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The reeling in of Red's Contract kicks off four-block project, but raises legal issues

By Jared S. Hopkins
Staff writer

Red's Trading Post had to go. For city officials and private developers working to level and rebuild four blocks of downtown Twin Falls, the oldest gun shop in Idaho is in the wrong place — a corner where they want to put a new city hall.

But clearing the corner of 2nd Avenue South and Shoshone Street South prompted a legally challenging deal that raises questions about conflicts of interest for some Urban Renewal Authority board members.

The authority, a taxpayer-financed arm of city government, agreed Monday to pay \$200,000

for the gun shop's building at 215 Shoshone St. S. The city has for years been buying property in the area, but recently accelerated the plan to turn the area of low warehouses and storefronts into a mixed-use retail and office complex anchored by a new city hall. The project would be built by private developers.

But the deal goes far beyond a simple property transaction. It requires the owners of the gun shop to buy and relocate to a building at 203 5th Ave. S. — a property owned by URA board member Dave Woodhead. Woodhead's current tenant, Tribes Interiors, will stay in business but won't have a showroom in Twin Falls.

City officials say the deal is legal, though they acknowledge that they had to work around state law that bars urban renewal board members from benefiting from the projects they oversee.

City Attorney Fritz Wonderlich said that while Woodhead is a URA board member, his sale to the owners of Red's doesn't present a conflict of interest because of the way the contract was structured.

Initially, the authority planned to buy Woodhead's building and trade it to the owners of Red's, several parties in the deal said. But Wonderlich advised against it, and advised the arrangement that was approved by the URA board last week, said both Woodhead and Ryan Horsley, general manager of the gun shop.

While Woodhead will make money by selling a building he has listed for sale in the past, he

Red's

Continued from page A1

won't gain a "personal interest" as defined by Idaho law through the transaction, Wonderlich said.

When asked about the state law that bars URA board members from personally benefiting from their public service, Wonderlich said he reads the law to mean that a "personal interest" would involve acquiring real estate or landing a contract to do work for their own agency, and that the law governing the URA doesn't define "personal interest." The fact that Horsley is required to buy Woodhead's building doesn't mean Woodhead gains anything, he said.

"I don't know how Dave has 'acquired' anything there. If anything, he's losing something," Wonderlich said.

Wonderlich also said a conflict of interest was avoided because Woodhead did not vote on the Red's deal.

Another conflict was avoided, Wonderlich said, when URA board member Dexter Ball, owner of Twin Falls Title and Escrow, skipped the meeting where the Red's contract was approved. Ball's company is handling the transaction's title and escrow work for a fee. Ball said he agreed to do so because Horsley is a friend and that he was not involved in any of the URA negotiations.

Board members, Tom Frank, Cindy Bond, Bill Koch and Dave VanEngelen approved the contract. Board member Gary Garnand was absent.

While Wonderlich determined how the deal could be structured, the sale contract was written by Twin Falls Attorney Jeff Hepworth. He, along with developer Fran Florence, has a city-financed contract to give advice about downtown redevelopment. The influential businessmen are also the key players in a planned for-profit limited liability corporation that would control development of the four blocks made possible by URA property acquisition and trades.

Hepworth, a former URA board member, has said he would receive 5 percent of LLC profits. He also owns property adjacent to the four-block site. Florence, a former Twin Falls Planning and Zoning Commission chairman, would receive 10 percent of LLC profit for managing the development.

Both men were invited by city officials to attend a closed-door URA board meeting that preceded Monday's contract vote.

Hepworth said he was not working for any of the parties when he "filled in the blanks" in the contract after Woodhead called him. He said Woodhead and Horsley struck the deal.

"I did not negotiate the purchase; I did not negotiate the sale between Ryan and Urban Renewal," Hepworth said.

Woodhead, however, remembers it differently.

"I didn't do anything. It was mostly Jeff who did all of this," said Woodhead. "He's been acting on behalf of urban renewal."

Woodhead declined to disclose his sale price but said it is less than what he asked when the building was listed for sale more than a year ago. He said the building was not on the market when he was approached by Horsley earlier this year. He acknowledges that the sale wouldn't be taking place if the URA was not proceeding with the four-block development plan.

Horsley said he wanted the purchase of the Tribes building in his contract to ensure that he would have a place to move.

"I kind of held their feet to the fire," Horsley said of the URA.

Hepworth said the deal is nothing out of the ordinary.

"Every contract has different circumstances," Hepworth said. "I never saw a contract that didn't have something that seemed peculiar in it."

But William Stoebuck, who taught property law at the University of Washington School of Law for 40 years, said the arrangement is not common in real estate deals.

"I don't know if I've ever seen it done," said Stoebuck, an author of several books on

property law who retired in 2004. "I'm sure it has been done. It can be done. I don't think it's commonly done. I practiced law for five years and taught it for 40 years. But I don't think I ever taught that or gave a presentation on that."

Theoretically, however, almost anything can be written into a contract, Stoebuck said.

"You could put a condition in where you're obligated if Mars turns green or the sun comes up," he said. "You can put anything in."

While the URA board approved the purchase of Red's, not all of the financial details are set. City officials said the URA is talking to banks about a line of credit to pay Horsley, though the city finance department reports that the agency had \$2.9 million in cash on hand as of April 30.

Under Idaho law, urban renewal agencies are allowed to borrow money and incur debt, and to fund projects with credit. They also can collect tax revenue from properties that increase in value because of their work.

But the URA can't levy taxes, Wonderlich said, so the URA doesn't have to worry about the recent Idaho Supreme Court decision in *Frazier v. Boise*, which said Idaho's Constitution requires cities to seek voter approval for long-term contracts incurring debt.

But David Frazier, the Boise-based professional photographer who brought the lawsuit, said state laws don't trump the constitution.

He called urban renewal agencies city "alter-egos" of city governments, not separate entities.

"There's nothing that says the constitution only applies to some people," Frazer said. "The constitution takes precedent."

Twin Falls Economic Development Director Melinda Anderson, who oversees the URA, could not be reached for comment. Mitch Humble, the city community development director, said there are no immediate plans for the Red's property.

The future of Tribes Interiors, meanwhile, is equally unclear. Hepworth said he sees no irony in the idea that a successful business that draws upscale shoppers downtown will be forced to close its storefront because of the deal. He said Tribes can improve its business in its warehouse near the four block redevelopment zone.

"It's kind of a domino effect, and it's wonderful," Hepworth said.

Tribes owner Dyan Petterson said she has no immediate plan to open another showroom but said she hopes the four-block plan will eventually succeed.

"We'll be back in Twin," she said. "We kind of know what's going on. We will be part of this revival."

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IDAHO CODE

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No public official or employee of a municipality (or board or commission thereof), and no commissioner or employee of an urban renewal agency shall voluntarily acquire any personal interest, direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project in such municipality or in any contract or proposed contract in connection with such urban renewal project.

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Take a tour of the four-block area, view an interview with URA board member Dave Woodhead, read the recently signed contract and archive stories on the issue.