

1989

W. & G. Company v. Redevelopment Agency of Salt Lake City : Reply Brief of Appellants

Utah Court of Appeals

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IN THE SUPREME COURT OF THE STATE OF UTAH

~~89-0285 CA~~

~~W. & G. COMPANY, a Utah general partner-~~
ship; Darol Krantz, an individual,
d/b/a BROADWAY MUSIC; J. ROSS TRAPP,
Trustee of the Ross Trapp Trust and
Trustee of the June Trapp Trust;
NATIONAL DEPARTMENT STORE, a Utah corp-
oration; ROBERT C. NELSON, d/b/a THE
MAGAZINE SHOP; and DOWNTOWN ATHLETIC
CLUB, a Utah corporation,

Plaintiffs/Respondents,

vs.

REDEVELOPMENT AGENCY OF SALT LAKE CITY,
SALT LAKE CITY CORPORATION, TED L.
WILSON, in his official capacity as a
member and chief operating officer of
the Board of Directors of the Redevelop-
ment Agency of Salt Lake City, RONALD
J. WHITEHEAD, GRANT MABEY, SIDNEY R.
FONSBECK, EARL S. HARDWICK, IONE M.
DAVIS and EDWARD PARKER in their offi-
cial capacities as members of the Board
of Directors of the Redevelopment
Agency of Salt Lake City, and MICHAEL
CHITWOOD, in his official capacity as
the Executive Director of the Redevelop-
ment Agency of Salt Lake City,

Defendants/Appellants.

Appeal No. 860539

REPLY BRIEF OF APPELLANTS

On Appeal from the District Court of Salt Lake County
HONORABLE RAYMOND S. UNO, District Judge

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Clerk, Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

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d/b/a BROADWAY MUSIC; J. ROSS TRAPP, :
Trustee of the Ross Trapp Trust and :
Trustee of the June Trapp Trust; :
NATIONAL DEPARTMENT STORE, a Utah corp- :
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vs.	:	
	:	
REDEVELOPMENT AGENCY OF SALT LAKE CITY,	:	
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	:	
Defendants/Appellants.	:	

REPLY BRIEF OF APPELLANTS

PARTIES AND PRELIMINARY PARAGRAPH

Originally, this matter included the "DOWN-TOWN ATHLETIC CLUB" (hereinafter "DAC") as a Plaintiff. The Court of Appeals has subsequently determined that DAC has no interest in any property within Block 57. (*Down-Town Athletic Club v. S. M. Horman & Sons, et al.*, 66 Utah Adv. Rep. 32 (Utah Ct. App. 1987)). The fee owner of that same property has recently filed an action in Federal Court seeking to compel condemnation of that property by the RDA. (*S. M. Horman & Sons v. Salt Lake City Corporation and Redevelopment Agency of Salt Lake City*, Civil No. 88-C-015-S).

The Plaintiff W & G COMPANY (Elliot Wolfe), at the writing of this Brief, has apparently changed its position and is in final negotiations with the RDA to sell to the RDA its property. Moreover, the RDA has either acquired by purchase or condemnation numerous parcels of property located within Block 57. The interests as they are represented in this case

and as they are presently constituted are shown in the plat map annexed hereto as Exhibit "A" as part of the Appendix to this Brief.

Respondents inadvertently failed to provide this Court with copies of the Findings and Conclusions and Judgment entered in this matter by Judge Uno and have included those documents in the Appendix to this Brief.

ARGUMENT I

THE TRIAL COURT ERRED IN HOLDING THE STATUTORILY PRESCRIBED NOTICE OF PUBLIC HEARING REGARDING ADOPTION OF A REDEVELOPMENT PLAN AND THE DETERMINATION OF "BLIGHT" WAS CONSTITUTIONALLY INADEQUATE.

It is conceded by the Landowners that the statutory Notice prescribed in the Utah Neighborhood Development Act, UTAH CODE ANN. §11-19-16, was, in fact, given *verbatim* and in the manner and form provided in the statute. None of the Landowners herein claimed they did not receive the mailed notices. Also, no affidavit of the Landowners herein indicated that they relied upon or, in fact, were even aware of the comments made by the RDA Director, Michael Chitwood set forth on page 33 of Respondents' Brief, *cited*, P. 9, Exhibit "D" to RDA's Memorandum of Summary Judgment Motions. (The significance of that statement is addressed hereinafter in this Brief.)

The Trial Court apparently ruled that the statutory Notices, given in 1975, 1977, and 1982, were constitutionally inadequate and, therefore, ineffective, in that they "did not give the Plaintiff [Landowners] the minimum guarantees of due

process of law and equal protection of the law under the Fifth and Fourteenth Amendments of the United States Constitution, Article 1, Section 7; of the Utah Constitution, [by informing the landowners] that their properties might be subject to an agency determination of blight, detrimental or inimical to the public's health, safety, and welfare, and agency redevelopment including the use of eminent domain power to take their properties. (Conclusions of Law, Paragraph 13, R.939-940).

The Landowners argued before the Trial Court, and before this Court, that the due process clause of the Fourteenth Amendment affords them much more detailed Notice than was provided by the RDA. Appellant cites, *Nelson v. Jacobsen*, 669 P.2d 1207 (Utah 1983); *Wells v. Children's Aid Society of Utah, et al.*, 681 P.2d 199, 204 (Utah 1984); *Nesbeth v. Albuquerque*, 575 P.2d 1340 (N.M. 1977). The fallacy of that argument is that all of the cases cited by the Landowners deal with a determination as to whether or not adequate notice is given in a judicial proceeding, but public hearings held by the RDA under the Utah Neighborhood Development Act are legislative and not judicial proceedings. Therefore, the arguments espoused and addressed within those cases have absolutely no application to the issue at hand. The due process clause of the Fourteenth Amendment does not apply to legislative proceedings but is restricted to judicial proceedings".

Washington State has an Urban Renewal Statute similar to the Utah Neighborhood Development Act which, like Utah, provides that Notice be given of public hearings to be held before the legislative body considering the adoption of a redevelopment plan and the determination that properties located within the project are blighted. The specific statute reads as follows:

The local governing body shall hold a public hearing on an urban renewal plan after public notice thereof. Such notice shall be given by publication once each week for two consecutive weeks not less than ten nor more than thirty days prior to the date of the hearing in a newspaper having a general circulation in the urban renewal area of the municipality and by mailing a notice of such hearing not less than ten days prior to the date of the hearing to the persons whose names appear on the county treasurer's tax roll as the owner or reputed owner of the property, at the address shown on the tax roll. The notice shall describe the time, date, place, and purpose of the hearing, shall generally identify the urban renewal area affected, and shall outline the general scope of the urban renewal plan under consideration.
(RCW 35.81.060(3)).

In construing whether or not the above-described statute afforded Landowners adequate notice of their right to appear and challenge blight at the public hearings the Washington Supreme Court has held as follows:

It is implicitly recognized in *Miller v. City of Tacoma*, *supra*, and in the first *Apostle* opinion, and explicitly stated in numerous cases from other jurisdictions, that the hearing on the issue of blight in an urban renewal proceeding is legislative in nature, rather than judicial. See e.g., *Wilson v. City of Long Branch*, 27 N.J. 360, 142 A.2d 837 (1958). It has long been recognized that a legislative hearing is not subject to the stringent substantive and procedural safeguards that apply to a judicial hearing. *Grisanti v. Cleveland*, Ohio

Com. Pl., 18 Ohio Op.2d 143, 179 N.E.2d 798 (1961), aff'd, 89 Ohio Law Abst. 1, 181 N.E.2d 299 (Ohio App.), *appeal dismissed*, 173 Ohio St. 386, 182 N.E.2d 568, *appeal dismissed*, 371 U.S. 68, 83 S.Ct 111, 9 L.Ed.2d 119 (1962). In fact all the urban renewal cases we have found hold that due process is not violated by notice given under statutes similar to ours. Nor does the absence of procedural guidelines for the hearing on the issue of blight in an urban renewal proceeding constitute any failure of due process. *Robinette v. Chicago Land Clearance Comm'n*, 115 F.Supp. 669 (N.D. Ill. 1951); *Ross v. Chicago Land Clearance Comm'n*, 413 Ill. 377, 108 N.E.2d 776 (1952); *Zurn v. City of Chicago*, 389 Ill. 114, 59 N.E.2d 18 (1945); *Wilson v. Long Branch*, *supra*; *David Jeffrey Co. v. City of Milwaukee*, 267 Wis. 559, 66 N.W.2d 362 (1954). The rationale underlying these decisions is well stated in the landmark decision of *Zurn v. City of Chicago*, *supra* at 132 of 389 Ill., at 27 of 59 N.E.2d.

No such notice to the property owners is necessary to comply with the requirements of due process of law. No property is taken in this proceeding under section 42 [corresponding to the hearing on blight in this case]. The property rights of the landowners are in nowise affected. This is merely another of the steps required by the statute authorizing a redevelopment corporation to exercise the power of eminent domain. After such certificate is issued and suit is filed for the taking of property by the exercise of the power of eminent domain, the court, in such suit, will determine for itself whether or not the steps have been taken and the precedent conditions met by the redevelopment corporation, authorizing it to exercise such power. * * * The court, in any condemnation suit instituted by a redevelopment corporation, will determine whether these conditions precedent to the exercise of the right have been complied with. The hearing, therefore, in the suit in which it is sought to acquire property by eminent domain, gives to the property owner the right and the opportunity to be heard upon all questions on which he is entitled to a hearing and fulfills all the requirements of due process of law.

In the present case, the hearing determined only that the area was blighted, but it did not affect any particular property. No property will be taken except by voluntary sale through negotiation or by condemnation. Any property owner who believes that his property is being taken in violation of due process of law can have the question litigated in a condemnation proceeding. We are in accord with the cases cited above and hold that the procedural aspects by which the city council arrives at its determination that an area is or is not blighted do not violate the due process clauses of the United States Constitution or the Washington State Constitution. (*Apostle v. City of Seattle*, 459 P.2d 792, 797-798 (Wash. 1969)).

Courts have held that if the legislature undertakes to establish a form of notice to be given to concerned individuals regarding matters under their consideration it is not proper for the courts to impose additional and more detailed notice requirements.

The plaintiffs have no constitutional right to notice of the BHA's submission of a project to the DCA for approval. "The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." *Board of Regents v. Roth*, 408 U.S. 564, 569, 92 S.Ct 2701, 2705, 33 L.Ed.2d 548 (1972). The plaintiffs here have not shown that they are threatened with deprivation of any such protected interest. The statutory grant of a hearing upon request is a procedural right, not a substantial property interest, and cannot of itself trigger additional procedural requirements. (*Cole v. Brookline Housing Authority*, 360 N.E.2d 336, 339 (Mass.App.1976)).

Indeed, there is legion of authority that establishes that landowners have no absolute constitutional right to a public hearing on the issue of blight and that any such grant or establishment by the legislature is a matter of comity and political accommodation.

It seems plain that so far as the investigation of the matter of blight is concerned, the demands of due process did not call for a hearing at all. *David Jeffrey Co. v. City of Milwaukee*, 267 Wis. 559, 66 M.W.2d 362, 380 (Sup.Ct.1954); *Robinette v. Chicago Land Clearance Commission*, 115 F.Supp. 669, 672 (D.C.Ill. 1951). That determination might constitutionally have been left for ex parte action by the governing body or the planning board. Of course, the Legislature in its discretion may, as was done here, lay down a mandate for a particular type of hearing. In this event, the procedure must be followed. But having in mind the nature of the public use involved and the fact that ordinarily the subject matter of the hearing is within the legislative domain, the language employed should be scrutinized carefully to determine if the lawmakers intended to yield the normal prerogative and function of their branch of the government. (*Wilson v. Long Branch*, 27 N.J. 360, 142 A.2d 837, 851 (N.J. 1958)).

The same result was reached and pronouncement made in *Bailey v. Board of Appeals of Holden*, 345 N.E.2d 367 (Mass. 1976) when that court stated:

The determination of what property is to be taken and used for public housing is a legislative function, not requiring a prior hearing as a matter of constitutional right. *Reid v. Acting Comm'r of Dept. of Community Affairs*, 362 Mass. 136, 140, 284 N.E.2d 245 (1972); *Hayeck v. Metropolitan Dist. Comm'n*, 335 Mass. 372, 375, 140 N.E.2d 210 (1957); *Joslin Mfg. Co. v. Providence*, 262 U.S. 668, 678, 43 S.Ct. 684, 67 L.Ed. 1167 (1923). (345 N.E.2d at 369).

The same result occurred in Arizona where the Court noted that the Arizona counterpart of the Neighborhood Development Act [Slum Clearance and Redevelopment Act] did not require a public hearing concerning the issue of blight. The Arizona Appellate Court ruled that such an omission does not vitiate the validity of a redevelopment act:

The trial court erred. Nothing in the slum clearance and redevelopment act, A.R.S. §36-1471 et seq., requires the mayor and council to conduct a hearing, much less receive evidence, at the time they make the findings of necessity required by A.R.S. §36-1473. This section provides only:

"No municipality shall exercise any of the powers conferred upon municipalities by this article until its local governing body adopts a resolution finding that:

1. One or more slum or blighted areas exist in the municipality, and
2. The redevelopment of such area or areas is necessary in the interest of the public health, safety, morals or welfare of the residents of the municipality."

Subsequent provisions of the legislative enactment do provide for public hearings. A.R.S. §36-1479(E) requires a noticed public hearing prior to the approval of a redevelopment plan or substantial modification thereof. A.R.S. §36-1480(C) likewise provides for detailed public notice prior to the consideration of any redevelopment contract.

* * *

And in *Boston Edison Co. v. Boston Redevelopment Authority*, 374 Mass. 37, 371 N.E.2d 728 (1977) the court explains that the findings of an agency, as opposed to a legislative body, are subject to a broader scope of review. None of the redevelopment cases to which we have been referred, or which we have examined, hold that a governmental body exercising legislative powers must receive evidence of blight before it can lawfully adopt a resolution declaring a certain area to be blighted. (*Tucson Community Dev. v. Tucson*, 641 P.2d 1298, 1303, 1304 (Ariz.App.Ct. 1981)).

The Landowners have attempted to construe the comments attributable to the RDA Director, Michael Chitwood, during the 1975 public hearing at which the Redevelopment Project Plan which encompassed Block 57 was approved, to state that Chitwood misled the Landowners into believing that their property would not be subject to condemnation if the Plan were

approved. (Brief of Respondent, Page 33). It is interesting to note that *counsel* makes that argument without any factual support for that statement. None of the affidavits filed by any of the Landowners in this matter indicated that they were aware of, let alone relied upon, the statements made by Mr. Chitwood. Clearly, the effect of the written notice was to identify the subject matter of the public meeting under consideration and that a determination that properties located within the proposed Project Area constituted a "blighted area". The Redevelopment Plan which was proposed to be adopted unequivocally indicated to all Landowners that, if not within the action year, 1975, at sometime thereafter, all properties would, as a result of the enactment of the Redevelopment Plan, be subject to the powers of eminent domain. (RESPONDENTS' OPENING BRIEF, Pages 10-11). The Brief of the Landowners failed to point out that Mr. Chitwood was correctly describing the statutory process that existed at that time. Section 11-19-13 originally, and in 1975, provided as follows:

Upon the adoption of a project area redevelopment plan by resolution of the agency, it shall be submitted to the legislative body. The legislative body may elect to undertake and carry out the redevelopment project set forth in such plan; *but implementation shall be on a yearly basis and funding therefor shall be provided for in the annual budget of the community. The planning and implementation of a redevelopment project on a yearly basis in annual increments shall be designated as a neighborhood development program and no redevelopment project shall be undertaken unless and until a reuse of the property as provided herein shall have been arranged, planned or provided.*

(UTAH CODE ANN. §11-19-13) (emphasis added).

Mr. Chitwood's observation to those in attendance at the meeting was absolutely correct. While their properties were not particularly targeted for acquisition during the year 1975, they were subject to acquisition in subsequent years if the RDA developed a redevelopment project on a yearly basis which included the implementation of a plan to acquire by condemnation their subject property. The RDA followed that procedure from 1975 through 1982. In 1983, however, the above quoted statute was revised and what is now adopted on an annual basis is a budget and not an annual implementation program.

Upon the approval of a redevelopment plan by resolution of the agency, it shall be submitted to the legislative body for adoption. Upon adoption by the legislative body the agency shall carry out the redevelopment project set forth in the plan. Funding shall be provided for in the annual budget of the agency. No redevelopment project activities may be undertaken unless a reuse of the property has been arranged, planned or provided.
(UTAH CODE ANN. §11-19-13 (1983)).

In 1975 the RDA would have had to follow the procedure outlined by Mr. Chitwood, as prescribed by statute, and his statement was accurate. The State Legislature, however, elected in 1983 to relieve the RDAs of annual implementation requirements.

ARGUMENT II

RESPONDENTS AND THE TRIAL COURT MISCONSTRUED THE EFFECT OF §11-19-9.

Section 11-19-9 does not require the legislative finding of "blight" be made on a specific property-by property basis.

It should initially be pointed out that the arguments asserted in this case have been brought before this Court in a recent matter and this Court has summarily disposed of the same. Although the Landowners were different parties, the counsel of record asserting the arguments were the same. In the Briefs of the Appellants in *Redevelopment Agency v. Earl D. Tanner, et al.*, Appeal Nos. 17692, 19348, Messrs Campbell and Gesas presented to this Court, *inter alia*, the identical arguments asserted herein regarding §11-19-9 and counsel's position that proper construction of that statute *mandates* a property-by-property blight determination and specific finding. For the Court's convenience, the applicable pages of those Briefs have been annexed hereto as Exhibit "B" and made part of the Appendix to this Brief. This Court considered and rejected other grounds for reversal of the *Tanner* case, and as to the "property-by-property" versus "area blight" analysis and the arguments made in *Tanner*, and as are made in this case, this Court noted:

We have also examined appellants' other objections to the trial courts' determinations and find them to be without merit.
(*Redevelopment Agency of Salt Lake City v. Tanner*, 740 P.2d 1296, 1302 (Utah 1987)) (emphasis added).

Probably the best evidence of the fact that §11-19-9 cannot be construed as the Landowner's herein maintain is that in their Responding Brief they failed completely to address the arguments set forth in the RDA's Opening Brief to the effect that the very definition of "blight" does not require

that the legislative body look at the particular aspects of any particular building whatsoever. (OPENING BRIEF OF APPELLANT, Pages 24-25). It is not by oversight that the Landowners failed to address that argument. Rather, it is irrefutable that the statutory definition of blight and the factors which "characterize" the existence of blight in some instances may refer to factors other than the physical condition of any individual building or structure, and properties could clearly be within a "blighted area" and not be physically deteriorated whatsoever. It is conceded that §11-19-9 is restrictive in nature. It is clear that the Utah legislature intended to withdraw from the RDA *carte blanche* authority to include within the confines of the project area any and all buildings simply on the determination that their inclusion was, in the opinion of the RDA, necessary for redevelopment. But it is submitted that the legislature carefully utilized the far less restrictive terminology of "detrimental or inimical to the public health, safety, or welfare," rather than the word "blight" in imposing that restriction upon the RDA. Moreover, there is nothing in the Utah Neighborhood Development Act which requires that specific "findings" of a "judicial nature", as argued by the Landowners, must be made by the RDA that each and every property is "detrimental or inimical to the public's health, safety, or welfare." The only "findings" required by the Act is that the "project area" is composed of the "blighted area".

Counsel has been able to locate one additional judicial analysis of the "area" v. "property-by-property" concepts since the OPENING BRIEF was filed. The Wisconsin Supreme Court considered the matter in *David Jeffrey Co. v. Milwaukee*, 267 Wis. 559, 66 N.W.2d 362 (1954), wherein the Court held:

Here again it is to be noted that the law is directed against slum and blighted areas, not individual structures. It must be presumed that the legislature believed that the evils resulting from blight are inherent not in the particular structures but in the entire blighted area as a whole. Consider also that the acts of acquisition and clearance are two purposes in the elimination of the blight problem; there remains a third and important purpose--redevelopment of the area, so vitally essential to its return to the community duly safeguarded from the danger of blight recurrence. Redevelopment will involve the vacation of streets and alleys, the relocation of streets, the construction of new streets, probably the construction of recreational facilities, more than likely the enlargement of sites for dwelling houses, replatting, restrictions as to future uses of the lands in the area as well as many other changes. The necessity for acquiring vacant parcels and unoffending buildings within a blighted area to effectuate a sound workable plan of redevelopment is obvious. (66 N.W.2d at 377).

Other entities or agencies of state, county, or municipal governments have the powers of eminent domain in addition to redevelopment agencies and once those entities are duly constituted, they also are given authority to subject land within the confines of their jurisdiction to condemnation without mandated "due process" public hearings as the Landowners herein argue. See e.g., Mosquito Abatement Districts, UTAH CODE ANN. §26-27-2; Special Improvement Districts, UTAH CODE ANN. §11-23-7; Metropolitan Water Districts, UTAH CODE

ANN. §73-8-1; Public Airport Authorities, UTAH CODE ANN. §2-2-5; Public Utility Companies, UTAH CODE ANN. §34-8-1; Railroads, UTAH CODE ANN. §78-34-1.

ARGUMENT III

THE CONSEQUENCES OF THE DISTRICT COURT'S SUMMARY JUDGMENT

What within the redevelopment community has widely become known as the "Uno Decision", when agencies have had an opportunity to consider its ramifications, has created considerable consternation, frustration, and concern. Untold numbers of redevelopment plans have been adopted by numerous cities throughout the state after holding the required public hearings assumed to have been properly "noticed" by following the provisions of §11-19-16. But Judge Uno's summary determination that the prescribed form does not provide "due process" notice and, consequently, the 60-day statute of limitation designed to cut off challenges to an adopted plan is tolled, now subjects every redevelopment project in the state adopted from 1969 to present to belated challenges by disgruntled landowners. Millions of dollars of completed public redevelopment projects are now in jeopardy by this decision. Additionally, bonds issued to fund those projects are equally clouded and at risk because of the effects of that decision.

If upheld, this decision effectively terminates future redevelopment because that activity, by its very nature, subject to an agency's requirement to comply with §11-19-9, requires an "area" approach to the problems presented. It

most assuredly bankrupts most, if not all, RDAs if bonds issued pursuant to plans adopted since 1969 suddenly become suspect because of an initial inadequate "notice" claim. This is not mere *argumentum ab inconvenienti* or *argumentum ab horrore*; instead, it is the unfortunate reality of this summary determination by the District Court. To permit the maintenance of such untimely claims allows these Landowners all the benefits of being within a project area without any of the attendant negatives. So long as properties within their area but belonging to others are being acquired, demolished, and rehabilitated, or monies are being spent improving the area (*i.e.*, Mainstreet Beautification Project), they have no complaints. They know they are in a project area, but as long as the RDA's attention is focused on others they are content to reap the benefits of improved land values resulting from that activity. It is only when redevelopment focused on their particular properties that they suddenly claim they had "inadequate" notice that their particular properties could be subject to acquisition.

This case has become pivotal to the very survival of urban renewal within this State. If all presently existing projects state-wide are exposed to similar untimely claims of defective notice, the economic results would be catastrophic. If all future redevelopment could not address the problems of "blight" and propose solutions to permanently end those problems on a "area" basis then urban renewal is meaningless.

Cities would be forced to return to usage of health, fire, and building code violations to remove individual structures without being able to address the deep-rooted problem that causes expanding and recurrent deterioration of certain areas.

It is respectfully submitted that the District Court gave inadequate consideration to this matter, which resulted in an unfortunate summary disposition of this case. Although lengthy Findings and Conclusions are on record, they were prepared by counsel without any guidance from the Court. Judge Uno entered a brief two-sentence decision in favor of the Landowners and against the RDA. The RDA requested, several times, that Judge Uno prepare a memorandum decision indicating the Court's findings and rationale. Rule 52(a) requires the Court issue a brief written statement of the ground for its decision on all motions granted under Rule 56 when the motion is based on more than one ground. The Court refused to do so and, therefore, the Findings and Conclusions, prepared by the Landowners' counsel without judicial input, epitomize the maxim "to the victor belong the spoils".

The State Legislature, subsequent to the adoption of the Act in 1969, in addition to the restrictions of §11-19-9, has imposed other limiting conditions which, while not in effect in 1975 when Block 57 was added to the RDA's project area, have addressed most of the concerns and arguments of the Landowners herein. For example, §11-19-2(9) defining a "blighted area" has been modified and restricted by requiring

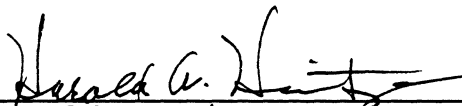
the existence of "two or more" of the enumerated indicia. Section 11-19-9.5 has limited the size of project areas to no more than "100 acres," and placed a time limit on the RDA's power to condemn property. That same statutory revision has restricted the RDA's power to condemn property under its 1975, 1977, and 1982 plans. (Condemnation powers under the subject plan end on April 1, 1990.) Additional public hearings were added in §11-19-12. Preferences were afforded to Landowners in redevelopment plans under §11-19-12.1. Additional parties are notified of the public hearings under §11-19-16(3). And, finally, additional time was afforded persons to file an action in Court, similar to this one, to contest the "regularity, formality, or legality" of an adopted plan under §11-19-20.

The consequences of the District Court's ruling are immense. The interpretation placed upon §11-19-9 by the District Court abrogates the entire philosophy and purpose of the redevelopment act and is diametrically at odds with all of the other provisions of the Act. The Court's imposition of additional "due process" notice requirements retroactive to 1975 effectively invalidates most existing projects and most outstanding bond obligations. Section 11-19-20 was designed and included within the Act to avoid and prevent this very circumstance. This matter should and must be dismissed as untimely.

CONCLUSION

The entire basis for the District Court's determination that the statute of limitations did not bar this action was: (1) that the Notices of the public hearings at which the issue of blight was to be considered was inadequate and (2) usage of the "area" concept in identifying blight violated §11-19-9. Neither of those determinations by the District Court were correct and the Court erred in not granting the RDA's Motion of Summary Judgment. This case should be remanded with directions to the District Court to vacate the Summary Judgment entered for the Landowners and to enter Summary Judgment for the RDA.

Respectfully submitted,



Harold A. Hintze
Attorney for Appellants


CERTIFICATE OF HAND-DELIVERY

I hereby certify that I hand-delivered four (4) copies of
the REPLY BRIEF OF APPELLANTS to

Robert S. Campbell, Jr.
E. Barney Gesas
310 South Main Street, 12th Floor
Salt Lake City, Utah 84101

Craig Adamson
310 South Main Street #1330
Salt Lake City, Utah 84101

on this 16th day of May, 1988.



Harold A. Hintze
Attorney for Appellants

Tab A

FILED IN CLERK'S OFFICE
Salt Lake County Utah

AUG 28 1986

H. D. ...
By: *[Signature]*
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF UTAH, IN AND FOR SALT LAKE COUNTY

W. & G. COMPANY, a Utah general partnership; DAROL KRANTZ, an individual, d/b/a BROADWAY MUSIC; J. ROSS TRAPP, Trustee of the Ross Trapp Trust and Trustee of the June Trapp Trust; NATIONAL DEPARTMENT STORE, a Utah corporation; ROBERT C. NELSON, d/b/a THE MAGAZINE SHOP; and DOWNTOWN ATHLETIC CLUB, a Utah corporation,
Plaintiffs,

vs.

REDEVELOPMENT AGENCY OF SALT LAKE CITY, SALT LAKE CITY CORPORATION, TED L. WILSON, in his official capacity as a member and chief operating officer of the Board of Directors of the Redevelopment Agency of Salt Lake City, RONALD J. WHITEHEAD, GRANT MABEY, SIDNEY R. FONSBECK, EARL S. HARDWICK, IONE M. DAVIS and EDWARD PARKER in their official capacities as members of the Board of Directors of the Redevelopment Agency of Salt Lake City, and MICHAEL CHITWOOD, in his official capacity as the Executive Director of the Redevelopment Agency of Salt Lake City,
Defendants.

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: FINDINGS OF FACT
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: AND CONCLUSIONS OF
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: LAW ON MOTIONS AND
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: CROSS-MOTIONS FOR
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: Civil No. C85-1043
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: (Judge Raymond S. Uno)
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This matter came on regularly for hearing in the forenoon on May 15, 1986 before the Court, the HONORABLE RAYMOND S. UNO, District Judge, presiding, on plaintiffs' motions for partial summary judgment and defendants' cross-motion for summary judgment. The parties appeared through and were represented by their respective counsel, Robert S. Campbell, Jr., Esq. and E. Barney Gesas, Esq., of Watkiss & Campbell, Salt Lake City, Utah, and Craig G. Adamson, Esq., of Dart, Adamson & Parken, Salt Lake City, Utah, for the plaintiffs, and Harold A. Hintze, Esq., for the defendants.

Plaintiffs' motions for partial summary judgment were supported by affidavits, accompanying exhibits and the publication of witness depositions. Both plaintiffs and defendants submitted extensive legal memoranda in support of their respective positions and in response to opposing motions for summary judgment. Extended oral argument on the facts and controlling law were made by respective counsel.

Having given full consideration to the respective motions and cross-motions for summary judgment, including the accompanying exhibits and affidavits and published deposition, having reviewed the legal memoranda filed and supporting oral argument, having accepted the stipulation by the parties that there were no genuine issues of material fact, and being now apprised as to all and singular the law and fact in the matter, the Court herewith makes and enters its

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FINDINGS OF FACT

1. Pursuant to stipulation at the time of oral argument made by respective counsel for all parties, there are no genuine issues of material fact relating to plaintiffs' motions for partial summary judgment or defendants' motion for summary judgment.

2. The plaintiffs (sometimes "the property owners") are seven property owners having separate interests in real properties situated in Block 57 of the central downtown business district of Salt Lake City, Utah, and are more particularly described in the map marked as Exhibit "1" attached to the complaint.

3. The Redevelopment Agency of Salt Lake City (sometimes the "RDA" or "Agency") is a public agency of Salt Lake City Corporation possessing specifically delegated urban redevelopment powers by statute. After January 1, 1980, the Agency consisted of members of the Salt Lake City Council, with the Mayor functioning as the Chief Executive Officer.

4. The Agency has in the past and is presently engaged in an attempt to acquire the plaintiffs' Block 57 properties through the threat or exercise of the eminent domain power for a proposed urban renewal redevelopment project under a 1982 "project area" redevelopment plan.

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5. The RDA, from 1975 through 1982, adopted each year an annual redevelopment plan for the central business district of Salt Lake City known as the "C.B.D. Neighborhood Development Plan." The Agency redevelopment plan is adopted by ordinance of Salt Lake City and is used to guide and control redevelopment undertakings in the "project area." The "project area" is an area of the community determined by the Agency to be a "blighted area." The "project area" included Block 57 for the first time in 1975 and in 1982 encompassed 26 1/2 block in downtown Salt Lake City spanning from North Temple on the north to Fifth South on the south, from Fourth West on the west to Third East on the east.

6. On May 14, 1982, the RDA sent letters to various downtown property owners, including the plaintiffs, regarding assistance which the Agency proposed for the central business district area residents, and several public hearings to be held by the RDA and Salt Lake City. That letter advised the plaintiffs and others of housing rehabilitation, new housing construction, and curb, gutter and sidewalk repair programs, the cost of which would be shared by the owners and the Agency.

7. The May 14, 1982 letter and notice of the RDA, in pursuance of its "area concept" for the 1982 redevelopment plan, described the boundaries of the 26 1/2 block area of blight in the downtown business district of Salt Lake City and stated

that any person having objections to the proposed redevelopment plan or "who denied the existence of blight in the proposed project area" could file written objections or appear at a subsequent hearing in June, 1982. Properties which were encompassed within the "blighted area" of the 1982 plan included the Hotel Utah, the Kennecott Building, the ZCMI Center, the Tracy Office Center, the Tribune Building, the Kearns Building, the Walker Bank Building, the J.C. Penney Building, the Deseret Building, and, inter alia, the plaintiffs' properties.

8. The Agency's 1982 notice of public hearings concerning the adoption of the 1982 plan and the accompanying letter of May 14, 1982 from the Salt Lake City Mayor attached to that notice:

(i) did not advise plaintiffs there was to be an evidentiary hearing on the issue of whether their properties were blighted; or

(ii) did not advise plaintiffs that the Agency had determined or was about to determine that each of their Block 57 properties were blighted, and detrimental or inimical to the public health, safety or welfare; or

(iii) did not advise the plaintiffs that in some manner their properties were in jeopardy of urban development, and if they did not appear in the 1982 public hearings to present evidence on the non-blighted character of their properties, there could be or would be a finding of blight and detriment to the public health, safety and welfare against each of their properties; or

(iv) did not apprise plaintiffs that Block 57 would be targeted sometime in the immediate or distant future for redevelopment; or

(v) did not advise plaintiffs that their specific properties may be acquired for redevelopment by negotiation or through the use of the power of eminent domain.

The RDA notice and accompanying letter of the Mayor were ambiguous, confusing and misleading and in the context of other non-redevelopment related matters discussed therein, did not provide reasonable notice to the plaintiffs that their properties might be subject to an Agency determination of detriment, or inimical to the public interest, and blight and redevelopment, including a taking by eminent domain.

9. Neither at the June 1982 hearing or any other hearings conducted by the Agency or Salt Lake City, was a determination or finding made by the RDA that each of the plaintiffs' properties were detrimental or inimical to the public health, safety or welfare, and blighted. No evidence was submitted to the RDA or the Salt Lake City Council by the RDA staff stating, in substance, that the project area under the 1982 area plan was restricted to properties that were "blighted" and "detrimental or inimical to the public health, safety or welfare."

10. The Agency and Salt Lake City did not determine at any time in 1982 and the 1982 plan did not anywhere indicate that the RDA intended to redevelop plaintiffs' properties for any reason whatsoever in that year or any time thereafter.

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11. No public hearings were held and no determinations were made by the RDA or the City in 1982 or at any other time with regard to the possible "blight" of plaintiffs' properties.

12. The Agency in 1975 proposed the adoption of an ordinance amending its 1971 redevelopment plan to include an additional 11 blocks of the downtown Salt Lake City business district, including Block 57. It is argued by the Agency, in connection with the adoption of the 1975 redevelopment plan, that the notices of public hearings of proceedings scheduled before the Agency and Salt Lake City in 1975 are the controlling proceedings and relevant notices for the Court to review in determining whether notice was adequate and lawful in this action.

13. The plaintiffs argue that although reference to the 1975 plan of the RDA and the City and the accompanying notices of hearings are factually irrelevant to the Court's determination herein, in any event, the RDA did not make a specific determination in 1975 that the plaintiffs' properties or any other properties in Block 57 were blighted, and specifically detrimental or inimical to the public health, safety or welfare.

14. In 1975, the Agency's director, Mr. Chitwood, stated on the public record that no landowner within the "project area" need be concerned about his property being acquired

or condemned by the Agency. In fact, Mr. Chitwood assured all citizen-landowners in attendance at the public hearings that before any of their properties would be designated for particular redevelopment, the landowners would be provided notice and given a hearing, along with detailed architectural information about the restoration and renovation of their properties. Moreover, the RDA director stated that if acquisition or rehabilitation were to be undertaken of any properties in the project area by the RDA, the RDA would not proceed to acquire or rehabilitate properties without notice, hearings and the approval and consent of the involved property owners. Only after such hearings and refusal of the affected property owners to cooperate, said the Agency, would it attempt to undertake condemnation proceedings.

15. The RDA claims that a project area-wide structural survey was conducted sometime during or prior to 1975; and that this was evidence which was used to establish the project area and support a finding of "blight". Plaintiffs claim that this survey has no relevance to this case because of its lack of substantiality on the merits as to plaintiffs' properties and because it is out of date, being more than nine years old at the time the RDA attempted to acquire the plaintiffs' properties in late 1984. This survey was an examination of the outside appearances of various buildings only. It has limited relevance.

16. In 1984, one of the plaintiffs-landowners, Mr. J. Ross Trapp, applied for and received a building permit from the defendant Salt Lake City Corporation to rebuild and refurbish his Block 57 property after conversing with the defendant Executive Director of the RDA, Mr. Michael Chitwood. Mr. Chitwood advised Mr. Trapp that the RDA would not seek to condemn the Trapp Building for any future proposed urban redevelopment. Based on those conversations, Mr. Trapp expended approximately \$500,000 in 1984 on improvements and remodeling of the Trapp Block 57 property. The defendant Salt Lake City Corporation and the Redevelopment Agency did not object to or otherwise stop Mr. Trapp from undertaking the remodeling and improvement of his property. The RDA and Salt Lake City Corporation did not determine the Trapp property to be blighted or advise Trapp he could not renovate or rebuild his building on Block 57.

17. Mr. Trapp has conducted himself in accordance with the prior statements and directions made by the RDA's director, Mr. Chitwood, in the RDA's 1975 public hearings. Mr. Chitwood advised affected property owners within the "project area" that the Agency would hire architects to provide consulting services to property owners once an area is designated for detailed development, such as rehabilitation, acquisition or relocation. The Agency would, according to Mr. Chitwood, hold a series of public hearings, and provide property owners with

detailed architectural information about their buildings. This information would be used by the Agency to encourage property owners to renovate their properties so they would have a minimum remaining 20 year economic life. Mr. Trapp did so.

18. The RDA director now acknowledges that the Trapp property in Block 57 is not blighted.

19. In adopting the 1982 neighborhood development plan and "project area", the Agency did not restrict the "project area" to buildings, improvements or lands which were detrimental or inimical to the public health, safety or welfare. Instead, the Agency included within the "project area" all properties within the 26 1/2 city block area without limitation as to whether the properties were blighted and detrimental or inimical to the public health, safety or welfare.

20. -In late 1984 and early 1985, the RDA sent to each of the plaintiffs a written notice that the Agency intended to acquire and redevelop their individual and specific properties in Block 57, and that the Agency would do so by condemnation if necessary. The Agency transmitted said notices to the plaintiffs in pursuance of its theory and position that it need concern itself only with an "area concept" for redevelopment of blight and that it need not make a determination that each of plaintiffs' properties are detrimental or inimical to the public health, safety or welfare as a condition to condemnation acqui-

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sition.

21. The property owners have filed a motion for partial summary judgment in this case against the Agency and Salt Lake City Corporation on the grounds there are certain jurisdictional and constitutional defects in the Agency's 1982 project area redevelopment plan, public hearing notices and proceedings. The property owners' motion for partial summary judgment sought the following relief:

- (a) a determination that the Agency did not, as required under §11-19-9, Utah Code Ann. (1953), as amended, make any determination in the 1982 plan and its predecessors that the plaintiffs' properties were blighted and did not restrict the project area to buildings and lands which were "detrimental or inimical to the public health, safety and welfare;" and
- (b) a determination that the Agency's 1982 notices of public hearings concerning adoption of the 1982 plan did not give notice to the property owners that their Block 57 properties may be in jeopardy and may be acquired for redevelopment as required by the Utah Neighborhood Redevelopment Act and the Due Process Clauses of the United States and Utah constitutions.

The property owners contend that the alleged procedural failures constitute jurisdictional defects that preclude the Agency from

acquiring their Block 57 properties for redevelopment under the threat or by the use of the power of eminent domain.

22. The Agency has filed a cross-motion for summary judgment on the grounds it has met the jurisdictional requirements of the Utah Neighborhood Development Act entitling it to acquire the plaintiffs' properties for redevelopment. The Agency, by its motion for partial summary judgment seeks:

- (a) a determination that it may acquire properties lying within a general "area" without regard to whether each specific property within the project area was blighted and detrimental or inimical to the public health, safety and welfare; and
- (b) a determination that proper notice has been given and the necessary hearings held.

The Agency argues that if it has met the necessary jurisdictional requirements entitling it to enforce its 1982 redevelopment plan, that the property owners' motion for summary judgment should be denied on the grounds that the applicable statute of limitations has run.

23. The Agency has proceeded to carry out the development of the Block 57 "project area" and to acquire the plaintiffs' properties as a part thereof, under the 1969 Utah Neighborhood Development Act, §§11-19-1, et seq., Utah Code Ann. (1953), as amended. That statute was preceded by the 1965 Utah

Community Development Act, §§11-15-1, et seq.

25. The Utah Neighborhood Development Act, §11-19-9, under which the RDA has proceeded, provides that in order for a project area under a redevelopment plan to be valid, the area:

must be restricted to buildings, improvements, or lands which are detrimental or inimical to the public health, safety or welfare.

26. As of 1982, the term "blighted", was defined under the Utah Neighborhood Development Act as buildings and structures for residential, commercial or industrial purposes which are:

[U]nfit or unsafe to occupy for such purposes or are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime

because of one or more specific factors. §11-19-2(10), Utah Code Ann. (1953), as amended.

Having now found specially the facts, the Court now enters the following:

CONCLUSIONS OF LAW

1. The statute under which the RDA is proceeding in this litigation and attempting to acquire and redevelop the plaintiffs' property is the 1969 Utah Neighborhood Development Act, §§11-19-1, et seq., Utah Code Ann. (1953), as amended.

2. The 1969 Utah Neighborhood Development Act was preceded by the 1965 Utah Community Development Act, §§11-15-1,

et seq.

3. Section 39 of the 1965 Utah Community Development Act is identical to Section 9 of the 1969 Utah Neighborhood Development Act.

4. The legislative intent and policy revealed in the legislative history of Section 39 of the 1965 Utah Community Development Act is embodied in the identical provision of Section 9 of the 1969 Utah Neighborhood Development Act.

5. The legislative history of the 1965 Community Development Act clearly reflects that that Act was originally proposed in the Utah Senate as Senate Bill 31. Section 39 of Senate Bill 31 was word-for-word taken from and identical the California Redevelopment Statute 32000 et seq., West's Cal. Ann. Code. Section 39 of Senate Bill 31 followed the dictates of Section 3321 of the California statute in providing:

A project area need not be restricted to buildings, improvements or lands which are detrimental or inimical to public health, safety or welfare, but may consist of an area in which such conditions predominate and injuriously affect the entire area. A project area may include lands, buildings or improvements which are not detrimental to the public health, safety or welfare, but whose inclusion is found necessary for the effective redevelopment of the area of which they are a part. (Emphasis added.)

6. The 1965 House Journal, 36th Session, reveals that the House of Representatives made two significant amendments to Section 39 of Senate Bill 31 as originally introduced. Ac-

according to the House Journal, in the first line after the word "area", the words "need not" were deleted, and the word "must" was inserted. That same sentence was also amended to insert a period after the word "welfare" and the entire balance of the Section was deleted. Section 39 of Senate Bill 31, as amended, then read as follows:

A project area must ~~[need-not]~~ be restricted to buildings, improvements or lands which are detrimental or inimical to the public health, safety or welfare. ~~[but-may-consist-of-an-area-in-which-such-conditions-predominate-and-injurioulsy-effect-the-entire-area---A-project-area-may-include-lands, buiddings,-or-improvements-which-are-not detrimental-to-public-health,-safety-or welfare,-but-whose-inclusion-is-found-necessary-for-effective-redevelopment-of-the area-of-which-they-are-a-part.]~~

7. The "area-wide" concept argued by the RDA was specifically rejected by the Utah legislature as underscored in the compelling legislative history. Instead, the legislature adopted a provision which limits a "project area" to buildings, lands or improvements which are detrimental or inimical to the public health, safety and welfare. The rejection by the Utah legislature of a specific provision contained in the 1965 Utah Community Development Act and re-enacted in the 1969 Utah Neighborhood Development Act is highly persuasive as a matter of law, consistent with controlling law, and warrants the conclusion that the 1969 Utah Neighborhood Development Act should not be construed to adopt or incorporate the "area-wide" concept.

8. Under §11-19-9 of the Utah Neighborhood Development Act, the Agency, incident to a determination of blight, must resolve that every property included within a redevelopment project area be detrimental or inimical to the public health, safety or welfare, §11-19-2(10) and (11) of the Utah Neighborhood Development Act require that the Agency determine that the "project area" is a "blighted area".

9. The RDA has failed to cite to the Court any authorities and court decisions to support its position of an "area-wide" application of the Utah Act where the statute being enforced is similar to Utah. The legal authorities cited by the RDA to support its claim that there are no state and federal constitutional barriers to redevelopment on an "area-wide" basis do not have application to the Utah Neighborhood Development Act and the provisions set forth in §11-19-9.

10. It is within the clear legislative prerogative to restrict redevelopment to specific buildings, lands or improvements which meet the test set by the legislature in this case to properties which are "detrimental or inimical to the public health, safety and welfare. Once the legislature has established the guidelines and limits to the implementation of a redevelopment plan for the acquisition and redevelopment of private properties, the RDA must then strictly comply with the requirements of the enabling legislation, including §11-19-

Moreover, since redevelopment is a serious action that may conflict with or otherwise impair the individual citizen's constitutional property rights, the statutory steps to be taken before acquiring real property for redevelopment through the threat or initiation of condemnation proceedings, are jurisdictional. Those steps may not be disregarded by the Redevelopment Agency.

11. Under §11-19-13, the RDA, in all activities relevant to the plaintiffs' properties herein, is required to adopt a project plan and implement redevelopment projects on a yearly basis in annual increments. The RDA's 1982 redevelopment plan, 1982 notices and proceedings to adopt that plan are the controlling plan, notices and proceeding under which the RDA has attempted to acquire and redevelop the plaintiffs' properties.

12. To the extent the RDA's 1975 plan is relevant to these proceedings, it did not determine and find that each of the plaintiffs' Block 57 properties are "blighted" and "detrimental or inimical to the public health, safety or welfare."

13. The RDA's 1975 notice of public hearings concerning the adoption of the 1975 redevelopment plan, when viewed in the context of the statements made by the Agency's director during the 1975 public hearings, did not give the plaintiffs the minimum guarantees of Due Process of Law and Equal Protection of the Law under the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Section 7 of the Utah Constitution that their properties might be subject to

an Agency determination of blight, detrimental and inimical to the public health, safety and welfare, and Agency redevelopment including the use of eminent domain power to take their properties.

14. The 1982 notice and letter from the RDA and the Salt Lake City Mayor were vague, ambiguous and misleading and did not give the plaintiffs the minimum guarantees to Due Process of Law and Equal Protection of the Law under the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Section 7 of the Utah Constitution that their properties might be subject to an Agency determination of blight and Agency redevelopment, including the use of eminent domain power to take their properties.

15. In order for the RDA to attempt the acquisition, voluntary or by eminent domain, of a citizen's property to arrest blight and for urban redevelopment, the law requires that it first make a specific determination that each of said properties are "detrimental or inimical to the public health, safety or welfare". Such requirement in law is a jurisdictional prerequisite to the acquisition by the RDA of a particular property for redevelopment.

16. That contrary to the requirements of §11-19-1 and §11-19-9 of the Utah Neighborhood Development Act, Utah Code Ann. (1953), as amended, the RDA's 1982 redevelopment plan and prior "area plans", together with the ordinance of Salt

Lake City adopting such area plans, did not and do not determine that each of the plaintiffs' Block 57 properties are "blighted" and are "detrimental or inimical to the public health, safety or welfare."

17. That because of the RDA and Salt Lake City's failure to comply with the requirements of the Utah Neighborhood Development Act, including §11-19-9 as a jurisdictional prerequisite to acquiring or threatening to acquire by eminent domain the plaintiffs' Block 57 properties, the defendants may not acquire the plaintiffs' Block 57 properties by condemnation or the threat thereof.

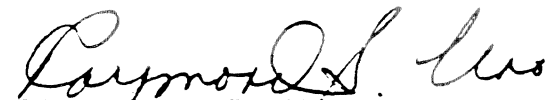
18. The plaintiffs' Motion for Partial Summary Judgment should be granted.

19. The defendants' Motion for Partial Summary Judgment should be denied.

WHEREFORE, let Summary Judgment be entered in favor of the plaintiffs and against the defendants in accordance with these Findings of Fact and Conclusions of Law.

DATED this 28 day of August, 1986.

BY THE COURT:



HONORABLE RAYMOND S. UNO
Third District Court Judge

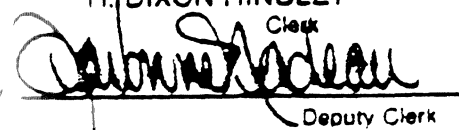
Findings prepared and
resubmitted by counsel
for plaintiffs.

ATTEST

H. DIXON HINDLEY

Clerk

By



Deputy Clerk

Tab B

SEP 8 1986
C. J. ...

Defendants.

This matter came on regularly for hearing in the forenoon on May 15, 1986 before the Court, the HONORABLE RAYMOND S. UNO, District Judge, presiding, on plaintiffs' motions for partial summary judgment and defendants' cross-motion for summary judgment. The parties appeared through and were represented by their respective counsel, Robert S. Campbell, Jr., Esq. and E. Barney Gesas, Esq., of Watkiss & Campbell, Salt Lake City, Utah, and Craig G. Adamson, Esq., of Dart, Adamson & Parken, Salt Lake City, Utah, for the plaintiffs, and Harold A. Hintze, Esq., for the defendants.

Plaintiffs' motions for partial summary judgment were supported by affidavits, accompanying exhibits and the publication of witness depositions. Both plaintiffs and defendants submitted extensive legal memoranda in support of their respective positions and in response to opposing motions for summary judgment. Extended oral argument on the facts and controlling law were made by respective counsel.

Having given full consideration to the respective motions and cross-motions for summary judgment, including the accompanying exhibits and affidavits and published deposition, having reviewed the legal memoranda filed and supporting oral argument, having accepted the stipulation by the parties that there were no genuine issues of material fact, and the Court having made and entered its Findings of Fact and Conclusions of Law,

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NOW DOES HEREBY ORDER, ADJUDGE AND DECREE as follows:

1. The plaintiffs' motion for partial summary judgment is hereby granted.

2. The defendants' motion for partial summary judgment is hereby denied.

3. That based upon the Court's Findings of Fact and Conclusions of Law heretofore entered by the Court that conclude the Redevelopment Agency and Salt Lake City have failed to comply with the requirements of the Utah Neighborhood Development Act, including §11-19-9 as a jurisdictional prerequisite to acquiring or threatening to acquire by eminent domain the plaintiffs' Block 57 properties, the defendants may not acquire the plaintiffs' Block 57 properties by condemnation or threat thereof.

DATED this 8TH day of SEPTEMBER, 1986.


BY THE COURT:



HONORABLE RAYMOND S. UNO
Third District Court Judge

ATTEST

H. DIXON HINDLEY
Clerk

By  Deputy Clerk

Tab C

allocation of the volume cap to the issuing authority for the bonds or certificates.

(8) The purpose of this chapter is to maximize the benefits of financing through the use of bonds and certificates by providing a formula for allocating the volume cap within the meaning of Section 146(e) of the code. 1987

Chapter 18. Historic Districts

11-18-1. "Historic District Act" - Short title.

11-18-2. Declaration of legislative intent.

11-18-3. Power of counties, cities and towns to expend public funds.

11-18-4. Power of counties, cities and towns to acquire, preserve and protect historical areas and sites.

11-18-5. Existing powers to acquire private property not limited.

11-18-6. Existing powers with respect to historic areas not limited.

11-18-1. "Historic District Act" - Short title.

This act shall be known and may be cited as the "Historic District Act." 1987

11-18-2. Declaration of legislative intent.

Recognizing that the historical heritage of this state is among its most valued and important assets, it is the intent of the legislature that the counties, cities and towns of this state shall have the power to preserve, protect and enhance historic and prehistoric areas and sites lying within their respective jurisdictions as provided in this act. 1987

11-18-3. Power of counties, cities and towns to expend public funds.

Counties, cities and towns are hereby empowered to expend public funds for the purpose of preserving, protecting or enhancing historical areas and sites as provided in this act. 1987

11-18-4. Power of counties, cities and towns to acquire, preserve and protect historical areas and sites.

For the purpose of carrying out this act, said counties, cities and towns shall have the power to:

(1) Acquire historical areas and sites by direct purchase, contract, lease, trade or gift;

(2) Obtain easements and rights of way across public or private property to ensure access or proper development of historical areas and sites;

(3) Protect historical areas and sites, and to ensure proper development and utilization of lands and areas adjacent to historical areas and sites;

(4) Enter into agreements with private individuals for the prior right to purchase historical areas and sites if and when said private individual elects to sell or dispose of his property. 1987

11-18-5. Existing powers to acquire private property not limited.

Nothing in this act shall be deemed to limit the power of counties, cities or towns to acquire private property, for protection as an historical area or site, under powers otherwise conferred by law. 1987

11-18-6. Existing powers with respect to historic areas not limited.

Nothing in sections 11-18-1 through 11-18-6 shall be construed to limit any existing inherent, statutory or other powers under which any county or municipality has enacted appropriate measures regarding historic areas. 1987

Chapter 19. Utah Neighborhood Development Act

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11-19-1. Short title of act.

This act shall be known and may be cited as the "Utah Neighborhood Development Act." 1969

11-19-2. Definitions.

As used in this chapter:

(1) "Community" means a city, county, town, or any combination of these.

(2) "Agency" means the legislative body of a community when designated by the legislative body itself to act as a redevelopment agency.

(3) "Public body" means the state, or any city, county, district, authority, or any other subdivision or public body of the state, their agencies, instrumentalities, or political subdivisions.

(4) "Federal government" means the United States or any of its agencies or instrumentalities.

(5) "Legislative body" means the city council, city commission, county commission, or other legislative body of the community.

(6) "Planning commission" means a city or county planning commission established pursuant to law or charter.

(7) "Redevelopment project" means any undertaking of an agency pursuant to this chapter.

(8) "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 provision of such residential, commercial, industrial, public, or other structures or spaces as may be appropriate or necessary in the interest of the general welfare, including recreational and other facilities incidental or appurtenant to them. Redevelopment includes:

(a) The alteration, improvement, modernization, reconstruction, or rehabilitation, or any com-

ination of these, of existing structures in a project area;

(b) Provision for open space types of use, such as streets and other public grounds and space around buildings, and public or private buildings, structures and improvements, and improvements of public or private recreation areas and other public grounds;

(c) The replanning or redesign or original development of undeveloped areas as to which either of the following conditions exist:

(i) The areas are stagnant or improperly utilized because of defective or inadequate street layout, faulty lot layout in relation to size, shape, accessibility, or usefulness, or for other causes; or

(ii) The areas require replanning and land assembly for reclamation or development in the interest of the general welfare. Redevelopment shall include and encourage the continuance of existing buildings or uses whose demolition and rebuilding or change of use are not deemed essential to the development, redevelopment or rehabilitation of the area.

(9) A "blighted area" is an area used or intended to be used for residential, commercial, industrial, or other purposes or any combination of such uses which is characterized by two or more 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.

(10) "Project area" means 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 chapter, and which is selected by the redevelopment agency pursuant to this chapter.

(11) "Redevelopment survey area" means an area of a community designated by resolution of the legislative body or the governing body of the agency for study by the agency to determine if a redevelopment project or projects within the area are feasible.

(12) "Redevelopment plan" means a plan developed by the agency and adopted by ordinance of the governing body of a community to guide and control redevelopment undertakings in a specific redevelopment project area.

(13) "Bond" means any bonds, notes, interim certificates, debentures, or other obligations issued by an agency. 1987

11-19-3. Designation of governing body of redevelopment agency - Powers of agency.

Each community may, by ordinance, designate the legislative body of the community as the governing body of the redevelopment agency. The agency is authorized to enter into contracts generally and may transact the business and exercise all the powers provided for in this chapter. The agency may accept financial or other assistance from any public or private source for the agency's activities, powers, and duties, and expend any funds so received for any of the purposes of this chapter. The agency may borrow money or accept financial or other assistance from the state or the federal government for any redevelopment project within its area of operation and comply with any conditions of such loan or grant. 1983

11-19-4. Other communities - Authorization for redevelopment of project areas.

By ordinance the legislative body of a community may authorize the redevelopment of a project area within its territorial limits by another community if such project area is contiguous to such other community. The ordinance shall designate the community to undertake such redevelopment. The community so authorized may undertake the redevelopment of such project area in all respects as if the area were within its territorial limits and its legislative body, agency, and planning commission shall have all the rights, powers, and privileges with respect to such project area as if it were within the territorial limits of the community so authorized. Neither the legislative body, agency nor planning commission of the community so authorizing shall be required to comply with any requirements of this act except as set forth in this section. Any redevelopment plan for such project area shall be approved by ordinance enacted by the legislative body of the community so authorizing. 1971

11-19-5. Planning commission and master plan - required.

Before any area is designated for redevelopment, the community authorized to undertake the development shall:

(1) Have a planning commission

(2) Have a master or general community plan as required by law. 1983

11-19-6. Designating redevelopment survey areas.

Redevelopment survey areas may be designated by resolution of the legislative body or the governing body of the agency. 1983

11-19-7. Designating redevelopment survey areas

- Who may request.

Any person, a group, association or corporation may in writing request the legislative body or the agency to designate a redevelopment survey area or areas for project study purposes and may submit with their request plans showing the proposed redevelopment of such areas or any part or parts thereof. 1969

11-19-8. Designating redevelopment survey areas

- Contents of resolution.

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

(1) A finding that the area requires study to determine if a redevelopment project or projects within the area are feasible; and

(2) A description of the boundaries of the area designated. 1971

11-19-9. Project areas - Restrictions.

A project area must be restricted to buildings, improvements, or lands which are detrimental or

inimical to the public health, safety, or welfare. 1969

11-19-9.5. Limits on value and size of project areas incorporating division of tax revenues without consent of local taxing agencies - Time limits.

(1) No redevelopment plan adopted after April 1, 1983, may incorporate the provisions of section 11-19-29 if the assessed value of the project area described in the redevelopment plan, when added to the total assessed value as shown on the last equalized assessment roll certified by the county assessor for other redevelopment project areas of the community for which an allocation of ad valorem taxes is provided, exceeds a figure at the time of the adoption of such redevelopment plan after April 1, 1983, equal to 15% of the total locally assessed value of the community, unless the governing body of each local taxing agency which levies taxes upon the property within the proposed redevelopment project area consents to the redevelopment project area plan in writing. If the county assessor fails to report the value of the locally assessed property within the proposed redevelopment project area within 90 days after notice as provided in section 11-19-16, the 15% limitation does not apply. No redevelopment plan adopted before April 1, 1983, incorporating the provisions of section 11-19-29 may be amended after April 1, 1983, to add area containing additional assessed value unless the governing body of each local taxing agency which levies taxes upon the property within the area proposed to be added consents in writing to a higher percentage of assessed value if such additional assessed value when added to the assessed value in the project area as such assessed value existed immediately before the adoption of such amendment would exceed the limits established in this subsection (1) for a redevelopment plan adopted after April 1, 1983.

(2) No project area with a redevelopment plan adopted after April 1, 1983, incorporating the provisions of section 11-19-29, may exceed 100 acres of privately owned property unless the governing body of each local taxing agency which levies taxes upon property within the proposed redevelopment project area consents in writing to the redevelopment project area plan. No redevelopment plan adopted before April 1, 1983, may be amended after April 1, 1983, to add any additional area if (a) the project area exceeds 100 acres of privately owned property or (b) the project area is less than 100 acres of privately owned property, but would exceed 100 acres of privately owned property with the additional area, unless the governing body of each local taxing agency which levies taxes upon property within the area proposed to be added consents in writing to the adding of the additional area to the project area.

(3) For purposes of computing under section 11-19-29 the amount to allocated to and when collected to be paid into a special fund of a redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed or otherwise) incurred by such redevelopment agency after April 1, 1983, from a project area with a redevelopment plan adopted before April 1, 1983, incorporating the provisions of section 11-19-29 and containing more than 100 acres of privately owned property, the redevelopment agency may be paid only that portion of that amount levied each year from 100 acres selected by the redevelopment agency from the entire project area. The amount allocated to and when

collected to be paid into a special fund of a redevelopment agency under subsections 11-19-29(1)(c) and (1)(e) from the 100 acres of privately owned property shall be that portion of the levied taxes each year in excess of the amount from the 100 acres allocated to and when collected paid to the taxing agencies under subsection 11-19-29(1)(a). The 100 acres of privately owned property shall be contiguous.

The 100-acre limit of privately owned property set forth in this subsection shall not apply to loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed or otherwise) incurred by such redevelopment agencies before April 1, 1983, in projects with redevelopment plans adopted before April 1, 1983. The 100-acre limit of privately owned property shall not apply if the governing body of each local taxing agency which levies taxes upon the property within the project area consents in writing to exceeding the 100-acre limit of privately owned property.

Each redevelopment agency shall establish by resolution adopted on or before August 1, 1983, which areas in the project area shall be included in the 100 acres of privately owned property to be used for the purposes of computing the amount to be allocated to and when collected to be paid into a special fund of the redevelopment agency. The resolution shall also contain a legal description of the areas included in the 100 acres. A copy of the resolution shall be filed with the county auditor and the state tax commission within 30 days of adoption of the resolution. After the resolution has been adopted no person, entity, or public body may contest the regularity, formality, or legality of the establishment of the 100 acres or of the resolution for any cause whatsoever.

(4) Every project area with a redevelopment plan adopted before April 1, 1983, which exceeds 590 acres of privately owned property shall be reduced to 590 acres of privately owned property unless the governing body of each local taxing agency which levies taxes upon property within the redevelopment project area consents in writing to the project area not being reduced. Each redevelopment agency shall establish by resolution adopted on or before August 1, 1983, which areas in the project area shall be included in the 590 acres of privately owned property to be used for the purposes of reducing to the 590 acre limit of privately owned property. The resolution shall also contain a legal description of the areas included in the 590 acres of privately owned property. A copy of the resolution shall be filed with the county auditor and the state tax commission within 30 days of adoption of the resolution. After the resolution has been adopted no person, entity, or public body may contest the regularity, formality, or legality of the reduction to the 590 acre limit of privately owned property or of the resolution for any cause whatsoever.

(5) A redevelopment plan adopted after April 1, 1983, shall contain:

(a) A time limit not to exceed 7 years from the date of the approval of the plan after which the agency may not commence acquisition of property through eminent domain;

(b) A time limit not to exceed 15 years from the date of the approval of the plan after which no bonds may be issued for redevelopment projects; and

(c) A time limit not to exceed 32 years from the date of the approval of the plan after which no tax

increment from the project area may be allocated to or used by the agency.

The time limits set forth in subsections (5)(a), (b); and (c) shall apply to redevelopment plans adopted before April 1, 1983, but shall be measured from April 1, 1983.

1983

11-19-10. Project areas - Selection -

Preliminary plan.

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 cooperation with the planning commission of the community.

1971

11-19-11. Project areas - Contents of preliminary plan.

A preliminary plan need not be detailed and is sufficient if it:

(1) Describes the boundaries of the project area;

(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.

1983

11-19-12. Redevelopment plan preparation

Public hearing - Consistency with master and other plans - Consultation with community planning commission.

The agency shall prepare or cause to be prepared a redevelopment plan for each project area and for that purpose shall hold one public hearing and conduct examinations, investigations, and other negotiations. The plan shall be consistent with the community's master plan and other plans of the community involved in development or capital improvement programs affecting the project area. The agency shall consult with the planning commission of the community in preparing a project area redevelopment plan.

1983

11-19-12.1. Opportunities to participate in project required - Preferences - Rules.

(1) Every redevelopment plan shall provide for reasonable opportunities to participate in the redevelopment of property in the project area by the owners of property in the project area if the owners enter into a participation agreement with the agency.

(2) The agency may permit owners and tenants within the project area reasonable opportunities to participate in the redevelopment of the project area by:

(a) Owners retaining, maintaining, and if necessary rehabilitating, all or portions of their properties;

(b) Owners acquiring adjacent or other properties in the project area;

(c) Owners selling all or portions of their improvements to the agency, retaining the land, and developing their properties;

(d) Owners selling all or portions of their properties to the agency and purchasing other properties in the project area;

(e) Owners selling all or portions of their properties to the agency and obtaining preferences to

reenter the project area;

(f) Tenants having opportunities to become owners of property in the project area, subject to the opportunities of owners of property in the project area; and

(g) Other methods approved by the agency.

(3) Every redevelopment agency may extend reasonable preferential opportunities to owners and tenants in the project area ahead of persons and entities from outside the project area, to be owners and tenants in the project area during and after the completion of redevelopment.

(4) The agency shall prepare and submit rules governing the opportunities to the legislative body of the community at the time the agency submits the redevelopment plan to the legislative body of the community.

(5) The legislative body of the community may not adopt the redevelopment plan until the rules have been adopted by the agency and approved by the legislative body of the community.

(6) This section does not apply to redevelopment plans adopted before April 1, 1983. 1983

11-19-13. Approval and adoption of plan -

Execution - Funding - Reuse of property.

Upon the approval of a redevelopment plan by resolution of the agency, it shall be submitted to the legislative body for adoption. Upon adoption by the legislative body the agency shall carry out the redevelopment project set forth in the plan. Funding shall be provided for in the annual budget of the agency. No redevelopment project activities may be undertaken unless a reuse of the property has been arranged, planned or provided. 1983

11-19-13.1. Agency budget - Hearing - Notice

- Public inspection - Agency budget forms -

Copies of adopted budget filed - Amendment -

Expenditures limited by budget.

(1) Each agency shall prepare and adopt an annual budget for each fiscal year. The fiscal year shall be the same as the fiscal year of the community. The agency shall hold a public hearing on the budget before adopting the budget. Notice of the public hearing shall be published in a newspaper of general circulation within the community at least once, two weeks in advance of the public hearing. The prepared budget shall be made available for public inspection at least three days before the day of commencement of the public hearing. The state auditor shall prescribe the budget forms and the categories to be contained in each agency budget, including, but not limited to, the following:

(a) revenues and expenditures for the budget year;

(b) all legal fees; and

(c) all administrative costs, including, but not limited to, salaries of redevelopment personnel, rent, supplies, and other material.

(2) Within 30 days after adoption of the budget, the agency shall file a copy of the budget with the county auditor, the State Tax Commission, and each property taxing entity affected by the distribution of property taxes pursuant to Section 11-19-29. The budget may be amended during the year by the governing body of the agency, but any amendment which would increase the total expenditures shall be made only after public hearing by notice published as required for initial adoption of each budget. The agency may not make expenditures in excess of the total expenditures established in the budget as it is adopted or amended. This section applies to fiscal

years beginning on or after July 1, 1983. 1986

11-19-13.2. Annual reports by agency -

Contents.

On or before November 1 of each year, each agency shall prepare and file a report with the county auditor, the state tax commission, the state board of education, and each property taxing entity affected by the distribution of property taxes pursuant to section 11-19-29. The reports shall contain:

(1) Estimates of the portion of property taxes to be paid to the agency pursuant to section 11-19-29, for the calendar year ending December 31; and

(2) An estimate of the portion of property taxes to be paid to the agency, pursuant to section 11-19-29, for the calendar year beginning the next January 1.

This section applies to fiscal years beginning on or after July 1, 1983. 1983

11-19-13.3. Annual reports by county auditor -

Contents.

On or before March 31 of each year, the county auditor shall report the following data on each project area to the redevelopment agency, the state tax commission, the state board of education, and each property taxing agency affected by the distribution of property taxes pursuant to section 11-19-29:

(1) The total assessed property value for the previous tax year;

(2) The base-year total assessed property values for the previous tax year;

(3) The tax increment available to be paid for the previous tax year;

(4) The tax increment requested by the agency for the previous tax year; and

(5) The tax increment paid to the agency for the previous tax year.

This section applies to fiscal years beginning on or after July 1, 1983. 1983

11-19-13.4. Audit of agency accounts - Filing audits.

Each agency (for the fiscal year ending June 30 for an agency created by a city, and for the fiscal year ending December 31 for an agency created by a county) shall cause an audit to be made of its accounts in the same manner and time set forth in Chapter 2, Title 51. Such audits are not required of an agency for any fiscal year in which an agency does not have expenditures in excess of \$25,000. Each audit shall be filed in the manner provided for in Section 51-2-3. This section applies to fiscal years beginning on or after July 1, 1983. 1986

11-19-14. Report to accompany plan - Contents.

Every project area redevelopment plan shall be accompanied by 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;

(3) A financial analysis of the proposed redevelopment describing the proposed method of financing the redevelopment of the project area in sufficient detail so that the legislative body may determine the economic feasibility of the plan;

(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;

(5) An analysis of the preliminary plan; and

(6) The report and recommendations of the planning commission. 1971

11-19-15. Public hearing.

The legislative body at a public hearing shall consider the project area redevelopment plan. The legislative body may adjourn the hearing from time to time. 1971

11-19-16. Notice of public hearing required - Contents.

(1) 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. The notice shall:

(a) Describe specifically the boundaries of the proposed redevelopment project area; and

(b) State the day, hour and place in which persons objecting to the proposed project area redevelopment plan or denying the existence of blight in the proposed project area or denying the regularity of any of the proceedings, may appear before the legislative body and show cause why the proposed plan should not be adopted.

(2) Not less than 30 days prior to the date set for the hearing, the agency shall give notice by mail to the state tax commission, county assessor, county auditor, and the governing body of each of the taxing entities of which taxable property is included in the project area. The notice shall include the requirements set forth in subsection (1) and an invitation to each taxing district to submit comments to the agency concerning the subject matter of the hearing prior to the date of the hearing.

(3) Not less than 30 days prior to the date set for the hearing, the agency shall give notice by mail as provided in subsection (2) to the last known assessee of each parcel of land in the project area at the last known address shown on the last equalized assessment roll of the county. 1983

11-19-17. Objections to plan - Filing.

At any time not later than the hour set for hearing objections to the proposed project area redevelopment plan, any person may file in writing with the clerk of the legislative body a statement of his objections to the proposed plan. 1971

11-19-18. Objections to plan - Hearing - Consideration of evidence.

At the hour set in the notice in section 11-19-16 of this act for hearing objections, the legislative body shall proceed to hear and pass upon all written and oral objections. Before adopting the project area redevelopment plan the legislative body shall consider the report of the agency, and all evidence and testimony for and against the adoption of the plan. 1971

11-19-19. Adoption, rejection or modification of plan - Proceedings - Effect of objections - Plan submitted to voters - When rejection required - Petition for alternative plan.

Once the hearing has been held, the legislative body may proceed to adopt, reject or modify the project area redevelopment plan. The project area redevelopment plan may not be modified so as to add any real property to the project area without the legislative body holding a new hearing to consider the matter. In the event the owners of 40% of the area of the property included within the project area proposed in the redevelopment plan excluding property owned by public agencies or dedicated to public use make objections in writing prior to or at the hearing and such objections are not withdrawn

at or prior to such hearing, the plan shall not be adopted until the proposition to so adopt the plan shall have been approved by a majority of the registered voters of the community voting thereon at an election called for such purpose, which election may be held on the same day and with the same election officials as any primary or general election held in the community and shall be held as nearly as practicable in conformity with the general election laws of the state. Upon the approval by the voters as set forth above, the project area redevelopment plan shall be deemed adopted and the legislative body shall confirm such adoption by ordinance.

In the event the owners of two-thirds of the area of the property included within any project area proposed in the redevelopment plan excluding property owned by public agencies or dedicated to public use make objections in writing at or prior to such hearing, the legislative body shall not adopt the project, and the proposed project shall not be reconsidered by the legislative body for a period of three years; but a majority of the owners of the area of the property included within the project area, excluding property owned by public agencies or dedicated to public use, may file a written petition requesting an alternative preliminary plan be formulated pursuant to section 11-19-10 of this act. 1983

11-19-20. Adoption of plan by ordinance - Limitation on contest of legality.

The legislative body by ordinance may adopt the redevelopment plan in its original form or as modified as the official redevelopment plan for the project area. For a period of 60 days after publication of the ordinance adopting the redevelopment plan, any person in interest may contest the regularity, formality or legality of the ordinance. After the 60 day period no person may contest the regularity, formality or legality of the ordinance for any cause whatsoever. 1983

11-19-21. Adoption by ordinance - Contents.

The ordinance shall contain:

(1) A legal description of the boundaries of the project area covered by the redevelopment plan;

(2) The purposes and intent of the legislative body with respect to the project area;

(3) The plan incorporated by reference;

(4) A designation of the approved plan as the official redevelopment plan of the project area;

(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,

(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,

(c) The adoption and carrying out of the redevelopment plan is economically sound and feasible,

(d) The redevelopment plan conforms to the master or general plan of the community,

(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,

(f) The condemnation of real property, if provided for in the redevelopment plan, is necessary to the execution of the redevelopment plan and adequate provisions have been made for payment for property to be acquired as provided by law,

(g) The agency has a feasible method or plan

for the relocation of families and persons displaced from the project area, if the redevelopment plan may result in the temporary or permanent displacement of any occupants of housing facilities in the project area, and

(h) There are or are being provided in the project area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and persons displaced from the project area, decent, safe, and sanitary dwellings equal in number to the number of and available to such displaced families and persons and reasonably accessible to their places of employment; and

(6) A statement that the legislative body is satisfied permanent housing facilities will be available within three years from the time occupants of the project area are displaced and that pending the development of such facilities there will be available to such displaced occupants adequate temporary housing facilities at rents comparable to those in the community at the time of their displacement. 1969

11-19-22. Acquisition and disposition of property

Control of property sold or leased for private use.

The agency may buy, sell, convey, lease, or otherwise acquire or dispose of property. The agency shall retain controls and establish restrictions and covenants running with land sold or leased for private use for such periods of time not to exceed 25 years from the date of such sale or lease and under such conditions as are provided in the redevelopment plan. The establishment of such controls is a public purpose under the provisions of this chapter. 1983

11-19-23. Amendment or modification of plan.

If at any time after adoption of a redevelopment plan for a project area by the legislative body it becomes necessary or desirable to amend or modify such plan, such amendment or modification may be made in the same manner as if the amendment or modification constituted a redevelopment plan being originally proposed in accordance with this act. 1969

11-19-23.1. Powers of public body aiding and co-operating in redevelopment projects - Notice requirement.

For the purpose of aiding and co-operating in the planning, undertaking, construction, or operation of redevelopment projects located within the area in which it is authorized to act, any public body, after fifteen days' public notice, may:

(1) Dedicate, sell, convey, or lease any of its property to a redevelopment agency;

(2) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with redevelopment projects;

(3) Furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, roadways, alleys, sidewalks, or other places which it is otherwise empowered to undertake;

(4) Plan or replan, zone or rezone any part of the area and make any legal exceptions from building regulations and ordinances;

(5) Enter into agreements with the federal government, an agency, or any other public body respecting action to be taken pursuant to any of the powers granted by this act or any other law, which agreements may extend over any period, notwithstanding any law to the contrary;

(6) Purchase or legally invest in any of the bonds of an agency and exercise all of the rights of any holder of such bonds;

(7) Lend, grant, or contribute funds to a redevelopment agency for a redevelopment project;

(8) Purchase and buy or otherwise acquire land in a project area from an agency for redevelopment in accordance with the plan, and in connection with it, to become obligated to the extent that it is authorized and funds have been made available to make the redevelopment improvements or structures required; and

(9) Do any and all things necessary to aid or co-operate in the planning or carrying out of a redevelopment project. 1971

11-19-23.2. Bonds - Powers of redevelopment agency to issue - Payments.

A redevelopment agency shall have power to issue bonds from time to time in its discretion to finance the undertaking of any redevelopment project under this chapter, including the payment of principal and interest upon any advances for surveys and plans or preliminary loans, and shall also have power to issue refunding bonds for the payment or retirement of such bonds previously issued by it. The bonds shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the agency derived from or held in connection with its undertaking and carrying out of redevelopment projects under this chapter, other than funds directly paid by the community; but the payment of these bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source, in aid of any redevelopment projects or any part of same, the title as to which is in the agency. 1971

11-19-23.3. Bonds as indebtedness - Exemption from taxes.

Bonds issued under sections 11-19-23.2 through 11-19-28 shall not constitute an indebtedness within the meaning of any statutory debt limitation or restriction, shall constitute an indebtedness only to the extent required by the Utah Constitution and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance or sale of bonds. Bonds issued under the provisions of this chapter are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes. 1974

11-19-23.4. Bonds - Type - Form - Interest - Redemption.

Bonds issued under this chapter shall be authorized by resolution of the agency and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either with or without coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics, as may be provided by the resolution. 1980

11-19-23.5. Sale of bonds.

Such bonds may be sold at public or private sale in such manner and at such prices, either at, in excess of, or below the face value of these bonds, as

provided by resolution. 1977

11-19-23.6. Validity of official signatures on bonds - Negotiability.

In case any of the officials of the agency whose signatures appear on any bonds or coupons issued under this chapter shall cease to be such officials before the delivery of such bonds, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if these officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued under this chapter shall be fully negotiable. 1971

11-19-23.7. Actions on validity or enforceability of bonds - Presumptions - Time for bringing action.

In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this chapter or the security for same, any such bond reciting in substance that it has been issued by the agency in connection with an area redevelopment project, shall be conclusively deemed to have been issued for such purpose, and such project shall be conclusively deemed to have been planned, located and carried out in accordance with the provisions of this chapter. For a period of thirty days after the publication of the resolution authorizing the bonds in a newspaper having general circulation in the area of operation, any person shall have the right to contest the legality of the resolution authorizing any bonds or any provisions made for the security and payment of the bonds; and after such time no one shall have any cause of action to contest the regularity, formality, or legality of the bonds for any cause whatsoever. 1971

11-19-23.8. Investment in bonds.

All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business, all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by an agency pursuant to this chapter. These bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions, and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities. 1971

11-19-23.9. Agency authority within project area Acquisition of property.

Within the project area an agency may:

(1) Purchase, lease, obtain option upon, acquire by gift, grant, bequest, devise, or otherwise, any real or personal property, any interest in property, and any improvements on it; or

(2) Acquire real property by eminent domain; but when the power of eminent domain is exercised under the provisions of this chapter and the party whose property is affected contests the matter in the district court, the court may, in cases where the amount of the award exceeds the amount offered, award in addition to his just compensation, costs, including a reasonable attorney's fee as determined

by the court. The court, or jury in cases tried before a jury, may also award a reasonable sum as compensation for the costs and expenses, if any, of relocating the owner whose property is acquired or a party conducting a business on such acquired property. An award may also be made for damages to any fixtures or personal property owned by the owner of such acquired property or owned by the person conducting a business on such acquired property, if such fixtures or personal property are damaged as a result of such acquisition or relocation. 1971

11-19-23.10. Acquisition of property from members or officers prohibited.

An agency shall not acquire from any of its members or officers any property or interest in property except through eminent domain proceedings. 1971

11-19-23.11. Acquisition of real property without owner's consent prohibited - Exception.

Without the consent of an owner, an agency shall not acquire any real property on which an existing building is to be continued on its present site and in its present form and use unless such building requires structural alteration, improvement, modernization or rehabilitation, or the site or lot on which the building is situated requires modification in size, shape or use or it is necessary to impose upon such property any of the standards, restrictions and controls of the plan and the owner fails or refuses to agree to participate in the redevelopment plan. 1971

11-19-23.12. Acquisition of public property.

Property already devoted to a public use may be acquired by the agency through eminent domain, but property of the public body shall not be acquired without its consent. 1971

11-19-24. Conflict of laws - Rights and duties not affected by act.

It is the intent of the legislature that the rights, duties, responsibilities and authority granted under the Utah Community Redevelopment Law shall in no way be diminished, restricted, abolished, or in any way impaired by this act; neither shall the rights, duties, responsibilities and authority of any governmental unit be diminished, restricted, or impaired in utilizing the benefits of this act. 1969

11-19-25. Bond issues - Purposes - Authorized types - Methods of securing bonds - Agency members and persons executing bonds not personally liable - Bonds and obligations not general obligation or debt - Negotiability.

(1) From time to time an agency may issue bonds for any of its corporate purposes. An agency may also issue refunding bonds for the purpose of paying or retiring bonds previously issued by it.

(2) An agency may issue such types of bonds as it may determine including bonds on which the principal and interest are payable:

(a) Exclusively from the income and revenues of the redevelopment projects financed with the proceeds of the bonds, or with such proceeds together with financial assistance from the state or federal government in aid of the projects.

(b) Exclusively from the income and revenues of certain designated redevelopment projects whether or not they were financed in whole or in part with the proceeds of the bonds.

(c) In whole or in part from taxes allocated to, and paid into a special fund of, the agency under section 11-19-29.

(d) From its revenues generally.

(e) From any contributions or other financial assistance from the state or federal government.

(f) By any combination of these methods.

(3) Any of such bonds may be additionally secured by a pledge of any revenues or by an encumbrance by mortgage, deed of trust, or otherwise of any redevelopment project or other property of the agency or by a pledge of the taxes referred to in subsection (2) of this section, or by any combination thereof.

(4) Neither the members of an agency nor any persons executing the bonds are liable personally on the bonds by reason of their issuance.

(5) The bonds and other obligations of any agency are not a general obligation or debt of the community, the state, or any of its political subdivisions, and neither the community, the state, nor any of its political subdivisions are liable on them, nor in any event shall the bonds or obligations give rise to a general obligation or liability of the community, the state, or any of its political subdivisions, or a charge against their general credit or taxing powers, or be payable out of any funds or properties other than those of the agency; and these bond and other obligations shall so state on their face. The bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

(6) Bonds issued pursuant to this part [chapter] are fully negotiable. 1974

11-19-26. Agency powers in issuance of bonds.

(1) In connection with the issuance of bonds, and in addition to its other powers, an agency has the powers prescribed in subsection (2) of this section.

(2) An agency may:

(a) Pledge all or any part of its gross or net rents, fees, or revenues to which its right then exists or may thereafter come into existence.

(b) Encumber by mortgage, deed of trust, or otherwise all or any part of its real or personal property, then owned or thereafter acquired.

(c) Covenant against pledging all or any part of its rents, fees, and revenues.

(d) Covenant against encumbering all or any part of its real or personal property, to which its right or title then exists or may thereafter come into existence.

(e) Covenant against permitting any lien on such revenues or property.

(f) Covenant with respect to limitations on its right to sell, lease, or otherwise dispose of all or part of any redevelopment project.

(g) Covenant as to what other, or additional debts or obligations it may incur.

(h) Covenant as to the bonds to be issued, as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the bond proceeds.

(i) Provide for the replacement of lost, destroyed, or mutilated bonds.

(j) Covenant against extending the time for the payment of its bonds or interest.

(k) Redeem the bonds, covenant for their redemption, and provide the redemption terms and conditions.

(l) Covenant as to the consideration of rents and fees to be charged in the sale or lease of a redevelopment project, the amount to be raised each year or other period of time by rents, fees, and other revenues, and as to their use and disposition.

(m) Create or authorize the creation of special funds for money held for redevelopment or other

costs, debt service, reserves, or other purposes, and covenant as to the use and disposition of such money.

(n) Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds whose holders are required to consent thereto, and the manner in which such consent may be given.

(o) Covenant as to the use of any or all of its real or personal property.

(p) Covenant as to the maintenance of its real and personal property, its replacement, the insurance to be carried on it, and the use and disposition of insurance money.

(q) Covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation.

(r) Covenant and prescribe as to events of default and terms and conditions upon which any or all of its bond or obligations become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(s) Vest in a trustee or the holders of bonds or any proportion of them the right to enforce the payment of the bonds or any covenants securing or relating to the bonds.

(t) Vest in a trustee the right, in the event of a default by the agency, to take possession of all or part of any redevelopment project, to collect the rents and revenues arising from it and to dispose of such money pursuant to the agreement of the agency with the trustee.

(u) Provide for the powers and duties of a trustee and limit his liabilities.

(v) Provide the terms and conditions upon which the trustee or the holders of bonds or any proportion of them may enforce any covenant or rights securing or relating to the bonds.

(w) Exercise all or any part or combination of the powers granted in sections 11-19-23.2 through 11-19-28 inclusive.

(x) Make covenants other than and in addition to the covenants expressly authorized in such sections of like or different character.

(y) Make such covenants and to do any and all such acts and things as may be necessary, convenient, or desirable to secure its bonds, or, except as otherwise provided in this part, [chapter] as will tend to make the bonds more marketable notwithstanding that such covenants, acts, or things may not be enumerated in this part [chapter]. 1974

11-19-27. Rights of obligee.

(1) In addition to all other rights which may be conferred on him, and subject only to any contractual restrictions binding upon him, an obligee may:

(a) By mandamus, suit, action, or proceeding, compel the agency and its members, officers, agents, or employees to perform each and every term, provision, and covenant contained in any contract of the agency with or for the benefit of the obligee, and require the carrying out of any or all such covenants and agreements of the agency and the fulfillment of all duties imposed upon it by this part [chapter].

(b) By suit, action, or proceeding in equity, enjoin any acts or things which may be unlawful, or the violation of any of the rights of the obligee.

(2) By its resolution, trust indenture, mortgage, lease, or other contract, an agency may confer upon any obligee holding or representing a specified amount in bonds, the following rights upon the

happening of an event or default prescribed in such resolution or instrument, to be exercised by suit, action, or proceeding in any court of competent jurisdiction:

(a) To cause possession of all or part of any redevelopment project to be surrendered to any such obligee.

(b) To obtain the appointment of a receiver of all or part of any redevelopment project of the agency and of the rents and profits from it. If a receiver is appointed, he may enter and take possession of the redevelopment project or any part of it, operate and maintain it, collect and receive all fees, rents, revenues, or other charges thereafter arising from it, and shall keep such money in separate accounts and apply it pursuant to the obligations of the agency as the court shall direct.

(c) To require the agency and its members and employees to account as if it and they were the trustees of an express trust. 1974

11-19-28. Bonds exempt from taxes except corporate franchise tax - Purchase of bonds by agency - Property of agency exempt from execution and taxes.

(1) The bonds are issued for an essential public and governmental purpose, and together with interest on them and income from them are exempt from all taxes except for the corporate franchise tax.

(2) An agency may purchase its bonds at a price not more than their principal amount and accrued interest plus (if the bonds purchased are callable at a premium) an amount not to exceed the premium that would be applicable if the bonds were purchased on the next following call date. All bonds so purchased shall be canceled.

(3) All property of an agency, including funds owned or held by it for the purposes of this act shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against a legislative body be a charge or lien upon such property; provided, however, that the provisions of this subsection shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this act by an agency on its rents, fees, grants or revenues from area redevelopment projects.

(4) The property of a redevelopment agency, acquired or held for the purposes of this act, is declared to be public property used for essential public and governmental purposes and such property shall be exempt from all taxes of the municipality, the county, the state, or any political subdivision thereof; provided, that such tax exemption shall terminate when the agency sells, leases, or otherwise disposes of such property in a project area to a purchaser or lessee which is not a public body entitled to tax exemption with respect to such property. 1984

11-19-29. Division of tax revenues - Authorized provision of redevelopment plan.

(1) Any redevelopment plan may contain a provision that taxes, if any, levied upon taxable property in a redevelopment project each year by or for the benefit of the state of Utah, any city, county, city and county, district, or other public corporation (hereinafter sometimes called "taxing agencies") after the effective date of the ordinance approving the redevelopment plan, shall be divided as follows:

(a) That portion of the taxes which would be produced by the rate upon which the tax is levied

each year by or for each of the taxing agencies upon the total sum of the assessed value of the taxable property in the redevelopment project as shown upon the assessment roll used in connection with the taxation of such property by such taxing agency, last equalized prior to the effective date of such ordinance, shall be allocated to and when collected shall be paid into the funds of the respective taxing agencies as taxes by or for said taxing agencies on all other property are paid (for the purposes of allocating taxes levied by or for any taxing agency or agencies which did not include the territory in a redevelopment project on the effective date of such ordinance but to which such territory has been annexed or otherwise included after such effective date, the assessment roll of the county last equalized on the effective date of the ordinance shall be used in determining the assessed valuation of the taxable property in the project on the effective date); and

(b) In a redevelopment project with a redevelopment plan adopted before April 1, 1983, that portion of the levied taxes each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under subsection (a) shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by such redevelopment agency before April 1, 1983, to finance or refinance, in whole or in part, such redevelopment project. Payment of tax revenues to the redevelopment agency shall be subject to and shall except uncollected or delinquent taxes in the same manner as payments of taxes to other taxing agencies are subject to collection. Unless and until the total assessed valuation of the taxable property in a redevelopment project exceeds the total assessed value of the taxable property in such project as shown by the last equalized assessment roll referred to in subsection (1)(a) of this section, all of the taxes levied and collected upon the taxable property in such redevelopment project shall be paid into the funds of the respective taxing agencies. When such loans, advances, and indebtedness, if any, and interest thereon, have been paid, all moneys thereafter received from taxes upon the taxable property in such redevelopment project shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid.

Notwithstanding the provisions of subsection 11-19-5(3), subsections 11-19-29(1)(b) and (c), or any other provisions of this chapter, any loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed or otherwise) issued prior to April 1, 1983, may be refinanced and repaid from 100% of that portion of the levied taxes paid into the special fund of the redevelopment agency each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under subsection (1)(a) if the principal amount of such loans, moneys advanced to, or indebtedness is not increased in the refinancing.

(c) In a redevelopment project with a redevelopment plan adopted before April 1, 1983, that portion of the levied taxes each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under subsection (a) shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency according to the limits set forth in subsection (c) to pay the principal of and interest on

loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by such redevelopment agency after April 1, 1983, to finance or refinance, in whole or in part, such redevelopment project. Payment of tax revenues to the redevelopment agency shall be subject to and shall except uncollected or delinquent taxes in the same manner as payments of taxes to other taxing agencies are subject to collection. Unless and until the total assessed valuation of the taxable property in a redevelopment project exceeds the total assessed value of the taxable property in such project as shown by the last equalized assessment roll referred to in subsection (1)(a) of this section, all of the taxes levied and collected upon the taxable property in such redevelopment project shall be paid into the funds of the respective taxing agencies. When such loans, advances, and indebtedness, if any, and interest thereon, have been paid, all moneys thereafter received from taxes upon the taxable property in such redevelopment project shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid.

(d) In a redevelopment project with a redevelopment plan adopted after April 1, 1983, that portion of the levied taxes each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under subsection (a) shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency according to the limits set forth in subsection (e) to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by such redevelopment agency after April 1, 1983, to finance or refinance, in whole or in part, such redevelopment project. Payment of tax revenues to the redevelopment agency shall be subject to and shall except uncollected or delinquent taxes in the same manner as payments of taxes to other taxing agencies are subject to collection. Unless and until the total assessed valuation of the taxable property in a redevelopment project exceeds the total assessed value of the taxable property in such project as shown by the last equalized assessment roll referred to in subsection (1)(a) of this section, all of the taxes levied and collected upon the taxable property in such redevelopment project shall be paid into the funds of the respective taxing agencies. When such loans, advances, and indebtedness, if any, and interest thereon, have been paid, all moneys thereafter received from taxes upon the taxable property in such redevelopment project shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid.

(e) For purposes of subsection (c) and (d) the maximum amounts which shall be allocated to and when collected shall be paid into the special fund of the redevelopment agency may not exceed the following percentages:

(i) For a period of the first five tax years commencing from the first tax year a redevelopment agency accepts an amount allocated to and when collected paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) which loans, advances, or indebtedness are incurred by such redevelopment agency after April 1, 1983, 100% of that portion of the levied taxes each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing

agencies under subsection (a);

(ii) For a period of the next five tax years 80% of that portion of the levied taxes each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under subsection (a);

(iii) For a period of the next five tax years 75% of that portion of the levied taxes each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under subsection (a);

(iv) For a period of the next five tax years 70% of that portion of the levied taxes each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under subsection (a);

(v) For a period of the next five tax years 60% of that portion of the levied taxes each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under subsection (a).

(f) Nothing contained in subsection (1)(c), (1)(d), and (1)(e) shall prevent an agency from receiving a greater percentage than those set forth in subsection (1)(e) of the levied taxes of any local taxing agency each year in excess of the amount allocated to and when collected paid into the funds of the respective local taxing agency if the governing body of such local taxing agency consents in writing. 1983

11-19-29.1. Time for payment of taxes to agency.

The portion of taxes to be paid to an agency as provided in subsection 11-19-29(b) is not allocable or payable for the first time until January 1 of the year following the adoption of the redevelopment plan. This section does not apply to redevelopment plans adopted before April 1, 1983. 1983

11-19-29.2. Determination of assessed value and names and addresses of assesses.

For purposes of this chapter, the assessment roll of each county is equalized as of November 1 of each year. For purposes of this chapter, in determining the assessed value of property on the county assessment roll or determining the names or addresses of assesses on the roll, the term "last equalized" in reference to the county assessment roll, or in any words intended to refer to the latest or current assessment roll of the county, shall be ascertained as defined in Section 59-2-326. 1987

11-19-29.3. Distribution of property taxes.

Any property taxes not distributed under Section 11-19-29 to an agency shall be distributed by the county in the same manner as other property taxes. Each county shall pay and distribute to each agency, in the manner provided for in Section 59-2-1365, the property taxes allocated under Section 11-19-29. 1987

11-19-29.4. Adjustment of base year assessed valuation of area required for county rate adjustment - Minimum payment to agency.

In each year in which there are increases or decreases in the assessed valuation of a project area as a result of statutes enacted by the Legislature, a judicial decision, or an order from the State Tax Commission to a county to adjust or factor its assessment rate pursuant to Subsection 59-2-704(2), the amount of assessed valuation for the base year established pursuant to Subsection 11-19-29(1)(a) shall be increased or decreased by the amount of the increases or decreases as a result of a statute, judi-

cial decision, or the order to adjust or factor its assessment rate pursuant to Subsection 59-2-704(2). Notwithstanding the increase or decrease resulting from a statute, judicial decision, or the order to adjust or factor the assessment rate, the amount of money allocated to and when collected paid to the agency each year for payment of bonds or other indebtedness may not be less than would have been allocated to and when collected paid to the agency each year if there had been no statute, judicial decision, or order to adjust or factor. 1987

11-19-29.5. Adjustment of base year assessed valuation of area required for changes in exemptions - Minimum payment to agency.

In each year in which there are increases or decreases in the assessed valuation of the project area as a result of changes in exemptions provided in Article XIII, Sec. 2, Utah Constitution, or Section 59-2-103, the amount of assessed valuation of the base year established pursuant to Subsection 11-19-29(1)(a) shall be increased or decreased as a result of the changes in such exemptions. Notwithstanding the increase or decrease resulting from such changes in such exemptions, the amount of money allocated to and when collected paid to the agency each year for payment of bonds or other indebtedness may not be less than would have been allocated to and when collected paid to the agency each year if there had been no changes in the exemptions. 1987

11-19-29.6. Adjustment of base year assessed valuation of area required for changes in percentage of fair cash value assessed - Minimum payment to agency.

In each year in which there are increases or decreases in the assessed valuation of the project area as a result of any increase or decrease in the percentage of fair market value, as established under Section 59-2-103, to be assessed provided under that section, the amount of assessed valuation for the base year established under Subsection 11-19-29(1)(a) shall be increased or decreased by the amount of the increase or decreases as a result of any change in the percentage of fair market value, as established under Section 59-2-103, assessed as provided under that section. Notwithstanding the increase or decrease resulting from changes in the percentage, the amount of money allocated to and when collected paid to the agency each year for payment of bonds or other indebtedness may not be less than would have been allocated and when collected paid to the agency each year if there had been no changes in the percentage. 1987

11-19-30. Pledge of taxes allocated to special fund of agency for payment of loans, advances or indebtedness - "Taxes" defined.

(1) In any redevelopment plan or in the proceedings for the advance of moneys, or making of loans, or the incurring of any indebtedness (whether funded, refunded, assumed, or otherwise) by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project, the portion of taxes mentioned in subsection (1)(b) of section 11-19-29 may be irrevocably pledged for the payment of the principal of and interest on such loans, advances, or indebtedness.

(2) As used in this act, "taxes" include, but without limitation, all levies on an ad valorem basis upon land, real property, personal property, or any other property, tangible or intangible. 1974

11-19-31. Taxation of property leased by agency.

Whenever property in any redevelopment project

has been redeveloped and thereafter is leased by the redevelopment agency to any person or persons or whenever the agency leases real property in any redevelopment project to any person or persons for redevelopment, the property shall be assessed and taxed in the same manner as privately owned property. 1974

11-19-32. Transmittal of description of land within project area and other documents to taxing agencies.

After the adoption by the legislative body of a redevelopment plan which contains the provision permitted by section 11-19-29, the agency or the clerk of the community shall transmit a copy of the description of the land within the project area, a copy of the ordinance adopting the plan, and a map or plat indicating the boundaries of the project area to: (1) the auditor and tax assessor of the county in which the project is located; (2) the officer or officers performing the functions of auditor or assessor for any taxing agencies which, in levying or collecting its taxes, do not use the county assessment roll or do not collect its taxes through the county; (3) the governing body of each of the taxing agencies which levies taxes upon any property in the project area; and (4) the state tax commission. The copies of the description, ordinance, and map or plat shall be transmitted as promptly as practicable within 30 days, following the adoption of the redevelopment plan, but in any event, on or before the January first next following the adoption of the plan. 1983

11-19-32.1 Recording description of area and date of plan approval.

Within 30 days after the approval of the redevelopment plan, the agency shall record with the recorder of the county in which the project area is situated a document containing the following:

- (1) A description of the land within the project area;
- (2) A statement that the redevelopment plan for the project area has been approved; and
- (3) The date of approval. 1983

11-19-33. Payments by agency in lieu of taxes.

The agency may pay to any or all taxing agencies an amount of money in lieu of taxes which have been allocated to the agency under section 11-19-29. The agency may pay to any school district with territory located within the project area any amount of money which [in] the agency's determination is appropriate to alleviate any financial burden or detriment caused to the school district by a redevelopment project. 1974

11-19-34. Transmittal of preliminary plan information to taxing and other agencies - Consultation with taxing agencies.

(1) Within five days of creation of a preliminary plan, the agency shall transmit to the state tax commission, state board of education, the auditor, assessor, treasurer, and legislative body of the county in which the proposed project area is located, and the governing body of each taxing agency which levies taxes upon any property in the proposed project area, and which would be affected by a division of tax revenues pursuant to section 11-19-29 permissible under the redevelopment plan:

- (a) A description of the boundaries of the proposed project area;
- (b) A map showing the boundaries of the proposed project area;
- (c) A statement that a plan for the redevelopment of the proposed project area is being prepared;

and

(d) A statement that, if the redevelopment plan is adopted and permits such a division of tax revenues, property taxes resulting from increases in valuation above the assessed value as shown on the last equalized assessment roll could be allocated to the agency for redevelopment purposes, rather than being paid into the treasury of the taxing agency.

(2) Prior to the public hearing as provided for in section 11-19-15, the agency shall consult with each taxing agency which levies taxes on property in the proposed project area regarding the preliminary plan. 1983

11-19-35. Payment for land or cost of buildings, facilities, structures or other improvements of benefit to project area.

(1) An agency may, with the consent of the legislative body, pay all or part of the value of the land for and the cost of the installation and construction of any building, facility, structure, or other improvement which is publicly owned within the project area, upon a determination by resolution of the agency and local legislative body that such buildings, facilities, structures, or other improvements are of benefit to the project area regardless of whether such improvement is within another project area, or in the case of a project area in which substantially all the land is publicly owned that such improvement is of benefit to an adjacent project area of the agency. Such determination by the agency and the local legislative body shall be final and conclusive as to the issue of benefit to the project area.

(2) When the value of such land or the cost of the installation and construction of such building, facility, structure, or other improvement, or both, has been, or will be, paid or provided for initially by the community or other public corporation, the agency may enter into a contract with the community or other public corporation under which it agrees to reimburse the community or other public corporation for all or part of the value of such land or all or part of the cost of such building, facility, structure, or other improvement, or both, by periodic payments over a period of years.

(3) The obligation of the agency under such contract shall constitute an indebtedness of the agency for the purpose of carrying out the redevelopment project for such project area, which indebtedness may be made payable out of taxes levied in such project area and allocated to the agency under subsection (1)(b) of section 11-19-29 or out of any other available funds.

(4) In a case where such land has been or will be acquired by, or the cost of the installation and construction of such building, facility, structure or other improvement has been paid by, a parking authority, joint powers entity, or other public corporation to provide a building, facility, structure, or other improvement which has been or will be leased to the community, such contract may be made with, and such reimbursement may be made payable to the community.

(5) Taxes allocated and paid to an agency under section 11-19-29 may not be used to construct municipal buildings, courts, or other judicial buildings, convention centers, and fire stations, or any other similar buildings intended for communitywide use.

(6) This section does not apply to any land, building, facility, structure, or other improvement for which:

(a) Bonds or other indebtedness have been

issued or contracted;

(b) The purchase has been accomplished; or

(c) Construction has commenced before April 1, 1983. 1983

Chapter 20. Utah Public Transit District Act

11-20-1. Short title of act.

11-20-2. Declaration of legislature.

11-20-3. Act to be liberally construed.

11-20-4. Definitions.

11-20-5. Organization and incorporation of district - Contents of ordinance.

11-20-6. Certified copy of ordinance - Duty to mail.

11-20-7. Approval or rejection of ordinance -

Municipalities and counties to act within sixty days.

11-20-8. Area-wide election to be held.

11-20-9. Ordinances calling for election - Contents.

11-20-10. Ordinances calling for election - Publication.

11-20-11. Ballot - Contents.

11-20-12. Results of election - Counting and canvassing of returns - Majority vote will exclude area - Assessed valuation of approving areas to be considered - Public interest must be served.

11-20-13. Certification to lieutenant governor.

11-20-14. Certificate of incorporation to be issued - Copies to municipalities and counties.

11-20-15. Objections to incorporation - Commencement of proceedings within three months - Interest must be substantially and adversely affected.

11-20-16. Powers of incorporated district.

11-20-17. Consent required to control public transit facilities - Competition with existing publicly or privately owned public utilities prohibited.

11-20-18. Rates and charges for service.

11-20-19. Establishment of rates and charges - Right of user to request hearing.

11-20-20. Hearings on rates and charges - Time - Publication of notice.

11-20-21. Hearing - Other municipality or county may intervene.

11-20-22. Hearing - Cross-examination - Introduction of evidence not covered on direct.

11-20-23. Hearing - Technical rules of evidence not to apply.

11-20-24. Hearing - Proceedings to be of record Review.

11-20-25. Decision of board - Findings of fact.

11-20-26. Safety regulations - Transportation department.

11-20-27. Traffic laws applicable.

11-20-28. Bond issues and other indebtedness authorized.

11-20-29. Participation in federal programs authorized.

11-20-30. Employee rights and benefits extended under federal law to apply.

11-20-31. Employees may organize and bargain collectively - Strikes prohibited - District to enter into bargaining agreements.

11-20-32. Labor disputes to be submitted to arbitration - Selection of board - "Labor dispute" defined - Parties to share expense.

11-20-33. Acquisition of existing public transit systems - Rights and benefits of employees preserved.

11-20-34. Agreements with state or public agency.

11-20-35. Limitation on indebtedness of district - "Indebtedness" defined.

11-20-36. Investment of district funds - Prudent man rule established.

11-20-37. Elections - State laws to apply.

11-20-38. Board of directors - Selection - Appointment - Qualifications - Quorum - Compensation - Terms.

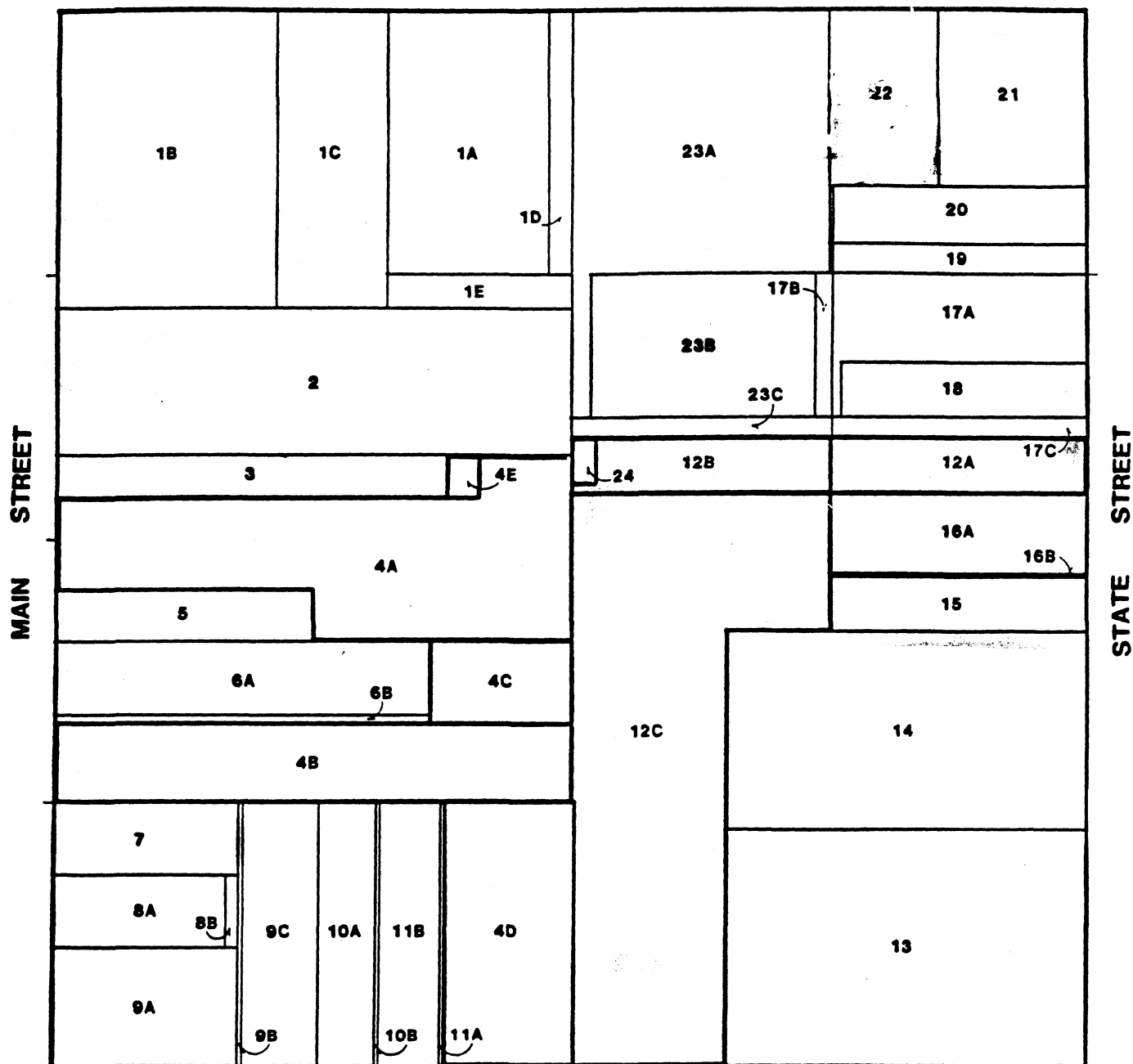
11-20-39. Board of directors - Powers and duties.

11-20-40. District officers - Appointment - Duty - Compensation - Oath - Bond.

11-20-41. General manager - Duties - Qualifications - Term and removal - Salary to be fixed.

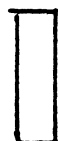
Exhibit A

2ND SOUTH



3RD SOUTH

BLOCK 57 **PLAT "A"** **SALT LAKE CITY SURVEY**



Krantz - #11
 Trapp - #5
 National Department Store - #16A
 Magazine Shop - #8



Redevelopment Agency of Salt Lake City
 #3, 10A, 13, 18, 17A, 19, 20, 21, 23a, b, c



Downtown Athletic Club - #12a, b, c
 W & G Company - #14



Barrows - #22



Exhibit B

REDEVELOPMENT AGENCY OF :
SALT LAKE CITY, :
 :
Plaintiff-Respondent, :
 :
vs. : Appeal Nos. 17692
 : 19348
EARL D. TANNER and MARY :
LOUISE TANNER, his wife, :
DAVID V. TRASK and LARRY :
V. LUNT, :
 :
Defendants-Appellants. :

On Consolidated Appeals from the District Court
of Salt Lake County
HONORABLE DAVID B. DEE, District Judge

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POINT III

THE TRIAL COURT ERRED IN FAILING TO

GRANT THE LANDOWNERS' MOTIONS

SETTING ASIDE THE JANUARY 1980

STIPULATION AND DISMISSING THE CASE

FOR LACK OF SUBJECT MATTER JURISDICTION.

1. Subject Matter Jurisdiction may be Raised at any Stage.

It is settled law in this State that the power of the Court over the res of the controversy may be questioned at any time, even on appeal, by the parties or the court, itself. Kennedy v. New Era Industries, Inc., 600 P.2d 534 (Utah 1979); Neider v. Utah Department of Transportation, 665 P.2d 1306 (Utah 1983); Coray v. Southern Pacific Co., 112 Utah 166, 185 P.2d 963 (1947); Dixie Stockgrowers' Bank v. Washington County, 81 Utah 429, 19 P.2d 388 (1933).

As this Court put it in Utah Department of Business Regulations v. Public Service Comm., 602 P.2d 696, 699 (Utah 1979):

"a court's lack of jurisdiction over the subject matter of a dispute may not be waived by the parties, and may be raised by the court sua sponte."

Moreover, this Court has held in eminent domain litigation that if the condemnor fails to satisfy the conditions precedent to exercising the power to condemn, the attempted condemnation must not only fail, but the court lacks subject matter jurisdiction to entertain the suit. Salt Lake County v. Murray City Redevelopment, 598 P.2d 1339, (Utah 1979). It is well established that a failure by a public body to follow pre-condemnation

statutory requirements will deprive a court of subject matter jurisdiction.

"[T]he adoption of a condemnation resolution is a condition precedent to the filing of an eminent domain proceeding and ... unless such a resolution is adopted the commission has no power to acquire the property and the court to which it resorts has no jurisdiction to entertain its suit." (Emphasis added.)

State v. Hurliman, 230 Or. 98, 368 P.2d 724, 731 (1962).

The rule announced in Murray City Redevelopment and Hurliman has long been followed by this Court. In the earlier condemnation case of Town of Tremonton v. Johnson, 49 Utah 307, 164 Pac. 190 (1917), this Court adopted the same rule:

"The general rule is that, where the statute prescribes the procedure or steps to be taken by a municipal corporation in exercising the right of eminent domain, the procedure prescribed by the statute becomes a matter of substance, and must be strictly followed by the condemnor as against the owner of the property sought to be condemned. It is further held that, where the statute prescribes certain steps to be taken before initiating condemnation proceedings, such steps are jurisdictional, and may not be disregarded." (Emphasis added.)

164 P. at 191

2. The Failure of the Agency to Make Specific Findings that the Landowners' Property was "Blighted" is a Jurisdictional Failure Requiring Dismissal. Under the Neighborhood Redevelopment Act upon which the RDA premised its condemnation complaint herein, a "project area" designated for redevelopment must be restricted to those buildings, improvements, or lands which

are blighted.^{8/} 11-19-9 U.C.A. 1969 (Repl. Vol. 2A). The Agency never declared the landowners' property to be blighted. The only resolution by the RDA of "blight" in this case occurred in June 1977, when the Agency declared an entire 18½ block area of the downtown business district of Salt Lake City to be blighted.^{9/} That sweeping declaration covered every property from North Temple to 5th South and from 3rd West to 2nd East in Salt Lake City and included such obviously "blighted properties" as the Hotel Utah, Kearns Building, ZCMI Center, and almost every major office building in the central business district.

The RDA position before the trial court on this jurisdictional issue was unambiguous that the Utah statute was modeled after the California Redevelopment Law §33321, which adopted an "area concept" of blight. The California statute provides that a "project area need not be restricted to buildings, improvements or lands which are detrimental or inimical to the public health, safety or welfare" and "may include lands, buildings or improvements which are not detrimental to public health, safety or welfare, but whose inclusion is found necessary for redevelopment of the area of which they are a part".

(Emphasis added.)^{10/}

^{8/}

Blight is statutorily defined in 11-19-2(10) U.C.A. 1969 (Repl. Vol. 2A). See Statement of Facts herein, p. 12.

^{9/}

The testimony of the Director, Chitwood, is explicit on this issue. (R. 1663-66).

^{10/}

California Redevelopment Law §33321 West's Cal. Code Anno. See argument of RDA in its trial court brief. (R. 1251-53).

The trouble with the Agency's argument is that when the Utah Legislature passed the Utah Neighborhood Development Act in 1969, although following the general format and contours of the California Redevelopment Law, it specifically rejected Section 33321 of the California code and the "area concept" therein contained, and enacted Section 11-19-9 which requires that:

"A project area must be restricted to buildings, improvements, or lands which are detrimental or inimical to the public health safety or welfare." (Emphasis added).

11-19-9 U.C.A. 1969 (Repl. Vol 2A)

Thus, the Agency's argument is fatally flawed. The panoramic declaration of "blight" in the Redevelopment Act of 1977 (updated annually through 1979) which encompassed virtually the entire downtown business district of Salt Lake City (excluding the L.D.S. Temple grounds) did not come within striking distance of the statutory mandate in 11-19-9 requiring a specific declaration of "blight" as to particular buildings and improvements.

The failure of the RDA to conform to the statutory mandate is a jurisdictional defect which precludes the Agency from condemning the landowners' property and requires that this Court remit the case to the district court with instructions to dismiss for lack of subject matter jurisdiction.

IN THE SUPREME COURT OF THE STATE OF UTAH

REDEVELOPMENT AGENCY OF
SALT LAKE CITY,

Plaintiff-Respondent,

vs.

EARL D. TANNER and MARY
LOUISE TANNER, his wife,
DAVID V. TRASK and LARRY
V. LUNT,

Defendants-Appellants.

:

:

: Appeal Nos. 17692
19348

:

:

:

:

:

REPLY BRIEF OF APPELLANTS

On Consolidated Appeals from the District Court
of Salt Lake County
HONORABLE DAVID B. DEE, District Judge

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Earl D. Tanner, et al.

Attorneys for Respondent.

POINT II

THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION
BECAUSE THE R.D.A. FAILED TO DETERMINE THAT THE
LANDOWNERS' PROPERTY WAS BLIGHTED.

The one fact which the Agency attempts to obscure in its answering brief, yet never denies, is that it did not make a determination that the Landowners' property was blighted. The Agency has claimed throughout this proceeding that it is only required to find that an "area" is blighted and need not make individual lot-by-lot building-by-building determinations of blight and limit its redevelopment activity to blighted property and buildings. (Agency Br. at 50). On page 35 of its brief, the Agency admits the study of Block 53 was done on an "area" basis, although it attempts to mask that fact by suggesting that there was an "individual analysis of each parcel." What the Agency is really saying is that in looking at the entire 18½ block area of downtown Salt Lake City, it also made some examination of the parts. But that is a far cry from the required finding that the specific property of these Landowners was blighted. A single legal question is therefore framed in this regard -- does the Utah Neighborhood Development Act require a lot-by-lot building-by-building finding by the Agency of blight?

The Agency claims it does not, asserting that the overall tenor of the statute is that the blight question is to be considered and determined on an "area-wide" basis. The Agency

ignores the legislative history of the relevant development acts and ignores the basic rules of statutory construction.

The relevant statutory provision states:

"A project area must be restricted to buildings, improvements, or lands which are detrimental or inimical to the public health, safety or welfare." (Emphasis added).

§11-19-9, U.C.A. 1979. (Repl. Vol 2-A). This section clearly defines what the legislature means by a "project area" and is a limitation on the general references to "areas" and "blighted areas" upon which the Agency places so much emphasis. It is a well established rule of statutory construction that "specific provisions prevail over more general expressions." Osuala v. Aetna Life and Casualty, 608 P.2d 242, 243 (Utah 1980); Millett v. Clark Clinic, 609 P.2d 934, 936 (Utah 1980).

The Agency also ignores the clear legislative history which reveals the legislature's intent in placing this restriction upon the redevelopment actions of the Agency. §11-19-9 of the Utah Neighborhood Development Act clearly has its genesis in §11-15-39 of the Utah Community Development Act. The language of the two sections is identical.

The Utah Community Development Act was introduced in 1965 in Senate Bill Number 31 (Appendix 1). Section 43 of that Senate Bill contained a section identical to §33321 of the California Redevelopment Law (Appendix 2). In fact, examination of both Senate Bill 31 and the California Development Law reveals

that Senate Bill 31 was drawn almost word for word from the California statute (Appendix 1 and 2). Section 43 of Senate Bill 31 and Section 33321 of the California statute provide:

The project area need not be restricted to buildings, improvements or lands which are detrimental or inimical to public health, safety, or welfare, and may consist of an area in which such conditions predominate and injuriously effect the entire area. The project area may include lands, buildings, or improvements which are not detrimental to the public health, safety or welfare, but whose inclusion is thought necessary for redevelopment of the area of which they are a part. (Emphasis added)

In the course of the legislative deliberations Senate Bill 31 was extensively amended. 1965 Senate Journal Thirty-Sixth Session 422-434, 507-509, 815-819; 1965 House Journal, Thirty-Sixth Session, 612-615, 758-762. Section 43 became Section 39, Senate Journal at 425, and that section was then substantially amended by the House. Specifically, the House amendments provided that the words "need not" were replaced by the word "must," a period was placed after the word "welfare" and the balance of the section was stricken. House Journal at 613, 659. As a consequence a section which expressly provided under the California law and the original Utah bill that a project area "need not" be restricted to buildings and improvements which were blighted and which specifically provided that non-blighted buildings could be included in the project area, provided under the Utah law as enacted that a project area "must be restricted" to buildings which are found to be blighted. The

language which permitted for the inclusion of non-blighted buildings was stricken. The legislative intent could not be clearer.

The statute under which the Agency has proceeded in this case is not the 1965 Utah Community Development Act, but rather the 1969 Utah Neighborhood Development Act. When that Act was passed in 1969 the original version of the bill, and the Act as finally enacted, included a Section 9 which was identical to Section 39 of the 1965 legislation and placed identical restrictions on the powers of the Redevelopment Agency (Appendix 3). The Legislature in 1969 had the opportunity under the new act to broaden the powers of the Redevelopment Agency and chose not to do so. Again, a well-established rule of statutory construction is applicable.

In terms of legislative intent, it is assumed that whenever the legislature enacts a provision it has in mind previous statutes relating to the same subject matter, wherefore it is held that in the absence of any express repeal or amendment therein, the new provision was enacted in accordance with the legislative policy embodied in those previous statutes, and they all should be construed together.

Murray City v. Hall, 663 P.2d 1314, 1318 (Utah 1983).

It is the rare case when a legislative intent is so plain. The Legislature had before it in 1965 two alternatives. One alternative was clearly laid out in the language of the proposed legislation and the language and interpretations of the California statute upon which that proposed legislation was

based. The Utah legislature specifically removed from the applicable section all language which would have endowed the Agency with the power to declare property blighted on an "area-wide" basis and instead asserted language which specifically limited the Agency to a property-by-property declaration of blight. In failing to make an individual finding that the Landowner's property was blighted, the Agency failed to establish the jurisdictional and statutory prerequisites entitling it to condemn the Landowner's property. The trial court should be reversed and the stipulation and order of immediate occupancy should be rescinded.

POINT III

THE TRIAL COURT ERRED IN REFUSING TO DISMISS

THE CONDEMNATION PROCEEDING BECAUSE THE

R.D.A. LACKED ANY PLANNED USE FOR

THE LANDOWNERS' PROPERTY.

The Agency admits that the "public use" of all properties subject to redevelopment under the Utah Neighborhood Redevelopment Act consists of "the removal of blight and the placing of that property in either public or private development." (Agency Br. 43). As has been discussed above, and admitted by the Agency, there never was a specific determination that the Landowners' property was blighted. Therefore, the Agency cannot and has not claimed that it was necessary to condemn the Landowners' property and raze the building on it to eliminate blight. The only public use of the Landowners' property then is for some