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Legal Opinion 2021-019

TO: City Counsel, Mayor John Engen, Dale Bickell, Ellen Buchanan, Eran Pehan, Leigh Griffing, Marty Rehbein, Ginny Merriam

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE September 23, 2021

RE: City may utilize tax increment funds to acquire real property. City may transfer land to a corporation as a donation or at a reduced price if the land is used to permanently provide low-income housing.

FACTS:

Wednesday September 22, 2021 during city council administration and finance committee, one of the topics discussed was city concern about a potential sale of the Bridge Apartments by its current owners and city acquisition and preservation of the 20 plus unit Bridge Apartments to ensure permanent future rental to disabled and low income individuals. It was further discussed that the Mayor would prefer as a future city option to subsequently transfer ownership to another entity pursuant to a guarantee that the apartments be permanently available solely for disabled and low income individuals.

ISSUE(S):

May urban renewal tax increment funds be used for city acquisition of real property?

CONCLUSION(S):

Urban renewal tax increment funds may be used for city acquisition of real property.

LEGAL DISCUSSION:

Title 7, chapter 15, part 42 MCA is entitled URBAN RENEWAL; and part 43 is entitled URBAN RENEWAL CONTINUED. There are several dozen sections of Montana urban renewal law set forth in parts 42 and 43 MCA.

The Bridge Apartments are located within a city council established urban renewal area (district). The words “acquisition” and “disposition” with respect to real property appear in several locations within Montana’s urban renewal laws.

Montana’s urban renewal laws define the term real property in subsection 7-15-4206(15) MCA as meaning:

“(15) ‘Real property’ means all lands, including improvements and fixtures on the land, all property of any nature appurtenant to the land or used in connection with the land, and every estate, interest, right, and use, legal or equitable, in the land , including terms for years and liens by way of judgment, mortgage or otherwise.”

Section 7-15-4258 MCA of Montana’s urban renewal laws is entitled “ACQUISITION AND ADMINISTRATION OF REAL AND PERSONAL PROPERTY”. Section 7-15-4258 MCA provides in pertinent part: as follows:

“7-15-4258. ACQUISITION AND ADMINISTRATION OF REAL AND PERSONAL PROPERTY. (1) A municipality may:

- (a) ACQUIRE BY PURCHASE, lease, option, gift, grant, bequest, devise, eminent domain pursuant to Title 70, chapter 30, or otherwise ANY REAL PROPERTY and personal property that may be necessary for the administration of the provisions contained in part 43 and this part, TOGETHER WITH ANY IMPROVEMENTS ON THE REAL PROPERTY;
- (b) HOLD, IMPROVE, clear or prepare for redevelopment property acquired pursuant to subsection (1)(a);
- (c) DISPOSE OF REAL OR PERSONAL PROPERTY;
. . . . (emphasis added)

The urban renewal law definition of “public use” set forth in subsection 7-15-4206(14) MCA also includes cross reference to Montana’s eminent domain laws stating:

“(14) “Public use” means:

- (a) A public use enumerated in 70-30-102; or
- (b) A project financed by the method provided in 7-15-4288.”

Section 70-30-102 MCA of Montana’s urban renewal laws is entitled “PUBLIC USES ENUMERATED” and includes subsections (12) urban renewal projects ; and (18) public assistance purposes as provided in 53-2-201”.

Title 53, chapter 2, part 2 MCA is entitled “DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES”. The first subsection of 53-2-201 MCA is entitled “POWERS AND DUTIES OF DEPARTMENT and initially indicates that the Department shall administer and supervise public assistance. subsection 53-2-201(5) MCA identifying the Department of Public Health and Home Services powers states that the Department has the power to purchase “either real or personal property that is necessary to carry out its public assistance functions”{

Montana’s urban renewal laws through its multiple references to Montana eminent domain law is empowering municipal urban renewal to include public assistance as part of a city’s urban

renewal plan or urban renewal projects, which may include acquiring real property for public assistance related purposes. Thus, Montana Municipal Urban renewal projects may include projects related to public assistance.

Section 7-15-4288 MCA is entitled “COSTS THAT MY BE PAID BY TAX INCREMENT FINANCING”. Section 7-15-4288 MCA expressly authorizes that urban renewal tax increment funds may be utilized for “land acquisition” as well as the acquisition of publicly owned buildings”.

Section 7-15-4262 MCA is entitled “DISPOSAL OF MUNICIPAL PROPERTY IN URBAN RENEWAL AREAS”. Subsections 7-15-4262(5) and (6) MCA provide that a city may dispose of urban renewal land as a donation or at a reduced price to a corporation for the purpose of constructing multi-family housing development operated for low income housing and that such reduced price land transfers” must be used to permanently provide low income housing. The transfer of the property may contain a reversionary clause to reflect this condition.”

In addition, Montana Constitution Article XI(4)(2) mandates that “The powers of incorporated cities and towns and counties SHALL BE LIBERALLY CONSTRUED.” (emphasis added) Missoula city voters have elected to have a self-government charter form of government. Section 7-1-106 MCA of Montana’s self-government power laws provides that the powers and authority of a local government with self-government powers” SHALL BE LIBERALLY CONSTRUED.”

Thus, the City of Missoula should be able to legally acquire the Bridge Apartments and subsequently dispose of the Bridge Apartments through donation or reduced sale to a corporation that will operate the housing permanently as low income housing. In addition the transfer of the real property as permanent low income housing may include a reversionary clause to reflect the permanent low income condition.

CONCLUSION(S):

Urban renewal tax increment funds may be used for acquisition of real property.

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/s/ Jim Nugent

Jim Nugent, City Attorney

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