995, the City created a second URA known as the “Industrial URA,” and simultaneously passed an ordinance for TIF purposes in the Industrial URA. In 2000, the City created a third URA, known as the “East URA” with a corresponding TIF ordinance. In 2006, the City consolidated the Industrial URA and the East URA into the Copper Creek URA, which had been renamed the Pleasant Hill URA.

Additionally, the Plan was amended to cover the consolidation and some property that had not previously been covered by any of the three URAs was added to the newly consolidated Pleasant Hill URA. The consolidated Pleasant Hill URA, like its predecessors, was an economic development area, not a slum or blighted area. In June 2013, the City annexed 238 acres on the east edge of the City and by resolution established a new economic development URA largely consisting of the newly annexed property. Additionally, the City amended the consolidated Plan to incorporate the just-created URA into the existing Pleasant Hill URA (Amended Plan). In addition to specifications for the types of projects to be completed on the newly annexed property, the Amended Plan purported to extend the life of the original Copper Creek URA for 20 more years. The City’s intention was to use TIF revenue from the old Copper Creek URA to subsidize the street improvements and other infrastructure in the newly added areas of the consolidated Pleasant Hill URA.

On July 22, 2013, Concerned Citizens of Southeast Polk School District (Concerned Citizens), a nonprofit entity comprised of residents of the Southeast Polk School District, filed a petition for a writ of certiorari and for a declaratory judgment and an injunction to prevent both the annexation and the Amended Plan from taking effect. The City filed a motion for summary judgment on three issues: (1) the 2013 resolution illegally extended the Copper Creek URA for an additional 20 years; (2) the 2013 resolution unlawfully allowed TIF funds from the original Copper Creek URA to support projects outside that URA; and (3) the resolution failed to conform with the City’s 2005 Comprehensive Development Plan (Comprehensive Development Plan). The district court granted the City summary judgment on the first issue. The district court reasoned that because the Copper Creek URA was established before January 1, 1995, it was not subject to the 20-year statutory sunset in the Iowa Code. The district court also granted summary judgment to the City on the issue of whether TIF revenues from the original Copper Creek URA could be used outside that URA. Finding genuine issues of material fact, the district court denied summary judgment on the third issue of whether the June 2013 resolution conformed with the Comprehensive Development Plan. However, after conducting a trial the following month, the district court found that the City had not violated its own Comprehensive Development Plan. Both Concerned Citizens and the intervenor, Southeast Polk School District, appealed. The Court of Appeals affirmed, generally agreeing with the district court’s analysis. The Iowa Supreme Court (Court) granted further review.

Issues. Concerned Citizens claim the Amended Plan violates Iowa law because it unlawfully extends the duration of a

TIF area, unlawfully uses revenue from that TIF area to support development in other parts of the City, and fails to conform to the terms of the Comprehensive Development Plan.

Arguments and Analysis.

Copper Creek URA Extension. Iowa Code section 403.17(10) limits a TIF division of property tax revenue based upon an economic development determination to 20 years. This duration limit was added in 1994 and specifically applies to urban renewal plans approved on or after January 1, 1995. Concerned Citizens asserted that the use of the word “plans” in that provision means that once a plan was amended, particularly when the amendment involved the consolidation of various URAs, any grandfathering ended and the 20-year limit applies. Conversely, the City argued that because the 1994 legislation only required that the plan have been approved before January 1, 1995, and because Iowa Code section 403.5 expressly permits the modification of plans after they have been approved, the pre-amendment existence of the plan is what matters and the plan can later be amended without affecting the grandfathered status of any URA utilizing a TIF arrangement that was established before 1995. An even more assertive oral argument was made by the City that would allow a city to amend a plan to subject more territory to a TIF arrangement and thereby avoid the 20-year limit within any of the territory, if the original plan had been approved before 1995. The Court noted the City’s logical concession in its written brief on this issue that such an interpretation “would violate the law” if the TIF allocation were extended beyond the 20-year limit in any part of the Pleasant Hill URA other than the original Copper Creek URA.

The Court reasoned that because an urban renewal plan cannot exist without a URA, the sunset provision is tied to a URA. Consequently, if the sunset provision is tied to a URA, the Court found it is reasonable that the grandfathering exception would also be tied to a URA, and in this case the specific territory of the URA approved before 1995. The Court also noted a clear intent to grandfather existing URAs, as opposed to grandfathering all URAs set up by a municipality just because the municipality had approved one economic development urban renewal project before the deadline. The Court further supported this conclusion by noting that the Legislature did not construct the 20-year limit to take effect immediately but gave municipalities until January 1, 1995, to operate under the old law.

The Court also analyzed the Copper Creek URA’s extension in light of the City’s use of TIF property tax revenues within the newly consolidated URA. Iowa law does not prohibit a municipality from combining tax revenues within the combined URA to fund a new project. Such a practice was upheld in *Fults v. City of Coralville*, 666 N.W.2d 548 (Iowa 2003). However, once the City consolidated URAs, the original Copper Creek URA no longer existed. According to the Court, the City’s 2006 action was not a mere formality but had the desired legal effect of allowing the City to use TIF revenue from the Copper Creek URA outside the boundaries of the Copper Creek URA. The Court also dismissed the City’s attempt to argue how a URA can cease to exist as a separate area for TIF revenue sharing purposes and yet have its life extended seven years later as a separate area for grandfathering purposes. The Court found no basis in Iowa Code chapter 403 that would allow a URA to both continue as it was and be consolidated at the same time. Accordingly, the Court held that the City could not by adoption of the 2013 Amended Plan legally extend the June 1994 version of a URA that no longer existed.

Use of TIF Revenues Outside of Copper Creek URA. The Court relied on *Fults* to conclude that the City is authorized to use TIF revenue from the old Copper Creek URA to fund street improvements and construction and other aspects of economic development outside the Copper Creek URA boundaries following the consolidation of the various URAs.

Compliance with Comprehensive Development Plan. Iowa Code chapter 403 requires that an urban renewal plan conform to the general plan for the municipality as a whole. In this case, the City’s general plan is its Comprehensive Development Plan. Concerned Citizens argued that the Amended Plan was inconsistent with the Comprehensive Development Plan. According to Concerned Citizens, the City’s 2013 Amended Plan contemplated a light industrial warehouse development with related street improvements and construction, whereas the Comprehensive Development Plan provided for commercial use in the same area and did not mention several of the planned street improvements and construction. The Court found Concerned Citizens’ argument analogous to the Court’s previous decision in *McMurray v. City Council of the City of West Des Moines*, 642 N.W.2d 273 (Iowa 2002). Ultimately, the Court found that the lack of inclusion or specificity of certain projects in the Comprehensive Development Plan and the inclusion of such projects in the City’s 2013 Amended Plan did not create a direct inconsistency in the plans.

Holding. The Court vacated the decision of the Court of Appeals, and affirmed the district court in part, reversed it in part, and remanded for further proceedings. The Court concluded that extending the duration of the Copper Creek URA TIF was impermissible because that area had previously been consolidated with other TIF areas and therefore no longer existed. The Court also held that revenue may be shared within the consolidated, larger TIF area subject to the time limits set forth in the 1994 Iowa law, and that the Amended Plan and the Comprehensive Development Plan were not inconsistent with each other.

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