

1989

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

Utah Court of Appeals

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Robert S. Campbell, Jr.; E. Barney Gesas; Watkiss & Campbell; Craig G. Adamson; Attorneys for Respondents.

Harold A. Hintze; Olsen; Hintze; Nielson & Hill; Attorney for Appellants.

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## Recommended Citation

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**BRIEF**

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DOCKET NO.

**89-0285-CA**

IN THE SUPREME COURT OF THE STATE OF UTAH

W & G. COMPANY, a Utah general part-  
nership; 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 cor-  
poration; ROBERT C. NELSON, d/b/a  
THE MAGAZINE SHOP,

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 Re-  
development 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 Re-  
development 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/Appellants.

**89-0285-CA**

Appeal No. 860539

*Category #14 (b)*

**REPLY BRIEF OF RESPONDENTS**

On Appeal from the District Court of Salt Lake County  
Honorable Raymond S. Uno, District Judge

ROBERT S. CAMPBELL, JR.  
E. BARNEY GESAS  
WATKISS & CAMPBELL  
310 South Main St., #1200  
Salt Lake City, Utah 84101

HAROLD A. HINTZE  
OLSEN, HINTZE, NIELSON & HILL  
3319 N. University Ave. #200  
Provo, Utah 84604  
Attorneys for Defendants/  
Appellants

CRAIG G. ADAMSON  
310 South Main St., #1330  
Salt Lake City, Utah 84101  
Attorneys for Plaintiffs/  
Respondents

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IN THE SUPREME COURT OF THE STATE OF UTAH

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W. & G. COMPANY, a Utah general part- :  
nership; 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 cor- :  
poration; ROBERT C. NELSON, d/b/a :  
THE MAGAZINE SHOP, :

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 Re- :  
development 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 Re- :  
development Agency of Salt Lake City, :  
and MICHAEL CHITWOOD, in his official :  
capacity as the Executive Director of :  
the Redevelopment Agency of Salt Lake :  
City, :

Appeal No. 860539

Defendants/Appellants. :

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ANSWERING BRIEF OF RESPONDENTS

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This answering brief is submitted by the respondents,  
W.& G. Company, Darrol Krantz, J. Ross Trapp, National Department  
Store and Robert C. Nelson (hereinafter the "landowners" or "res-  
pondents"). Each of the parties in this appeal are identified

in the full caption of the case, thus meeting the requirements of Rule 24(a)(1), R.U.S.C.

#### NATURE OF THE APPEAL

This is an appeal by Salt Lake City Corporation ("Salt Lake City"), the Redevelopment Agency of Salt Lake City (the "RDA" or "Agency"), and its officers, board of directors and executive director, from the final September 8, 1986 summary judgment entered in favor of the landowners and against the appellants by the Third District Court for Salt Lake County.

#### ISSUES PRESENTED FOR REVIEW

1. Whether the lower court erred in ordering that the RDA as a prerequisite to acquiring or attempting to acquire private property by eminent domain for urban redevelopment, must make a specific determination that each targeted property is "detrimental or inimical to the public health, safety or welfare" under 11-19-9 of the Utah Neighborhood Development Act?

2. Whether the lower court erred in ruling that the landowners' action in challenging the RDA's 1982 redevelopment plan is not barred by the statute of limitations, 11-19-20?

3. Whether the lower court erred in ruling that the RDA's 1982 notices of public hearing failed to provide the landowners the minimum state and federal guarantees of Due Process and Equal Protection of Law by not informing the landowners their properties might be subject to an Agency determination of blight and redevelopment, including the use of the eminent domain power to take their properties?

SUMMARY JUDGMENT FINDINGS, CONCLUSIONS,  
ORDER AND CONTROLLING STATUTES

The lower court's summary judgment order, findings of fact and conclusions of law that are central to this appeal are included in the addendum of this brief and marked as Attachments 1 and 2 respectively.

The applicable sections of the 1969 Utah Neighborhood Development Act, §§11-19-1, et seq., Utah Code Ann. 1969 (Repl. Vol. 2A) (sometimes the "Act") that are determinative of this appeal are contained in the addendum to this brief and marked as Attachment 3.<sup>1/</sup>

STATEMENT OF FACTS

The Statement of Facts in the RDA's opening brief is fundamentally incomplete and so unfairly selective as to be arbitrary. While brevity is ordinarily encouraged, the RDA statement is but one and one-half pages in length and completely ignores most of the elementary facts presented to and considered by District Judge Uno below. Moreover, the RDA has failed to attach to its brief copies of the findings, conclusions and summary judgment order of the trial court, as well, as relevant statutes as required by Rule 24(a) and (f) R.U.S.Ct.

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<sup>1/</sup> All statutory citations and references to the Utah Neighborhood Development Act in this brief are taken from the Act as contained in §§11-19-1, et seq., Utah Code Ann. 1969 (Repl. Vol. 2A) and do not reflect amendments to the Act after 1982. The parties stipulated and the trial court concluded as a matter of law that the Act as codified through 1982 governed the court's determinations. (R. 494-96; 934-35.)

As a consequence of the RDA's shortcomings, the landowners will present their own statement from the material facts stipulated below that were not in dispute and as found by the trial court.

1. Nature of the Action.

This is an action for declaratory and injunctive relief brought by several landowners of downtown Salt Lake City real property against the Agency and Salt Lake City. (R. 2-27.) On motions for partial summary judgment filed by both parties, the lower court denied the RDA's motion and granted summary judgment in favor of the landowners, holding that the RDA had 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 landowners' real properties and accordingly, the RDA is not entitled to condemn their properties until those failures were cured. (R. 944.) The RDA brought this appeal seeking reversal of the court's summary judgment order.

2. The Landowners and Their Block 57 Properties.

The landowners are five property owners having separate interests in real properties situated in Block 57 of the central downtown business district of Salt Lake City, Utah. (R. 925.)<sup>2/</sup>

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<sup>2/</sup> The landowners' Block 57 property interests are more particularly described in Attachment 4 of the addendum of this brief.



3. The RDA and the Utah Neighborhood Development Act.

The RDA is a public agency of Salt Lake City Corporation. It is established to engage in redevelopment projects and operates under specifically delegated urban redevelopment powers under the 1969 Utah Neighborhood Development Act. (R. 925, 935.) It was alleged by the landowners and found by the district court that before the RDA can acquire a citizen's property for redevelopment, it must strictly follow several statutory requirements in the Act. (R. 935-41.)

4. The RDA's Redevelopment Plans and Attempts to Acquire the Landowners' Properties.

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" (R. 926). 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" under the Act. (R. 926.) The "project area" is an area of the community determined by the Agency to be a "blighted area." (R. 926.) The "project area" included Block 57 for the first time in 1975 and in 1982 encompassed 26½ blocks 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. (R. 926.)<sup>3/</sup> The 1982 plan encompassed every single property

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<sup>3/</sup> The 1982 RDA Redevelopment Plan is set forth in Attachment 5 of the Addendum to this brief.

located in "the blighted area" including the Hotel Utah, The Kennecott Building, the ZCMI Center, the Tracy Office Center, the Tribune Building, the Kearns Building, the Walker Bank Building, the Deseret Building and the landowners' properties. (R. 927.)

From 1982 through 1985, the RDA attempted to acquire the landowners' Block 57 properties through the threat or exercise of the eminent domain power for a proposed urban renewal redevelopment project under the 1982 "project area" redevelopment plan. (R. 925.)

5. The RDA's 1982 Redevelopment Activities and Defective Hearing Notices.

Following the commencement of this action, the RDA unsuccessfully moved for summary judgment on the grounds the landowners' complaint was time barred under 11-19-20, arguing its 1982 notices and redevelopment plan were controlling. (R. 124-243.) After discovery and an attempt to resurrect its statute of limitations argument, the RDA filed a second counter-motion for summary judgment asserting a new and an inconsistent position regarding the 1982 notices and plan by urging that it was really its 1975 hearing notices and proceedings which should govern the court's determinations. The trial court ruled that the 1975 notices and proceedings, to the extent they were relevant, did not, under the facts, meet minimum Due Process of Law requirements and that the inadequate 1982 RDA notices and proceedings were controlling for purposes of the limitations question. (R. 939-40.)

Beginning on May 14, 1982, the RDA sent letters and public hearing notices<sup>4/</sup> to various downtown Salt Lake City property owners, including the landowners. The letter described proposed RDA housing rehabilitation and construction and sidewalk beautification programs for the central business district area residents, and several public hearings to be held by the RDA and the City. (R. 926.)

The 1982 hearing notice described hearings the RDA was going to conduct to consider adopting the 1982 redevelopment plan and described the boundaries of the 26½ block area of blight in the downtown business district of Salt Lake City. It also 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. (R. 927.) The RDA mailed the 1982 notice to the landowners in pursuance of its theory and position that it need concern itself only with an "area concept" for redevelopment and that a more specific determination that properties were detrimental or inimical to the public health, safety or welfare was not required. (R. 932-33.) When the landowners reviewed the 1982 letter and notice, they considered that their only relevancy to the subject properties was the curb, gutter and sidewalk beautification programs of the RDA along Main, State and Third South Streets. (R. 306-334.)

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<sup>4/</sup> Attached hereto as Addendum Attachment 6 are exemplar copies.

The RDA's 1982 notice of public hearings, together with the accompanying letter, did not advise the landowners:

- (i) that there was to be an evidentiary hearing on the issue of whether their Block 57 properties were blighted; or
- (ii) that the RDA had determined or was about to determine their Block 57 properties were blighted, and detrimental or inimical to the public health, safety or welfare; or
- (iii) 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 or would be a finding of blight and detriment to the public health, safety and welfare against each of their properties; or
- (iv) that Block 57 and the landowners' properties therein would be targeted sometime in the immediate or foreseeable future, for redevelopment and acquisition through the RDA's use of the eminent domain power.

(R. 928.)

The RDA 1982 hearing notice and letter were ambiguous, confusing and misleading and, in the context of the other non-redevelopment related matters discussed in the letter, did not provide reasonable notice to the landowners that their properties might be subject to RDA redevelopment and acquisition. (R. 928.)

6. The RDA's Failure to Find the Landowners' Block 57 Properties Were Blighted.

The RDA and Salt Lake City, neither received evidence nor made any determination or finding, at the June 1982 hearings or at any other hearings including 1975, that each of the landowners' properties were detrimental or inimical to the public

health, safety or welfare, and blighted. (R. 928.) The 1982 RDA plan did not indicate that the RDA intended to redevelop the landowners' properties for any reason whatsoever in that year or at any time thereafter. (R. 928.)

In adopting the 1982 plan and "project area", the RDA did not restrict the "project area" to buildings, improvements or lands which were detrimental or inimical to the public health, safety or welfare. (R. 932.) Instead, the RDA included within the "project area" all properties within the 26½ city block area without limitation as to whether the properties were blighted, detrimental or inimical to the public health, safety or welfare, including the most distinguished and landmark buildings in Salt Lake City. (R. 927; 932.)

7. The RDA's 1975 Redevelopment Activities, Public Statements of Its Director, and Defective Hearing Notices.

Earlier in 1975, the RDA 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. Written notice was provided of hearings to consider adoption of the 1975 plan. (R. 929) The RDA's executive director, Michael Chitwood, stated on the public record in the 1975 RDA hearings that no landowner within the "project area" need be concerned about his property being acquired or condemned by the RDA. (R. 929-30.) Mr. Chitwood went

on to assure all citizens that before any of their properties would be designated for redevelopment, the landowners would be provided notice and a hearing, along with detailed architectural information about the restoration and renovation of their properties. (R. 930.) Moreover, Chitwood advised at the 1975 hearing that if acquisition or rehabilitation were to be undertaken of any properties in the project area by the RDA, the RDA would not proceed with redevelopment or property acquisition without notice, hearings, and the approval and consent of the affected property owners. (R. 930.) Only after such would the Agency then attempt to undertake condemnation proceedings. (R. 930.)

8. The RDA's Purported 1975 Project Area-Wide Structural Survey.

The RDA claimed before the trial court, as it does here, that it performed a project area-wide structural survey during or prior to 1975, which was evidence used to establish the project area and support a finding of "blight". (R. 930.) In fact, the survey only involved a superficial examination of the exterior appearance of various buildings in downtown Salt Lake City. (R. 930.) The RDA in its own papers and exhibits filed before the trial court, admitted the structural survey had serious limitations:

"This map shows the existing structural condition of the buildings located within the area. They are graded in four grades; one is sound, which is brown, the orange is minor rehabilitation, the gold is major rehabilitation, and the green is beyond repair. This is just an indication of what is there today.

It does not represent any acquisition program, it does not represent any relocation, but is the best opinion of members of the Planning Department staff as to what is presently there in a structural sense. It is based on this map here that we consider the area eligible for a redevelopment treatment as part of the tax increment plan." (R. 754-890, P. 4 Ex. D to RDA memo on motions for summary judgment.) (1975 statement of RDA director Chitwood.)

9. Owner Development of the Trapp Property.

In 1984, following a fire that substantially destroyed his Block 57 property, the landowner, J. Ross Trapp, applied for and received a building permit from Salt Lake City Corporation to rebuild and refurbish his property. (R. 931.) Mr. Trapp made the building permit application after a conversation he had with the RDA executive director, Mr. Chitwood. (R. 931.) Chitwood advised Mr. Trapp at that time that the RDA would not seek to condemn the Trapp Block 57 property for any future proposed urban redevelopment. (R. 931.) Based on those conversations, Mr. Trapp expended approximately \$500,000.00 in 1984 on improvements and remodeling of the Trapp Block 57 property. (R. 931.) The RDA and Salt Lake City did not object to or stop Mr. Trapp from undertaking the remodeling and improvement of his property, since they had not determined the Trapp property to be blighted. (R. 931.)

Believing his property would not be acquired by the RDA, Mr. Trapp relied in 1984 on the prior statements and directions of the RDA director, Chitwood, made in the RDA's 1975 public

hearings. (R. 931.)<sup>5/</sup> Nonetheless, the RDA, in late 1984, attempted to acquire the Trapp property by threat of the exercise of the power of eminent domain to cure blight. (R. 932.)

10. The RDA's Attempt to Condemn and the Landowners' Suit Against the RDA.

In 1984 and 1985, the RDA, following its "area concept" of redevelopment, sent to each of the landowners a written notice that it intended to acquire their individual Block 57 properties, and that the RDA would do so by condemnation, if necessary. (R. 932.)<sup>6/</sup>

On February 19, 1985, the landowners filed their complaint in the district court against the RDA which alleged, inter alia, that the 1982 ordinance and "C.B.D. Redevelopment Plan" were procedurally and substantively defective, that their property was not and had not been determined to be "blighted" and that the RDA was unentitled to condemn or otherwise acquire their property. Injunctive and declaratory relief was sought. (R. 2-27.)

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<sup>5/</sup> Mr. Chitwood had advised the 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. This information and consulting services 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. (R. 932.)

<sup>6/</sup> Addendum Attachment 7.



11. The Landowners' and RDA's Motions for Summary Judgment.

After certain discovery was performed, the landowners filed a motion for partial summary judgment. The RDA filed a second summary judgment motion.

(a) The landowners' motion for partial summary judgment.

The landowners' motion was premised on jurisdictional and constitutional defects in the RDA's 1982 project area redevelopment plan, public hearing notices and proceedings, and sought a determination that:

- (i) the RDA did not, as required under 11-19-9, make any determination in the 1982 plan and its predecessors that the landowners' 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
- (ii) the RDA's 1982 notices of public hearings concerning the adoption of the 1982 plan did not give reasonable notice to the landowners that their Block 57 properties may be in jeopardy and may be acquired for redevelopment as required by the Act and the Due Process Clauses of the United States and Utah Constitutions.

(R. 933.)

The landowners contended that the procedural failures constituted jurisdictional defects that precluded the Agency from acquiring their Block 57 properties for redevelopment by or under the threat of eminent domain. (R. 934.)

(b) The RDA's second motion for summary judgment.

The RDA's second motion was based on the grounds it had met the jurisdictional requirements of the Act entitling it to acquire the landowners' properties for redevelopment and sought a determination that:

- (i) 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;
- (ii) proper notice had been given and the necessary hearings held; and
- (iii) if it had met the necessary jurisdictional requirements entitling it to enforce its 1982 redevelopment plan, the landowners' motion for summary judgment should be denied on the grounds that the applicable statute of limitations had run.

(R. 934.)

12. Summary Judgment, Findings of Fact and Conclusions of Law.

On May 15, 1986, the landowners' and the RDA's motion and cross-motion for summary judgment came on for hearing before District Judge Uno. At the outset, all parties stipulated that there were no genuine issues of material fact. (R. 924-925.)

Upon submission, Judge Uno granted the landowners' motion for partial summary judgment and denied the RDA's motion, entering detailed Findings of Fact and Conclusions of Law. (R. 923-941.)<sup>7/</sup> In particular, the Court found, inter alia:

- . that the Utah Neighborhood Development Act requires, as a condition to condemning such property for urban redevelopment, the RDA make specific findings as part of a redevelopment plan that a landowner's property is blighted or detrimental and inimical to the public health, safety and welfare. (R. 940-41.)
- . that the RDA did not conduct a blight study, did not find the landowners' properties to be blighted or inimical and detrimental to the public health, safety or welfare. Until such was done, the RDA's attempt or threat to condemn the landowners' properties was jurisdictionally deficient; (R. 928-29; 940-41.)

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<sup>7/</sup> See Attachment 2.

- . that the landowners were entitled to reasonable notice from the RDA of a hearing regarding whether the landowners' properties were blighted or detrimental and inimical to the public health, safety and welfare and as to whether the Agency had determined that the landowners' properties were, each and all, blighted; (R. 939-40.)
- . that the notice of the 1982 hearing did not provide reasonable notice and Due Process of Law to the landowners; (R. 940.)
- . that the RDA's 1975 plan and the so-called structural survey of the exterior of the buildings had little relevance to the attempts in 1984 by the RDA to acquire the landowners' properties and that even at that, the 1975 plan did not determine that each of the landowners' properties in Block 57 were blighted or detrimental and inimical to the public health, safety or welfare; (R. 924-301; 939-40.)
- . that representatives of the RDA in 1975 assured landowners that their properties would not be acquired or condemned until further hearings were held and cooperative negotiations undertaken; (R. 929-30.)
- . that the notices of the 1982 RDA plan and hearing were constitutionally deficient denying to the landowners Due Process of Law under Article I, Section 7 of the Utah State Constitution and the Fourteenth Amendment of the United States Constitution; (R. 940.)

Summary judgment was thereupon entered on September 8, 1986 in favor of the landowners and against the RDA declaring that the RDA could not acquire the landowners' properties through eminent domain for development purposes, it having failed to comply with jurisdictional, statutory and constitutional prerequisites. (R. 944) From the judgment entered, the RDA filed its notice of appeal to this Court on October 6, 1986.

## SUMMARY OF THE ARGUMENT

This is a case in the field of urban redevelopment and eminent domain of immense constitutional and statutory dimension.

Under the undisputed facts, the Agency in 1984 threatened and attempted to condemn the landowners' properties which were neither detrimental or inimical to the public interest nor had they so been found by the Agency. The RDA's effort rested on a flawed notion of "area" redevelopment which would ostensibly permit the acquisition of non-blighted properties if they happened to be situated as part of a larger area erroneously determined to be blighted by the Agency. The statute, 11-19-9 of the Redevelopment Act, plainly rejects the RDA's "area" concept and requires the Agency to make a determination that each property sought to be acquired is detrimental to the health, safety and welfare of the general public. The trial court explicitly found in favor of the landowners and against the RDA on the issue.

Beyond that, the RDA plainly violated the procedural mandates of the Act by failing to provide public notice and hearings to the owners that their properties were in jeopardy of being acquired as blighted or detrimental and inimical to the public interest. This failure violated the owners' constitutional guarantees of Due Process of Law under both Articles I, Section 7 of the Utah Constitution and the Fourteenth Amendment of the federal Constitution. The trial court so found in favor of the owners and against the Agency.

If the Agency's favored "area" concept argument were to prevail on appeal herein, private property rights would be rendered insecure and would be subjected to far-reaching eminent domain procedures never before recognized in Utah. As well, the essential legislative wisdom expressed in 11-19-9 would be fundamentally emasculated. The trial court's findings and conclusions in favor of the owners and against the RDA were manifestly correct in all regards and should be affirmed, it is respectfully submitted, by this Court on appeal.

#### ARGUMENT

#### POINT I

#### THE SUMMARY JUDGMENT ORDER BASED ON STIPULATED AND UNCONTESTED FINDINGS OF FACT SHOULD BE AFFIRMED.

The RDA, in its opening brief, has not contested or disputed the Court's findings of fact. Nor has it suggested they be set aside as being clearly erroneous in accordance with the standards set forth in Rule 52(a), Utah Rules of Civil Procedure. See also Bennion v. Hansen, 699 P.2d 757 (Utah 1985).

This Court has succinctly stated the standard of review in an appeal of a summary judgment:

Our inquiry on review is whether there is any genuine issue as to any material fact, and if there is not, whether the plaintiffs are entitled to a judgment as a matter of law.

Thornock v. Cook, 604 P.2d 934, 936 (Utah 1979) (citations omitted). As will be demonstrated in the following points, there

are substantial uncontested facts in the record to support as a matter of law the trial court's summary judgment. It should be affirmed.

## POINT II

THE TRIAL COURT PROPERLY DETERMINED THAT THE  
UTAH LEGISLATURE HAS REJECTED THE "AREA-WIDE"  
CONCEPT OF REDEVELOPMENT AND THAT 11-19-9  
REQUIRES A PROPERTY-BY-PROPERTY FINDING OF  
BLIGHT AS A PREREQUISITE TO ACQUIRING PRIVATE  
PROPERTY FOR REDEVELOPMENT.

### 1. The RDA's "Area-Wide" Redevelopment Theory.

The Agency in Point III of its opening brief, argues that it may condemn for urban renewal a citizen's property which, although structurally and architecturally sound and economically viable, is situated in a larger downtown "area" which the RDA has decided to be redeveloped. Put in a slightly different way, the RDA may condemn private property which is not blighted and detrimental to the public health, safety and welfare, if that property is situated in a larger area, part of which may be blighted or detrimental.

The centerpiece of the RDA's position is that urban redevelopment must be carried out on an elaborate and spacious scale that does not concern itself with boundary lines of individual properties. The functional, economic and societal utility of individual property is of no relevance if the general "area"

blanketed for redevelopment, has been generally proclaimed as blighted by the Agency. This sweeping argument concludes that since the RDA has decided that public policy entitles urban blight to be addressed in an "area" mold, the condition, setting and use of the individual private property within that area is legally irrelevant and ergo, each citizen's property may be condemned by the Agency even though that property, on its own, is not blighted or detrimental and iminical to the public health, safety and welfare.

The whole trouble with the RDA's argument is that it ignores who it is that sets "public policy" in Utah, namely the legislature, and what the legislature has plainly declared the public policy to be under the controlling statute 11-19-9. The Act and that statute, in particular, makes it clear that the Agency can prepare maps and strategies on grand proportions ad infinitum as to how, where and when it believes private property in a community should develop, but when the RDA actually begins to condemn property in pursuance of its development strategies, it must show that such property, itself, is detrimental or inimical to the public health, safety and welfare, and therefore, blighted. Secondly, when the RDA does finally confront the statute, it fundamentally misconstrues the statutory language in a flawed effort to reconcile its "area" concept. Lastly and in the context of the facts of this case, even if the sweeping interpretation of 11-19-9 urged by the RDA were somehow accepted, the RDA

has failed herein to comply with the due process notice requirements of the Act.

2. The Legislative History of 11-19-9.

The legislative history of Section 19 of the Utah Neighborhood Development Act unequivocally manifests the legislative intent to reject the area-wide concept of development as advanced by the RDA. Section 11-19-9 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)

Section 11-19-9 U.C.A. 1979 (Repl. Vol. 2A).

The legislative history of this section is set out in the district court's Conclusions of Law 2 through 7 (R. 935-37), and has not been challenged by the RDA in this appeal. The 1969 Utah Neighborhood Development Act, under which the RDA is proceeding in this litigation, was preceded by the 1965 Utah Community Development Act, Sections 11-15-1, et. seq. (R. 935-36). Section 39 of the Utah Community Development Act is identical to Section 9 of the Utah Neighborhood Development Act, which is set out above. (R. 936). The 1965 Community Development Act was originally introduced as Senate Bill 31. Senate Bill 31 was almost identical to the California Redevelopment Statute, 32,000, et. seq., West's Cal. Ann. Code, with Section 39 thereof being identical to Section 3321 of the California statute:

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)

(Conclusion of Law 5, R. 936).

The Utah Legislature, in amendments initially introduced in the House of Representatives, specifically rejected the area-wide concept of development embodied in the California statute. Two amendments passed by the House and accepted by the Senate deleted the words "need not" after the word "area" in the first line of Section 39, and inserted the word "must". 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 then read as follows:

A project are **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-injuriously-effect-the-entire-area--A project-area-may-include-lands,-buildings,-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:-~~]

(Conclusion of Law 6, R. 936-37).

The rejection by the Utah Legislature of the area-wide concept of development advanced by the RDA could not be clearer.

A specific statutory authorization for such area-wide development was amended to delete such broad authorization and to specifically limit the redevelopment to improvements which are inimical or detrimental to the public health, safety or welfare. The underlying statutory policy insures that a citizen's property, however small in the larger scheme of modern-day government redevelopment, shall not be taken for redevelopment unless the property, itself is detrimentally blighted.

Rejection by a legislature of the specific provision contained in an act as originally proposed is "most persuasive to the conclusion that the act should not be construed as in effect to include that provision." Gilbertson v. McLean, 341 P.2d 139, 145 (Ore. 1959); Lancaster v. Arizona Board of Regents, 694 P.2d 281, 288 (Ariz. App. 1984); City of Manhattan v. Erickson, 460 P.2d 622, 623 (Kan. 1969). It is impossible to conclude, after reading the original provision of Section 39 of Senate Bill 31 and its counterpart in the California statute, and the amended version of Section 39, that the legislature intended that particular Section to mean the same thing after the amendment as it meant before (the view which the RDA is forced to urge). See Gilbertson, supra.

3. The RDA's Inapposite Legal Authorities.

The cases cited by the RDA in support of its position that the Utah legislature intended to authorize condemnation for

urban redevelopment on an "area"-wide concept, all have their genesis in a 1954 U. S. Supreme Court decision, which opinion is only relevant for its ratio decidendi, not for the square corners of the factual holding. In Berman v. Parker, 348 U.S. 26 (1954), the District of Columbia Redevelopment Act provided that urban housing blight within the District could be eliminated by the "acquisition and the assembly of real property \* \* \* for redevelopment pursuant to a project area redevelopment plan". The Act was attacked on the basis that the plaintiff's property was an economically viable department store, not slum housing and that a taking of such property under an "area" concept of redevelopment violated Fifth Amendment rights. Writing for the Court, Justice Douglas focused upon the legislative discretion to determine the definition of public use under which private property could be taken. Concluding that the Congress had declared that the public use included the taking of non-blighted properties within an area, the Berman Court stated that the issue was one within the wisdom of the legislature:

\* \* \* when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive. In such cases the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation, whether it be Congress legislating concerning the District of Columbia \* \* \* or the States legislating concerning local affairs. \* \* \* This principle admits of no exception merely because the power of eminent domain is involved. (Emphasis added).

348 U.S. at 32.

Berman then went on to say that under the legislative definition, property could be condemned for urban redevelopment "which standing by itself, is innocuous and unoffending" because of the need of the "area as a whole" (the District of Columbia) which Congress and its agencies were evaluating. 348 U.S. at 35. But the center-core of the Berman decision was the broad discretion of the legislature to determine the manner of land acquisition to best accomplish the public purpose.

The basic rationale of Berman supports the landowners' position herein and the decision of the trial court below. There was no statute in Berman that had its counterpart in or parallel to 11-19-9 of the Utah Development Act. Indeed, had 11-19-9 been present in Berman, the factual holding therein would have been the reverse.

Without exception, all of the other cases cited by the RDA in its brief<sup>8/</sup> rest upon statutes in lock-step with that in Berman and California which adopt an "area" concept for the condemnation of non-blighted private property for urban redevelopment. Not a single case cited by the RDA was decided under a statute comparable to that of 11-19-9. The decisions thus cited by the Agency are inapposite and of no assistance to the Court in the case at Bar.

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<sup>8/</sup> Wilson v. City of Long Branch, 27 N.J. 360, 142 A.2d 837 (1958), Cert. denied, 358 U.S. 873 (1958); Grubstein v. Urban Renewal Agency of the City of Tampa, 115 So. 2d 745 (Fla. 1959); R. B. Davis v. City of Lubbock, 160 Tex. 38, 326 S.W. 2d 699 (1959); Maryland Plaza Redevelopment v. Greenberg, 594 S.W. 2d 284 (Mo. App. 1959); Randolph v. Wilmington Housing Authority, 37 Del. Ch. 202, 139 A.2d 476 (1958).

The trial court below reviewed the same case citations of the RDA as the Agency has cited in its opening brief and determined that the Utah legislature had spoken incisively on the subject in declaring that a citizen's property could not be condemned for urban renewal unless that property was, itself, blighted and detrimental or inimical to the public health, safety and welfare. (Conclusions of Law 10. R. 938-39.)

4. The RDA's Flawed Interpretation of 11-19-9.

The RDA asserts that Section 11-19-9 does not mean what its black letter language plainly indicates, it being contended that there are several places in the statute in which the words "area" and "areas" are used, and used in conjunction with the word "blight". It fails in its analysis of the structure of the Act and the central importance of the designation of a "project area" within the context of a redevelopment plan vis-a-vis property to be condemned within the area.

The Act's structure anticipates and, in law, mandates a three-step process for creation and implementation of a redevelopment program. First, the RDA must designate a "redevelopment survey area" which is defined by statute as an area within the community determined by either the City Council or the RDA for RDA study as to whether a redevelopment project is feasible and within the public interest in any or all of the survey area. (Sections 11-19-2(13); 11-19-8). The statutory intent is clear -- the survey area is to be the subject of general study which

may or may not include blighted properties detrimental or inimical to the public health, safety or welfare. The statutory intent is equally clear that the survey or study area is unmistakably distinguished from a project area. 11-19-2(11), (13).

The second step under the statutory urban redevelopment is the selection and designation by the RDA within the survey area of one or more "project areas" for potential redevelopment, and then the formulation of a preliminary plan for the redevelopment of the project area. 11-19-10. It is at this step that 11-19-9 becomes of relevant consideration and mandates that the RDA include within the project area only those properties, buildings and improvements which are detrimental or inimical to the health, safety or welfare of the general public. This second step is a necessary consequence of the statutory definition of a "project area":

"'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 act, and which is selected by the Redevelopment Agency pursuant to this chapter." (Emphasis added.)

Section 11-19-2(11).

The third and final statutory step of urban redevelopment is the adoption and implementation of a "redevelopment plan" within a designated "project area." That the plan follows sequentially the selection of a specific project area within the survey area is obvious under the statutory definition:

"'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." (Emphasis added.)

11-19-2(14).

In this third step, notice must be given to property owners and a public hearing held relative to the adoption of the project area redevelopment plan, at which time a landowner has the opportunity to present evidence and confront witnesses with regard to whether his or her property is detrimental or inimical to the public health, safety and welfare. See 11-19-12 to 20.

The pivotal failing of the RDA in this case is that it has assumed and treated its designation of the survey or study area as synonymous with the project area. Having thus established a survey area of 26½ city blocks in the Salt Lake City downtown business district, the Agency erroneously assumed that all property within that study area was axiomatically blighted under its "area" concept of urban redevelopment and consequently it was entitled to acquire and condemn all properties within the survey area after holding a public hearing on the area to be surveyed. That was the thrust and reach of both the 1975 and 1982 plans.

What the RDA proposes is that this Court completely ignore those restrictions and the well-established rule of statutory construction that specific provisions shall prevail over more general provisions, Specilia generalibus derogant. Perry v. Pioneer Wholesale Supply Co., 681 P.2d 214, 216 (Utah 1984);

Osuala v. Aetna Life & Casualty, 608 P.2d 242, 243 (Utah 1980);  
Millett v. Clark Clinic Corp., 609 P.2d 934, 936 (Utah 1980).

The more general references to "area" and "areas", when addressing the broad community designations of redevelopment "survey area" and blighted areas do not contradict or derogate from the lower court's interpretation of 11-19-9, viz, that when the RDA begins actual development and is required under the statute to designate a specific project area, the property to be acquired thereunder must be blighted or detrimental and inimical to the public health, safety and welfare under 11-19-9.

The RDA contends 11-19-9 is not synonymous with and does not address the issue of blight, it being far less restrictive in its application. (Point III B, RDA Br.) Its argument disregards the plain language of the Act's definitional sections and the legislative history of 11-19-9. To the contrary, 11-19-9 absolutely addresses the subject of "blight" by its use of the words "project area" in the opening stanza. A "project area" for redevelopment means an area of a community which is a "blighted area". 11-19-2(11). A "blighted area", under the controlling 1982 Act definition, is one:

[C]haracterized by the existence of buildings and structures . . . which are unfit or unsafe to occupy for such purposes or are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime because of any one or a combination of the following factors:

. . . .

11-19-2(10).



To claim 11-19-9 is less restrictive ignores the imperative of the word "must" contained in the statute. Therefore, a project area is a blighted area that must be restricted for redevelopment purposes to those buildings, improvements, or lands which are detrimental or inimical to the public health, safety or welfare. 11-19-9.

Even assuming arguendo, that the RDA's contentions were somehow correct viz., that the language of 11-19-9 means something of broader scope than blight, its position still fails. The lower court found specially the facts and, as well, concluded as a matter of law (which the RDA here does not dispute) that at neither the June 1982 hearings nor any other proceeding of the Agency was "a determination or finding made \* \* \* that each of the plaintiffs' properties were detrimental or inimical to the public health, safety or welfare." (R. 928, 932). Thus, even under the more relaxed standard urged by the Agency, it did not comply with 11-19-9.

Recognizing its failure to find the landowners' properties were blighted, detrimental or inimical to the public health, safety or welfare, the RDA refers to an obsolete 1975 "structural survey" in Point IV of its brief. The "survey," says the RDA, was evidence before the Agency and Salt Lake City in 1975 "on which a finding that the area was blighted could reasonably have been made by the legislative body." (RDA Br. 26.) (Emphasis added.) The reference to the 1975 structural survey ignores the

trial court's findings that the RDA 1975 redevelopment plan did not make a specific finding that the landowners' properties were blighted, and detrimental or inimical to the public health, safety or welfare; and that the survey was of limited relevance, and publicly acknowledged by the RDA to have severe limitations. (R. 929.) (See, Statement of Facts par. 8, supra.)

### POINT III

CONTRARY TO THE RDA'S CLAIM, THIS COURT MAY  
EXAMINE THE ACTIONS OF THE RDA TO DETERMINE  
IF IT HAS JURISDICTIONALLY COMPLIED WITH THE  
UTAH NEIGHBORHOOD DEVELOPMENT ACT.

The RDA, under Points III and IV of its opening brief, argues that this Court is limited in its inquiry as to whether the RDA has complied with the Utah Neighborhood Development Act. Thus, says the RDA, this Court may only examine whether the RDA has acted in bad faith, arbitrarily or capriciously in making an area-wide determination of blight. Not only is the RDA's argument in error, but it makes the erroneous assumption that it has, in fact, made a proper determination of "area" blight in compliance with the Utah Neighborhood Development Act and strict requirements of 11-19-9. The trial court found and concluded it did not.

The landowners' complaint focuses on the jurisdictional and constitutional failures of the RDA, and only incidentally, whether the RDA has acted arbitrarily, capriciously, or in

bad faith. Specifically, those claims are that the RDA (i) has not complied at all with 11-19-9 and (ii) has deprived the landowners of Due Process by failing to provide reasonable notice to the landowners that their properties might be determined to be blighted and thereafter condemned and acquired for redevelopment purposes.

This Court is entitled to examine, at any point in time, whether the RDA has complied with the jurisdictional requirements of the Utah Neighborhood Development Act. Utah Dept. of Bus. Regulation, etc. v. Public Serv. Comm'n, 602 P.2d 696 (Utah 1979). Where jurisdiction is concerned, and in particular with the redevelopment activities of a public agency, this Court is not hesitant to examine carefully redevelopment activities.

"[B]ecause redevelopment is a serious action that may be in derogation of individual property rights, we hold that strict compliance with the enabling legislation is required . . . . While the Act is broad in scope . . . , it is necessary that the legislation enabling this grant of authority be strictly followed.

\* \* \*

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."

Salt Lake County v. Murray City Redevelopment, 598 P.2d 1339, 1344-1345 (Utah 1979), citing Town of Tremonton v. Johnson, 49 Utah 307, 164 P. 190 (1917) (emphasis added). Similarly, this

Court will carefully scrutinize proceedings where a party is denied due process as a result of inadequate or ambiguous notice. Nelson v. Jacobsen, 669 P.2d 1207 (Utah 1983).

POINT IV

THE DISTRICT COURT CORRECTLY DETERMINED  
THE LANDOWNER'S ACTION IS NOT BARRED BY  
THE APPLICABLE STATUTE OF LIMITATIONS.

1. The RDA Is Estopped From Asserting a Statute of Limitations Defense.

The RDA asserts that the landowners' action is barred by the statute of limitations as set forth in 11-19-20. The RDA bases its assertion on the landowners' alleged receipt of notice on September 15, 1975 of the ordinance adopted by the Salt Lake City Board of Commissioners which for the first time included Block 57 in the C.B.D. Neighborhood Development Plan. This argument is so completely devoid of any basis in fact or reason that even the RDA ignored it in its first motion for partial summary judgment which claimed that the statute of limitations, based on the 1982 Area Redevelopment Plan and notices, barred plaintiffs' claims.<sup>9/</sup> The trial court denied the motion.

While the RDA now claims that the 1975 plan put the landowners on notice that their property interests were threatened,

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<sup>9/</sup> (See, Defendant's Memorandum in Support of its Motion for Partial Summary Judgment, March 19, 1986, R. 124-243). Incredibly, the RDA now claims in its brief, p. 8, that the 1982 plan and notices are irrelevant to this case.

the statements of the RDA Director Michael Chitwood at the 1975 public hearings made it clear to all the property owners that no properties would be acquired for redevelopment, clearance or rehabilitation without further notice and public hearings.<sup>10/</sup>

[I]f we cannot gain your cooperation for rehabilitation and if that structure is necessary for the completion of an area plan, then we would, after we had a public hearing and after we have specified the fact that we are going to acquire your building and it had been approved that plan or that annual increment year, then we would have the right to acquire your property and relocate it . . . Again, I emphasize we are not after acquisition right now. That is not the ballgame. (P. 9, Exhibit D to RDA's memo on Summary Judgment Motions.)

The behavior of the RDA as recent as 1984 confirmed that the property rights of the landowners were not in jeopardy. When the property of landowner Trapp burned down, he went to Mr. Chitwood to see if he should spend \$500,000 to rebuild, not wanting to make such a substantial investment in the restoration of his property if the RDA was going to take his property by condemnation. Chitwood assured him, however, that he could rebuild. Only a few months later, Trapp received notice that the RDA intended to condemn his property.

This Court has held that when a party has been led to believe their rights were not threatened, the other party is estopped to hide behind a statute of limitations defense.

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<sup>10/</sup> Ex. D (July 31, 1975 minutes of RDA public hearing), pp. 3, 4, 6, 7, 9 and 14; Ex. E (August 4, 1975 minutes of RDA public hearing), pp. 3, 4, 7, 8, 14 and 19 to RDA's memo on Summary Judgment Motions. (R. 754-780.)

One cannot justly or equitably lull an adversary into a false sense of security thereby subjecting his claim to the bar of limitations, and then be heard to plead that very delay as a defense to the action when brought.

Rice v. Granite School District, 23 Utah 2d 22, 456 P.2d 159, 163 (1969). See also, Estate of Christensen v. Christensen, 655 P.2d 646, 651 (Utah 1982); Butcher v. Gilroy, 744 P.2d 311, 314 (Utah Ct. App. 1987).

In this case, the RDA has tried to assert a statute of limitations defense after making the very statements which led the landowners to believe that their interests were not yet endangered. By asserting the statute of limitations, the RDA is attempting to deny the landowners their "day in court" based on notices and hearings at which the RDA director promised the landowners and other property owners that subsequent notices would be given and hearings held when and if their property interests were threatened. The RDA cannot complain of the failure of the landowners to act within 30 days when the conduct of the RDA, itself, induced the landowners to take no action within the 30-day time frame. This Court should not permit the statute of limitations to be used as a bludgeon to stamp out the voices of the owners who have never had the opportunity to be heard on the questions of the jurisdictional requirements of the project area being restricted to detrimental, inimical and blighted properties under 11-19-9.

2. The Thirty-Day Statute of Limitations Is Inapplicable To the Facts of This Case.

The Act's statute of limitations, 11-19-20, does not apply in this case for two fundamental reasons. First, the RDA's 1975 and 1982 public hearing notices under the attendant facts were found by the trial court to be constitutionally defective. They failed to advise the landowners that their properties might be determined to be blighted and acquired for redevelopment by the exercise of the power of eminent domain. Second, since the RDA had not made the necessary determination that the landowners' properties were blighted, detrimental or inimical to the public health, safety and welfare, they could not possibly have been placed on notice by either the 1975 or 1982 RDA plans that their real properties were in jeopardy of acquisition for redevelopment.

The substantive law of this State on the statute of limitations does not turn on clever or mechanical arguments which have no relationship to the facts and substantial justice. A limitations argument is only applicable in this instance if a person in interest shall have been given reasonable notice or should have had that notice, in the exercise of ordinary diligence, to contest the validity of the development plan project area. Unless that were the law, the RDA could through gamesmanship, charades, and the giving of the most innocuous type of notice, intentionally block and deprive property owners from

being heard on the most serious constitutional questions confronting their property rights.

The Supreme Court of Utah has clearly laid down the law that regardless of the language of a statute, the statute of limitations will be applied only when the party against whom it is invoked, had reasonable notice of the implications of the conduct as to which the statute is applied. Stewart v. K&S Co., Inc., 591 P.2d 433 (Utah 1979); Foil v. Ballinger, 601 P.2d 144, 147 (Utah 1979); Leach v. Anderson, 535 P.2d 1241, 1244 (Utah 1975) (statute of limitations period does not commence until cause of action comes into being.) See also, Perry v. Pioneer Wholesale Supply Co., 681 P.2d 214, 218 (Utah 1984); (a property owner must be on notice, actual or constructive, of the threat to his property interests before he is required to take steps against that threat); Christiansen v. Utah-Idaho Sugar Company, 590 P.2d 1251, 1252-1253 (Utah 1979).

Even apart from the entitlement of the Due Process Clause, (see, Point V, infra), it is clear that the RDA deprived the landowners of a reasonable notice of the intentions of the Agency and City, that they were given no reasonable opportunity to be heard on the question of blight, detriment or inimical impact, and no opportunity to cross-examine. Moreover, they were denied their constitutional rights to Due Process of Law. Under those conditions the 30-day statute of limitations bar asserted by the RDA is inapplicable. Stewart v. K&S Co., Inc., supra; Scott v. Hansen, 18 U.2d 303, 422 P.2d 525 (1966).



POINT V

THE RDA'S "NOTICES" OF PUBLIC HEARINGS DENIED  
LANDOWNERS THEIR CONSTITUTIONAL RIGHTS OF DUE  
PROCESS.

The RDA claims that since its 1975 hearing notices comply with the Act's statutory language, the landowners were guaranteed their constitutional rights of Due Process of Law. However, as the trial court noted, when those notices are viewed along with the statements made at the public hearings by the RDA at the time, it is irrational to claim that the landowners would be deemed to be on notice that their property rights were in jeopardy. In point of law, the Agency's notice argument defies well established constitutional principles.

The decisions of the Utah Supreme Court and of the United States Supreme Court have left no room for doubt that the lack of reasonable notice and opportunity to be heard in the defense of constitutionally guaranteed property rights is a violation of the constitutional guarantee of the Due Process clause of the 14th Amendment of the United States Constitution and Article I Section 7 of the State Constitution. As Justice Oaks wrote in Nelson v. Jacobsen, 669 P.2d 1207 (Utah 1983):

Timely and adequate notice and an opportunity to be heard in a meaningful way are the very heart of the procedural fairness. Worrall v. Ogden City Fire Department, Utah, 616 P.2d 598, 601-02 (1980); Goss v. Lopez, 419 U.S. 565, 579, 95 S.Ct. 729, 738, 42 L.Ed.2d 725 (1976). The much-cited case of Mullane v.

Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950), sets out the classic requirements of adequate notice:

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance." [Citations omitted.] (Emphasis added.)

The Utah Court in Nelson went on to state that ambiguous and inadequate notices are not sufficient under the Due Process Clause:

Many cases have held that where notice is ambiguous or inadequate to inform a party of the nature of the proceedings against him or not given sufficiently in advance of the proceeding to permit preparation, a party is deprived of due process. (Citations omitted.)

See also, opinion of Justice Oaks in Wells v. Children's Aid Society of Utah, et al., 681 P.2d 199 at 204 (Utah 1984); Nesbit v. City of Albuquerque, 575 P.2d 1340 (N.M. 1977).

The United States Supreme Court has spoken consistently on the issue that for purposes of the Due Process Clause, a notice which fails to reasonably apprise a party of the nature of the proceeding, the issues at stake, and the consequences which follow, is no notice at all. Armstrong v. Manzo, 380 U.S. 545, 550 (1965) (citing with favor the landmark case of Mullane v.

Central Hanover Trust Co., 339 U.S. 306 at 313); Goldberg v. Kelly, 397 U.S. 254 (1970).

The 1975 hearing notices, were they even relevant, were constitutionally defective for lack of notice. The RDA's Chitwood stated that if acquisition or rehabilitation were to be undertaken in the project area, the RDA would provide further written notice and hold hearings and that the Agency would not proceed to acquire or redevelop properties without the approval and consent of involved property owners. No particular properties were targeted. Only after such hearings and refusal of the affected property owners to cooperate, would the RDA undertake condemnation proceedings.<sup>11/</sup>

The trial court concluded that the 1975 notices and hearings did not advise the landowners of any imminent jeopardy to their property rights and were constitutionally inadequate. In concluding that both the 1975 and 1982 public hearing notices violated Due Process of Law guarantees of the plaintiffs, the trial court recognized the glaring failures of the RDA and rejected its arguments of reasonable notice and statutory compliance. (R. 939-40). This Court should affirm the trial court's conclusions in all regards.

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<sup>11/</sup> The 1975 plan suffers from additional infirmity beyond its constitutional defect. The RDA concedes that in 1975, it had no acquisition or clearance plans for Block 57, indeed, for any Salt Lake City block. (RDA Br. 11) The 1975 project area plan called for two studies, one a proposed parking facility at West Temple and 2nd South and the other a proposed performing and fine arts facility. (R. 754-80; Exhibit D p. 14).


C O N C L U S I O N

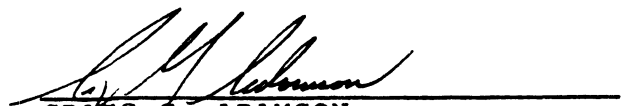
Affirmance of the district court in this instance does not necessarily result in the conclusion that these owners' properties may never be acquired by the RDA for urban redevelopment. What it should and will mean is that such properties may not be acquired for urban redevelopment unless there is a discreet Agency finding that such property, itself, is detrimental and inimical to the health, safety and welfare of the public. What it should and will mean is that the Redevelopment Agency must give public notice and conduct public hearings which will afford property owners the due process of law that is conspicuously absent in the case at Bar.

The order of summary judgment of the district court should be affirmed in all regards.

Respectfully submitted,

  
ROBERT S. CAMPBELL, JR.

  
E. BARNEY GESAS  
of and for  
WATKISS & CAMPBELL  
310 South Main, Suite 1200  
Salt Lake City, Utah 84101

  
CRAIG G. ADAMSON  
310 South Main, Suite 1330  
Salt Lake City, Utah 84101

Attorneys for Respondents

## Addenda

## Addendum A

SEP 6 1986

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ORDER ON MOTIONS  
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FOR PARTIAL  
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SUMMARY JUDGMENT  
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Civil No. 85-1043  
:(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 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:

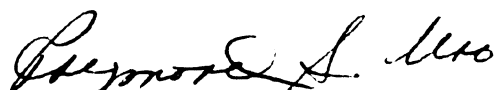
1. The plaintiffs' motion for partial summary judgment is hereby granted.

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.

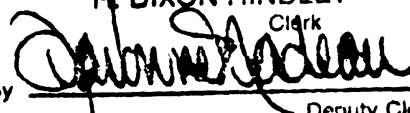
DATED this 8<sup>TH</sup> day of SEPTEMBER, 1986.

BY THE COURT:

  
HONORABLE RAYMOND S. UNO  
Third District Court Judge

ATTEST

H. DIXON HINDLEY  
Clerk

By   
Deputy Clerk

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## Addendum B

FILED IN CLERK'S OFFICE  
Salt Lake County Utah

AUG 28 1986

By Raymond S. Uno  
Deputy Clerk

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

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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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: AND CONCLUSIONS OF  
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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 blocks 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

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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

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(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

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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.

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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

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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

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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,

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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-

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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, buildings,-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 §11-19-9.

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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

GOVERNMENT

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.

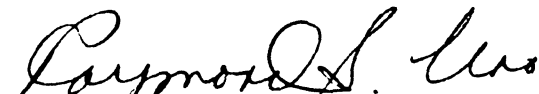
18. The plaintiffs' Motion for Partial Summary Judgment should be granted.

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

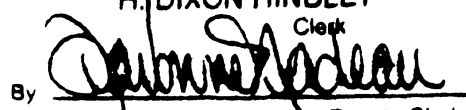
WHEREFORE, let Summary Judgment be entered in favor of the plaintiffs and against the defendants in accordance with these Findings of Fact and Conclusions of Law.

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

1000001

## Addendum C

## CHAPTER 19

### UTAH NEIGHBORHOOD DEVELOPMENT ACT

**11-19-1. Short title of act.**—This act shall be known and may be cited as the “Utah Neighborhood Development Act.”

**History:** L. 1969 (1st S. S.), ch. 5, § 1.

**Cross-Reference.**

Utah Community Redevelopment Law, 11-15-1 et seq.

**Title of Act.**

An act relating to redevelopment of areas in cities and counties; providing for definitions; providing for the agency to implement development plans; providing for procedures in respect to adoption of redevelopment plans and their amendments and modifications; and providing for the powers of the redevelopment agencies and the legislative bodies.

**Collateral References.**

Suability and liability for torts, of public housing authority, 61 A. L. R. 2d 1246.

Validity, construction, and effect of statutes providing for urban redevelopment by private enterprise, 44 A. L. R. 2d 1414.

**11-19-2. Definitions.**—As used in this act:

. . . .

(9) The word “redevelopment” means the planning, development, re-planning, redesign, clearance, reconstruction, or rehabilitation, or any combination of these, of all or part of a project area, and the provisions of such residential, commercial, industrial, public, or other structures or spaces as may be appropriate or necessary in the interest of the general welfare, including recreational and other facilities incidental or appurtenant to them. Redevelopment includes.

(a) The alteration, improvement, modernization, reconstruction, or rehabilitation, or any combination of these, of existing structures in a project area;

. . . .

(10) The words “blighted area” are characterized by the existence of buildings and structures, used or intended to be used for residential, commercial, industrial, or other purposes, or any combination of such uses, which are unfit or unsafe to occupy for such purposes or are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime because of any one or a combination of the following factors:

- (a) Defective design and character of physical construction,
- (b) Faulty interior arrangement and exterior spacing,
- (c) High density of population and overcrowding,
- (d) Inadequate provision for ventilation, light, sanitation, open spaces, and recreation facilities,

(e) Age, obsolescence, deterioration, dilapidation, mixed character, or shifting of uses,

(f) Economic dislocation, deterioration, or disuse, resulting from faulty planning,

(g) Subdividing and sale of lots of irregular form and shape and inadequate size for proper usefulness and development.

(h) Laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions,

(i) Existence of inadequate streets, open spaces, and utilities, and

(j) Existence of lots or other areas which are subject to being submerged by water.

(11) The words "project area" mean an area of a community which is a blighted area within a designated redevelopment survey area, the redevelopment of which is necessary to effectuate the public purposes declared in this act, and which is selected by the redevelopment agency pursuant to section 11-19-10.

. . . .

(13) The words "redevelopment survey area" mean an area of a community designated by resolution of the legislative body upon recommendation of the agency for study by the agency to determine if a redevelopment project or projects within said area are feasible.

(14) The words "project area redevelopment plan" or "redevelopment plan" mean 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.

. . . .

**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.

History: L. 1969 (1st S. S.), ch. 5, § 7; Compiler's Notes.  
1971, ch. 17, § 5.

The 1971 amendment inserted "survey" before "area or areas."

**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.

History: L. 1969 (1st S. S.), ch. 5, § 8; Compiler's Notes.  
1971, ch. 17, § 6.

The 1971 amendment inserted "survey" before "area or areas" and substituted "the area" for "said area" in subd. (1).

**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.

History: L. 1969 (1st S. S.), ch. 5, § 9.



**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 co-operation with the planning commission of the community.

**History:** L. 1969 (1st S. S.), ch. 5, community" after "legislative body" and "survey" after "redevelopment" in two places and added "in co operation with the planning commission of the community" at the end of the section.

**Compiler's Notes.**

The 1971 amendment inserted "of the

. . . .

**11-19-12. Redevelopment plan—Public hearings required—Authority of agency—All plans to be consistent—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 public hearings and may conduct examinations, investigations, and other negotiations. Such plan shall be consistent with the community's master plan and any or all categorical plans of other agencies 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.

**History:** L. 1969 (1st S. S.), ch. 5, § 12; 1971, ch 17, § 8.

**Compiler's Notes.**

The 1971 amendment deleted "general" before "redevelopment"; substituted "each project area" for "the community"; deleted "community" before "development"

and "of other public agencies" following "improvement programs"; substituted "project area" for "community" at the end of the second sentence; added the last sentence relating to consultation with the community planning commission; and made a minor change in style.

**11-19-13. Implementation of redevelopment project to be on yearly basis.**—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.

**History:** L. 1969 (1st S. S.), ch. 5, § 13, 1971, ch. 17, § 9.

**Compiler's Notes.**

The 1971 amendment inserted "project area" before "redevelopment plan" and made minor changes in style and phraseology.

**11-19-14. Report to accompany plan—Contents.**—Every project area redevelopment plan shall be accompanied by a report containing:

- (1) The reasons for the selection of the project area;
- (2) A description of the physical, social and economic conditions existing in the area;
- (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.

**History:** L. 1969 (1st S. S.), ch. 5, § 14; 1971, ch. 17, § 10. **Compiler's Notes.**

The 1971 amendment inserted "project area" before "redevelopment plan."

**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.

**History:** L. 1969 (1st S. S.), ch. 5, § 15; 1971, ch. 17, § 11. **Compiler's Notes.**

The 1971 amendment inserted "project area" before "redevelopment plan."

**11-19-16. Notice of public hearing—Contents.**—Notice of the public hearing on a project area redevelopment plan shall be given by publication not less than once a week for four successive weeks in a newspaper of general circulation published in the county in which the land lies. The notice shall:

- (1) Describe specifically the boundaries of the proposed redevelopment project area; and
- (2) State the day, hour and place when and where any and all persons having any objections to the proposed project area redevelopment plan or who deny the existence of blight in the proposed project area, or the regularity of any of the prior proceedings, may appear before the legislative body and show cause why the proposed plan should not be adopted.

**History:** L. 1969 (1st S. S.), ch. 5, § 16; 1971, ch. 17, § 12. **Compiler's Notes.**

project area redevelopment plan" after "public hearing" in the first paragraph and inserted "project area" before "redevelopment plan" in subsec. (2).

The 1971 amendment inserted "on a

**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.

**History:** L. 1969 (1st S. S.), ch. 5, § 17; 1971, ch. 17, § 13. **Compiler's Notes.**

The 1971 amendment inserted "project area" before "redevelopment plan."

~~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.

**History:** L. 1969 (1st S. S.), ch. 5, **Compiler's Notes.**  
§ 18; 1971, ch. 17, § 14.

The 1971 amendment substituted "section 11-19-16" for "section 11-19-15" and, in the second sentence, inserted "project area" before "redevelopment plan."

**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 a majority 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.

**History:** L. 1969 (1st S. S.), ch. 5,  
§ 19; 1971, ch. 17, § 15.

**Compiler's Notes.**

The 1971 amendment substituted "Once the hearing has been held" for "If no objections in writing have been delivered to the clerk of the legislative body prior to the hour set for the hearing thereon, if no oral objections are presented during the hearing thereon, or if the objections

are overruled by the legislative body" at the beginning of the section; inserted "project area redevelopment" before "plan" at the end of the first sentence; inserted the second sentence prohibiting modification of the plan to add property without a hearing; inserted "the project area" before "redevelopment plan" in the fourth sentence; and made minor changes in phraseology and style.

**11-19-20. Adoption of plan by ordinance—Limitation on contest of legality.**—The legislative body by ordinance may adopt the project area redevelopment plan in its original form or as modified as the official redevelopment plan for the project area. For a period of thirty days after publication of the ordinance adopting the project area redevelopment plan, any person in interest shall have the right to contest the legality of the ordinance, but after this period of time no one shall have any cause of action to contest the regularity, formality or legality of the ordinance for any cause whatsoever.

**History:** L. 1969 (1st S. S.), ch. 5,  
§ 20; 1971, ch. 17, § 16.

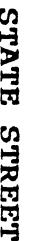
**Compiler's Notes.**

Prior to the 1971 amendment this sec-

tion read: "The legislative body by ordinance may adopt the redevelopment plan as the official redevelopment plan for the project area."

## Addendum D

15  
SURVEY



1. W&G Company  
2. Darol R. Krantz  
3. J. Ross Trapp  
4. National Department Store  
5. Robert C. Nelson

## Addendum E

C.B.D. NEIGHBORHOOD DEVELOPMENT PLAN

(Final Plan)

Salt Lake City, Utah

May 1, 1982

REDEVELOPMENT AGENCY

OF

SALT LAKE CITY

351 South State

Salt Lake City, Utah 84111

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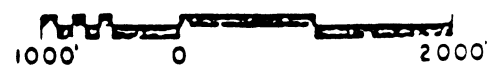
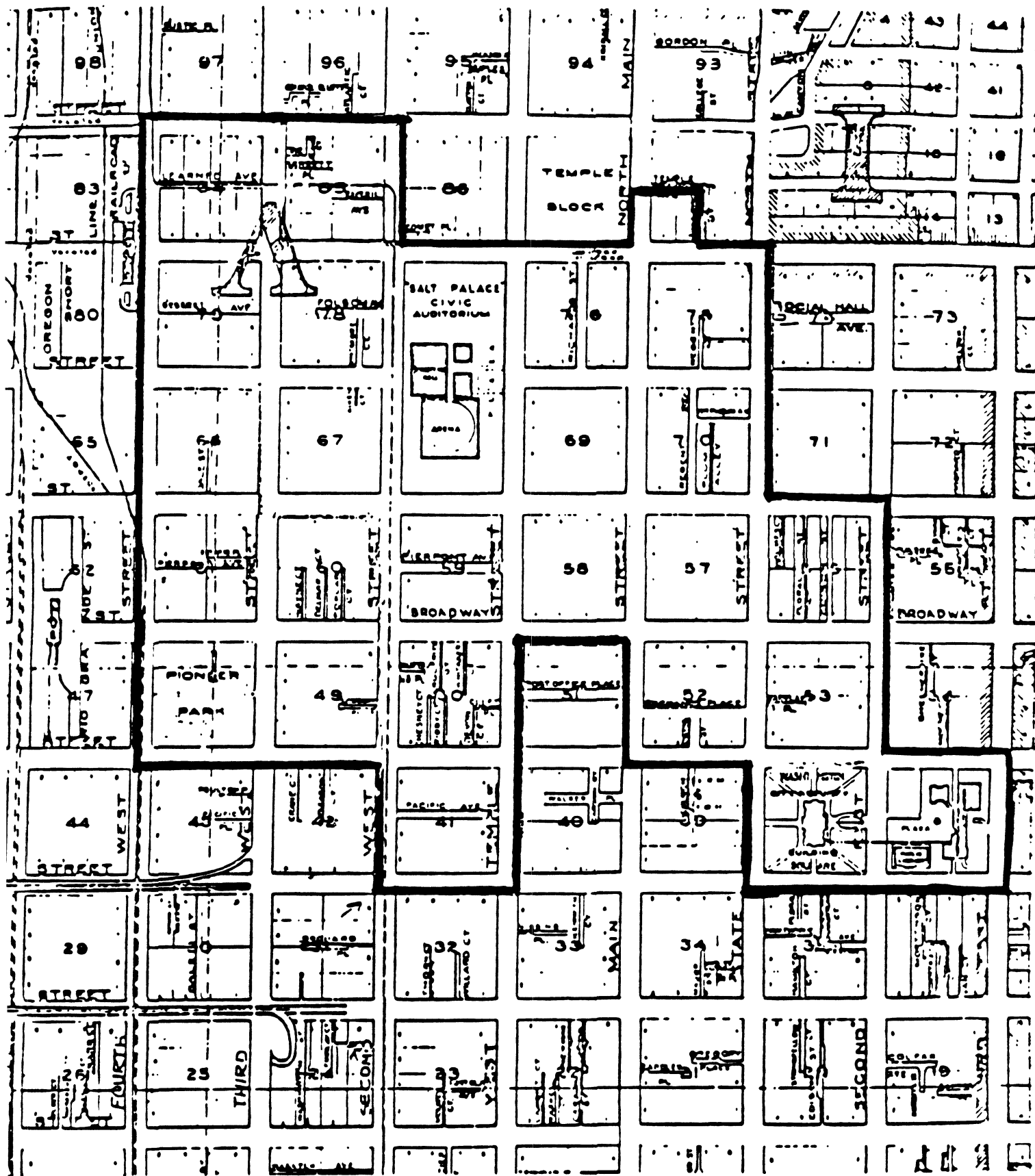
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A. Description of the Redevelopment Project Area.

The C.B.D. Neighborhood Redevelopment Project Area, hereinafter referred to as the project area, is enclosed within the following boundaries:

Commencing at the Southwest Corner of the intersection of Second West Street and Fifth South Street; thence North along the West right-of-way line of Second West Street to the Southwest Corner of the intersection of Second West Street and Fourth South Street; thence West along the South right-of-way line of Fourth South Street to the Southwest Corner of the intersection of Fourth South Street and Fourth West Street; thence North along the West right-of-way line of Fourth West Street to the Northwest Corner of the intersection of Fourth West Street and North Temple Street; thence East along the North right-of-way line of North Temple Street to the Northeast Corner of the intersection of North Temple Street and Second West Street; thence South along the East right-of-way line of Second West Street to the Northeast Corner of the intersection of Second West Street and South Temple Street; thence East along the North right-of-way line of South Temple Street to the Northwest Corner of the intersection of South Temple Street and Main Street; thence North along the West right-of-way line of Main Street 265 feet; thence East 132 feet to the East right-of-way line of Main Street; thence East 340.25 feet; thence South 79 feet; thence East 14.5 feet; thence South 60 feet; thence West 15.75 feet; thence South 126 feet to the North right-of-way line of South Temple Street; thence East along the North right-of-way line of South Temple Street to the Northeast Corner of the intersection of South Temple Street and State Street; thence South along the East right-of-way line of State Street to the Northeast Corner of the intersection of State Street and Second South Street; thence East along the North right-of-way line of Second South Street to the Northeast Corner of the intersection of Second South Street and Second East Street; thence South along the East right-of-way line of Second East Street to the Northeast Corner of the intersection of Second East Street and Fourth South Street; thence East along the North right-of-way line of Fourth South Street to the Northeast Corner of the intersection of Fourth South Street and Third East Street; thence South along the East right-of-way line of Third East Street to the Southeast Corner of the intersection of Third East Street and Fifth South Street; thence West along the South right-of-way line of Fifth South Street to the Southwest Corner of the intersection of Fifth South Street and State Street; thence North along the West right-of-way line of State Street to the Southwest Corner of the intersection of State Street and Fourth South Street; thence West along the South right-of-way line of Fourth South Street to the Southwest Corner of the intersection of Fourth South Street and Main Street; thence North along the West right-of-way line of Main Street to the Southwest Corner of the intersection of Third South Street and Main Street; thence West along the South right-of-way line of Third South Street to the Southeast Corner of the intersection of Third South Street and West Temple Street; thence South along the East right-of-way line of West Temple Street to the Southeast Corner of the intersection of West Temple Street and Fifth South Street; thence West along the South right-of-way line of Fifth South Street to the place of beginning; all in Salt Lake City, Salt Lake County, Utah, containing all of Blocks 37, 38, 41, 48, 49, 50, 52, 53, 56, 57, 58, 59, 60, 61, 66, 67, 68, 69, 70, 75, 76, 77, 78, 79, 84, 85, and part of Block 88, Plat A, Salt Lake City Survey.



## B. Statement of Development Objectives

1. Removal of structurally substandard buildings to permit the return of the project area land to economic use and new construction.
2. Removal of impediments to land disposition and development through assembly of land into reasonably sized and shaped parcels served by improved public utilities and new community facilities.
3. Rehabilitation of buildings to assure sound long term economic activity in the core area of the City.
4. The elimination of environmental deficiencies, including among others, small and irregular lot subdivision, overcrowding of the land, and inadequate off-street parking.
5. Achievement of an environment reflecting a high level of concern for architectural and urban design principles, developed through encouragement, guidance, appropriate controls, and professional assistance to owner participants and redevelopers.
6. Promote new and reaffirm existing cultural activities within the area.
7. The provision of housing units for low or moderate cost on land to be disposed of for residential purpose.
8. The strengthening of the tax base and economic health of the entire community and the State of Utah.
9. Provision for improvements of public streets, curbs and sidewalks, other public rights-of-way, street lights, and landscaped areas.
10. Provision of adequate off-street parking.
11. Provide improved pedestrian circulation systems.
12. Coordinate and improve mass transportation and C.B.D. shuttle system.

## C. General Land Use Plan

### 1. Land Use Map

A map entitled "Proposed Land Use", included as an exhibit and made a part of this plan, indicates the type and location of land uses to be permitted in the C.B.D. Neighborhood Development Project Area and the major circulation routes serving the Area.

### 2. Description of Land Uses

The following uses, together with accessory support services, customarily appurtenant thereto, shall be permitted in the project area:

a.     CBD General Commercial

This use district is designed to cater to the needs of a large retail and/or service, commercial and general business consumer population. The uses normally associated with, and permitted in this district, include general commercial activities and support services, recreational and cultural facilities, religious institutions, and urban apartments.

b.     Limited Commercial/Office/Residential Mix

This district is intended to provide for a limited commercial residential mixture of uses with adequate provisions to insure that the commercial and general business activities do not adversely impact on the desirability of this area for high density residential uses. The limited commercial services will be those that provide services for both residents of the area and also for those serviced by or providing services for the central business district. In addition to these limited general commercial activities and their support services, arts and cultural groups have expressed a growing interest in the South Temple area which could well become a focal point for such activities in the City and the State. The following other uses will be permitted:

High density and residential urban apartments, recreational and cultural facilities and religious institutions.

c.     Hotel/Motel and Related Visitor Services

This district is designed to cater to the visitors of Salt Lake City by providing for limited commercial activities that provide tourist related services. Included in this district will also be urban apartments, recreational and cultural facilities, religious institutions, craft shops, and schools and the necessary support facilities for these uses.

d.     Public Facilities

This land use district encompasses the existing Civic Auditorium and Performing Arts Center, Devereaux House, Capitol Theater, City-County Building, City Library, City-County Jail, Municipal Courts Building, and other federal, state, county and municipal offices.

e.     Support Services

The uses included in this category are designed to be accessory to and customarily appurtenant to the uses provided in the district enumerated above. The support services include, but will not limit the following uses:

Parking lots and parking structures.  
Public utilities.  
Transportation and communication facilities.  
Public and semi-public facilities.  
Parks, open space, and pedestrian malls.

### 3. Planning Criteria

In order to provide developers a maximum flexibility in the development of acquired land and to encourage and obtain the highest in quality development and design, specific development controls for the use districts identified above are not set forth herein. Each development proposal will be considered as a planned unit development and subject to: appropriate elements of the City's Master Plan; the Planning and Zoning Code of the City; other applicable building codes and ordinances of the City; and a review and recommendation by the Salt Lake City Planning and Zoning Commission and approval by the Redevelopment Agency of Salt Lake City.

A review of redevelopment proposals may also be made by a design review committee established by the Redevelopment Agency of Salt Lake City. Development proposals shall be accompanied by site plans, development data and other appropriate material that clearly describes the extent of development proposed including land coverage, setbacks, heights and bulk proposed, off-street parking and loading to be provided, and any other data determined necessary or requested by the City Planning and Zoning Commission or the Redevelopment Agency of Salt Lake City. The disposition of Project land for any of the reuses described under this Section shall be made on the basis of the redevelopment proposal determined to be the most appropriate and in conformance with the objectives sought.

#### D. Techniques to Achieve Plan Objectives

Activities contemplated in carrying out the program in the Area include the acquisition, clearance and rehabilitation of properties in the project area.

##### 1. Rehabilitation

Properties determined to be in substandard condition by the Redevelopment Agency of Salt Lake City, and not otherwise needed for redevelopment, may be sufficiently rehabilitated to insure a remaining economic life of twenty years.

##### 2. Acquisition and Clearance

Parcels of real property located in the project area may be acquired by purchase or condemnation.

##### 3. Implementation of Redevelopment Projects

Redevelopment projects may be undertaken and carried out on a yearly basis as provided in Section 11-19-13 Utah Code Annotated 1953, as amended. The planning and implementation of redevelopment projects on a yearly basis shall be designated as an annual implementation program.

## E. Property Acquisition, Disposition, Relocation, and Development

The objectives of this redevelopment plan are to be accomplished by:

### 1. Acquisition of Real Property

The Agency may acquire but is not required to acquire, all real property located in the project area, by gift, devise, exchange, purchase, eminent domain, or any lawful method. The Agency is authorized to acquire structures without acquiring the land upon which those structures are located. The Agency is also authorized to acquire any other interest in real property less than a fee.

The Agency shall not acquire real property on which an existing building is to be continued on its present site and in its present form and use without the consent of the owner, unless, in the Agency's judgment, (1) such building requires structural alteration, improvement, modernization, or rehabilitation, or (2) the site or lot on which the building is situated requires modification in size, shape, or use. or (3) it is necessary to impose upon such property any of the standards restrictions and controls of the plan.

### 2. Acquisition of Personal Property

Generally personal property shall not be acquired. However, where necessary in the execution of this plan, the Agency is authorized to acquire personal property in the project area by any lawful means except eminent domain.

### 3. Cooperation with Public Bodies

Certain public bodies are authorized by state law to aid and cooperate with or without consideration, in the planning, undertaking, construction, or operation of this project. The Agency shall seek the aid and cooperation of such public bodies in order to accomplish the purposes of redevelopment and the highest public good.

The Agency, by law, is not authorized to acquire real property owned by public bodies without the consent of such public bodies. The Agency, however, will seek the cooperation of all public bodies which own or intend to acquire property in the project area. The Agency shall impose on all public bodies the planning and design controls contained in the plan to insure that present uses and any future development by public bodies will conform to the requirements of this plan.

### 4. Property Management

During such time as property, if any, in the project area is owned by the Agency, such property shall be under the management and control of the Agency. Such property may be rented or leased by the Agency pending its disposition for redevelopment.

## 5. Relocation

The Agency shall assist all persons (including families, business concerns, and others) displaced by the project in finding other locations and facilities. The Agency is authorized to demolish and clear buildings, structures, and other improvements from any real property in the project area as necessary to carry out the purposes of this plan. The Agency is authorized to install and construct or to cause to be installed and constructed the public improvements, public facilities, and public utilities (within or outside the project area) necessary to carry out the plan. The Agency is authorized to prepare or cause to be prepared as building sites any real property in the project area. The Agency is authorized to rehabilitate or to cause to be rehabilitated any building or structure in the project area. The Agency is also authorized and directed to advise, encourage, and assist in the rehabilitation of property in the project area not owned by the Agency.

## 6. Property Disposition and Development

For the purposes of this plan, the Agency is authorized to sell, lease, exchange, subdivide, transfer, assign, pledge, encumber by mortgage or deed of trust, or otherwise dispose of any interest in real property. The Agency is authorized to dispose of real property by leases or sales by negotiation with or without public bidding. All real property acquired by the Agency in the project area shall be sold or leased to public or private persons or entities for development for the uses permitted in the plan. Real property may be conveyed by the Agency to the City or any other public body without charge. The Agency shall reserve such powers and controls in the disposition and development documents as may be necessary to prevent transfer, retention, or use of property for speculative purposes and to insure that development is carried out pursuant to this plan. All purchasers or lessees of property shall be made obligated to use the property for the purposes designated in this plan, to begin and complete development of the property within a period of time which the Agency fixes as reasonable, and to comply with other conditions which the Agency deems necessary to carry out the purposes of this plan.

## 7. Development

To the maximum possible extent, the objectives of the plan are to be accomplished through Agency encouragement of, and assistance to, private enterprise in carrying out development activities control and review. To provide adequate safeguards to ensure that the provisions of this plan will be carried out and to prevent the recurrence of blight, all real property sold, leased, or conveyed by the Agency, as well as all property subject to participation agreements, shall be made subject to the provisions of this plan by leases, deeds, contracts, agreements, declarations of restrictions, provisions of the City ordinances, conditional use permits, or other means. Where appropriate, as determined by the Agency, such documents or portions thereof shall be recorded in the Office of the County Recorder. The leases, deeds, contracts, agreements, and declarations of restrictions may contain restrictions, covenants, covenants running with the land, rights of reverter, conditions subsequent, equitable servitudes, or any other provision necessary to carry out this plan. To the extent now or hereafter permitted by law, the Agency is authorized to pay for, develop, or construct any building, facility, structure, or other improvement either within or without the project area for itself or for any public body or public entity to the extent that such improvement would be of benefit to the project.

## 7. Development (con't)

During the period of development in the project area, the Agency shall insure that the provisions of this plan and of other documents formulated pursuant to this plan are being observed, and that development in the project area is proceeding in accordance with development documents and time schedules. Development plans, both public and private, shall be submitted to the Agency for approval and architectural review. All development must conform to this plan and all applicable Federal, State, and local laws. For the purposes of this plan, the Agency is authorized to sell, lease, exchange, transfer, assign, pledge, encumber, or otherwise dispose of personal property.

### F. Other Provisions to Meet State or Local Law

Layout of principal streets, population densities, building intensities and standards proposed as the basis for the redevelopment of the project area are found in the documents listed on Exhibit "A", entitled Supporting Documents, which documents are incorporated herein, and made a part hereof, and are specifically set forth in the "Salt Lake City Central Community Development Plan" listed in Exhibit "A".

### G. Provisions for Amending Plan

The C.B.D. Neighborhood Development Plan may be modified any time by the Redevelopment Agency of Salt Lake City, in the same manner as the original Plan.

### H. Tax Increment Provisions

This redevelopment plan entitled "C.B.D. Neighborhood Development Plan", specifically incorporates the provisions of tax increment financing permitted by Section 11-19-29, Utah Code Annotated 1953, as amended, which provides as follows.

1. Any redevelopment plan may contain a provision that taxes, if any, levied upon taxable property in the redevelopment project each year or 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 provided 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 purpose of allocating taxes levied by



a. (con't)

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. That portion of the levied taxes each year in excess of such amount 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, monies advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by such redevelopment agency to finance or refinance, in whole or part, such redevelopment project. 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 (a) (1) of this section, all of the taxes levied and collected upon the taxable property in such redevelopment projects 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 monies 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.

I. Implementation of Redevelopment Project Program

The redevelopment projects set forth in the C.B.D. Neighborhood Development Plan shall be implemented on a yearly basis as approved by the Redevelopment Agency and the City Council.

J. General Design Objectives

The design of particular elements should be such that the over-all redevelopment of the project area will:

1. Provide an attractive urban environment;
2. Blend harmoniously with the adjoining areas;
3. Provide for the optimum amount of open space in relation to new buildings;
4. Provide unobtrusive parking areas, appropriately screened and landscaped to blend harmoniously with the area;
5. Provide open spaces and pedestrian walks which are oriented to the directions of maximum use and designed to derive benefit from topographical conditions and views.
6. Provide for the maximum separation and protection of pedestrian access routes from vehicular traffic arteries.

7. The development of land within the project area will be undertaken in such a manner that available off-street parking will be maintained to the maximum degree. Special emphasis will be placed on phased construction of all new development projects to support the parking program.

K. Specific Design Objectives and Control

1. Building Design Objectives

- a. All new buildings shall be of design and materials which will be in harmony with adjoining areas and other new development and shall be subject to design review and approval by the Redevelopment Agency of Salt Lake City.
- b. The design of buildings shall take optimum advantage of available views and topography and shall provide, where appropriate, separate levels of access.
- c. Taller buildings within the renewal area should be designed and placed to act as significant landmarks in the project area and the city.

2. Open Space Pedestrian Walks and Interior Drive Design Objectives

- a. All open spaces, pedestrian walks and interior drives shall be designed as an integral part of an overall site design, properly related to existing and proposed buildings.
- b. Attractively landscaped open spaces shall be provided, which will offer maximum usability to occupants of the building for which they are developed.
- c. Landscaped, paved, and comfortably graded pedestrian walks should be provided along the lines of the most intense use, particularly from building entrances to streets, parking areas, and adjacent buildings on the same site.
- d. The location and design of pedestrian walks should afford maximum safety and separation from vehicular traffic, and should recognize desirable views of new and existing development in the area and surrounding community.
- e. Materials and design of paving, retaining walls, fences, curbs, benches, etc., shall be of good appearance, easily maintained, and indicative of their purpose.

3. Parking Design Objectives

- a. Parking areas shall be designed with careful regard to orderly arrangement, topography, relationship to view, ease of access, and as an integral part of overall site design.

- b. It is desirable that parking areas be level or on terraces as determined by the slope of the land.

#### 4. Landscape Design Objectives

- a. A coordinated landscaped design over the entire project area incorporating landscaped treatment for open space, roads, paths and parking areas into a continuous and integrated design shall be a primary objective.
- b. Primary landscape treatment shall consist of non-deciduous shrubs, ground cover, and street trees as appropriate to the character of the project area.

#### 5. Project Improvement Design Objectives

- a. Public rights-of-way. All streets, sidewalks, and walkways within public rights-of-way will be designed or approved by the City of Salt Lake and will be consistent with all design objectives.
- b. Street lighting and signs. Lighting standards and signs of pleasant appearance and modern illumination standards shall be provided as necessary.
- c. Rough grading. Existing structures, retaining walls, underbrush, pavement, curb and gutters will be removed and the entire site graded in conformance with the final project design determined by the Redevelopment Agency of Salt Lake City.

EXHIBIT "A"

SUPPORTING DOCUMENTS

C.B.D. NEIGHBORHOOD DEVELOPMENT PLAN

May 1, 1982

The following documents are part of the C.B.D. Neighborhood Development Plan dated May 1, 1982, and are incorporated by reference. The documents support the statements and findings incorporated in the C.B.D. Neighborhood Development Plan.

1. Salt Lake City Master Plan, as amended.
2. Salt Lake Valley 1985, Master Plan, Salt Lake County.
3. Salt Lake City Central Community Development Plan.
4. Master Plan, Salt Lake City Parks and Recreation, November 1977.
5. Salt Lake City Community Improvement Program.
  - a. Social Survey
  - b. Structural and Environmental Survey
  - c. Urban Design Criteria and Historic Preservation
  - d. Housing
  - e. Urban Transportation
  - f. Land Use
  - g. Blight Analysis
  - h. Agency Survey
  - i. Legal and Administrative Capability
  - j. Youth Services Study
  - k. Citizen Councils - A Plan for Development

6. United States Census Information.
  - a. General Population Characteristics - Utah
  - b. Census Traits - Salt Lake City, Utah
  - c. General Social and Economic Characteristics - Utah
  - d. Urban Atlas
7. Long Range Transportation Plan.  
Wasatch Front Regional Council, December 1979.
8. Exchange Place - Historic District, Utah Division of State History,  
June 1978.
9. Zoning Ordinances, Salt Lake City.
10. Sign Regulations, Salt Lake City.
11. Surveillance of Land Use & Socio-Economic Characteristics, 1970, 1975,  
and 1995.
12. 1977 Transit Supply and Demand Characteristics, November 1978.  
Wasatch Front Regional Council.
13. Housing: A Regional View, 1977.
14. Housing Element, Salt Lake City Planning Commission, 1980.
15. West South Temple, A Mixed-Use Development District, 1980.
16. Salt Lake City Multi-Ethnic Center, July 1975.
17. Citizen Development Policy Recommendations, Salt Lake City.  
Official Development Policy Conference, June 1973.
18. Comprehensive Economic Development Plan, Salt Lake City.  
Technical Memorandum 1, March 1981.
19. Projected Tax-Increment Revenues Available for Debt Service by Two  
Project Areas in Salt Lake City, Utah, December 1980.
20. The West Downtown Economic and Market Analysis Study, January 1980.

21. Historical and Architectural Sites Inventory 1977-78 prepared by the Utah State Historical Society for the redevelopment of Salt Lake City containing three documents. Document 1 is a report, document No. 2 contains history of the properties, and document No. 3 consists of forms.
22. Analysis of Salt Lake City Office Space and Demand and Potential 1976-1985, Salt Lake Area Chamber of Commerce.
23. Office Building Survey, June 1980, Salt Lake Area Chamber of Commerce.
24. Structural Survey, Central Business District, Salt Lake City, 1975.
25. Structural Survey, Block 76, Plat "A", Salt Lake City, May 1977.
26. Structural Survey, Blocks 52, 53, and 56, Plat "A", Salt Lake City, April 1977.
27. Redevelopment Agency of Salt Lake City Neighborhood Development Program 1971-1972, Binder No. 11 and Map Binder No. 11.
28. Preliminary Plans of Proposed Development, Block 53, Plat "A", Salt Lake City.
29. Block 53 Master Plan for the Redevelopment Agency of Salt Lake City.
30. Summary Report, Phase I, Crossroads Traffic Study, September 8, 1977.
31. Salt Lake City Parking Study, November 20, 1971.
32. Block 53 Redevelopment, Salt Lake City, Utah.
  - a. Part I, requests for proposals
  - b. Part II, legal documents
  - c. Part III, declaration of design intent and conditions
33. Development Program and Financial Analysis for West Downtown Project Area, November, 1981
34. Proposed West Downtown Master Plan (Draft)

## Addendum F

## PUBLIC HEARING NOTICE

(Board of Directors of the Redevelopment Agency of Salt Lake City)

NOTICE IS HEREBY GIVEN that the Board of Directors of the Redevelopment Agency of Salt Lake City will hold public hearings on June 3, at 5:00 p.m., and June 4, 1982, at 10:30 a.m., in Room 301, City and County Building, Salt Lake City, Utah. The purpose of the public hearings is to consider adopting the redevelopment plan entitled, "C.B.D. Neighborhood Development Plan", dated May 1, 1982, to provide for projects to be undertaken by the Agency during the fiscal year commencing from the date of adoption of the Plan through June 30, 1983.

The proposed project area covered by the Redevelopment Plan covers the following area, to-wit:

Commencing at the Southwest Corner of the intersection of Second West Street and Fifth South Street; thence North along the West right-of-way line of Second West Street to the Southwest Corner of the intersection of Second West Street and Fourth South Street; thence West along the South right-of-way line of Fourth South Street to the Southwest Corner of the intersection of Fourth South Street and Fourth West Street; thence North along the West right-of-way line of Fourth West Street to the Northwest Corner of the intersection of Fourth West Street and North Temple Street; thence East along the North right-of-way line of North Temple Street to the Northeast Corner of the intersection of North Temple Street and Second West Street; thence South along the East right-of-way line of Second West Street to the Northeast Corner of the intersection of Second West Street and South Temple Street; thence East along the North right-of-way line of South Temple Street to the Northwest Corner of the intersection of South Temple Street and Main Street; thence North along the West right-of-way line of Main Street 265 feet; thence East 132 feet to the East right-of-way line of Main Street; thence East 340.25 feet; thence South 79 feet; thence East 14.5 feet; thence South 60 feet; thence West 15.75 feet; thence South 126 feet to the North right-of-way line of South Temple Street; thence East along the North right-of-way line of South Temple Street to the Northeast Corner of the intersection of South Temple Street and State Street; thence South along the East right-of-way line of State Street to the Northeast Corner of the intersection of State Street and Second South Street; thence East along the North right-of-way line of Second South Street to the Northeast Corner of the intersection of Second South Street and Second East Street; thence South along the East right-of-way line of Second East Street to the Northeast Corner

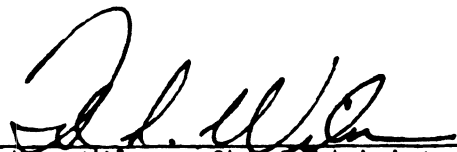


of the intersection of Second East Street and Fourth South Street; thence East along the North right-of-way line of Fourth South Street to the Northeast Corner of the intersection of Fourth South Street and Third East Street; thence South along the East right-of-way line of Third East Street to the Southeast Corner of the intersection of Third East Street and Fifth South Street; thence West along the South right-of-way line of Fifth South Street to the Southwest Corner of the intersection of Fifth South Street and State Street; thence North along the West right-of-way line of State Street to the Southwest Corner of the intersection of State Street and Fourth South Street; thence West along the South right-of-way line of Fourth South Street to the Southwest Corner of the intersection of Fourth South Street and Main Street; thence North along the West right-of-way line of Main Street to the Southwest Corner of the intersection of Third South Street and Main Street; thence West along the South right-of-way line of Third South Street to the Southeast Corner of the intersection of Third South Street and West Temple Street; thence South along the East right-of-way line of West Temple Street to the Southeast Corner of the intersection of West Temple Street and Fifth South Street; thence West along the South right-of-way line of Fifth South Street to the place of beginning; all in Salt Lake City, Salt Lake County, Utah, containing all of Blocks 37, 38, 41, 48, 49, 50, 52, 53, 56, 57, 58, 59, 60, 61, 66, 67, 68, 69, 70, 75, 76, 77, 78, 79, 84, 85, and part of Block 88, Plat A, Salt Lake City Survey.

Persons having objections to the proposed redevelopment plan or who deny the existence of blight in the proposed project area, or the regularity of prior proceedings may appear at the hearing or may file written objections prior to the hearings with the Redevelopment Agency of Salt Lake City showing cause why the proposed plan should not be adopted.

A copy of the proposed redevelopment plan dated May 1, 1982, is on file for public inspection in the office of the Redevelopment Agency of Salt Lake City, 351 South State Street, Salt Lake City, Utah.

By order of the Board of Directors of the Redevelopment Agency of Salt Lake City, this 12th day of May, 1982.

  
\_\_\_\_\_  
Ted L. Wilson, Chief Administrative  
Officer



## redevelopment agency of salt lake city

May 14, 1982

Dear Salt Lake City Resident:



351 south state street  
salt lake city, utah 84111  
(801) 328-3211

Since 1971 the Redevelopment Agency of Salt Lake City has been successfully working to improve conditions for residents of Salt Lake City. Neighborhood Areas have been upgraded through the renovation or the removal of conditions causing blight.

For more than a year, the Redevelopment Agency and Salt Lake City have explored plans to update its redevelopment plan in the Central Business District of the City. This is consistent with the goals of both the City and the Agency in maintaining a strong and economically sound community. Local citizens have participated in making recommendations which have been incorporated in the plan.

The proposed amended C.B.D. Neighborhood Development Plan will include the following assistance for residents of the area: (1) Housing rehabilitation programs available for home improvements and repairs; (2) New construction of additional housing for City residents; (3) Curb, gutter, and sidewalk repair programs where these costs could be shared between the owners and the Agency.

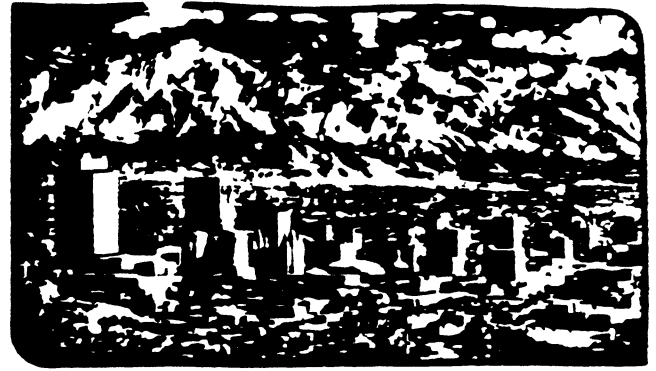
The enclosed Notices described two public hearings to be held by the Redevelopment Agency of Salt Lake City and a third public hearing to be held by the City Council of Salt Lake City to consider adopting the proposed "C.B.D. Neighborhood Development Plan", dated May 1, 1982. The project area boundaries included in the proposed plan are described in the Notices and map. We desire to keep you informed of our plans and invite you to attend these meetings.

If you have any questions concerning the proposed redevelopment plan, you may contact Mr. Michael R. Chitwood, Executive Director of the Redevelopment Agency or Mr. Richard J. Turpin, Assistant Director, at telephone number 328-3211 for further information.

Very truly yours,

Ted L. Wilson, Chief Administrative Officer  
Redevelopment Agency of Salt Lake City

## Addendum G



September 14, 1984

**redevelopment agency  
of salt lake city**



351 south state street  
salt lake city, utah 84111  
(801) 328-3211

Mr. Robert C. Nelson, et al  
c/o The Magazine Shop  
267 South Main Street  
Salt Lake City, UT 84111

**NOTICE OF INTENT TO ACQUIRE REAL PROPERTY**

Dear Mr. Nelson:

On August 9, 1984, the City Council of Salt Lake authorized the Redevelopment Agency of Salt Lake City to undertake the acquisition of certain properties located in Block 57, Plat "A", Salt Lake City Survey, for redevelopment activities.

This is to advise you that the Redevelopment Agency of Salt Lake City intends to acquire your property located at 267 South Main Street, Salt Lake City, Utah, and further described as follows:

Beginning at a point 45 feet South from the Northwest corner of Lot 2, Block 57, Plat "A", Salt Lake City Survey, and running thence South 45 feet; thence East 110.75 feet; thence North 45 feet; thence West 110.75 feet to the point of beginning.

Together with a right of way over the following described land:

Beginning at a point 110.75 feet East of the Northwest corner of Lot 2, Block 57, Plat "A", and running thence East 9 feet; thence South 165 feet, more or less, to Third South Street; thence West 9 feet; thence North 165 feet to the place of beginning.

ALSO, Beginning at a point 45 feet South and 110.75 feet East of the Northwest corner of Lot 2, Block 57, Plat "A", Salt Lake City Survey, and running thence South 45 feet; thence East 9 feet; thence North 45 feet; thence

West 9 feet to the point of beginning.

Together with a right of way over the following described land:

Beginning at a point 110.75 feet East of the Northwest corner of Lot 2, Block 57, Plat "A", and running thence East 9 feet; thence South 165 feet, more or less, to Third South Street; thence West 9 feet; thence North 165 feet to the place of beginning.

In the administration of its real property acquisition program, the Redevelopment Agency will make every reasonable effort to acquire real property expeditiously through negotiated agreements and avoid litigation if at all possible. The Agency will pay fair market value for all property interests acquired based upon two independent appraisals obtained by the Agency. The Agency will conduct its acquisition activities in an effort to minimize hardships to owners and tenants of properties acquired.

Please be advised that this is not notice to you or to your tenants, if any, to vacate the premises. All relocation claims, if any, shall be handled separately by Mr. Warren Wright of this office.

The following procedures will be followed by the Redevelopment Agency in acquiring your property:

1. The property owner, or his designated representative, will be given the opportunity to accompany each appraiser during his inspection of the property. This will afford you an opportunity to make known to the appraisers any facts and pertinent information which will help them determine the fair market value of your property. Mr. Larry Holladay, Real Estate Director, will contact you for an appointment to inspect your property. If you do not desire to be present during the inspection, and you do not intend to appoint a representative, please advise us in writing.

2. The Agency will review both appraisals to determine the fair market value of the property. After the determination of the amount of fair market value, the Agency will submit to the owner a written offer to purchase the property for the amount of its fair market value.

3. If the owner feels the Agency's offer of fair market value does not represent the true value of his property, he may refuse to accept it. The Agency will consider all evidence offered by the owner concerning the determination of fair market value. If a voluntary agreement cannot be reached, the Redevelopment Agency will institute a formal condemnation proceeding against the property and deposit with the court 75% of the amount established as fair market value. The owner may withdraw the amount of such deposit in accordance with State law. All cost of appraisal services, attorney fees, witness fees, and other expenses that the owner may incur in presenting his case to the court will be the obligation of the owner.

4. If the owner desires to retain any fixtures, or other improvements scheduled for acquisition by the Agency, he should contact the


Agency as soon as possible in order that the transaction can be considered by the Agency's appraisers and relocation and acquisition personnel.

5. The following settlement costs will be paid by the owner: all outstanding mortgages, loans, liens, or encumbrances on the property must be satisfied by the owner prior to or at the time of settlement. The owner will pay his prorated share of property taxes, rents, insurance, and other expenses of the property as to the day of possession and will provide a policy of title insurance to the Agency showing title in the owner.

6. The sale of privately-owned property for public purposes is considered "involuntary conversion" by the Internal Revenue Service, and the owner may not have to pay tax on any profit from the sale of the property to the Agency if the money is reinvested in similar property within a certain time period. Internal Revenue Service Publication 549 entitled, "Condemnation of Private Property for Public Use," is available from the Internal Revenue Service. It explains how the Federal income tax is applied to gains or losses resulting from condemnation of property or its sale under the threat of condemnation for public purposes. The owner should discuss his particular circumstances with his personal tax advisor or the local Internal Revenue Service Office.

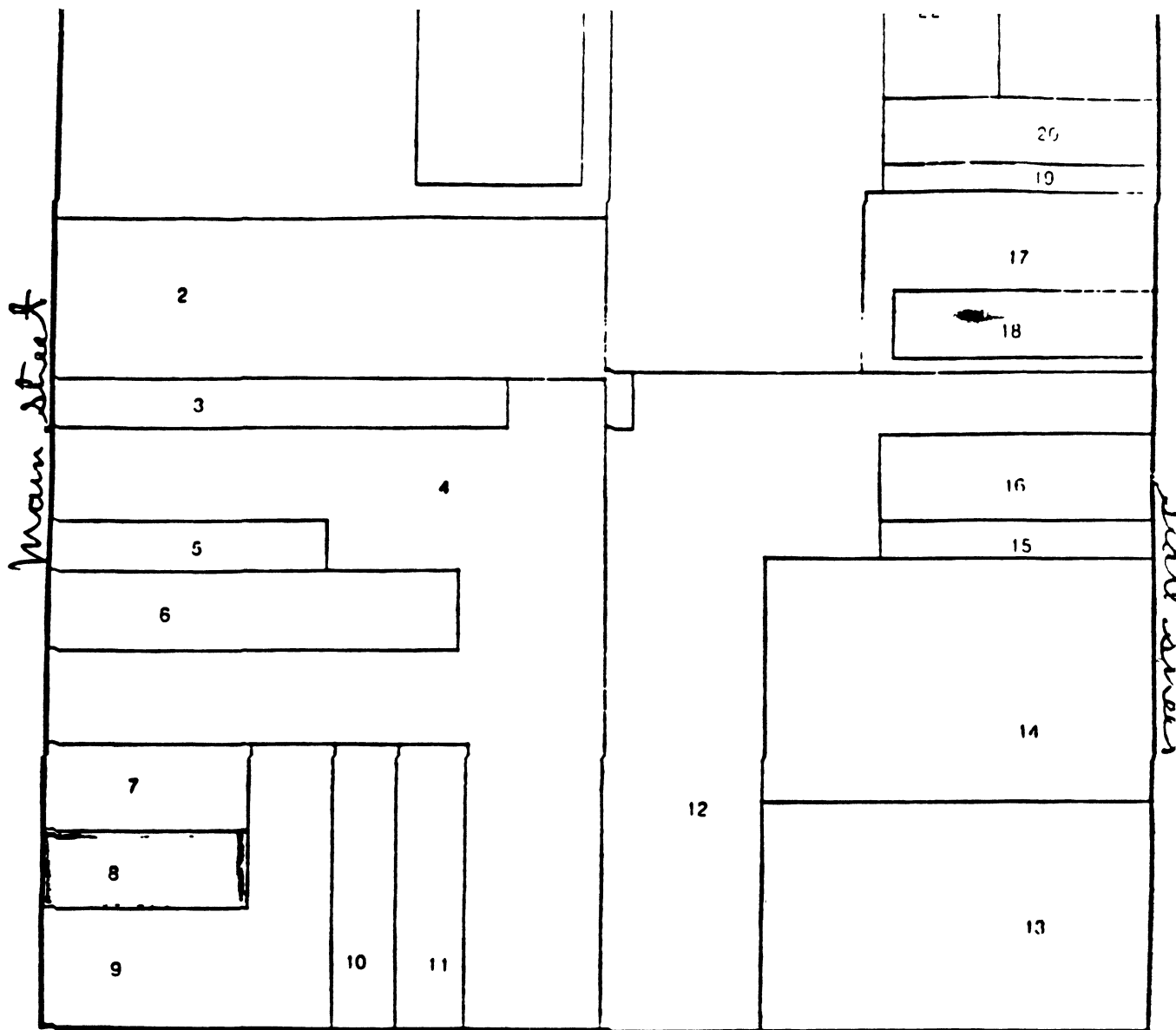
If you wish more information or if you have any questions regarding this Notice of Intent to purchase or about relocation, please call Mr. Larry Holladay at the Redevelopment Agency, phone number 328-3211 or visit the office at 351 South State Street, Salt Lake City, Utah. The regular business hours of the office are 8:00 a.m. to 5:00 p.m. Monday through Friday. If the above hours are not convenient, an appointment may be arranged for another time.

REDEVELOPMENT AGENCY OF SALT LAKE CITY

By:   
Michael R. Chitwood  
Executive Director

slc

Enclosure



BLOCK OWNERSHIP MAP  
Block 57

300 South

SCALE : 1" = 100'