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OPINION NO. 2003-01

TO: Debra Stark, Community Development Director
FROM: Stephen M. Kemp, City Attorney
DATE: July 8, 2003
SUBJECT: Application of provisions of Chapter 246, Laws 2003, Pertaining to Eminent Domain in Redevelopment Districts.

QUESTIONS:

1. Do our adopted redevelopment areas and accompanying plans become null and void? Are they repealed?
2. Should we no longer hand out copies of our redevelopment plans?
3. Can we get direction on the definition of slum and blight (for example, give us an example of what might qualify in our City)?

OPINION:

Chapter 246 of the Laws 2003 amended the Redevelopment Statutes found in A.R.S. §36-1471, et. seq.

Question 1:

The first question to be resolved is the effective date of the new legislation. Section 22 of Chapter 226 provides that the act does not apply to eminent domain actions that were initiated before the effective date of this act pertaining to a health care institution.

The rules of statutory construction pertaining to retroactivity provide that generally a statute is not retroactive in application simply because it may relate to antecedent facts. Tower Plaza Investments Ltd. v. DeWitt, 109 Ariz. 248, 508 P.2d 324 (1973). Arizona courts have repeatedly held that the legislature must specifically declare its intent to provide for retroactive application of a new

statute. See, Rodriguez v. Terry, 79 Ariz. 348, 290 P.2d 248 (1955); Madden-Tyler v. Maricopa County, 189 Ariz. 462, 943 P.2d 822, (App. 1997); City of Tucson v Whiteco Metrocom, Inc., 194 Ariz. 390, 983 P.2d 759 (App. 1999)

In this case, the legislature has not specified retroactive application of the statute; therefore it is our opinion that Chapter 246 does not apply retroactively to the formation of existing redevelopment areas. This is consistent with Arizona law that provides that statutes do not govern events that occur before their effective date, unless the statute expressly provides otherwise. State v. Gonzales, 141 Ariz. 512, 687 P.2d 1267 (1984).

Therefore, the answer to your first question is that our existing redevelopment areas and accompanying plans remain in full force and effect. However, these areas and plans are now subject to the provisions contained in Chapter 246, Laws 2003 pertaining to the use of eminent domain in Slum and Blighted Areas.

Question 2:

As the existing plans remain in full force and effect, there is no reason to stop providing such information to the public. However, you may wish to indicate to future redevelopers that the City now has new requirements for the exercise of eminent domain, which may alter or restrict the City's ability to participate in a plan of redevelopment.

At the same time, it needs to be remembered that at the end of the ten-year period, the City needs to do an analysis as to the action needed to be taken to remove slum and blight. It is our opinion that this will apply to existing redevelopment districts at the end of the ten-year period.¹

Chapter 246, Laws 2003 has modified the definitions of "Slum and Blight". Section 8 defines Blighted Area and Slum Area as follows:

2. "BLIGHTED AREA" means an area, other than a slum area, where sound municipal growth and the provision of housing accommodations is substantially retarded or arrested in a predominance of the properties by any of the following:
 - (a) A dominance of defective or inadequate street layout.
 - (b) Faulty lot layout in relation to size, adequacy, accessibility or usefulness.
 - (c) Unsanitary or unsafe conditions.
 - (d) Deterioration of site or other improvements.

¹ See Chapter 246, Laws 2003, Section 11.

- (e) Diversity of ownership.
- (f) Tax or Special Assessment delinquency exceeding the fair market value of the land.
- (g) Defective or unusual conditions of Title.
- (h) Improper or obsolete subdivision platting.
- (i) The existence of conditions that endanger life or property by fire and other causes...

18. "SLUM AREA" means an area in which both of the following are true:

- (a) There is a predominance of buildings or improvements, whether residential or nonresidential.
- (b) The public health, safety or welfare is threatened because of any of the following:
 - (i) Dilapidated, deteriorated, aging or obsolescent buildings or improvements.
 - (ii) The inadequate provision for ventilation, light, air, sanitation or open spaces.
 - (iii) Overcrowding.
 - (iv) The existence of conditions that endanger life or property by fire and other causes.

The existence of a blighted area or a slum area remains a legislative decision. Considering the existing redevelopment areas in the City of Peoria, the area within the Peoria Downtown Revitalization Plan appears to have a predominance of the characteristics of a blighted area, including:

1. Deterioration of site or other Improvements (Large numbers of vacant businesses and lack of investment in existing buildings)
2. A dominance of defective or inadequate street layout. (Grand Avenue and the BNSF Railroad bisect the area restricting access)
3. Faulty Lot layout in relation to size adequacy, accessibility or use. (Commercial Lots lack adequate onsite parking and landscaping)
4. Improper or obsolete subdivision platting. (Local streets with 70 foot rights of way as compared to our existing 50 foot requirement; alleys and unnecessary streets)

Chapter 246, Laws of 2003, requires that only a predominance of one of the above items needs to be identified for a blighted area. Similarly, the Downtown Revitalization Plan area appears to meet the definition of a Slum as well as it has a predominance of buildings that are dilapidated, deteriorated, aging or obsolescent. Many of these buildings have impacted the public health, safety and welfare as identified by the numerous code violations that have occurred in the past.

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While the enactment of this act does impact the formation process of redevelopment areas and the exercise of eminent domain, the legislation should not be interpreted to invalidate existing redevelopment areas or to preclude use of this tool in the future.

I trust that this answers your questions in this matter. Should you have any further questions, please contact our office.

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