1978

Salt Lake County v. Murray City Redevelopment et al : Brief of Amicus Curiae

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

SALT LAKE COUNTY, a body politic and corporate,

Plaintiff-Appellant,

vs.

MURRAY CITY REDEVELOPMENT and MURRAY CITY, a municipal corporation, VAUGHN SOFFE, JACK DEMANN and JACK FITTS,

Defendants-Respondents.

Case No. 15755

BRIEF OF AMICUS CURIAE

Appeal from Judgments of the
District Court of Salt Lake Co
Honorable David B. Dee, District
and
Honorable David K. Winder, Dist

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BRIEF OF AMICUS CURIAE

STATEMENT OF THE NATURE OF THE CASE

This action was brought by Salt Lake County to contest the validity of the adoption of a redevelopment plan by Murray City, defendants-respondents, pursuant to the Utah Neighborhood Development Act, Chapter 19, Utah Code Annotated §11-19-1, et. seq. 1953, as amended 1971, and to challenge the validity of Murray City Ordinance No. 458 enacted to implement said Utah Neighborhood Development Act on procedural and constitutional grounds. The Plaintiffs

sought to have the Murray City Neighborhood Development Plan be declared null, void and of no effect. In the alternative, it was requested that defendants-respondents be required to redraw the project area to conform with the requirements of the Utah Neighborhood Development Act.

DISPOSITION IN TRIAL COURT

The trial court ruled in this case on two different occasions. Initially, defendants-respondents filed a motion for summary judgment and were granted a partial summary judgment for all issues except two:

1. Whether there was sufficient evidence of "blight" upon which the Murray Redevelopment Agency could base its determination that blight existed in the project area; and

2. Whether the boundary areas of the project area comport with the description given in the plan and the public notice. (Transcript at 163)

Plaintiff-appellant filed a Notice Preserving plaintiff's Right to Appeal in regard to this partial grant (Transcript 167-168). The plaintiff-appellant and defendants-respondents then each filed a Motion for Summary Judgment. The motion of defendants-respondents was granted without specified reasons (Transcript at 258-259). Summary Judgment was entered on the 5th day of March, 1978 (Transcript at 270-271).

RELIEF SOUGHT ON APPEAL

The Westside Action Committee, a coalition of property owners in the proposed redevelopment area, acting as amicus curiae, seeks reversal of the judgment of the trial court and requests that the Court enter a judgment in favor of plaintiff-appellant and against defendants-respondent determining that the Murray City Ordinance adopting and implementing the Neighborhood Development Plan was not enacted in accordance with Utah Neighborhood Development Act, Utah Code Annotated §11-19-1, et seq. and is therefore null, void and of no effect; or alternatively, require the Murray City Redevelopment Agency to redraw its project area to be in conformance with the Utah Neighborhood Development Act, in particular, Sections 11-19-9 and 11-19-2(10).

STATEMENT OF FACTS

The Murray City Board of Commissioners appointed the Murray City Redevelopment Agency with three of the Commissioners serving as the chief policy body of that agency.

On June 1, 1976, a preliminary plan for redevelopment in Murray City was adopted by the Murray City Commission (Exhibit B) on the basis that said areas were "blighted" areas. This plan appears to be based primarily on a 1976 study, the Murray Core Area Downtown District Revitalization

Plan which dealt primarily with a small area from 4800 South to First Avenue (approximately 5050 South) on both sides of State Street. The Redevelopment Agency adopted the general plan and goals on July 1, 1976. A single notice was published in the Murray Eagle on July 20, 1976, showing hearing dates of August 23, 1976 and August 24, 1976 (Exhibit F). No hearing was held until September 6, 1976, (Minutes Exhibit D, Respondent's Brief at page 7). On August 27, August 31, September 2 and September 6, 1976, the City Commission caused a notice to be published in the Salt Lake Tribune stating the hearing would be held on September 6, 1976 (Exhibit G). These four notices were spread over an eleven day period. There is nothing in the record to verify defendants-respondent's statement that notice was sent to property owners on September 1, 1976 (Brief of Respondent at pages 7 and 8) and petitioning property owners did not receive such notice.

On September 8, 1976, although none of the public was present, the Murray City Commission adopted Ordinance No. 453 accepting the Redevelopment Plan.

On October 8, 1976, plaintiff-Appellant filed a Complaint in the District Court of Salt Lake County, State of Utah, attacking the proposed redevelopment on several

grounds. Plaintiff-appellant's complaint raised numerous objections to the plan in its first cause of action, then in the second, third, fourth and fifth causes of action raised constitutional objections to the Utah Neighborhood Development Act as applied factually to Salt Lake County (Transcript 2-12).

ARGUMENT

POINT I

SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED DEFENDANTS-RESPONDENTS BECAUSE THE NEIGHBORHOOD DEVELOPMENT PLAN'S DETERMINATION OF BLIGHT WAS NOT STATUTORILY ADEQUATE.

A redevelopment plan may not be enforced which does not comply with the provisions of the Utah Neighborhood Development Act, Utah Code Annotated §11-19-1, et seq. Section 11-19-9 of that act specifically requires that:

> A project area must be restricted to buildings, improvements or land which are detrimental or inimical to the public health.

There has been no such restriction in this case. Two project areas have been outlined and there is nothing on the record to indicate that either has been restricted to "buildings, improvements or lands which are detrimental or inimical to the public health".

The areas outlined for this project cannot be sustained as a blighted area. Although not all homes in a project area need meet the standard for blight, certainly

the majority should. Respondent's best evidence indicates that at best 5.31% of the buildings were beyond repair. (Exhibit #1). Assuming that the 5.31% figure can be supported it is, nevertheless, an insufficient basis on which to declare an area blighted. Allowing such a precedent to stand would mean that in any area of 20 homes, if one was "beyond repair" the entire area could be declared a redevelopment project. If the 5.31% were not evenly distributed but were found in a single area, only that small area should be taken as a project area.

Defendants-Respondents support their action by contending that blight is a process and must be viewed from that perspective (Respondents' Brief at 20). To use such a pre-determined point of view subverts the requirement of an objective standard and would sanction a determination of a process of blight in an area where the homes are in satisfactory condition. Defendants-respondents could find occasional disrepair to be the "process of blight". Such a standard is no standard at all.

Section 11-19-14, Utah Code Annotated, 1953, states:

> Every project area redevelopment plan shall be accompanied by a report containing:
> (1) the reasons for the selection of the project area;
> (2) a description of the physical, social and economic conditions existing in the area;...

Murray City's failure to treat the two project areas separat statistically is a violation of this section. Unless analyzed separately, there is no reason to believe that any of the statistics accurately represent the extent of blight. Combining such area statistics does violence to the legislature requirement that separate plans be made for each project area.

Utilizing the powers of eminent domain for redevelopment of such minimal need is an abuse of the legislative grant of that power. Eminent domain is a harsh exercise of power and strict construction should apply. This Court recently held that the power of eminent domain is not to be exercised thoughtlessly or arbitrarily and, further that such a taking must be founded on public necessity, Salt Lake County v. Ramoselli, 567 P.2d 182 (Ut. 1977):

> The power of eminent domain is not to be exercised thoughtlessly or arbitrarily and the courts possess full authority to determine the proper limits of the power to prevent abuses in its exercise, and litigants should, and do have great latitude in conferring, dispositive functions upon the court as they clearly did in this instance.

In circumstances similar to this case, the County was seeking to condemn 11 acres for a park and recreational areas and this Court held that the County did not establish public necessity.

In a similar case the Florida Supreme Court placed the burden on the condemning authority to establish public purpose and reasonable necessity and held that the burden was not met.

Baycol, Inc. v. Downtown Development Authority, 315 S. 2d 451 (Fla. 1975). In Baycol, the Fort Lauderdale Downtown Development Authority sought to condemn property by eminent domain for construction of a parking facility. Although the landowner's attack addressed the issue of bonds and the anticipated private use of the area, the Supreme Court of Florida addressed generally the power of eminent domain. The Court held that "a strict construction must be given against the agency asserting the power" of iminent domain, Id at 455.

The standards for declaring an area blighted are stricter than those for condemnation for a public use.

A determination of blight can never be sustained on grounds of a better use. It must be shown as a real hindrance to the city and incapable of elimination or improvement without public assistance, Sweetwater Valley Civic Assoc. v. National City, 133 Cal. Rptr. 859, 555 P.2d 1099 (1976). Blight must be made on determination of the existing use and not a better use, Id. The project areas under consideration in the present case have not been shown

to be blighted areas and at most meet only the foregoing concept of optimum use and should not be sustained.

This Court made clear in Ramoselli, supra, that the court has full power to determine the proper limits of a grant of legislative power to prevent abuse of exercise. This Court has the power to examine the evidence to determine if it was exercised arbitrarily or capriciously. Even assuming for the sake of argument that the areas may be found to be "blighted" under the definition of the Utah Development Act, the provisions of §11-19-9 of that Act in its most limited interpretation requires that the condemnati be restricted to "buildings, improvements, or land which are detrimental or inimical to the public health, safety or welfare," §11-19-9, Utah Code annotated, 1953, as amended. The deposition of Charles Clay indicates that several nice homes have been included. Any residence not found to be detrimental or inimical to public health should be excluded from the project area. The language of the statute clearly indicates an intent that the taking should be of the selective type suggested by Nichols:

> Although acceptance of the "area" concept seems to preclude the omission of any parcel within the area, it has been said that where the taking is for the purpose of preventing the spread of blight and to conserve the basic character of a deteriorating area or

> develop a new character, inoffensive parcels may be omitted from the taking or conversely, offensive parcels only may be taken on the theory that the remedial action need not await total deterioration. Vol. 2A, Nichols on Eminent Domain, §7.51561(1) Blight pg. 7-221.

Thus the agency should at least be required to make a determination of houses to be omitted. The case should be remanded for this purpose.

The Murray City Board of Commissioners have not shown that the project areas are blighted areas as defined by §11-19-2(10), Utah Code Annotated, 1953 as amended:

> Characterized by the existence of buildings and structures used or intended to be used for residential, commercial, industrial, or other purposes, or any combination of such uses, which are unfit or unsafe to occupy for such purposes or are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime because of any one of a combination of the following factors:

Instead defendants-respondents have emphasized factors listed after this paragraph such as the irregular form and shape of lots [11-19-2(10)(g)] without demonstrating that the project areas meet the essential requirements set out above.

Such evidence of blight as the City has presented is disputed by the petitioning area residents and its superficiality is offensive to people who fear losing life long

homes. The finding that 5.37% of the homes were in less than rehabilitable condition was made on the basis of a window survey done by Mr. Watts (Watts deposition at 499). The studies used were not current and boundaries of the areas covered not the same as those of the project areas. The MARC Study, Murray Core Area Downtown Revitalization Study and Neighborhood Development Plan do not pertain to the same boundaries. Such differences may well have significant effects.

The City has gone beyond the power granted by the Neighborhood Redevelopment Act first in applying it to an area which it cannot show to be blighted and second in extending project areas beyond buildings and land it claims to be blighted. The elderly and low income residents of the project areas who are petitioning this court should be protected from the enormous power granted by this act being used in such a capricious and arbitrary fashion.

POINT II

THE LOWER COURT ERRED IN ITS GRANT OF SUMMARY JUDGMENT TO DEFENDANTS-RESPONDENTS BECAUSE THE NEIGHBORHOOD DEVELOPMENT PLAN WAS NOT DEVELOPED IN STRICT COMPLIANCE WITH THE LEGISLATIVE GRANT OF AUTHORITY.

A. The Murray City Commission did not comply with the requirements of Notice in Section 11-19-16 Utah Code Annotated 1953, as amended.

> Notice of public hearing - Contents. Notice of the public hearing on a project area redevelopment plan shall be given by publication not less than once a week for four successive weeks in a newspaper of general circulation published in the county in which the plan lies. . . Utah Code Annotated §11-19-16.

Although specific requirements are set out in the statute for adequate notice, the Murray City Commission did not comply. Three elements must be satisfied to meet the requirements of notice in this section: (1) it shall be not less than once a week, (2) it shall be for four successive weeks and (3) the publication shall be in a newspaper of general circulation. It must be inferred that each notice would give the same date, time, place and other pertinent information. To fail to require such would thwart the intent of noticeto give interested parties an opportunity to reply.

The first attempt of notice by publication was made by the Murray City Commission on July 20, 1976, in a small weekly newspaper called the Murray Eagle. Publication there occurred once only and publicized the hearings dates as August 23, 1976 and August 24, 1976 (Exhibit F). Clearly this single publication did not meet the three statutory elements of sufficient notice. The record attests to the fact that such hearings were never held and so these notices only served to confuse the situation.

The only other attempt to give notice by publication commenced on Friday, August 27, 1976, and was followed by notice on Tuesday, August 31, 1976 then Thursday, September 2, 1976, and final publication on the date of the hearing, Monday, September 6, 1976. These notices appear to be a last minute attempt at compliance but cover only one 11 day period and not the required four weeks. Such "publication" is insufficient to give notice of a hearing under the statute but is more inadequate still in this case because it also had to correct the previous misleading notice.

Defendants-respondents asserts (Brief of Respondent at page 11) that the affidavits of publication show publication on five different dates. Examination of the affidavit reveal that the two notices were of different hearing dates. (Exhibits F 1 & 2). Such inconsistency defeats the purpose of giving notice. These notices are not to be considered as one act of publication but, rather two very separate acts. Because they publicized two completely separate hearings, a proper second notice was still more imperative to correct the first.

The Florida Supreme Court in Baycol, Inc. v. Downtown Development Authority, 315 S. 2d 451 (Fla. 1975) made clear that when an eminent domain action is being

considered strict compliance with statutory procedures is required. Baycol should apply in this case, for to allow less than strict construction would be to thwart clear legislative intent.

The issue of the use of the police power to effect an urban renewal program through eminent domain is a serious intrusion of due process rights for the individual. Because of the seriousness of such an action, due process rights must be strictly observed. Only strict compliance with the processes mandated by legislative grant will be sufficient to preserve those rights.

Although the use of the police power to affect zoning is a less significant intrusion into the rights of the individual, the courts have chosen in such cases to require strict compliance with the statutory grant of power. Though a change in zoning will not mandate that a person leave his home or neighborhood, the courts have still chosen to carefully preserve the individual's rights. In Hart v. Bayless Investment & Trading Co., 346 P.2d 1101 (Arizona 1959) the courts found that:

> This Court has held that, where a jurisdictional notice is required to be given in a certain manner, any means other than that described is ineffective (citations omitted). This is so even though the intended recipient of that notice does in fact acquire the knowledge contemplated by the law. . .

> . . . This Court has shown a predilection in analogous cases to demand strict compliance with statutory requirements concerning the zoning aspect of the police power. (Id. at 1108 1109).

Lack of statutory notice has been found to be a jurisdictional defect which renders action by a zoning authority void, Pima County v. Clapp, 530 P.2d 1119 (Ct. App. Arizona 1975). In that case the county appealed from an order of the Superior Court directing said County to process a plan for development of a certain tract that the County had rezoned to prohibit land uses which were proposed in the plat. The court required that the County conform to a mailing of notice "in addition" to other notice because mailing was also required in the statute. The court held that failure to follow the legislative standards rendered the action invalid. See Pima at 1122. Lack of statutory notice means lack of strict compliance with statutory guidelines for notice required for eminent domain action and so should have no less serious result than the invalidity of the action.

It cannot be argued that the Murray City Commission even substantially complied with the requirements of notice. The language of the statute is clear and specific and susceptible to precise interpretation. Requiring that notice be by publication once a week for four weeks has a valid basis and is not arbitrary. No one would be expected to be

ready to present a case without adequate time to prepare. Utah Code Annotated §11-19-17, 1953, as amended requires the objections to a proposed redevelopment to be filed in writing. The legislative body is then required to hear and pass on all objections. Four weeks is a good estimate of the time required. In Re Phillips Estate, 44 P.2d 699 (1935) spelled out clearly the Utah standard for "successive weeks", to wit:

> Successive weeks. . .means successive weeks commencing with a Sunday after the first week commencing with a Sunday in which the first publication appeared. Supra. at page 704.

The notice given in this case did not conform to this requirement. The city misconstrues the meaning of the statute in order to assert its compliance. Two papers giving different dates for the hearing will not meet the requirement. The publication in the Murray Eagle was of a hearing date which was never held. There was no retraction or amendment made in that notice in the Murray Eagle and so anyone who might have seen the original notice was effectively denied the purpose for notice. The statutory requirement of four publications once per week is especially important in this case because the erroneous information required correction.

Defendants-respondents states at page 12 of their brief that "substantial compliance" is the proper standard for the trial court to apply to the present case and quotes Beck v. Ransome-Crummy Co., 42 Cal. App. 764, 184 P. 431 (Calif. 1919), to-wit:

> If, either in the summons or in the resolution, there is not an entire omission of a statutory requirement, but merely a defect, a court may properly determine there has or has not been a substantial compliance with the statute dependent upon the facts of the particular case. . . .This judgment of what is a substantial compliance with the statute is to be exercised in the first instance by the trial court. If the case is one where a requirement of the statute has not been entirely disregarded, its [the trial court's] determination of the question of substantial compliance ought to be controlling in the absence of discretion. (Id at page 434)(Brief of Defendant at 12)

However, defendants-respondents did not quote the complete paragraph. The preceding sentences state:

> Where a clear statutory requirement is omitted from the initial resolution or process which is the means of imparting notice of adverse proceedings, the rule of liberal construction must yield to the constitutional guarantee of due process of law. Courts cannot in a particular case dispense with any element of notice which the Legislature has enacted shall be given in all similar cases. Beck supra at page 434)(emphasis added).

Should there have been any question of the court's intent it was clarified in Fidelity v. Deposit Company of Maryland v. Claude Fisher Co., 327 P.2d 78 (2nd Dist. Ct. Appeals Calif., 1958). Although a contract case, the court

cited Beck, supra, to support its statement that: "Statutes of limitation and the like, prescribing definite periods of time within which actions may be brought or certain steps taken are, of necessity, adamant rather than flexible in nature." (at page 81).

Defendants-respondents did not meet the required standard of strict compliance nor did defendants-respondents act in even substantial compliance adequate to support the legislative intent. Therefore, the trial court acted arbitrarily and capriciously in granting summary judgment to defendants-respondents. Inadequate notice is a jurisdictional defect which should void the action, as stated in Hart supra at 1108:

> In other jurisdictions, courts which have been confronted with this issue have found, almost without exception, that compliance with statutory requirements as to hearing and notice is jurisdictional and that ordinances which have not been adopted in conformity with the enabling act are void. Hurst v. City of Burlingams, 207 Cal. 134, 277 P. 308; Kelly v. City of Philadelphia, 382 Pa. 459, 115 A.2d 238; Rhode Island Home Builders v. Budlong Rose Co., 77 R.I. 147, 74 A.2d 237; Treat v. Town Plan & Zoning Commission, 145 Conn. 136, 139 A.2d 601; Gendron v. Borough of Naugatuck, supra. (See also Pima County at 1122.)

Although defendants-respondents seeks to distinguish Hart on the basis of different code requirements and distinctions in the statute, the language of the Hart Court was never intended to be strictly on those facts, and

actually expresses the ideas of strict compliance to whatever the legislative restriction.

> By the Zoning Act, certain authority was conferred upon the Board, but subject to those express conditions imposed by the same Act. An attempted exercise of that authority without compliance with the statutory conditions precedent is utterly void and of no effect. It is true that where there is no factual evidence presented to show that such an ordinance was not properly adopted, such an enactment is entitled to the presumption of regularity which attaches to all official acts (citations omitted). However, when, as here, facts are shown which rebut that presumption, the courts will exercise their jurisdiction to determine whether the necessary statutory prerequisites have been complied with. Hart, supra. at 1105 (emphasis added).

Hart would be applicable to the case at hand and would demand compliance to whatever statutory conditions had been given.

B. The Redevelopment Agency has not included in their report a relocation plan as required under Section 11-19-14(4), Utah Code Annotated, 1953, as amended in 1971, nor has the Murray City Commission complied with Utah Code Annotated §§11-19-21(5)(g) or 11-19-21(5)(h) or 11-19-21(6).

Because of the seriousness of the use of eminent domain under the police power great protections must be provided the property owners. Section 11-19-14(4) Utah Code Annotated reads in pertinent part:

> Every project area redevelopment plan shall be accompanied by a report containing:
> . . .(4) A method or plan for the relocation of families and persons to be temporarily or permanently displaced from housing facilities, if any, in the project area. . .

The Neighborhood Development Plan contains a perfunctory attempt to meet the requirements, to-wit:

> 4. A method or plan for the relocation of families and persons to be temporarily or permanently displaced from housing facilities, if any, in the project area.
>
> During the annual increment from July 1, 1976 to June 30, 1979, there will be relocation activities. The Agency shall comply with the federal Uniform Relocation Act as adopted in 1971 and amended from time to time and the State Relocation Act. We will work to replace the displaced resident within the area of Murray City to minimize the social hardship. (Exhibit 1 of the Neighborhood Development Plan).

The Utah Neighborhood Development Act is explicit in its requirements of what must be shown before the plan is adopted:

> 11-19-21 Adoption of ordinance - Contents. --The ordinance shall contain:
>
> ...(5) The findings and determinations of the legislative body based upon fact that:
>
> ...(g) The agency has a feasiable method or plan for the relocation of families and persons displaced from the project area, if the redevelopment plan may result in the temporary or permanent displacement of any occupants of housing facilities in the project area, and

(h) There are or are being provide in the project area or in other areas not generally less desirable in regard to put utilities and public and commercial facil and at rents or prices within the financi means of the families and persons displac from the project area, decent, safe and sanitary dwelling equal in number to the number of and available to such displaced families and persons and reasonably acces to their places of employment; and

(6) A statement that the legislativ body is satisfied permanent housing facil will be available within three years from the time occupants of the project area ar displaced and that pending the developmen such facilities there will be available to such displaced occupants adequate temporary housing facilities at rents com parable to those in the community at the time of their displacement.

The simple statement in the Neighborhood Developmen Plan that they "shall comply" with the law cannot serve as a "method or plan" of relocation. The Federal Uniform Relocation Act and State Relocation Acts do not set up plans but provide only general and minimal guidelines. To state as part of a plan of relocation that these Acts will be utilized is absurd. The point of the statute was not to encourage repetition of generalizations but to require development and implementation of a detailed plan.

It is readily apparent that no plan has been formulated. The June 1, 1976 plan (Exhibit I) stated that approximately 1,000 people live within the project area. The "majority" of those people were said to be between 55

and 75 years old and limited to two per household. Only 25 were said to be families with young children. Finally, it stated that there was a limited amount of housing available in the area. The redevelopment agency provides for relocation only of five families. If the purpose of relocation is to protect all displaced persons, it would be unreasonable to conclude that relocation of five families is adequate in light of the foregoing statistics. The remainder of the 1,000 people are not considered at any point in the plan. Leaving that number of people unprovided and unaccounted for is contrary to the intent of the Legislature.

Special care should be taken in this case because of the predominance of elderly persons in the project area. Relocation is difficult enough for a young person in the flux of his life, but may be lifethreatening to an elderly resident who has established himself in an area. Established habits and patterns are important to the elderly. Many of these people have neighbors and friends who are now able to provide company as well as provide an assurance that someone will be available to help should an accident occur. Many of the elderly in the area have the opportunity to live with family members. Relocation plans have not made provision to maintain these extended families.

It is interesting to note that at page 10 of the Neighborhood Development Plan, the Agency is to begin planning housing for senior citizens because of the number of elderly

who reside there. Yet it is said only five families will need relocating. There is nothing in the record to prove that any contact has been made with the residents. No offers have been shown and no statements have been made in the Neighborhood Development Plan (Exhibit I) that indicate an awareness of the problem. The record shows that the agency did not comply with the Utah Neighborhood Development Act, Utah Code Annotated §11-19-1 et. seq.

The 8th Circuit Court of Appeals in Katsen v. Coleman, 530 F.2d 176 (8th Cir. 1976) held that the Missouri State Highway Department and chief engineer adequately complied with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 which required the state to provide federal agencies with "satisfactory assurar that adequate redevelopment assistance and replacement dwellings would be available for displaced persons. In that case the plan which was held to be "adequate" was far more extensive than the general statement of this case. The Agency had already: (1) relocated 1,612 persons, (2) moved 420 homes, (3) relocated four businesses, and (4) did all relocating in light of a study done by (a) interviewing relocatees, (b) spot check of 5% of the housing and (c) checking the availability of housing, id. at page 180.

The Agency actions in this case do not provide a method or plan for relocation. That alone is sufficient basis upon which to overturn the lower court ruling because it is arbitrary and capricious to rule in favor of an agency which has not complied strictly with its legislative grant of power. Such an omission from the plan is prejudicial to the substantive rights of the parties here involved.

C. Murray City and the Redevelopment Agency have not complied with UCA 11-19-10 and 11-19-12 requiring a separate plan for each project area.

The Redevelopment Project has been designated two target areas for redevelopment but the areas are not treated separately. UCA 11-19-10 states in pertinent part:

> . . .the agency shall select one or more project areas comprising all or part of such redevelopment survey area, and formulate a preliminary plan for the redevelopment of each project area in cooperation with the planning commission of the community. (Emphasis added)

11-19-12 UCA, states:

> The agency shall prepare or cause to be prepared a redevelopment plan for each project area and for that purpose shall hold public hearings and may conduct examinations, investigations and other negotiations.

These sections require plans for each separate project area. The single plan in this instance does not meet such a standard. There is but a single set of statistics, street development plans, population densities and

building intensities generalized for both areas. The statistics of the two areas cannot feasibly be the same and an average is inaccurate. The areas are six blocks apart at their closest point and differ greatly in density, land use and undoubtedly, the instance of "blight".

To treat the areas together thwarts legislative intent. The purpose in requiring specifics for each area is that each will, and should, be separately considered. Defects or flaws in intended use or, in this case, existence of blight may void one proposal yet not affect another. Likewise, statistics may be in excess of 90% in one area for crime, delinquency, infant mortality, etc. but minimal for another, yet if the two are combined, the statistics as to the extent of deterioration will be high enough to cause alarm. The only protection against such abuse is strict compliance with the requirement of separate plans.

There is no plan in the record for Area 2 except the general plan found in Areas for 1 and 2. The specific requirements of the Code cannot be fulfilled in such a general way.

CONCLUSION

This Court should overrule the lower court's grant of summary judgment because such grant was arbitrary and capricious. The lower court was not supported in a finding

that defendants-respondents had established a condition of blight. The defendants-respondents did not comply with the statutory mandates for forumulation of a redevelopment plan and so were without jurisdiction to carry out that plan.

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed copies of the foregoing Brief of Amicus Curiae to Mr. R. Paul Van Dam, Salt Lake County Attorney, Suite 500, Chancellor Building, 220 South 200 East, Salt Lake City, Utah 84111, Mr. Bill Thomas Peters, Special Deputy County Attorney, Suite 500, Chancellor Building, 220 South 200 East, Salt Lake City, Utah 84111, and to Mr. H. Craig Hall and Merrill G. Hansen, Murray City Attorneys, 5461 South State Street, Murray, Utah 84107, on this 15th day of February, 1979.