

LETTER OPINION
94-L-282

October 17, 1994

Mr. Charlie Whitman
Bismarck City Attorney
P.O. Box 5503
Bismarck, ND 58502-5503

Dear Mr. Whitman:

Thank you for your September 2, 1994, letter concerning tax increment financing in urban development or renewal areas. You indicated that the city of Bismarck has designated an urban development or renewal area comprised of a major portion of the downtown area. You also indicate that a number of development or renewal projects have been financed, in part, within this development or renewal area by utilizing tax increment financing¹ as provided for in N.D.C.C. § 40-58-20. You also indicate that as projects are completed the tax increment produced by completed projects is used to assist in financing other renewal projects within the development or renewal area.

You ask whether N.D.C.C. § 40-58-20(10) requires a city to remove an individual parcel from such an urban development or renewal area after any tax increment-financed improvements to the specific parcel have been individually completed and any tax increment-financed obligations with respect to such parcels have been repaid.

N.D.C.C. § 40-58-20(10) provides as follows:

10. When the cost of development or renewal of any development or renewal area has been fully paid and all bonds,

¹Tax increment financing generally is a method for financing redevelopment projects based on the premise that the portion of increased ad valorem taxes generated as a result of property improvement is available to pay for such redevelopment. State v. City of Daytona Beach, 484 So.2d 1214, 1215 (Fla. 1986).

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notes, or other obligations issued by the municipality to pay that cost have been retired, or funds sufficient for the retirement thereof have been received by the municipality, the governing body shall cause this to be reported to the county auditor, who shall thereafter compute the mill rates of all taxes upon the total taxable value of the development or renewal area. Any balance then on hand in the tax increment fund must be distributed by the county treasurer to the state and all political subdivisions having power to tax property in the area, in amounts proportionate to the amounts of the tax losses previously reimbursed to them.

(Emphasis supplied.) A development or renewal area is defined in N.D.C.C. ? 40-58-01.1(7) as follows:

7. "Development or renewal area" means industrial or commercial property, a slum or blighted area, or a combination of these properties or areas that the local governing body designates as appropriate for a development or renewal project.

A development or renewal project "may include authorized undertakings or activities of a municipality in a development or renewal area for the development of commercial or industrial property or for the elimination and prevention of the development or spread of slums and blight." N.D.C.C. ? 40-58-01.1(9).

N.D.C.C. ? 1-02-03 provides as follows:

1-02-03. Language - How construed. Words and phrases must be construed according to the context and the rules of grammar and the approved usage of the language. Technical words and phrases and such others as have acquired a peculiar and appropriate meaning in law, or as are defined by statute, must be construed according to such peculiar and appropriate meaning or definition.

You indicate in your letter that the city of Bismarck has designated the majority of the downtown area as a single development or renewal area. You further indicate that the area has not been declared to be renewed and the purposes of the renewal area have not

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been fulfilled. Consequently, I must assume that other development or renewal projects within the city of Bismarck's urban renewal development or renewal area are planned or anticipated.

By the express terms of N.D.C.C. ?? 40-58-20(3) and 40-58-20(4), a development or renewal area is treated as a whole for purposes of calculating the tax increment of property in such an area. Once the renewal of the area is completed and fully paid, N.D.C.C. ? 40-58-20(10) expressly provides that the entire area is treated as a whole for the purposes of concluding tax increment financing. Since you have indicated that development and renewal within the urban development or renewal area is not yet complete, it cannot be said that N.D.C.C. ? 40-58-20(10) has been triggered or that any individual parcel which has been renewed or developed must be excluded from the area.

The city of Bismarck has chosen to create a somewhat large contiguous development or renewal area containing a significant number of noncompleted projects and presumably other planned or anticipated projects. Generally, courts defer to the judgments of redevelopment authorities or city governing bodies as to what constitutes a properly designated renewal or blighted area. See, e.g., Dilley v. City of Des Moines, 247 N.W.2d 187, 192 (Iowa 1976) ("The question of what constitutes a 'blighted area' within the meaning of [the law] is a legislative question, political in nature and involving questions of public policy. . . . It is not for the courts to oversee the choice of a boundary line nor to sit in review on the size of a particular project area."); R. E. Short Co. v. City of Minneapolis, 269 N.W.2d 331, 341 (Minn. 1978). See also 40 Am.Jur.2d Housing Laws ? 19 (1968).

The use of an area-wide approach to the problem of redevelopment and urban blight has been approved by a number of courts. See, e.g., 40 Am.Jur.2d Housing Laws ? 18 (1968). In Sigma Tau Gamma, Etc. v. City of Menomonie, 288 N.W.2d 85, 92 (Wis. 1980), the court noted:

This area-wide approach to the problem of urban blight was also upheld by the United States Supreme Court. In Berman v. Parker, 348 U.S. 26, 75 S.Ct. 98, 99 L.Ed. 27

(1954), that court rejected an almost identical attack upon the District of Columbia Redevelopment Act of 1945. With respect to plaintiff-landowner's contention that the sweep of the proposed project was too broad and included unblighted, viable property, Mr. Justice DOUGLAS stated for the court:

"The particular uses to be made of the land in the project were determined with regard to the needs of the particular community. The experts concluded that if the community were to be healthy, if it were not to revert again to a blighted or slum area, as though possessed of a congenital disease, the area must be planned as a whole. It was not enough, they believed, to remove existing buildings that were insanitary or unsightly. It was important to redesign the whole area so as to eliminate the conditions that cause slums -- the overcrowding of dwellings, the lack of parks, the lack of adequate streets and alleys, the absence of recreational areas, the lack of light and air, the presence of outmoded street patterns. It was believed that the piecemeal approach, the removal of individual structures that were offensive, would be only a palliative."

348 U.S. at 34, 75 S.Ct. at 103.

It is also apparent from a review of the entire statute, N.D.C.C. ? 40-58-20, that the Legislature contemplated a method for tax increment financing of an entire development or renewal area, as opposed to only permitting the renewal or development of individual parcels or projects. For example, N.D.C.C. ? 40-58-20(1) provides:

1. At any time after the governing body of a municipality has approved a development or renewal plan for any development or renewal area, it may request the county auditor and treasurer to compute, certify, and remit tax increments resulting from the development or renewal of the area in accordance with the plan. . . .

(Emphasis supplied.)

Likewise, subsection 4 of the statute provides for excluding any incremental value from taxation by the state or any political subdivisions of the entire "development or renewal area, until the cost of development or renewal of the area has been reimbursed in accordance with this section." N.D.C.C. ? 40-58-20(4). Also, subsection 7 provides, in part, that after paying any tax losses, the county treasurer

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"shall remit the entire balance then on hand in the fund to the municipality, until the cost of development or renewal of the area has been reimbursed to the municipality as provided in this section." N.D.C.C. ? 40-58-20(7).

Based on the foregoing, it is my opinion that N.D.C.C. ? 40-58-20(10) does not authorize a city to remove individual parcels from an urban development or renewal area after tax increment-financed improvements to the specific parcel have been individually completed and paid.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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