



January 20, 2006

Lakewood Reinvestment Authority
480 South Allison Parkway
Lakewood, Colorado

Re: The Lakewood Reinvestment Authority's Obligation to Make
Annual Appropriations Pursuant to the Public Financing
Amendment to Redevelopment Agreement, Dated as of December
31, 2001

To the Lakewood Reinvestment Authority:

I am general counsel to the Lakewood Reinvestment Authority (the "Authority"), and acting as such, I am acquainted with the affairs of the Authority including the Public Financing Amendment to Redevelopment Agreement, dated as of December 31, 2001, and the First Amendment to the Public Financing Amendment, dated June 23, 2003, (collectively, the "Amendment"), which was executed by Michael J. Rock on behalf of the Authority and which concerns the Villa Italia re-development. I have examined the Amendment and all case law as I have deemed relevant, necessary or appropriate, including but not limited to, *Olson v. City of Golden*, 53 P.3d 747 (Colo. App. 2002), *cert denied* (2002), in order to give the opinions expressed herein.

1. At Section 7.04 of the Amendment, the parties to the Amendment acknowledge that "as of the date of the Amendment, the Authority's payment obligations under this Amendment with respect to Incremental Sales Taxes and Incremental Property Taxes are subject to annual appropriation...." Pursuant to Section 7.04, until such time as "counsel satisfactory to the Authority renders an opinion to the Authority that such payment obligations are no longer required to be subject to annual appropriation" the Authority "will include the amount of Incremental Sales Taxes and Incremental Property Taxes otherwise required to be paid by the Authority pursuant to this amendment as a line item in its annual budget and in good faith consider appropriating such amount to or for the account of the Districts, a 63-20 Corporation, the Bond Trustee or Redeveloper, as applicable."

2. As one of the negotiators for the Authority, I know that the reason for the annual appropriation requirement in the Amendment was directly related to article X, section 20 of the Colorado Constitution (the “Taxpayer’s Bill of Rights” or “TABOR”), which prohibits multi-fiscal year obligations on the part of “districts” without a vote of the electorate.
3. On February 14, 2002, the Colorado Court of Appeals reached a decision in *Olson v. City of Golden, supra*. The second major issue in *Olson* was whether an urban renewal authority (in that case, the Golden Urban Renewal Authority or “GURA”) is subject to the provisions of TABOR. TABOR, which applies to districts, defines “district” as “the state or any local government, excluding enterprises.” Colo. Const. art. X, § 20(2)(b).
4. In *Olson*, the question of whether TABOR applied to GURA turned on a determination by the court of GURA’s status as a local government, and therefore, a district subject to TABOR.
5. TABOR is intended to “prevent state and local government from enacting taxing and spending increases above TABOR’s limits without voter approval.” *Olson* at 753. It requires districts “to hold elections to obtain voter approval in advance for increases in taxes, spending, and direct or indirect debt.” Colo. Const. art. X, § 20, as quoted in *Olson, supra*, at 753.
6. Based on this analysis of TABOR’s intent, the court’s decision turned on two factors: first, whether GURA had the ability to levy taxes, and second, whether GURA held elections. Finding that GURA had no ability to levy taxes and that there was no provision for GURA to conduct elections of any kind, the court concluded that GURA was not a local government and therefore not a district under TABOR.
7. The Authority, like all urban renewal authorities, has no authority to levy taxes. Colorado Revised Statutes, Section 31-25-113, provides that “[n]o authority created by this part 1 has any power to levy or assess any ad valorem taxes, personal property taxes, or any other forms of taxes, including special assessments against any property.”
8. The Authority’s powers do not include a provision to hold elections.

Based on this analysis, I conclude that TABOR does not apply to the activities of the Authority and that the annual appropriations provided for in Section 7.04 of the Amendment are no longer required to obligate the transfer of funds on an annual basis as specified by the Amendment.

Sincerely,

Malcolm M. Murray, Esq.