BID opponents threaten lawsuit in Rapid City

By Barbara Soderlin
Journal staff

Rapid City's new downtown Business Improvement District has also been called the source of an unconstitutional tax, although for a different reason than the business owners who are suing the city of Sioux Falls over its downtown district.

Mary Renka, a downtown business owner, told the Rapid City Council on Aug. 16 that she and others plan to file a lawsuit challenging the Business Improvement District. Voters upheld the district in June after opponents, including Renka, challenged the city council's April 5 decision to create it.

Renka said the district is unconstitutional because of a cap that limits the assessment paid by property owners to $3,000 a year. The cap effectively means that owners of the most highly valued downtown properties pay a lower assessment rate than owners of properties with lower values.

Renka cited Article XI, Section 10 of the state constitution, which deals with special assessments for local improvements. The section states, "... such tax shall be uniform in respect to persons and property within the jurisdiction of the body levying the same."

Bruce Meister, another downtown property owner, said Thursday a suit had not been filed yet.

City attorney Jason Green told the council Aug. 16 that the funding mechanism behind the BID is not a tax, it is a special assessment "and that's a very important difference."

He said the new BID was formed under Title 9, Chapter 55, of state statute, which specifically deals with business improvement districts. Section 13 of that chapter says, "A municipality may levy a special assessment against the real property located in a district, to the extent of the special benefit on such property. It continues, "...the governing body may assess the costs under a method the governing body finds to be fair and equitable."

Green said the council instituted the cap as a way of making the assessment fair to the owners of highly valued properties.

"The council is limited to assessing any property to the extent of the special benefit it receives from the improvements to be funded with that money," he told the council Aug. 16. "I think the council rationally determined that no property would receive more than $3,000 of benefit as a result of the improvement, because that benefit is going to be shared throughout the district."

Destination Rapid City president Dan Senftner said the BID ordinance follows the law.

"We've followed everything to the letter that needs to be done," he said.

Don Perdue, who owns the City of Presidents building at 31 Main St., said he already spends about $18,000 a year operating and maintaining the building.

"That's the contribution of the Perdue family to this community," he said.

"Consequently, I think it's just a little bit less than generous to sit there and try to surtax us on the BID. I think we already have contributed enough to this community!"

Hani Shafai, owner of property in the 500 block of Kansas City Street, said the district should do more than just support the Main Street Square project at Sixth and Main streets with the BID's money.

He also said the assessment is unfair since his properties are in Zone 1 of the BID, meaning he will pay double the rate of properties in Zone 2, some of which are physically closer to the proposed plaza than Shafai's.

"I don't think the funding mechanism for it is really the right way of doing it," Shafai said.

"I intend to pay my assessment, but mostly likely I will protest it some way or another."

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