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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)	Case No. 15755
AGENCY and MURRAY CITY, a)	
municipal corporation,)	
VAUGHN SOFFE, JACK DEMANN)	
and JACK FITTS,)	
)	
Defendants-Respondents.)	

BRIEF OF APPELLANT

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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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

APPELLANT'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; alternatively requiring that the defendants-respondents redraw their project area to conform with the requirements of the Utah Neighborhood Development Act, and finally, to contest the constitutionality of the Utah Neighborhood Development Act.

and as such, derives a substantial portion of its revenues from the *ad valorem* property tax. Murray City is a body corporate and politic and lies wholly within the boundaries of Salt Lake County, State of Utah.

On July 20, 1976, the Board of Commissioners of Murray City caused to be published in the Murray Eagle, a weekly newspaper located in the city of Murray, a Notice thereby notifying all residents of Murray City that Murray City had established a redevelopment agency and had adopted, pursuant to the Utah Neighborhood Development Act, Utah Code Annotated, Section 11-19-1, *et. seq.*, 1953 as amended, a redevelopment project area. Said Notice further described the project area designated for redevelopment. (T-227) The record does not indicate any additional notice or publication in the Murray Eagle with regard to the proposed project area.

On August 27, August 31, 1976, and September 2 and September 6, 1976, said City Commission caused to be published in the Salt Lake Tribune, a daily newspaper, a Notice to all residents of Murray City, Utah, and in particular those persons residing within the limits of a specified area, that the Board of Commissioners of Murray City had established a redevelopment agency and had adopted, pursuant to Utah Neighborhood Development Act, Utah Code

Annotated, Section 11-19-1, *et. seq.*, 1953 as amended, a redevelopment project area and then described said project area within said Notice. There appears in the record no other publication or notification in the Salt Lake City Tribune. (T-228)

On the 8th day of September, 1976, the Board of Commissioners of Murray City adopted Ordinance Number 453 and, thereby, attempted to implement the redevelopment project referred to in the one-time publication in the Murray Eagle and the subsequent publication of notice four times in the Salt Lake Tribune in the period of eleven days. (T-13-15) Section 11-19-16, Utah Code Annotated, 1953 as amended, 1971, reads in part as follows:

"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 land lies. . ."

On the 8th day of October, 1976, plaintiff-appellant filed a Complaint in the District Court of Salt Lake County, State of Utah, attacking the purported redevelopment project on several grounds. The Complaint raised constitutional objections to certain provisions of the Utah Neighborhood Development Act; asserted that the Murray City Ordinance Number 453 was in violation of the Utah Neighborhood Development Act, in that it had not been

adopted in accordance with the requirements of said Act, and, therefore, null, void and with no effect, and finally, sought alternative relief in the form of requiring that Murray City redraw its project area limits to bring the project area into conformance with the requirements of the Utah Neighborhood Development Act, and in particular, Sections 11-19-9 and 11-19-2(10), Utah Code Annotated, 1953 as amended, 1971. (T 2-12)

Plaintiff-appellant's Complaint raised numerous objections to the plan as adopted in its First Cause of Action and the Second, Third, Fourth and Fifth Causes of Action raised constitutional objections to the Utah Neighborhood Development Act as it was to factually apply to Salt Lake County. (T 2-12)

Inasmuch as Summary Judgment was granted in favor of the defendants-respondents, the factual assertions made in plaintiff-appellant's Complaint and as subsequently developed through discovery, are to be considered in the light most favorable to the party moved against, in this case, plaintiff-appellant.

The Utah Neighborhood Development Act at Section 11-19-21, Utah Code Annotated, 1953, as amended, 1971, requires that the ordinance promulgating a project area contain (among other things):

"(5) The findings and determinations of the Legislative body based upon fact that (a) is a blighted area, the redevelopment of which is necessary to effectuate the public purposes declared in this act . . . (emphasis added)

Murray City Ordinance Number 453 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 a finding of blight by the City Commission. At page 12 of said Plan, it is declared

that 5.31 percent of the buildings or structures in the project area are unfit for use and must be demolished. That figure is disputed by other evidence in the record below. Further, that figure does not come from an independent investigation of Murray City with regard to ascertaining the factual basis upon which to adopt such a project, but is the result of a different study taken for a different purpose entitled the Murray Core Area District Revitalization Plan, published in 1974, which Core Area study is a part of the record of these proceedings. Further, the area actually surveyed in 1974 for the revitalization plan from which the purported statistics for the redevelopment plan were taken constituted only a small fraction of the two project areas, which the Murray Redevelopment Agency attempts to support with the statistics contained in the revitalization plan. Further, the Revitalization Plan that was subsequently seized upon by Murray City as a basis for implementing the Neighborhood Development Plan, did not relate to all types of buildings in the project area, but related only to commercial buildings and, thereby, did not relate a vast majority of the structures in the two project areas subsequently adopted. Therefore, the facts clearly demonstrate that the percentage of buildings in the two project areas that are unfit or unsafe for occupancy must be substantially less than 5 percent.

Plaintiff-appellant in its Complaint and subsequent motions and memoranda asserted that such a small percentage is not sufficient characterization of blight to permit the establishment of a project area under the Utah Neighborhood Development Act. The Ordinance and the Plan of redevelopment contains no finding of ill health in either of the project areas. Nor does the Ordinance and Plan indicate that there are more cases of ill health in either of the project areas than in Murray City as a whole. Nor does the Ordinance or Plan contain any indication that there is more ill health resulting from the condition of buildings or other conditions in the project area. Neither the Ordinance nor the Plan contains any reference whatsoever to infant mortality or of greater infant mortality in the proposed project areas than in Murray City as a whole or to an increase in infant mortality due to the condition of the buildings or any other conditions in the proposed project areas. Neither the Ordinance nor the Plan contains any reference whatsoever to juvenile delinquency or of greater juvenile delinquency in the project areas than in Murray City as a whole, or to an increase in juvenile delinquency due to the condition of buildings or any other condition in the project areas. Neither the Ordinance nor the Plan contains any reference whatsoever to crime, or that there is more crime in the project areas than in Murray City

as a whole or that there is an increase in crime due to the condition of buildings or any other condition in the project areas.

Neither the Ordinance nor the Plan contains any showing whatever that the project areas adopted have been restricted to buildings, improvements, or lands which are detrimental or inimical to the public health, safety, or welfare. The preliminary plan of redevelopment and the finally adopted plan does not contain a statement of the land uses, population densities or building intensities as required by 11-19-11(2), Utah Code Annotated, 1953. Page 14 of said Plan item (5) (b) of the Plan states as follows:

"Planning criteria has not specifically been set forth in the plan relative to land uses, densities, characteristics of internal circulation systems and need and type of public improvements in order to provide maximum flexibility in the development of acquired land and to achieve the highest quality development that is consistent with the city's long-range plans for redevelopment of the Central Business District."
(emphasis added)

The Plan of redevelopment does not contain a statement of the standards proposed as the basis for the redevelopment of the project area; the Plan does not show how the purposes of the Utah Neighborhood Development Act would be attained by such redevelopment, as required by the statutes.

The Plan does not show that the proposed redevelopment conforms to the master or general community plan as required by statute.

Plaintiff-appellant's discovery indicates that there is, in fact, no master plan.

Plaintiff-appellant's discovery and the deposition process and response for Request for Production of Documents demonstrates that there is no reliable information as to an increased incidence of ill-health, transmission of disease, infant mortality or juvenile delinquency in the project areas.

The testimony of Vaughn Soffe, former Mayor of Murray City and Chairman of the Murray City Redevelopment Agency, illustrates the dearth of Murray City fact finding as to blight. His deposition in summary demonstrates that the Murray City Commission relied heavily upon the study provided by the Murray Core Area Downtown District Revitalization Plan published in 1974, and upon complaints from Murray businessmen that they were having economic difficulties in the area known as the Central Business District. Mayor Soffe was unable to point to any factual evidence of blight, of studies of physical or social conditions which conclude blight, or even official opinions by County Health Officers showing a higher rate of disease or infant mortality in the project areas than elsewhere in the City of Murray. He did allude to another study in his deposition, however, the

defendant City in response to discovery motions and questioning did not produce any other study. Indications are that the "other study" referred to by Mayor Soffe may have been incorporated in the Murray Core Area Downtown District Revitalization Plan. The presumed study does not deal with statutory determinations of blight. (Vaughn Soffe, D 442-452)

The deposition of James Ivan Watts, Executive Director of the Murray City Redevelopment Agency, further demonstrates the lack of findings of fact by Murray City as to the existence of blight, and demonstrates that there were no findings of ill-health, transmission of disease, infant mortality or juvenile delinquency. That there were no studies and were no opinions obtained from the appropriate authorities as to the presence of statutorily defined blight. Mr. Watts' deposition further indicates that a study was, in fact, conducted concerning the incidents of crime, which study was conducted after the plan of redevelopment was written. (James Ivan Watts, deposition dated November 28, 1977, 27-30)

In his deposition, Charles Clay, Murray City Engineer, gives further evidence that Murray City had not established a factual basis for a determination of statutorily defined blight. He indicated that he had been the City Engineer for Murray City since 1974, that he had

never done a survey to determine how many or which buildings in Murray were unfit or unsafe to occupy, and he has in his capacity as City Engineer commenced legal proceedings to abate as dangerous only approximately 10 buildings over the past 4 1/2 years in the entire corporate limits of the City of Murray. (Charles Clay, D 284-291)

The Murray Core Area Revitalization Plan referred to Mayor Soffe and Mr. Watts contains no discussion whatever of ill-health, transmission of disease, juvenile delinquency, infant mortality or crime either in Murray City as a whole or as generated by any condition whatsoever in the area comprising the two project areas. The 1974 Revitalization Plan does contain statistics as to buildings which are beyond rehabilitation; however, those statistics are in variance with those included in City Ordinance Number 453 and the Redevelopment Plan. All of the structural condition statistics in the 1974 Revitalization Plan relate to a small area on both sides of State Street from 4800 South Street to First Avenue, approximately 5050 South, and have nothing to do with the majority of project area number 1, and nothing to do whatever with project area number 2. Murray City Ordinance Number 453 utilizes one plan, but makes reference to two separate redevelopment project areas, that is, project areas Number 1 and Number 2. The legal descriptions describing area number 1 and area number 2 contained in the

notice of project area and in Ordinance Number 453 are the same. Project area Number 1, the eastern boundary, applies only to the "commercial properties fronting on the east side of State Street". This description excludes all residential property fronting on the east side of State Street and any other non-commercial property, such as the Murray City Park, the Arlington School and the National Guard Armory. It would also exclude all commercial property in the immediate vicinity not fronting on State Street. The testimony of James Watts was that the intended project area was that of the "commercially zoned" property fronting on State Street rather than the "commercial properties fronting on the east side of State Street". Such a description, had it been used, would have included non-commercial properties fronting on State Street, but still would not have included commercially zoned properties in the immediate vicinity not fronting on State Street. (James Watts deposition November 28, 1977, D-490) The defendants-respondents do not have a master plan. Defendant-respondents, in response to plaintiff-appellant's discovery motions and through the depositions of the various witnesses, have failed to substantiate and, in fact, turn over a master plan that includes requirements of Section 11-19-5, Utah Code Annotated, 1953, as amended 1971. There is no plan showing the general location and extent of existing and

proposed major thoroughfares, transportation routes, terminals and other major public utilities and facilities. There is no master plan showing a land use plan which designates the proposed distribution and general location and extent of the use of the land for housing, business, industry, recreation, education, public buildings and grounds and other categories of public and private use of land. There is no master plan containing a statement of the standards of population density and building intensity recommended for the various districts and other territorial units and estimates of future population growth in the territory covered by the plan, which have been all correlated with a land use plan. There is no master plan containing maps, plans, charts or other descriptive matter of showing the areas in which conditions are found indicating the existence of blighted areas. The proposed redevelopment project purportedly adopted by Murray City contains no plan for the relocation of families, although there is some documented statement to the effect that there are five families within the area that need relocation.

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT BECAUSE THE DEFENDANTS FAILURE TO COMPLY WITH THE NOTICE REQUIREMENTS OF SECTION 11-19-16, UTAH CODE ANNOTATED, 1953, AS AMENDED, LEFT THE MURRAY CITY REDEVELOPMENT AGENCY AND MURRAY CITY WITHOUT JURISDICTION TO ADOPT THE PROJECT AREA REDEVELOPMENT PLAN.

Section 11-19-16, Utah Code Annotated, 1953, as amended, 1971, reads, in part, as follows:

"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 land is" (emphasis added)

The initial publication of the proposed project area occurred on July 20, 1976, in the Murray Eagle. Publication in that paper occurred only on that day. There were no subsequent publications in the Murray Eagle. The requirements of Section 11-19-16, Utah Code Annotated, 1953, of four successive weekly publications were not met by the one-time publication of July 20, 1976.

Thirty-seven days later, another attempt was made by the defendants to comply with the requirements of Section 11-19-16, Utah Code Annotated, 1953. Again, they failed to comply with the statutory notice. The second attempt at publication commenced on Friday, August

27, 1976. Four days later, on Tuesday, the 31st day of August, notice was again published. During that same week, two days later, on Thursday, the 2nd of September, 1976, notice was again published. Final publication took place four days later on Monday, the 6th day of September. Therefore, the statutory notice that is a condition precedent to the valid adoption of the project area by the defendants-respondents was not given. They did not publish for four successive weeks. This Court in In Re Phillips Estate, 44 P.2d 699 (1935) set forth the meaning of successive publication.

"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

Applying the standards set forth by this Court in Phillips, the defendants-respondents' notice, at best, was only three successive weeks rather than the jurisdictional four required by statute.

It is generally held that an ordinance, to be effective, must be published as required by law and an ordinance that is not published in accordance with the requirements is void. See 56 Am Jur 2d, Municipal Corporations §350. Thus, if the statute requires publication as a condition precedent to an enactment

thereunder and it is never properly published, the enactment never goes into effect. 56 Am Jur 2d, Municipal Corporation §351.

In Hart, et. al.v. Bayless Investment & Trading Company, 346 P.2d 1101 (1959), the plaintiff was questioning the validity of a zoning ordinance that had been in effect for many years. The plaintiff asserted that certain ordinances were of no force and effect because the requisite notice of hearings before the zoning commission and board of supervisors had not been given. The lower court agreed with the plaintiff and on appeal, the Supreme Court of Arizona affirmed, in part. In reaching its decision, the Court made the following observations:

"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."

at page 1105

By the Utah Neighborhood Development Act, certain authority was conferred upon the legislative body of a community to establish a redevelopment agency and adopt projects. One of the express conditions of that grant of authority is the Notice requirements found in Section 11-19-16. The

defendants-respondents failed to comply with the statutory conditions precedent by not publishing for four successive weeks. Therefore, the proposed project for redevelopment like the zoning ordinances in the Hart case, are of no effect.

The Court, in Hart, went on to say:

"This Court has held that, where a jurisdictional notice is required to be given in a certain manner, any means other than that prescribed is ineffective. See Yuma County v. Arizona Edison Co., 65 Ariz. 332, 180 P.2d 868. This is so even though the intended recipient of that notice does in fact acquire the knowledge contemplated by the law. Such a rule is no mere "legal technicality"; rather it is a fundamental safeguard assuring each citizen that he will be afforded due process of law. Nor may the requirement be relaxed merely because of a showing that certain complaining parties did have actual notice of the proceeding. We hold the evidence amply sustains the trial court's finding and legal conclusion that the Board failed to comply with the statute in that it did not give the requisite official notice in a daily newspaper."

In the case of Hopper v. Board of County Commissioners, 506 P.2d 348 (1973), the Court of Appeals of New Mexico was confronted with the validity of certain zoning ordinances passed by the defendant county commission without compliance with the statutory requirement of publication. The Court held the zoning ordinances

were void and concluded that the county had failed to adopt a valid zoning ordinance. In Hopper and in Hart, the authority for the local governing bodies to act was by grant of the state legislature. In the instant case, the authority for defendants to act was by legislative grant. In Hopper that grant was conditioned upon compliance with notice requirements. In Hart that grant was conditioned upon compliance with notice requirements. In the instant case, the grant is conditioned upon the notice requirements. As the New Mexico Court stated:

"Provisions respecting the publication of ordinances are mandatory and failure to publish substantially in the manner prescribed by the Legislature has the result that the ordinance was never validly adopted." citing 5 McQuillin, Municipal Corporations §16.78 (3rd Ed. 1969 Rev. Vol.) and other authorities.

See 506 P.2d 348 at page 351.

It is respectfully submitted that the trial court erred in denying plaintiff-appellant's motion for Summary Judgment in that the attempted adoption of a redevelopment project area by Murray City did not comply with the statutory requirement of Notice and the defendants-respondents were, therefore, without jurisdiction to proceed.

POINT II

THE TRIAL COURT ERRED IN NOT GRANTING THE PLAINTIFF'S SUMMARY JUDGMENT BECAUSE THE ENACTMENT OF MURRAY CITY ORDINANCE NUMBER 453 AND THE PLAN OF REDEVELOPMENT WERE NOT BASED UPON BLIGHT AS DEFINED IN THE UTAH NEIGHBORHOOD DEVELOPMENT ACT.

The Murray City Board of Commissioners adopted City Ordinance Number 453 on September 8, 1976, purporting to establish two redevelopment project areas in or near the Murray City central business district pursuant to the Utah Neighborhood Development Act, 11-19-1, *et. seq.*, Utah Code Annotated, 1953, as amended 1971.

The Utah Neighborhood Development Act restricts redevelopment project areas, "to buildings, improvements, or land which are detrimental or inimical to the public health, safety or welfare". See 11-19-9, Utah Code Annotated, 1953, as amended 1971. The Act also requires each project area to be "blighted area". 11-19-2(11), Utah Code Annotated, 1953, as amended 1971. The Act defines "blighted area" as:

"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" 11-19-2(10), Utah Code Annotated, 1953.

That Act at 11-19-21, Utah Code Annotated, 1953, requires that the ordinance promulgating a project area contain (among other things):

"(5) The findings and ~~determinations~~ of the legislative body based upon fact that (a) the project area is a blighted area, the redevelopment of which is necessary to effectuate the public purposes declared in this act . . ." (emphasis added)

Under the statutory construct described in the above and foregoing paragraphs, Murray City must show in its Ordinance and Plan either:

1. That its project areas are sufficiently characterized by the existence of buildings and structures which are unfit or unsafe to occupy, or
2. That such buildings and structures as are there are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and in addition to either 1 or 2 above,
3. That the project areas are restricted to buildings, improvements or lands which are detrimental or inimical to the public health, safety or welfare.

This is the only interpretation that the above statute can be given if it is to have logical consistency and purpose.

Murray City Ordinance Number 453, including the Murray City Neighborhood Development Plan, incorporated by reference, purporting to establish two project areas, fails wholly and completely to provide findings and determination based upon fact that the project areas are blighted areas

as defined by statute. The determinations in the Plan are entirely conclusionary and are not an adequate factual basis for a finding of blight. The Plan declares at page 12, that 5.31 percent of the buildings or structures in the project area are unfit for use and must be demolished. Although plaintiff-appellant disputes this figure, assuming *arguendo* that 5.31 percent of all buildings in the project area are unfit, plaintiff-appellant asserts that the plain language and meaning of Section 11-19-2(11), Utah Code Annotated, 1953, that a 5.31 percent factor does not sufficiently characterize an area as blighted, and, therefore, it is respectfully submitted that the project areas attempted to be adopted by Murray City should be declared null and void as being contrary to the legislative intent found in the Utah Neighborhood Development Act.

In addition, plaintiff-appellant asserts that the 5.31 percent figure is completely inaccurate. From the discovery conducted in this case, it appears that that particular statistic is taken from the Murray Core Area Downtown District Revitalization Plan published in 1974 by Associated Planning Consultants on behalf of Murray City. The "study" referred to in the first paragraph under item (2) on page 11 of the Neighborhood Development Plan, is, in fact, said 1974 Revitalization Plan.

As previously indicated, Section 11-19-2(10), Utah Code Annotated, 1953, allows the promoters of a redevelopment plan an alternative to finding that a sufficient number of buildings are unfit or unsafe to occupy. Under that statute, the City could have alternatively found that blight existed by showing that there are buildings and structures which are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime. However, nowhere in the Ordinance or Plan is there any reference whatsoever to findings of ill health in either of the project areas or of more cases of ill health in either of the project areas or of more cases of ill health than in Murray as a whole, or of more ill health resulting from the condition of buildings or any other conditions in the project areas. Nowhere in the Ordinance or Plan is there any reference whatsoever to the transmission of disease or of greater transmission of disease in the project areas than in Murray as a whole or to the increased transmission of disease due to the condition of buildings or any other condition in the project area. Nowhere in the Ordinance or Plan is there any reference whatsoever to infant mortality or of greater infant mortality in the project areas than in Murray as a whole, or to the increase in infant mortality due to the condition

of the buildings or any other condition in the project area. Nowhere in the Ordinance or Plan is there any reference whatsoever to juvenile delinquency or of greater juvenile delinquency in the project areas than in Murray as a whole, or to the increase of juvenile delinquency due to the condition of buildings or any other condition in the project areas. Nowhere in the Ordinance or Plan is there any reference whatsoever to crime, or that there is more crime in the project areas than in Murray as a whole, or to an increase in crime due to the condition of buildings or any other condition in the project areas. As previously stated, Section 11-19-21, Utah Code Annotated, 1953, as amended, requires that the Ordinance must state a basis in fact for a conclusion that a project area is blighted. Murray City has failed to establish or develop any such facts upon which such a basis could be asserted.

The legislature, in enacting the Neighborhood Development Act, was fully cognizant of the substantial financial impact that such a project could have upon the immediate surrounding taxpayers, and, therefore, required in the legislative scheme that not just one of the social ills described in Section 11-19-2(11), Utah Code Annotated, 1953, be proven, but that all of them be proven: "Conducive to ill health, transmission of disease,

infant mortality, juvenile delinquency and crime" (emphasis added) Further, the legislative enactment also reflects the intent of the legislature in keeping such projects to an absolute statutory minimum. The Act states at 11-19-9, Utah Code Annotated, 1953, as amended, that, "A project area must be restricted to buildings, improvements, or land which are detrimental or inimical to the public health, safety or welfare". These are legislative words of limitation, rather than a wholesale delegation of unlimited authority to various municipalities to re-do their entire commercial district as is contemplated in the instant action. Nowhere in the Ordinance or Plan is there any showing whatever that the project areas have been so restricted. The requirement of such showing is indicated in 11-19-21(5)(a), which requires a basis in fact that the areas are blighted.

Section 11-19-10, Utah Code Annotated, 1953, as amended 1971, states:

"On its own motion, . . . 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."

Section 11-19-11, Utah Code Annotated, 1953, as amended 1971, states:

"A preliminary plan need not be detailed and is sufficient if it: . . . (2) contains a general statement of the land uses, layout of principal streets, population densities and building intensities and standards proposed as the basis for the redevelopment of the project area; (3) shows how the purposes of this act would be attained by such redevelopment; and (4) shows that the proposed redevelopment conforms to the master or general community plan."

The preliminary plan was adopted by Murray City on June 1, 1976, under the title, Neighborhood Development Plan, and was later amended and adopted as Murray's Redevelopment Plan by Ordinance Number 453 on September 8, 1976. However, the preliminary plan, and thus, the finally adopted Plan fails to meet the statutory requirements cited above in the following ways:

(A) It does not contain a statement of the land uses, population densities or building intensities as required by 11-19-11(2), Utah Code Annotated, 1953. At Page 14, item (5)(b) of the Plan, it is stated:

"Planning criteria has not specifically been set forth in the Plan relative to land uses, densities, characteristics of internal circulation systems and need and type of public improvements in order to provide maximum flexibility in the development of acquired land and to achieve the highest quality development that is consistent with the City's long range plans for redevelopment of the Central Business District." (emphasis added)

This statement is a cavalier and presumptuous violation of the statutory requirement. The legislature in delegating the authority to various governmental bodies to adopt a Neighborhood Redevelopment Plan enacted a highly restrictive statute to require any community wishing to use it to first write as a condition precedent, a full and complete plan of development for public consideration prior to hearing an adoption. At a minimum, if Murray City wants to avail itself of the benefits of the statutory scheme, then certainly it ought to expect to follow the requirements of the statute. They did not do so. The Plan does not contain a statement of the standards proposed as the basis for the redevelopment of the project areas. The Plan does not show how the purposes of the Utah Neighborhood Development Act would be attained by such redevelopment as required by the statute. The Plan does not show that the proposed redevelopment conforms to the master or general community plan as required by statute. In fact, the discovery conducted in this case indicates that there is, in fact, no master plan. Under a literal and strict reading of the statute, there can be no project area formed at all because there has been no showing and there is not, in fact, building deterioration concentrated enough to warrant a

determination of blight. Even under a liberal reading of the statute, project areas might be formed around those specific buildings or concentrations of buildings that, in fact, and after a showing of fact, threaten the public health, safety or welfare, but even this liberal reading would not allow the wholesale adoption of project areas as was done in the instant case.

The deposition of Mayor Soffe fully demonstrates the lack of fact finding on the part of Murray City with regard to blight. He was unable to point to any factual evidence of blight, of studies of physical or social condition which conclude blight, or even official opinions by County Health officers showing a higher rate of disease or infant mortality than elsewhere in Murray. The only apparent independent statistics that were gathered were done by James Watts, Executive Director of Murray Redevelopment Agency, but even those statistics are questionable because appear to contain incidents of crime gathered outside of the specific project areas. Further, the testimony of Mayor Soffe in his deposition amply demonstrates that the Murray City Commission relied heavily on the study provided by the Murray Core Area Downtown District Revitalization Plan published in 1974 and upon the complaints from Murray businessmen that they were having economic difficulties in the area known as the

Central Business District, rather than from an actual study of the conditions in the two proposed project areas. James Ivan Watts, in his deposition, reinforced the testimony of Mayor Soffe in that it supports the inescapable conclusion that there were no findings of ill health, transmission of disease, infant mortality or juvenile delinquency. There were no studies and there were no opinions obtained from the appropriate authorities specified in the redevelopment Act as to presence of statutorily defined blight. And as to the so-called crime statistics, discovery would indicate that those statistics, however faulty they are, were, in fact, compiled after the plan of redevelopment was written.

The deposition of Charles Clay, Murray City Engineer, is further evidence of Murray City's failure to establish a factual basis for a determination of statutorily defined blight. Even though he has been the City Engineer since 1974, he has never performed a survey to determine how many buildings, if any, or which buildings, if any, in Murray City are unfit or unsafe to occupy.

In the case of Regus v. City of Baldwin Park, 70 Cal. App. 3rd 968 (1977), California Court of Appeals

examined the proposed re-development of portions of the City of Baldwin Park. The central concern of the Court in Regus was the question of "blight."

The provision of the California Code relating to blight requires only that conditions of blight predominates and must injuriously affect that total area. In Utah, the statute is more narrow, requiring that the project area be restricted to buildings, etc. . . which are inimical to the public safety, health and welfare. Section 11-19-9, Utah Code Annotated, 1953.

The Court in Regus rejected the proposed project and in doing so made the following observations:

"At bench, the evidence shows that the principal objectives of the Project, and the basis on which it was promoted, are to develop project land profitably, to bring more private enterprise (such as K-Mart) to Baldwin Park, to raise land values, and to promote commercial and industrial development."

"All testimony of City residents in support of the Project invoked the hope of commercial and industrial development, a concededly desirable goal in a community characterized as depressed (*Serrano v. Priest*, (1971) 5 Cal. 3rd 584, 96 Cal Rptr. 601, 487 P.2d 1241), but one insufficient by itself to justify use of the extraordinary powers of community redevelopment. If it were, tax increment financing at public expense would become commonplace as a subsidy to private enterprise. The subsidies contemplated here are substantial."

139 Cal Rptr. 196 at 202

While it is admitted that the redevelopment of the downtown commerical business district of Murray City may be a socially desirable objective, the general public should not be required to financially subsidize such private interests. As was stated in Regus, in essence, tax revenues are used as subsidies to attract new business. The immediate gainers are the subsidized business. The immediate losers are the taxpayers and government entities outside the project area, who are required to pay the normal running expenses of government operation without the assistance of new tax revenues from the project area.

"The promoters of such projects promise that in time everyone will benefit, taxpayers, government entities, other property owners, bondholders; all will profit from increased development of property and increased future assessments on the tax rolls, for with the baking of a bigger pie bigger shares will come to all. But the landscape is littered with speculative real estate developments whose projects turned into a pie in the sky; . . . Undoubtedly, it was for these reasons that the legislature restricted urban renewal to blighted areas, and when faced with abuses in 1976, further tightened its restrictions."

139 Cal Rpt. 205

The record in the instant case clearly demonstrates that the proposed plan of redevelopment adopted by Murray City did not comply with the statutory

requirements in that there was no factual basis upon which a conclusion of the existence of "blight" can be reached. This Court should prevent the type of speculation and abuse that the California Legislature and Courts have found to exist when such projects are adopted without a sufficient basis for their existence.

POINT III

THE TRIAL COURT ERRED IN NOT GRANTING JUDGMENT IN FAVOR OF THE PLAINTIFF AND AS AGAINST THE DEFENDANTS BECAUSE THE UTAH NEIGHBORHOOD DEVELOPMENT ACT REQUIRES, AS A MATTER OF LAW, A SEPARATE PLAN FOR EACH REDEVELOPMENT PROJECT AREA.

Section 11-19-10, Utah Code Annotated, 1953, states:

"The agencies 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)

Section 11-19-12, Utah Code Annotated, 1953, 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." (emphasis added)

Contrary to these statutory directives, Murray City has attempted to utilize one plan adopted by Ordinance Number

453 to support two redevelopment project areas, areas Number 1 and Number 2. On page one of the Plan, under item "a", it is stated: "Description of NPD Renewal Areas" (plural) and "The NPD (Neighborhood Development Project) Areas (plural) are enclosed within the following boundaries. . .". Then follows two separate sets of boundaries, one for Area Number 1 and one for Area Number 2. Thereafter, for nine pages, there follows, with but one exception, a purported plan of redevelopment so general in its language that it could apply to area Number 1 or area Number 2 or to any other area of Murray. The maps appended to the Plan do not sufficiently coincide with the language of the Plan to identify streets, land and building areas. The single exception is found at item "H" found on pages 6 and 7. Therein, are found references to the "Central Business District Neighborhood Development Plan", to "the extension of Vine Street west of State Street", to the "acquisition of property located at 4938 South State Street" and to the "acquisition and clearance of property at 4928 South State Street". All of these locations fall within the described boundaries of project area Number 1. There are no references whatsoever in any portion of the Plan to any of the properties or lands falling within area Number 2. There is no reason to suppose that the Neighborhood

Development Plan should refer to both project areas. Area Number 1 is commonly considered to include the Central Business District of Murray City. Its southern boundary is 5300 South State Street. The northern boundary of area Number 2 is 5900 South State Street. Area Number 2 runs south along State Street to 6100 South Street and east nearly to Third East Street. Area Number 2 is made up largely of vacant land and has never, historically or presently, been considered a part of Murray's Central Business District.

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; . . ."

The statutorily required report commences on page 11 of the Plan. However, none of the report material relates in any way whatever to area Number 2. The entire report relates solely to area Number 1.

Census tract 121 mentioned on page 12 and used as a basis for a "report" on social problems in the area, is six blocks from area Number 2 at its closest point. There is no mention in the social problems report

of ill health, transmission of disease, infant mortality, juvenile delinquency or crime as required by 11-19-2(11), Utah Code Annotated, 1953. The report on economic conditions found on page 13 relates entirely to the retail activity of the core area and has nothing whatever to do with area Number 2. These financial estimates on page 13 relate entirely to activities in area Number 1 and have nothing whatever to do with area Number 2.

From the above and foregoing it can be clearly seen that the defendants-respondents have, in contravention of the statutory directives of 11-19-10 and 11-19-12, Utah Code Annotated, 1953, attempted to utilize one plan adopted by Ordinance to implement two project areas when the statutes clearly require a plan for each project area. Murray should not be allowed to use its plan for project area Number 1 as the basis for implementing project area Number 2.

POINT IV

THE TRIAL COURT ERRED IN DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT BECAUSE THE DEFENDANTS FAILED TO TAKE ALL OF THE STEPS REQUIRED BY THE NEIGHBORHOOD DEVELOPMENT ACT FOR THE FORMATION OF A REDEVELOPMENT PROJECT.

Section 11-19-5, Utah Code Annotated, 1953, states:

"Before any area is designated for redevelopment, the community authorized

to undertake such development shall comply with the following requirements; . . .

(2) The community shall have a master or general community plan adopted by the legislative body, which plan shall include all of the following: . . ."

There then follows an extensive listing of master plan components, land use plans, population density and estimates, maps, charts, etc. It is plaintiff's information and belief that there is no such master plan. Defendants have failed to turn over a master plan in spite of repeated requests for discoveries of such a document. They did file with their Motion for Summary Judgment a copy of the zoning ordinances of Murray City, but certainly that could not be considered to be a master plan for the redevelopment of project areas Number 1 and 2.

Section 11-19-6, Utah Code Annotated, 1953, states:

"Redevelopment survey areas may be designated by resolution of the legislative body upon recommendation of the agency."

Section 11-19-8, Utah Code Annotated, 1953, states:

"The resolution designating a redevelopment survey area or areas shall contain the following: . . ."

These sections read in the context of the act mean that a city commission may move into a posture of

considering a redevelopment project if it wishes to do so, and if it does decide to do so, must announce its intention by formal resolution. Such a resolution is a condition precedent to further redevelopment activities. It is plaintiff's information and belief that Murray City has no such resolution and has not adopted such a resolution. Defendant has failed to produce such a resolution for plaintiff's inspection as a result of plaintiff's motion to produce, and it must, therefore, be assumed that no such resolution exists.

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

"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. . . ."

There is no plan for the relocation of families contained in the Murray City project. Page 13 and 14 of the report contains a statement that only five families need relocation and that they will be relocated in compliance with Federal Uniform Relocation Act and the State Relocation Act; but those acts establish standards only for relocation and do not contain methods or plans.

Finally, Section 11-19-14, Utah Code Annotated, 1953, further requires the report to contain, "(6) The

report and recommendations of the planning commission." Neither the plan nor its incorporated report includes the report and recommendations of the planning commission as required by statute.

Murray City has failed completely to comply with the requirements of the above cited statutes in attempting to adopt its redevelopment plans for project areas Number 1 and 2 in Murray City, and because of said failures, the decision of the trial court should be reversed and Murray City should be required to proceed as required by law.

POINT V

THE UTAH NEIGHBORHOOD DEVELOPMENT ACT AS APPLIED TO SALT LAKE COUNTY IN THE INSTANT CASE IS CONTRARY TO ARTICLE VI, SECTION 29 AND ARTICLE XIII, SECTION 5 OF THE CONSTITUTION OF THE STATE OF UTAH.

Article XIII, Section 5, of the Utah Constitution, states:

"The Legislature shall not impose taxes for the purpose of any county, city, town, or other municipal corporation, but may by law vest in the corporate authorities thereof, respectfully, the power to assess and collect taxes for all purposes of such corporation."

Plaintiff asserts that the purpose of such a constitutional provision is to protect local government from unnecessary or undue influence by the State Legislature.

Additional constitutional prohibitions on the legislature support this assertion; For example, Article VI, Section 28, prohibiting legislative delegation of municipal functions to special commissions, Article VI, Section 26, §3, prohibiting legislative locating of County Seats, §8, prohibiting legislative assessment and collection of taxes, §11, prohibiting legislative regulation of County and township affairs, §12, prohibiting legislative interference in certain municipal responsibilities, Article X, Sections 2, 3, and 5 protecting boundaries, county seats and forms of government from legislative interference and Article XII, Section 8, requiring consent of the local authorities who have control of the street or highway upon which any law proposes granting the right to construct the railway, telegraph, telephone or electric light plant. These provisions amply demonstrate that the constitutional framers intended maximum local control of local affairs.

It is respectfully submitted that the Utah Neighborhood Development Act, and in particular, Section 11-19-29, allowing incremental tax funding of redevelopment projects is violative of the intentions of the framers of our constitution, and in particular, violates Article XIII, Section 5, because it allows taking of assessed county taxes and the diversion of them to the cities for city

purposes. Although this Court in the case of Tribe v. Salt Lake City, 540 P.2d 499 (1975), addressed the question of whether or not the legislature could authorize the cities or any other municipality the authority to use such tax revenues, the Court did not in that case answer 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.

Plaintiff-appellant would assert that the fact that the County will be forced to increase its mill levy in order to support the rising cost of government in an urban area and to make up for the loss of the revenues in the redevelopment project area, constitutes a legislative imposition of taxes on County residents for city purposes, and, therefore, in violation of Article XIII, Section 5.

The Utah Constitution, Article VI, Section 29, states:

"The Legislature shall not authorize the State or any county, city, town, township, district or other political subdivision of the State to lend its credit or subscribe to stock or bonds in aid of any railroad, telegraph or private individual or corporate enterprise or undertaking."

plaintiff-appellant asserts that the financing provisions of the Murray City Redevelopment Plan as reflected in Ordinance Number 453, and as authorized by Section 11-19-29, Utah Code Annotated, 1953, as amended, violate Article VI, Section 29, of the Utah State Constitution insofar as the objects of the financing program adopted by Murray City are to materially benefit the commercial interests residing in and around the two project areas without furthering any public purpose approved by the State Legislature. While it is admitted that this Court in the case of Tribe v. Salt Lake City, 540 P.2d 499 (1975) addressed the question of whether or not the Salt Lake City Redevelopment Plan violated Article VI, Section 29, of the Utah Constitution, that case did not address the question of extending the Neighborhood Development Act to include the commercial interests of the community. This case is, therefore, distinguishable from Tribe in several respects: First, the Tribe case was not a true adversarial proceeding, the true nature and all of the facts of the Salt Lake City Plan were not effectively brought to the Court's attention. In the instant case, it is a true adversarial proceeding and the facts as developed clearly demonstrate that Murray City Redevelopment Plan is outside the

statutory purpose of carrying "blight". If the statute is, in fact, utilizable for the purpose of economic development as is present in the case at bar, then it is respectfully submitted that such a statute is violative of Article VI, Section 29, of the Constitution of Utah because economic development is not a public purpose, but is, in fact, a private purpose for which the credit of the city and tax revenues realized in the redevelopment area should not be used. This Court has had before it on numerous occasions a question of whether or not certain public projects have violated the prohibition against the "lending of credit" contained in Article VI, Section 29. However, those cases have generally turned on the question of whether or not a public purpose is being served. In the instant case, as previously indicated, the purpose appears to be private and commercial rather than public, and, therefore, is in violation of the constitution of the State of Utah.

CONCLUSION

Plaintiff-appellant respectfully submits that the trial court erred in not granting judgment in favor of the plaintiff and against the defendant because the City of Murray and its redevelopment agency did not have the jurisdiction to proceed with its proposed plan of

redevelopment. Further, that the manner in which they proceeded was defective in that they did not follow all of the statutory requirements, and in particular, did not develop a factual basis to demonstrate the existence of blight within the meaning of the Utah Neighborhood Development Act, and finally, that the Plan of redevelopment for Murray City, as applied in the instant case, is violative of Article VI, Section 29 and Article XIII, Section 5 of the Constitution of Utah, and should, therefore, be reversed, with directions that judgment be entered in favor of the plaintiff and against the defendants.

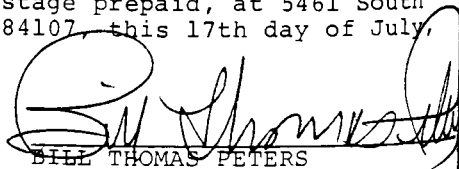
Respectfully submitted this
17th day of July, 1978,

R. PAUL VAN DAM
Salt Lake County Attorney

By 
BILL THOMAS PETERS
Special Deputy County Attorney

CERTIFICATE OF SERVICE

I, Bill Thomas Peters, do hereby certify that I mailed two true and correct copies of the foregoing BRIEF OF APPELLANT to H. Craig Hall and Merrill G. Hansen, Attorneys for Defendants, postage prepaid, at 5461 South State Street, Murray, Utah 84107, this 17th day of July, 1978.


BILL THOMAS PETERS