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

Defendants-Respondents.

Case No. 15755

BRIEF OF RESPONDENT

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

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Clerk, Supreme Court, Utah

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Plaintiff-Appellant,

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MURRAY CITY REDEVELOPMENT
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VAUGHN SOFFE, JACK DEMANN
and JACK FITTS,

Defendants-Respondents.

Case No. 15755

RESPONDENT'S BRIEF

STATEMENT OF THE NATURE OF THE CASE

This is an action contesting the validity of the adoption of a plan for redevelopment by the defendants-respondents pursuant to the Utah Neighborhood Development Act and challenges the validity of the Murray City Ordinance enacted to implement said Utah Neighborhood Development Act on procedural and constitutional grounds, and alternatively requiring that the defendants-respondents redraw their project area to conform with the requirements of the Utah Neighborhood Development Act.

DISPOSITION IN THE TRIAL COURT

The initial complaint in this matter pleaded five causes of Action which may be summarized as follows:

1. The First Cause of Action, in twenty-two paragraphs, asserts that the Murray City Redevelopment Plan and the Ordinance by which that Plan was adopted are not in conformity with the letter or the intent of the Utah Neighborhood Development Act under which they were promulgated.

2. The Second Cause of Action challenges the constitutionality of the Utah Neighborhood Development Act as being in violation of Utah Constitution, Article VI, §28 which prohibits the Legislature from delegating to any special commission any power to make, supervise or interfere with any municipal improvement, money, property or effects, to levy taxes or to perform any municipal functions.

3. The Third Cause of Action challenges the constitutionality of section 11-19-29, Utah Code Annotated, 1953, as being in violation of the Utah Constitution, Article VI, §29 which prohibits the Legislature from authorizing the state, county, city, town, township, district or other political subdivision of the State to lend its credit in aid of any private enterprise.

5. The Fourth Cause of Action challenges the constitutionality of section 11-19-29, Utah Code Annotated, 1953 as being in violation of the Utah Constitution, Article XIII, §5, which prohibits the Legislature from imposing taxes for any local sub-

division but may vest such powers to assess and collect taxes in such subdivision. The complaint alleged that Section 11-19-29 will force Salt Lake County to increase its mill levy or other taxes by depriving the county of its incremental ad valorm tax, thus imposing a tax on the county for the benefit of the redevelopment area in violation of the constitutional provision.

5. The Fifth Cause of Action challenges the constitutionality of section 11-19-29, Utah Code Annotated, 1953, as being in violation of the Utah Constitution, Article XIII, §10, which provides that the full value of each tax resource shall be available to each governmental subdivision entitled thereto.

Upon motion by the defendants-respondents for Summary Judgment, the trial court, on September 1, 1977 granted defendants-respondents a partial summary judgment as to the Second, Third, Fourth and Fifth Causes of Action (i.e., the constitutional challenges) and also as to all issues raised in the First Cause of Action except for two issues, to wit:

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;

which issues were reserved for trial.

"Murray City Ordinance 564 purporting to establish two project areas fails wholly and completely to provide findings and determinations based upon fact that the project areas are blighted areas. The determinations found in the plan are entirely conclusionary. There is no actual adequate factual basis for finding of blight by the City Commission." (page 7, Plaintiff-Appellant's brief)

Further, the statute cited at that same page is quoted with emphasis added. Such editorializing is inappropriate in what purports to be a "statement of facts" and Defendants-Respondents controvert such statements and assert that the entire record shows that the findings and determinations of the Murray Redevelopment Agency and the Murray City Commission were based upon fact. Likewise, the balance of the "Facts" asserts as facts the items that are the subject of plaintiff's argument and each of which is controverted by defendant.

Furthermore, Plaintiff has now raised on appeal issues that were not raised in the pleadings. (i.e. notice of publication Point I)

Prior to the filing of the Complaint by Plaintiff, the following action had taken place in relation to the adoption of the Redevelopment Plan, which is subject of this suit:

1. On March 13, 1975 Murray City adopted its general community plan, in which is designated the various planning and zoning areas as well as the standards of population density desired for an orderly future development. (Ord. No. 368 Exhibit A)

2. The open space element to the plan can be found

under heading "Specific Design Objectives and Controls" - adopted with plan. (p. 8 of Plan)

3. The preliminary plan and boundaries were adopted June 1, 1976. (Exhibit B)

4. Transmittal to the County Tax Assessor of the boundaries of the preliminary plan and request for tax information July 1, 1976. (Exhibit C)

5. There were no amendments to preliminary plan as adopted on June 1, 1976.

6. Approval of the general plan by the Agency was given on July 1, 1976.

7. The Redevelopment Commission adopted the general plan and goals for development on July 1, 1976.

8. The first hearing on final plan was held on September 6, 1976. (Minutes, Exhibit D)

9. The City Commission directed that notice be given of the joint public hearings on July 12, 1976. (Minutes Exhibit E)

10. The first reading of proposed order by City Commission on July 12, 1976.

11. July 20, 1976, date of first publication of Hearing. (Proof of Publication Exhibit F^{1 2})

12. A letter from Chairman of the Planning and Zoning was received endorsing the plan to the City Commission on August 23, 1976. (Exhibit G)

13. Notice was sent to property owners in the area on

September 1, 1976.

14. The public hearings were held on September 6 and September 8, 1976. (minutes, Exhibit H^{1 2})

15. Ordinance #453 read and adopted by City Commission on September 8, 1976. (Motion Exhibit I and J)

16. Letters were mailed to various taxing agencies affected by plan on September 12, 1976. Included with the letters was:

1. Copy of the Ordinance
2. The legal description of areas
3. A map of project areas
(Exhibit K)

The purposes and function of redevelopment are the heart of this action and are set forth in the Utah Neighborhood Development Act. By this action plaintiff in effect is challenging the public policy, the process, and the power and obligations of defendants Agency and City to perform their public functions and duties as mandated by the Legislature in that law. The Agency and City have discretionary powers and authority under the Utah Neighborhood Development Act in implementing and effectuating the public purposes declared therein.

In light of the settled law and long-standing redevelopment statutes, in other states, (especially California and Utah's Act is a copy of that state's law) it is clear that defendants, Agency and City, at all times herein were acting within the scope of the power and authority designated in the Utah Neighborhood Development Act in their quest to eliminate blight

in the project area pursuant to the standards imposed by declared legislative policy.

In addition, plaintiff failed to exhaust its administrative remedies, by its failure to make an official objection to the Redevelopment Agency, the City or the Staffs of either body.

As shown, *supra*, the Utah Neighborhood Development Act contains a complete administrative procedure for the adoption of redevelopment plans which fulfills the requirements of due process of law. It is well established that where such procedure is provided, objecting parties must avail themselves of the remedies therein before seeking the aid of the courts.

The law requires, and the defendants held, a duly noticed hearing specifically for the purpose of hearing "any and all persons having any objections to the proposed redevelopment plan." In addition any person objecting to the proposed plan was invited to file a written statement of such objections prior to the hearing. Plaintiff has failed to comply with these procedures.

While plaintiff's failure to pursue the administrative remedies provided may not be a complete bar to this action, it is certainly indicative of the sincerity in which plaintiff's charges are made. It clearly shows that plaintiff does not now desire, nor has ever desired, to seek any solution to the ills it claims infect the Project. Its only concern is to stop the Project at any cost.

The pleadings, declarations and the public record with respect to the preparation, adoption and contents of the Redevelopment Plan, the preparation, contents and recommendations of the MARC '76 Study, and the contents of the Plan in this action challenging the validity of the Redevelopment Plan clearly show that there is no triable issue of any material fact, only legal issues are presented in this action, and the trial court ruled correctly.

The Redevelopment Plan for the downtown Murray City Redevelopment Project as finally adopted was the culmination of extensive and meaningful public and private effort, and is legal and valid in all respects as herein shown.

ARGUMENT

POINT I

THE TRIAL COURT WAS CORRECT IN GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT BECAUSE DEFENDANT'S PUBLICATION OF NOTICE WAS IN SUBSTANTIAL COMPLIANCE WITH THE NOTICE REQUIREMENTS OF THE UTAH NEIGHBORHOOD DEVELOPMENT ACT.

Affidavits of publication show that defendants-respondents gave notice to the public of the hearing to be held in September, 1976 concerning the redevelopment plan, by publication on five different dates, to-wit: on July 20, 1976 in the Murray Eagle and on August 27, 1976, August 31, 1976, September 2, 1976 and on September 6, 1976 in the Salt Lake Tribune. Notice, therefore, appeared on five days, over a period of seven weeks. Defendants-respondents respectfully submit that the notice thereby made was in substantial compliance with the notice requirements of section 11-19-16.

In Hopper v. Board of County Commissioners, 506 P. 2d 348 (1973), a case on which plaintiff-appellant relies, the New Mexico court says: ". . . failure to publish substantially in the manner prescribed has the result that the ordinance was never validly adopted." (at page 351) (emphasis added). In that case, where the statute required the publication of the full text of the zoning ordinance, the court found that publication of only two of the text's twenty-two sections was not a substantial compliance with the statutory requirements and therefore the ordinance had

not been validly adopted.

However, it has been held that what constitutes "substantial compliance" is properly for the trial court to determine. Gustine City v. Silveira, 154 P.2d 474, (Calif. 1945). In Beck v. Ransome-Crummey Co., 42 Cal App. 674, 184 P.431 (Calif. 1919), the California court states:

"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 an abuse of discretion". (at page 434)

In the case sub judice, while the issue of notice was never properly before the court (since it did not appear in the initial complaint and that complaint was never amended to include that issue) to the extent that the trial court may have considered the issue as it was raised by plaintiff-appellant's Motion for Summary Judgment, it must be inferred from the denial of plaintiff-appellant's motion that the trial court had determined that the notice given by defendants-respondents on five occasions prior to the hearing constituted compliance with the notice requirements of section 11-19-16

of the Utah Neighborhood Development Act.

It should be noted that in Hart et al. v. Bayless Investment and Trading Co., 346 P.2d 1101 (Ariz. 1959), a case also relied upon by plaintiff-appellant, the facts in that case are in striking contrast to the facts in this case. In Hart, the failure to comply with the notice and hearing provisions of the Arizona Zoning Act was of such an extensive nature as to constitute a gross violation of the statutory mandate. In that case, the adoption of a zoning ordinance required two prior hearings, one before the Zoning Commission to be followed, along with the Zoning Commission's recommendations, be a second hearing before the Board of Supervisors. Each hearing was required to be preceded by "at least 15 days notice thereof by publication in a newspaper of general circulation in the county seat". Among a number of other defects charged, the most outstanding is described by the court:

"We can find no record or any formal notice of hearing given, or that a public hearing was actually held, or that a recommended ordinance was referred to the Board". (at page 1106).

Plainly, the facts of Hart indicate a gross failure of comppliance with the statutory notice requirement and therefore Hart is readily distinguishable from our case. Also, see:

Feldhake v. City of Sante Fe, 300P.2d 934;
Dewitz v. Joyce-Pruitt Co., 20 N.M. 572, 151 P.2d 100;
DeGraftenreid v. Casaus, 26 N.M. 216, 190 P.2d 728;
City of Alamogordo v. McGee, 64 N.M. 253, 327 P.2d 321 (1958);
Hughes v. City of Carlsbad, 53 N.M. 150, 203 P.2d 995 (1949).

The final statement on this point is that it was not raised and has not been properly raised in the plaintiff's complaint; no issue has not been made an issue in this suit by amendment. There has not been even an attempt to amend and include this issue as part of the suit and the court is now powerless to review the same under the provisions of section 11-19-20, Utah Code Annotated, 1953 (as amended). There has been no showing that plaintiff was without sufficient information relating to publication of notice at the time the action was commenced, to enable it to have included that issue initially. Indeed, the very nature of the issue would have required attention at that time.

The scope of review by the trial court was limited to the "substantial evidence" test. Defendant's first memorandum, Point B, discusses this issue in greater detail. There has been no showing that the trial court misapplied this rule and in fact, the court's decision is in keeping with the line of cases on this point as it relates to the redevelopment process.

See: Redevelopment Agency v. Hayes, 122 Cal. App. 2d 777, 266 P.2d 105 (1954); In Redevelopment Plan for Bunker Hill, 61 Cal. 2d, 21, 289 P.2d 538;
McQuillan, Municipal Corporations, Volume 2, Section 10.36

POINT II

THE TRIAL COURT WAS CORRECT IN GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT BECAUSE THE DETERMINATION OF BLIGHT WAS PROPERLY MADE BY THE REDEVELOPMENT AGENCY AND BY THE MURRAY CITY COMMISSION AND WAS IN COMPLIANCE WITH THE UTAH NEIGHBORHOOD DEVELOPMENT ACT.

In its entirety, the definition of "blighted area" is stated in section 11-19-2(10) as follows:

"The words 'blighted area' are 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 or a combination of the following factors:

- (a) Defective design and character of physical construction,
- (b) Faulty interior arrangement and exterior spacing,
- (c) High density of population and overcrowding,
- (d) Inadequate provision for ventilation, light, sanitation, open spaces, and recreation facilities,
- (e) Age, obsolescence, deterioration, dilapidation, mixed character, or shifting of uses,
- (f) Economic dislocation, deterioration, or disuse, resulting from faulty planning,
- (g) Subdividing and sale of lots of irregular form and shape and inadequate size for proper usefulness and development,
- (h) Laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions,
- (i) Existence of inadequate streets, open spaces, and utilities, and
- (j) Existence of lots or other areas which are subject to being submerged by water.

(emphasis added)

Attention has been drawn to the word "characterize" in order to emphasize that the concept of "blight" is not given a rigid definition. The statutory language of section 11-19-2(10) appears to offer guidelines for legislative bodies and agencies in determining whether or not an area is "blighted" and a suitable subject for redevelopment efforts.

In addition to such guidelines, further assistance offered to such bodies by the language of section 11-19-2(11):

"The words "project area mean an area of a community which is a blighted area within a designated redevelopment survey area, the redevelopment of which is necessary to effectuate the public purposes declared in this act..." (emphasis added)

The language of such purpose may be found in section 11-19-2(9):

"The word "redevelopment" means the planning, development, replanning, redesign, clearance, reconstruction, or rehabilitation, or any combination of these, of all or part of a project area, and the provisions of such residential, commercial, industrial, public, or other structures or spaces as may be appropriate or necessary in the interest of the general welfare." (emphasis added)

Likewise, section 11-19-21 concerning the ordinance by which the redevelopment plan is to be adopted states that such ordinance will include a finding that:

"(a) The project area is a blighted area, the redevelopment of which is necessary to effectuate the public purposes declared in this act.

(b) The redevelopment plan would redevelop the area in conformity with this act and in the interests of the public peace, health, safety and welfare, ...

(e) The carrying out of the redevelopment plan would promote the public peace, health, safety, and welfare of the community and would effectuate the purposes and policy of this act.

Where the statutory language does not more specifically limit or restrict the legislative body or the redevelopment agency in their determinations of what constitutes blight and what is in the interest of the general welfare, those bodies appropriately make such a determination upon a reasonable "basis in fact", and, barring legislative and agency determinations that are capricious, arbitrary and irrational, the scope of judicial review is, in such matters, greatly limited. Nevertheless, plaintiff-appellant argues that the blight which the redevelopment agency determined existed in the project area was not "sufficient" to justify a redevelopment plan for Murray City.

The statute is silent as to what constitutes a sufficient amount of blight, leaving it to the redevelopment agency and the legislative body to determine what is in the interest and general welfare of the community.

In making their determinations, the redevelopment agency and the Murray City Commission had the following information which was a part of the record before them:

1. The MARC '76 study (Exhibit "M"), the details of which have already been extensively covered in defendants' Memorandum of Points and Authorities in Support of Motion for Summary Judgment, pages 18, 19 and 20. This study, made by the Community Development Staff in 1976 showed 40.44% of commercial building in the survey area requiring either substantial structural repair or total replacement, and 59.37% of the residential buildings needing such repair or replacement.

2. Letter of August 6, 1976 from Jim Watts, the Executive Director of the redevelopment agency, calling the agency's attention to a series of court hearings involving the Rifle Street Trailer Court which was closed down because of improper electrical wiring and numerous health and sanitary violations. This same letter also cited a condemnation of the Gaslight Building for similar violations.

3. Letter of August 10, 1976 from Jim Watts, reviewing for the redevelopment agency the crime statistics for the area. The letter states:

"Within the two areas there is a substantial amount of criminal offenses and a check of the running log from January 1, 1976 until the present indicates that the areas comprise about one-eighth of the city's area and yet it accounts for over one-third of the major crimes committed in the city."

This letter gives the following break-down of crime statistics for the two areas which, as the letter states, represents only one-eighth of the city's geographical area:

Assault and battery	31%
Burglary	32%
Forgery	26%
Robbery	52%
Sex offenses	41%
Auto theft	28%
Vandalism	35%
Prowls	38%
Average	<u>35%</u>

The letter further states:

"The reasons for this high crime situation within the project areas is due, in my estimation, to the following reasons:

- (1) The area is old and the age of the structures becomes a desirable target for crimes against property.
- (2) The area is experiencing a shift in uses, causing a mixed character to exist in the areas designated for redevelopment.
- (3) Since the area is shifting in use and the buildings are quite old we find that it is hard to keep the buildings occupied. The vacant buildings created by this are also appealing to such crimes as vandalism.

4. Letter dated August 7, 1976, from C. G. Gillen, the Murray City Chief of Police, indicating that the project area is a high crime area and that the cause is the changing use and character of the buildings.

"Many of the crimes that are committed in the area happen because of the vacant buildings, and overall deterioration.

We will be unable to change this trend unless we can revitalize the area and make it a viable location, which the proposal would do."

5. Minutes of the Murray City Commission of May 5, 1976 indicating a presentation by Ken Millard, the Planning

Consultant who worked with the MARC '76 members in their study of community conditions and needs, which presentation included maps and models prepared for that study. It was stated that: "This presentation would hopefully enable the Planning and Zoning Commission to correlate their thinking with what can be done." The deposition of Mayor Soffe illustrates the extent to which Murray City went to evaluate the survey area, hold open citizen meetings, and review recommendations from both lay citizen groups and experts.

It is clear from the above, then, that while plaintiff-appellant would prefer to find the above evidence insufficient, the record nevertheless shows that the redevelopment agency had before it ample indications of increasing blight in the Murray community.

Plaintiff-appellant apparently does not recognize that blight is not only a condition, but is also a process. In its incipient stages, the process of blight may be first seen as little more than peeling paint, faulty plumbing and w or broken windows, all commonly associated with economic deterioration, both as its cause and as its effect. In its w or stages, blight may take the form of widespread disease and infant mortality, infestations of vermin, extensive criminal activity or total economic collapse. A blighted area may exhibit one of these symptoms or several, or others not cited.

One would expect the economic factors always to be present. It would be a short-sighted community indeed which, aware that such a process has begun, chooses to wait until its death rate or its crime rate reach the maximum possible level before taking appropriate action.

Yet plaintiff-appellant would have this court believe that the legislature insists that the community may not act until it is a victim of a whole catalogue of plagues. Plaintiff-appellant's reading of section 11-19-2(10)* is not sensible, for it would require us to understand that if, for example, conditions of blight in a community result in an unsanitary water supply causing (cholera? typhus?), the community may not move against such conditions unless it can also show an increase in juvenile delinquency. Such a binding of a community's powers would be ridiculous and the language of 11-19-2(10) cannot be so read. A careful and sensible reading of the statute indicates that the legislature provided for a community to deal with the kind of physical deterioration, of whatever causes, which result in unfit, unsafe, unsanitary, or criminal conditions.

Although there are not Utah cases in point we can find assistance from the California decisions, as Utah's

* Plaintiff-appellant's brief cites 11-19-2(11) - apparently a typographical error.

Act is almost an exact duplication of the one found in that State. The following cases dealt with the issues of the determination of blight and are discussed in more detail in our memorandum in support of Motion for Summary Judgment contained in the file:

Redevelopment Agency v. Hayes, 122 Cal. App. 2d 777, 266 P.2d 105 (1954)

Redevelopment Agency v. Modell, 177 Cal. App. 2d 321, 2 Cal. Repr. 245 (1960)

Levin v. Township of Bridgewater, 57 N.J. 506, 274 A.2d, 45 A.L.R. 3d 1054 (1971)

Grisanti v. Cleveland, 89 Ohio L.A.Gs. 1, 181 N.E. 2d 299 (1962)

Stahl v. Board of Finance, 62 N.J. Super. 562, 163 A2d 396 (1960)

Oliver v. City of Clairton, 374 Pa. 333, 98 A.2d 47 (1953)

Berman v. Parker, 348 U.S. 26, 75 S.Ct. 98 (Dist of Col.)

POINT III

THE TRIAL COURT WAS CORRECT IN GRANTING SUMMARY JUDGMENT FOR THE DEFENDANT BECAUSE THERE WAS A PLAN FOR EACH PROJECT AREA, IN COMPLIANCE WITH THE UTAH NEIGHBORHOOD DEVELOPMENT ACT.

Defendant-respondent does not dispute that there are indeed two separate and distinct project areas. From the first stages of investigation and planning, the two areas have been recognized as separate areas and have been so designated as "Area Number 1" and "Area Number 2". The boundary descriptions of each area appear in the newspaper public notices, in the Redevelopment Plan itself and in Ordinance #453 by which the Plan was adopted. It is clear from the entire record that at all times it was anticipated by all parties that two separate geographical areas were to be the targets for redevelopment.

It is equally clear, however, that at all times a single process of planning covered the two areas. The very nature of all discussion beginning with the earliest meetings of the Murray City Commission, the presentation of all reports, maps (the two areas being indicated on a single map), and the publications of notice, including boundary descriptions of the areas printed as a single notice, make it clear that the two areas were being planned for by a single, comprehensive Plan.

Section 11-19-10 states in its entirety:

"On its own motion, or at the direction of the legislative body of the community

or upon the written petition of the owners in fee of majority in area of any redevelopment survey area, excluding publicly owned areas or areas dedicated to a public use, 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 co-operation with the planning commission of the community."

Likewise, section 11-19-12 states:

"The agency shall prepare or cause to be prepared a redevelopment plan..."

It will be noted that neither section specifies that separate plan is required for each separate project area, but only that there be a plan to provide for each area. The entire record reflects compliance with the requirements of the Utah Neighborhood Development Act.

POINT IV

THE TRIAL COURT WAS CORRECT IN GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT BECAUSE DEFENDANT ACTED IN FULL AND COMPLETE COMPLIANCE WITH THE UTAH NEIGHBORHOOD DEVELOPMENT ACT.

Plaintiff-appellant alleges that there exists no master or general community plan as required by section 11-19-5 despite the fact that this allegation is plainly controverted by the presence in the record of Ordinance #368 by which was adopted the Uniform Zoning Ordinance of Murray City 1975, Part 40 (Exhibit "P") which, with its charts and Maps, meets all the requirements of section 11-19-5. This issue was summarily resolved by Judge Dee, as reflected in his Memorandum Decision, entered September 29, 1977 and subsequently by Judge Winder.

Plaintiff-appellant further alleges that when a city commission chooses to "move into a posture" of considering a redevelopment project, it "must announce its intention by formal resolution". This is a clear misreading of section 11-19-6 which states: "Redevelopment survey areas may be designated by resolution of the legislative body upon recommendation of the agency." (emphasis added). This section provides for a discretionary procedure which may be used at an early stage of planning, that is, at the stage at which a survey area is being considered for redevelopment, before such area has actually been designated as a project area. In the event that such a procedure is utilized, section 11-19-8 makes provision for the contents of such procedure.

In any event, this allegation, also summarily disposed of below, is controverted by a copy in the record of the authority from the Murray City Commission (Exhibit "I")

Plaintiff-appellant further alleges that the Plan does not provide for a method for relocating any families which might be displaced by the Plan. This issue was also dealt with summarily below. The Plan, at pages 13 and 14 apparently anticipates that little if any relocation will be necessary. In the event that such a necessity should arise, "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. It is clear that a more specific plan for relocation is not possible if the Plan has not in fact identified individuals or businesses which might be in need of relocation.

Plaintiff-appellant's allegation that defendant-respondent failed to comply with the requirement of 11-19-14(6) that the Plan be accompanied by the recommendations of the planning commission has also been dealt with summarily below. The minutes of the Murray City Commission meeting (Exhibit H) indicates the necessary recommendations from the Murray City Planning and Zoning Commission, in compliance with section 11-19-14(6).

In all respects, the Murray City Commission and the Redevelopment Agency complied fully with the requirements of the Utah Neighborhood Development Act. There is no merit in the

allegations made by plaintiff-appellant and there was error by the Trial Court which granted defendant's Motion for Summary Judgment.

POINT V

THE TRIAL COURT WAS CORRECT IN GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT BECAUSE THE INCREMENTAL FUNDING PLAN AUTHORIZED BY THE UTAH NEIGHBORHOOD DEVELOPMENT ACT IS A CONSTITUTIONALLY PERMISSIBLE METHOD OF FURTHERING THE PUBLIC PURPOSES OF THAT ACT.

While plaintiff-appellant recognized that the constitutionality of the Utah Neighborhood Development Act was affirmed by this court in Tribe v. Salt Lake City Corporation, 540 P. 2d 499 (1975), it nevertheless insists that Tribe did not address the question of

"whether or not such a use of tax revenues could be permitted if they, in fact, diverted the funds from another taxing body, and further, it did not answer the question of whether or not the shift of the tax burden to those taxpayers living outside of the project area was permissible under the Constitution of the State of Utah."

In fact, the court in Tribe based its holding on its determination that the redevelopment agency is:

"...an agency of the state designed for state purposes...[T]he public purposes for which the agency is organized inures to the benefit of the public generally, therefore the public may be charged for such benefits through general taxation." (at page 503) (emphasis added)

The public purpose of which the court speaks may be found in Section 2 of Senate Bill 3 S.S.#1, March 20, 1969, wherein the legislature declared that "...it is necessary for the welfare of the state and its inhabitants that redevelopment agencies be authorized within cities, counties or cities and

counties....in order to encourage the upgrading of property in those areas." The legislature further states: "This Act shall be liberally construed to effect its purposes."

The Utah Neighborhood Development Act and specifically the provision of section 11-19-29, creates a method by which substandard buildings and land use may be improved, "with the result, among other things of strengthening the tax base and ameliorating the economic health of the entire community." Tribe, supra at page 502. Thus are the legislative purposes served.

The short-sightedness of the county plaintiff-appellant is incomprehensible. If there were no redevelopment plan as provided for by the Utah Neighborhood Development Act, county tax revenues would be fixed at the level of the assess valuation of the blighted property. Under the Utah Neighborhood Development Act, no tax revenues are used to improve the property. But the increased tax revenues generated by that improvement after being used first to retire the bonds by which the improvements have been made go thereafter to the county. Thus the Utah Neighborhood Development Act provides a mechanism by which the tax base may be raised, thus countering the very problem that most fundamentally characterized blighted areas, namely, the withering of the tax base. Revenues to the county, after the payment of the improvement costs, are increased manyfold, to the benefit of all county residents, both in and out of the

project area.

Plaintiff-appellant is taking precisely that position by which other communities have painted themselves into the corner of irretrievable blight and urban decay, leading ultimately to municipal bankruptcy. The relation between blight and a reduced tax base is obvious. The county's purpose in attempting to obstruct the operation of section 11-19-29, the constitutionality of which section has already been affirmed by this court, is beyond comprehension.

Plaintiff-appellant's second constitutional challenge concerns Article VI, §29 of the Utah Constitution by which no "county, city, town, township, district or other political subdivision" may lend its credit in aid of any "private individual or corporate enterprise or undertaking." In response, defendant respondents can only cite once again from Tribe, supra (at page 503) by which this court dealt precisely and clearly with this very issue:

"The Act specifically provides that the bonds and other obligations of the agency are not a debt or obligation of the community....[T]he bondholders can look only to revenues from the operation of the facility and the allocated taxes for retirement of the bond obligation. Under the subject statute, providing for this arrangement, there can be no city debt created contrary to Article XIV, Sections 3 and 4; nor can there be a lending of the city's credit in contravention of Article VI, Section 29." (emphasis added)

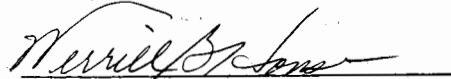
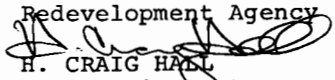
CONCLUSION

Defendants-respondents respectfully submit that the trial court was correct in granting defendant's Motion for Summary Judgment because the defendants-respondents acted in compliance with the provision of the Utah Neighborhood Development Act and within the scope of the powers and authority provided by that Act, and because in no respect is that Act unconstitutional.

The trial court's responsibility and authority was to determine if there was evidence before the legislative body of Murray City upon which it could have based its decision, not to substitute its judgment or opinion in place of that of the legislative authority. There was no abuse of discretion found by the trial court and none committed by it.

The judgment should be affirmed.

Respectfully submitted this
22 day of September,
1978.


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