

**LEAGUE OF WOMEN VOTER OF UTAH**

**REDEVELOPMENT AGENCY STUDY**

**2006**

**STUDY PURPOSE:**

The League of Women Voters of Utah is studying Redevelopment Agency (RDA) laws and their implementation in Utah to decide if the current law is in the best interests of the economic well being and civil rights of Utah citizens and if there could be changes that might improve the law.

RDAs are created by municipalities or counties and enabled by state law. However, some Utah legislators perceived abuses under the RDA law. These abuses were centered on the use of eminent domain, misinterpretation of the concept of blight and the loss of property taxes by counties and schools. The 2005 Legislature passed an amendment to the law, Senate Bill 184, to eliminate these abuses. Most items in the amendment expired in 2006. The Legislature then made several additional changes to the law in the 2006 Legislative session.

This study is presented to give citizens the background to understand current legislation.

## **REDEVELOPMENT AGENCY STUDY -- 2006 EXECUTIVE SUMMARY**

Redevelopment Agencies (RDAs) use tax increment revenue to cause redevelopment and economic development to occur. RDAs are created by municipalities and counties and enabled by state law. An explanation of RDA operation is included in the study.

The 2005 Legislature made changes in the law governing RDAs because of problems which they perceived as abuses of the law's intent. These problems were:

- Use of redevelopment tax increment to attract large scale retailers;
- Use of eminent domain to provide land for large scale retailers;
- Use of redevelopment in areas that were not blighted; and
- Loss of taxes by counties and schools.

To mitigate these abuses the 2005 Legislature passed Senate Bill 184 amending the RDA law. Most items in the bill expired in 2006. Senator Curtis Bramble (R) requested the Utah League of Cities and Towns to draft new legislation for the 2006 session. The legislation was passed.

The legislation includes:

- A new track, Community Development, that is added to the Economic Development and Redevelopment tracks;
- Requirement that a supermajority vote of the Taxing Entity Committee meeting is required for Economic Development and Redevelopment areas (This vote must be at least 7 days after the project is introduced.);
- The term of any project area would be negotiated with these committees;
- Criteria for blight will be more stringent (Blight is only used for Redevelopment projects.);
- Tax increment from retail business in Economic Development Areas is not allowed; and
- Eminent domain will not be allowed for any projects implemented under this law.

This study gives a synopsis of the history of Redevelopment Agencies since Congress passed the U.S. Housing Act in 1949, an explanation of the structure of RDAs in Utah with some explanation about the intent of the legislation, and a more detailed explanation of recent problems and the Legislature's work to solve them in 2005 and 2006. Other suggestions for changes are also reviewed.

This study also gives a short history of the Salt Lake City and Ogden RDAs, the two biggest RDAs in the state by project dollars. Information is included about their current finances, use of affordable housing funds, examples of projects, and two projects in Ogden that have been affected by the prohibition in SB 184 of the use of eminent domain.

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## I. BASIS AND HISTORY OF REDEVELOPMENT AGENCIES IN UTAH

The redevelopment concept was inaugurated in 1949 with the passage of the U.S. Housing Act of 1949. The goal of the act was to address the problem of deterioration of central cities. The original redevelopment concept was a federally subsidized program run by local redevelopment agencies. Federal funds were used to purchase and clear an area. The area was then usually sold to private enterprise for redevelopment.

### A. CURRENT STRUCTURE (RDA 101)

*The following structure does not reflect changes in the process used by redevelopment agencies that were imposed by SB 184 (2005) or SB 196 (2006). Changes made by SB 184 are addressed in Section I,B, "Changes Made in 2005 by Utah Legislature." Changes made by SB196 are addressed in Section VI, "2006 Legislation."*

The Utah Redevelopment Agencies Act authorizes a community to create a redevelopment agency and designate its legislative body as the governing body of the redevelopment agency. The agency has the authority to create redevelopment and economic development project areas, enter into contracts for redevelopment and economic development work and accept funds from either public or private sources for redevelopment and economic development purposes. The act requires that the community have a planning commission and a general plan before its redevelopment agency may undertake a redevelopment project or economic development project through the RDA.

To initiate the process the redevelopment agency undertakes a study of a survey area. All or part of the study area may be selected for a redevelopment or economic development project area. Either those proposing the project or the redevelopment agency must prepare a draft project area plan.

The major tools available to redevelopment agencies to direct growth within a community are

- the ability to assemble property for development with the use of eminent domain in an area that has been found to be blighted;
  - use of tax increment financing to pay for public and private aspects of redevelopment projects, and
  - use of tax increment financing for economic development without a finding of blight.
1. **BLIGHT**: For a redevelopment project area, there must be blight hearings and a finding of blight. Blight is defined by the law. Examples include unfit or unsafe buildings, defective character of construction, and overcrowding.
  2. **TAX INCREMENT FINANCING**: Tax increment financing is the primary financing method for redevelopment projects. Tax increment financing freezes property taxes as of a base year. Any revenue generated from increased taxable value

of property in the study area is diverted to the redevelopment agency for the length of time of the project area plan. Other taxing entities continue to receive the amount of taxes based on the base year value.

When a redevelopment project area is created, the value of the property within the project area is determined by the county assessor. The value at the start of the project area's life is called the "base value." Throughout the life of the project area, the taxes on the base value levied by each property taxing entity—city, county, schools, and special districts—are paid to the property taxing entity. If the RDA is successful in increasing the value above the base, or creating "incremental" value, the taxes levied against the incremental value by all of the taxing entities are paid to the RDA. These taxes are called the "tax increment." RDAs currently do not levy any taxes; they only collect taxes levied by taxing entities within the RDA project area. Depending on the budget approved by the taxing entity committee, the RDA may pay a portion of the tax increment back to the taxing entities or it may keep 100% during the life of the project area. At the close of the project area, the taxes generated by the incremental value are paid to the taxing entities.

The RDA is required to use the tax increment it collects for two purposes:

- (1) 80% within the project area to encourage private investment and growth in property values; and
- (2) 20% to support housing within the community.

Often, an RDA will have a developer pay for some of the extraordinary or initial costs of developing the area. It will then pay back to the developer some portion of these costs with a tax increment agreement. Since the developer is usually paid back from the taxes that she or he pays, a failure to pay the projected taxes due to lack of performance, etc., does not result in a burden to the taxpayers.

3. **TAXING ENTITY COMMITTEE**: If tax increment financing is used, a taxing entity committee must be set up and the size of the project area limited to 100 acres unless waived by the committee. The taxing entity committee determines the time period for the collection of tax increment, the percentage of tax increment to be used by the agency and the percentage of tax increment to be paid to the taxing entities during the life of the project area. The taxing entity committee is made up of two members from the local school district, one member from the Utah State Office of Education, two members from the county, two members from the city or town creating the redevelopment agency project area and one member representing all other affected taxing entities.
4. **PUBLIC INPUT**:  
For a redevelopment project area, public hearings must be held to;
  - Obtain comments on whether the area is blighted;
  - Obtain property owner input into the plan; and

- Obtain public review of the project area plan.

For an economic development project area, public hearings must be held to;

- Obtain public review of the draft project area plan.

A statement of the rights of property owners within the project area must be sent to the property owners within a proposed redevelopment project area prior to the blight hearing. If 2/3 or more of the property owners object, the area may not be established. If 40% or more of the property owners within a proposed project area object to the establishment of a project area, it must go to a vote of the community at the next general election.

5. **AFFORDABLE HOUSING**: Prior to collecting tax increment, the taxing entity committee must approve the use of tax increment to implement the plan and provide affordable housing. Twenty percent of the tax increment collected by the redevelopment agency must be used for affordable housing within the community unless it is waived by the Olene Walker Housing Trust Fund Board because the community already has an adequate amount of affordable housing.
6. **PROJECT LENGTH**: After adoption, the RDA has 3 years to commence implementation of the plan, 5 years to commence acquisition of property by eminent domain and up to 25 years to use tax increment. No eminent domain action can be initiated after the first five years.
7. **ECONOMIC DEVELOPMENT AREAS**: In 1993, the Utah Legislature authorized local communities to use tax increment financing to attract job-creating industries to the State of Utah. Prior to 1993, communities were using their redevelopment powers for a variety of purposes—redevelopment of blighted areas, transitioning areas toward retail development, and providing infrastructure or tax breaks to firms seeking to locate in Utah. However, prior to 1993, all of these activities were being done under the guise of redevelopment. School districts were vociferously objecting to the use of the school property taxes to capture sales tax for cities.

In 1993, the Legislature created two tracks under the Utah Neighborhood Development Act. One track allowed traditional redevelopment of blighted areas. The other allowed the creation of project areas for economic development. The benefit of creating an economic development project area was the ability to use the taxes generated by the new development to build infrastructure, make equipment loans, or generally provide an incentive for a new business to locate in Utah. However, the economic development approach carried with it several limitations.

- First, the tax increment could only be used if the business entity would be bringing new jobs to the State of Utah as a whole, not just to the local community. While an expansion of a business would qualify, simply moving

a firm from Community A to Community B would not. Firms, such as Micron, which were new to Utah clearly qualified.

- Second, the community could not use tax increment unless it had convinced the taxing entity committee that the development would not occur without the use of tax increment. The creation of the taxing entity committees for both redevelopment and economic development project areas was the primary way in which this “but for” test was implemented. (The “but for” test derives its name from the statement that RDA directors have to make when they request tax increment for an economic development project--“but for the use of tax increment, the project cannot proceed.”)
- Third, because there was no finding of blight, there could be no use of eminent domain. This meant that most economic development project areas would be on available, assembled sites.
- Fourth, the Legislature clearly stated it did not believe retail development was economic development. Therefore, it specifically forbade communities from using tax increment in economic development project areas where the purpose of creating the project area was to provide incentives for retail development. It went a step further and forbade communities from combining retail developments with other developments by limiting retail within economic development project areas to “incidental” retail.

For the most part there have been no major changes to the economic development track since 1993. Between 1993 and May, 2005, 37 economic development project areas have been created within the state. While some of the project areas have been set up for specific businesses to move to the state, like Dannon Yogurt in West Jordan, many EDA’s are created so that a community will have the tools in place when a business comes to Utah looking for a new plant location.

## **B. HISTORY OF CHANGES IN STATUTES PRIOR TO 2005 (TIMELINE)**

**1949** – United States Congress passed the U.S. Housing Act to address deterioration of central cities with a federally subsidized program run by local redevelopment agencies.

The following actions of the Utah State Legislature affected ability of a city, town or county to organize a redevelopment agency and to implement projects.

### **1965** –Passed **Utah Community Development Act:**

- Enabled creation of redevelopment agencies and redevelopment projects if approved by the community.

### **1969** – Passed **Utah Neighborhood Development Act:**

- Established authority and guidelines for creation of redevelopment agencies, and conduct of redevelopment activities by city and county legislative bodies.

**1977 – Passed Utah Residential Rehabilitation Act:**

- Established authority and guidelines for redevelopment agencies to issue bonds to finance housing rehabilitation loans within the city or county.

**1983 – Made changes to Utah Neighborhood Development Act:**

- Limited size and scale of redevelopment project in acreage and assessed valuation;
- Established declining percentage of tax increment that can be used within redevelopment project area (unless waived by governing bodies of all affected taxing jurisdictions);
- Established time limits for closure of redevelopment project areas;
- Required a statement of property owners' rights;
- Required property owners be offered right to participate in project before eminent domain can be exercised.

**1993 – Made changes to Utah Neighborhood Development Act :**

- Tightened criteria to be met for area to be blighted;
- Established economic development projects where goal would be job creation rather than blight removal but could not be used for retail developments or land assemblage with eminent domain;
- Established a requirement for a taxing entity committee to approve the use of tax increment within a project area;
- Limited tax increment district to 25 years, unless approved by taxing entity committee;
- Provided guidelines for sharing of tax increment between investment in project and payments to taxing agencies.

**2000 – Made changes to Utah Neighborhood Development Act:**

- Required 20% of tax increment be used for affordable housing.

**2001 – Passed the Redevelopment Agencies Act (Utah State Code Annotated 17B-4-101-1401),**

- Reorganized and reworded the Utah Neighborhood Development Act, grandfathering existing project areas.

**2003 – Made changes to Redevelopment Agencies Act:**

- Finding of blight permitted for federally designated superfund sites.

## **II. EXAMPLES OF EXISTING REDEVELOPMENT AGENCIES**

### **A. SALT LAKE CITY REDEVELOPMENT AGENCY**

1. History – The Redevelopment Agency of Salt Lake City was established in 1969 to improve blighted areas of Salt Lake City, encourage economic development, promote development of housing for low and moderate income



households and assist in implementing Salt Lake City's Master Plan. Since 1969 the Agency has created 8 project areas.

2. Current Finances – According to the 2004 Annual Report, the Agency has made almost \$206M of direct investment and \$24.6M of Agency loans in the project areas. An additional \$1.3B of private/other investment has been made in these areas.
3. Affordable Housing --The Agency has provided nearly \$9M in direct investment toward the construction of housing plus an additional \$8M in low-interest loans. This made possible the construction of 2,122 housing units, 834 of which were affordable to low income households. These amounts include grants and loans to projects outside RDA project area boundaries which have enabled development of 246 units most of which were targeted to low-income households or special needs groups.
4. Delta Center, An Example of a Salt Lake RDA Project -- The Delta Center in downtown Salt Lake City was built in 1989-90 with a \$20 million RDA subsidy. In the late 1980's, Larry Miller, the owner of the Utah Jazz NBA basketball team determined that he needed a larger arena to accommodate public demand for seats and to provide the cash flow to attract top NBA players. Larry Miller proposed paying the bulk of the \$80 million arena cost privately, requesting a \$20 million contribution from the RDA. A coalition of government officials worked together to make a new arena possible. Salt Lake City School District, Salt Lake County and Salt Lake City agreed that the RDA could use the portion of the tax increment that was slated to go to each entity from the downtown project area for the new arena. Salt Lake City School District asked for a partial in lieu payment in each year the tax increment was used for the new arena. Salt Lake County agreed to release the Jazz from its contract to play in the Salt Palace and to adopt non-compete agreements for the existing Acord Arena. The Utah Legislature agreed to change the RDA law to permit the use of funds scheduled to go to the taxing entities to be used for the new arena. The RDA subsidies paid for the land, the relocation of parking that was on the land used by Triad Center, the plaza surrounding the building, streetscape improvements on 400 West Street, and a small portion of the building construction cost. The Delta Center has a 50-year land lease. At the expiration of the lease, the land and building will belong to the RDA.

## **B. OGDEN REDEVELOPMENT AGENCY**

1. History - The Ogden RDA was established in 1969 by a vote of Ogden residents to address deteriorating conditions in the downtown business district and surrounding neighborhoods.

Since 1969, the Agency has created 19 blight-based redevelopment project areas and 4 economic development based project areas. One of the blight-based areas, the Newgate Redevelopment Project Area, has been dissolved following completion.

In 1997 the RDA established a Housing Fund to manage tax increment funds to be used for affordable housing. This fund can be used as local match for federally sponsored programs

2. Current Finances - The Ogden RDA received \$6,105,207 in tax increment property tax in 2005. These funds were used for administration, operating expenses, affordable housing, debt service, capital expenditures and the Riverfront Project.

The Agency's bonded debt in 2005 totaled \$12,875,000 for all project areas. Other loans for these areas totaled \$19,238,823.

In addition, the RDA has pledged the following amount of tax increment:

- Fresenius Medical: 54% not to exceed \$2,550,000;
- Williams International: 54% not to exceed \$5,296,347;
- American Can renovation: \$4,200,000;
- American Can Parking Structure: \$4,100,000.
- Ogden Airport-Gateway Center: \$2,343,712

3. Affordable Housing - Of the RDA projects, those primarily for the purpose of providing affordable housing include:

- St. Benedicts Manor, conversion of former hospital to a 100 unit apartment complex for the elderly and handicapped in 1981;
- Union Gardens at 3<sup>rd</sup> Street and Adams in 1981; and
- Golden Links on 24<sup>th</sup> Street between Van Buren and Harrison, a project for the elderly and disabled in 1986.

Five RDA project areas were approved after 2000 when allocation of 20 percent of tax increment for affordable housing became mandatory. \$250,000 was used for housing in the Union Square project, part of the Wall Avenue RDA project area. The Agency plans to use tax increment revenue from the West 12<sup>th</sup> Street, Hinckley Drive, and the American Can project areas for housing in the River Project Area.

4. Eccles Building Conversion, Example of Ogden RDA Project - The rehabilitation of the Eccles Building, located on the corner of 24<sup>th</sup> Street and Washington, was part of the 25<sup>th</sup> Street Project Area, created in 1979. Between 1998 and 2000, the Eccles Building was considered for use as a hotel or office space. The city had had a drop in percentage of occupied office space. But a feasibility study in 2000

showed that the best use of the property would be a 130-room “boutique hotel” with a restaurant, lounge and valet parking.

The cost of acquisition, renovation, and providing furniture, fixtures and equipment to establish a hotel in the Eccles Building was estimated at \$11M. The developer agreed to pay \$1M down and borrow \$6.9 million from local banks to finance the project.

To facilitate this project, the RDA Board:

- extended the ending date of the 25<sup>th</sup> Street Project Area to 2017;<sup>1</sup>
- issued an RDA bond in the amount of \$1.61M to support renovation; and
- agreed to give the developer 130 parking stalls rent free for 3 years in the RDA-owned parking structure behind the Eccles Conference Center.

The hotel was operated by Town Park Hotel Corporation as Crowne Plaza Hotel and Suites. It is now operating as Hampton Inn.

In 2005 the annual tax increment received from the 25<sup>th</sup> Street Project Area was \$610,036. Total bonded indebtedness for the 25<sup>th</sup> Street Project Area was \$1,445,000 (the tax increment for the Eccles Building). Other loans for the 25<sup>th</sup> Street Project Area totaled \$4,007,769 for city participation in 25<sup>th</sup> Street improvements.

5. Central Business District (CBD) Mall RDA Project Area- The project area was established in 1977 to facilitate the development of the Ogden City Mall by a developer. In 2001, the Ogden RDA purchased the mall from its current owner for \$6M using a loan from Business Depot Ogden (BDO) which is an Economic Development Project Area of the RDA. The RDA borrowed \$4M from a local bank to demolish the mall.

The Ogden RDA has issued revenue bonds totaling \$20.35M to refinance the loans used to purchase and demolish the mall, and to settle the suit brought by the Woodbury Corporation over their building which was part of the mall. These bonds are secured by the first position on the city’s share of the lease revenue from BDO and tax increments from the mall site.

No tax increment is available to pay the \$1,751,601 debt still owed to the city for funding injected into the original mall project during the late 1970s and early 1980s. This debt is being carried at 0% interest.

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<sup>1</sup> In 2001, the 25<sup>th</sup> Street RDA Project Area was due to end in 2008. At the time that the Eccles Building was being considered by the Ogden RDA Board, there was an existing debt for the 25<sup>th</sup> Street Project Area of \$4,481,221 owed to the city.

At the present time on the mall site, construction has started on the Tree House museum. The property on the northeast corner has been purchased by the property arm of the LDS church for construction of a commercial building. Construction of a High Adventure Recreation Center, which will be owned by the city, has begun. A private developer is selling condominiums in a building that will be adjacent to the Recreation Center. Construction of a cinema complex is under discussion. The Boyer Corporation will develop the remainder of the property with a bank building and town houses..

To finance the Recreation Center, the RDA is using the following:

- A \$2M loan from the federal Housing and Urban Development (HUD) agency. Repayment will be made from tax increments from ten RDA projects,<sup>2</sup>
- Revenue bonds of \$7.28M with a maturity of 20 years to be repaid from tax increments from ten RDA projects,
- Revenue bonds of \$8.9M to be repaid from the lease payments made by building occupants of about \$600,000 per year, and
- A one-time tax increment grant of \$295,000 to the city.

The total of these items will be \$18,475M to cover the construction, equipment and other costs involved with the Recreation Center.

### **III. STATUS OF OGDEN RDA PROJECTS AFFECTED BY SB 184**

**A. 21<sup>ST</sup>-22<sup>ND</sup> STREET RDA PROJECT AREA** - This project involved the Agency's purchase of 22 acres for a Wal-Mart. The area was found to be blighted. However, it is doubtful that this project will now become a reality because the RDA has been unable to reach agreements with ten of the property owners for purchase of their property and eminent domain cannot now be used. The options held by the city for these properties will not be renewed. Without the ability of the city to purchase the whole 22 acres, Wal-Mart is not considering moving ahead. This project will expire in 2007 unless implementation commences.

**B. OGDEN RIVER RDA PROJECT AREA** - The plan for this project is to convert a 59 acre parcel north and south of the Ogden River to a mixed-use, urban residential

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<sup>2</sup> State legislation dictated that the percentage of tax increment funds from RDA projects started before 1993 decreased every five years from 100% to 60%. The only exception to this is cultural and recreational facilities. Special legislation allowed the difference between 100% of tax increment and the reduced amount to be used for cultural and recreational facilities. This was subsequently limited to only those projects started before December 31, 2005. School districts are not affected by this provision. They will still receive the increased amount of the tax from these projects.

neighborhood compatible with downtown Ogden and to remediate the conditions of blight by removal of structurally substandard buildings.

This project is projected to be completed in two phases. The RDA needs to obtain 13 commercial and 40 residential properties for the first phase. The RDA plans to acquire the parcels from property owners and to relocate tenants. The proforma budget identifies \$2.15M of tax increment to initiate the project area plan. The RDA hopes to be able to complete the plan without the use of eminent domain.

#### **IV. ISSUES IN 2006 LEGISLATIVE SESSION**

The Utah League of Cities and Towns, the Utah Taxpayers Association and the Utah State School Board had approached Senator Curtis Bramble separately with requests for changes to the RDA law. He expressed concerns about the effect of RDAs on communities' economic development since it is often a zero sum game (an activity in which resources remain fixed but are redistributed among the players). He questioned using RDAs for municipal development. He believed that cities and school districts are losing property tax and that "personal property rights trump state eminent domain power."

##### **A. WHAT CAUSED THE LEGISLATURE TO WANT CHANGES**

**1. Use of RDA to Attract Retail Stores** – RDAs' use of tax increment to attract large retailers was one focus of the 2005 Legislature's concern about RDAs. While a city will clearly benefit from the sales taxes that a new retail store will generate, the benefits to other taxing entities serving a larger area were questioned. Some redevelopment agencies seemed to be focused on attracting "big box" retailers.

- Opponents ranged from those opposed to large scale retailers as a class of businesses to those who felt that bringing in large scale retailers is not economic development since retailers tend to follow population.
- Counties, school districts, the Utah State Office of Education and the Utah Taxpayers Association questioned whether the taxes levied by these geographically more diverse entities should be used by RDAs to build the city's retail tax base. Proponents believed that obtaining the consent of a majority of the representatives of these entities to the use of the tax increment, as required under the Redevelopment Agencies Act, meant that a majority concurred with this use. Proponents thought that all taxing entities benefit from public investments that increase the value of property in the long term.
- Proponents pointed out that "incentives" were not provided directly to retailers, but were either installation of needed public infrastructure (roads, sidewalks, and utilities) or environmental remediation, both of which must occur prior to the land's being put to any productive use.
- Impact of Sales Tax Allocation: Currently, 50 percent of the 1 percent Local Sales Tax amount is given to the city or county where the sale is made (Point of Sale) and 50% is divided between all cities and counties

by population. At the present time, a municipality can raise the amount of sales tax it collects by increasing retail sales within its boundaries. This has led cities to compete in offering bigger and bigger incentives to retail establishments

- Cities that lose retail businesses and sales to their neighbors are left with few options to finance services. One of the few options is to raise property tax which means that their citizens pay the same sales tax as their neighbors but pay higher property tax. Higher property tax creates a less inviting atmosphere for new businesses, especially business that will bring in significant capital investment in the form of buildings and equipment.

**2. Use of RDA in Areas Not Blighted** -- RDAs were also under attack for “redeveloping” lands that had not been previously developed into urban uses.

- Opponents felt that RDAs were declaring open fields “blighted” as a means to bolster the retail sales tax revenues of the community.
- Proponents argued that the properties could not be developed without provision of infrastructure or clean-up of environmental problems.

**3. Use of Eminent Domain for RDA Projects** -- The most visible of the new retail areas was the 21<sup>st</sup>-22<sup>nd</sup> Street Project Area in Ogden. This area is an older, deteriorating neighborhood in close proximity to downtown Ogden. The plan envisioned replacing several single family homes with a new Wal-Mart Superstore. The owners could not implement the plan themselves and were asked to sell their houses to the RDA who would then sell the property to Wal-Mart. While most homeowners and investors were willing to sell, some were not. Ogden was proceeding to go through the process of acquiring the properties by eminent domain, as was permitted under the Redevelopment Agencies Act, when SB 184 was passed. Use of eminent domain to attract a large retailer into a community became a third issue.

The Utah Relocation Act requires that if eminent domain is exercised displaced residents must be provided with a comparable replacement dwelling that is safe, clean and accessible.

- a. Examples of use of eminent domain: Two property owners in the 21<sup>st</sup>-22<sup>nd</sup> Street RDA Project Area were interviewed for this study. One was a resident and the other was a person who bought an interest in a piece of property to block the development. They both said the Redevelopment Agency didn’t fully explain their rights and didn’t treat them with respect. The resident thought that by only signing a petition to stop the project she had done all that was needed. The packet provided to the property owners had brochures giving information about Utah’s Private Property Ombudsman and about property owners’ rights to just compensation. The 2005 legislation combined with reluctance of some owners to sell has blocked this development.

Eminent domain was also used by the Ogden RDA against Stegen's Auto Parts & Service to facilitate construction of an office building on Wall Avenue for the Internal Revenue Service. Eddie Stegen said that although he didn't want to move after being in the same location for 42 years, he thought the result was fair. He is now in a more modern building with more parking that is also on Wall Avenue. He said that, unfortunately, his business has fallen off since the move, probably due to economic factors.

Neither the Salt Lake City RDA nor the Ogden RDA was able to furnish names of others that the committee could interview, who had been relocated by the RDA, an indication that eminent domain has not been widely used by these RDAs.

- b. Recent Supreme Court Decision on Eminent Domain (Kelo vs. New London) Eminent domain is used by a public entity to acquire private property when the current owners do not wish to sell. When eminent domain is exercised, the private owner is paid for both the value of the property and the cost of relocating to another property. The value is usually determined by a professional appraisal. The owner usually provides estimates of the relocation cost. When an owner occupant of a single family residence wants a substitute property, the outcome is that the current owner is paid a sufficient sum to move into a similar property and continue with whatever use it had previously enjoyed in the acquired property. If the owners simply wants cash, they may choose to take cash and not acquire another property. The question of when a government entity can use eminent domain under redevelopment and economic development statutes is defined by a combination of federal laws, state laws, and court cases.

The recent U.S. Supreme Court case Kelo vs. New London, decided in 2005, has been covered in the media as a dramatic expansion of the power of eminent domain. The Court found that the power of eminent domain under the New London revitalization plan was not contrary to the 5<sup>th</sup> Amendment to the U.S. Constitution, which states, “. . . nor shall private property be taken for public use, without just compensation.”<sup>3</sup> Under the 14<sup>th</sup> Amendment, the 5<sup>th</sup> Amendment is applicable to state actions.<sup>4</sup> The

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<sup>3</sup> The text of the Fifth Amendment to the U.S. Constitution is “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.”

<sup>4</sup> The applicable portion of the 14<sup>th</sup> Amendment is in Section 1: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of

Court also noted that state legislatures can dictate limitations on the use of the power of eminent domain beyond the limit imposed by the Constitution or the interpretation of the Constitution by the federal courts.

The Supreme Court decision is brief. They note that:

- The city is economically distressed, although the individual properties to be acquired were not;
- The economic development plan encompassed several economic goals;
- The plan had both been partially funded and approved by the appropriate agencies within the State of Connecticut;
- Implementation of the plan was anticipated to bring several types of economic benefits to the community (not just increase the city's tax base); and
- The acquiring private party who would build the office buildings and hotel had been selected through a public bid process.

The Supreme Court also clearly states that it would be contrary to the 5<sup>th</sup> Amendment for the City to have acquired one person's property and sell it to another person, simply to cause a change in ownership even if the original owner is paid a fair price. The Court bases its decision on the fact that the City of New London was acquiring property pursuant to a carefully considered plan whose goal was to create significant public benefits—revitalization of a distressed community and re-use of the naval base; jobs; and the associated improvements in the tax base. The State of Connecticut had laid out the parameters under which eminent domain could be used for economic revitalization and they were followed.

The Court cites several precedents for its decision, but two stand out: *Berman vs. Parker* (1954), which found that a city could acquire well-maintained properties by eminent domain if the area in which the properties are located is blighted and the acquisition is in accordance with a plan for redevelopment; and *Hawaii Housing Authority vs. Midkiff* (1984) which found that the State of Hawaii could acquire property from large landowners and sell the property to the current leaseholders in an effort to broaden the number of owners in the real property market. They also note that prior decisions have upheld the rights of private irrigation companies and private utilities to condemn for the seemingly private purposes of these entities.

The Court also indicates that State legislatures may limit the power of eminent domain beyond any limits in the federal constitution. Utah, for

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life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”



example, has never permitted a city to exercise eminent domain solely for economic development. In keeping with *Berman vs. Parker* (1954), from 1965 to 2005, Utah permitted the use of eminent domain to address blight, after a redevelopment plan had been adopted. Current Utah law does not permit redevelopment agencies to use eminent domain. Cities and counties may use eminent domain for purely public projects. Additionally, in Utah, several private entities, such as irrigation companies and utilities may use the power of eminent domain to acquire needed property.

- c. State Office of Private Property Ombudsman: In 1997, the Utah State Legislature created the State Office of Private Property Ombudsman so that there would be a professional who is available to mediate between private property owners and government agencies on issues related to eminent domain and takings.<sup>5</sup> Utah is the only state that offers property owners an ombudsman to help them sort out their rights. The ombudsman works with property owners affected by takings from all government agencies—UDOT, municipalities, counties, special districts, and RDAs. According to Craig Call, the State’s Ombudsman since the creation of the office, more than 75% of the time, the property owners don’t understand or misunderstand what is happening. In 25% of the cases, the property owner is raising serious questions about the way in which the government entity is operating. For 15% of the cases, the government entity needs to make a correction in what they are doing and in about 10% of the cases, the issue is a serious difference that cannot be resolved by him and the issue goes to court.

In an interview with Craig Call conducted for this study, he stated that he rarely gets involved in RDA cases and that most redevelopment cases involve answering questions about the process. When he is contacted early enough, he encourages landowners to become involved before the redevelopment plan is adopted when they can influence the ultimate outcomes. However, he more often assists owners to sort out issues of fair compensation when a condemnation action is pending.

When asked if RDAs were to be given the power of eminent domain again, what he would change to make it more fair, Mr. Call suggested that changes be made to the Utah Relocation Act so that it no longer would severely limit the amount of money an RDA can spend on re-establishing a business in a new location or compensation for a loss of goodwill related to its old location. While there is no cap on moving the furniture and fixtures, there is a \$10,000 cap on retrofitting the new location for the business, paying higher rents, advertising, utility connections and other costs of reestablishing the business such as buying new fixtures if the old

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<sup>5</sup> A “taking” may occur when a government agency eliminates the productive use of property by a private party. Typically, the private party seeks either compensation or limitation of the government restriction.

ones can't be moved. Often the \$10,000 cap is inadequate. He would also like to require that property to be condemned be "essential to the proposed use."

The State Ombudsman feels his office should not advertise since such advertisements would appear to be looking for trouble with actions of the various government agencies. However, RDAs exercising eminent domain usually notify the affected property owners of the State Ombudsman's services. He also organizes seminars and classes to increase the visibility of his office. Many people find him through the internet and webpage.

- 4. Loss of Taxes by Counties and Schools** -- The Utah Taxpayers Association and the Salt Lake County Auditor were raising concerns about distortions in the property tax structure caused by increasing use of tax increment. They argued that a portion of the taxes levied by the schools and county services were not going to pay for schools and county services, but to pay for redevelopment and economic development activities. The opponents also were concerned that if money going to RDAs from the school district and county levies were needed by schools and counties, then tax rates paid by everyone had been forced upward. They further argued that if the tax increment was not needed by schools and counties, then tax rates could be lowered if RDAs could not tap into this source of funds.

Proponents argued that often it is not necessary for county or schools to provide services directly to a project where tax increment was used and the investment of tax increment resulted in a long term increase in the tax base of all taxing entities.

According to the Utah Office of Legislative Research, in 2003 the amount of tax increment going to RDAs in the state was \$70M which is 4.7 percent of the total property tax charged in the state. Estimates have been made that in 2005 the amount will be \$100M. Although each area in the state is slightly different, in most 50-55% of property tax supports schools through local school districts plus levies that go to the Utah State Office of Education. Therefore, it is assumed that about half the tax increment amount would go to schools if it had not been earmarked for the redevelopment agencies.

The basic mission of RDAs to redevelop areas that were perceived to be eyesores or a danger was not under attack. Similarly, the use of tax increment within economic development project areas created to attract new jobs to the state was not an issue with most of the opponents.

During the 2005 Utah Legislature, a moratorium was placed on creating new redevelopment project areas. The Legislature reiterated that retail was not a permitted use in an economic development project area. (It continued as a permitted use within a redevelopment project area.) The Legislature also

eliminated the use of eminent domain for redevelopment within the State of Utah. While this is often covered in the press as eliminating eminent domain for economic development purposes, eminent domain use for economic development has never been possible in Utah.

## **B. WHAT THE LEGISLATURE DID ABOUT THEIR CONCERNS**

1. 2005 LEGISLATION: The law governing Redevelopment Agencies, 17B-4-101 to 1401, was much debated in the 2005 Utah State Legislature resulting in the last minute passage of an amendment, SB-184 that modified the Redevelopment Agencies Act. SB-184 includes the following provisions:

Prohibiting a redevelopment agency from:

- a) adopting redevelopment project area plans between 7/1/05 and 6/30/06 unless a blight study has been completed by certain dates;
- b) using eminent domain to acquire property;
- c) amending to increase the size of a project area;
- d) amending the tax increment budget to lengthen the time tax increment is paid;
- e) receiving tax increment for more than 25 years from a project area unless previously approved;
- f) receiving tax increment during a certain period if it is attributable to property devoted to retail sales in an economic development or housing development project area; and
- g) using tax increment to pay for a stadium or arena.

Eliminating:

- a) provisions authorizing additional tax increment for a convention centers sports complexes, cable television and public telecommunications services, an I-15 interchange or relocation of agriculture related businesses;
- b) a provision that defines incidental or subordinate development of retail sales to include sales from a convention center or sports complex; and
- c) a provision that allows larger cities to use tax increment from one project area in another project area.

Requires:

- a) a finding of blight to be approved by the taxing entity committee; and
- b) a specific method for appointing county taxing entity committee representatives; and
- c) made other modifications.

## 2. PERFORMANCE AUDIT OF REDEVELOPMENT AGENCY

PRACTICES: The Legislature requested the Office of the Utah Legislative Auditor General to conduct a performance audit on Redevelopment Agencies.

The audit was completed and published during the 2006 Legislative session before passage of SB196. The items addressed are summarized below.

- (a) **Large Areas of Undeveloped Land are Included in Redevelopment Projects:** Of ten redevelopment projects surveyed, the audit found that seven had some or significant areas of undeveloped land. This is allowed under the Utah Code that permits questionable structures to qualify large areas of undeveloped land as part of a redevelopment project.
- (b) **Blight Factors Need Clarification and Consistent Application:** Blight factors are defined so broadly that almost any area could be considered blighted
- (c) **“But for” Test:** Redevelopment Agencies should include a cost benefit analysis to determine if a redevelopment project is needed or if the project would be completed by the free market.
- (d) **Statutory Guidance Should be Improved:** State statute should define legislative goals for redevelopment
- (e) **Roles and Responsibilities Need Clarification:** Taxing Entity Committees are being asked to make financial and land-use decisions concerning developments even though they lack expertise. These include decisions about budgets of proposed developments, project times, size, and waivers of restrictions of tax increment financing to the total taxable value of property in the RDA.
- (f) **Greater Oversight is Needed:** Taxing Entity Committees provide little oversight of RDA projects after initial approval. The audit recommends that the taxing entity committee meet on approved projects at predetermined intervals.
- (g) **Inadequate Separation of Project Area Expenses:** Most RDAs do not keep expenses separate for each redevelopment project making it impossible to determine how tax increment has been spent. The audit recommends that the Legislature consider requiring RDAs to maintain separate expense records for each project.
- (h) **Representation on Taxing Entity Committee Needs to be Revisited:** Five entities are represented on the taxing entity committee but 3 of the 5 have 2 votes each while the other 2 have only one vote each. The audit recommends that the Legislature require a supermajority of three-fourths of committee members for approval of project budgets or findings of blight.
- (i) **Mitigation Can Influence Taxing Entity Votes:** Utah Code allows RDAs to provide taxing entities with mitigation funds to offset their potential loss in revenue from tax increment financing. Mitigation agreements may influence taxing entities to vote for a proposed project. If RDAs only mitigate with one taxing entity this practice is unfair to others. The audit recommends that the Legislature require RDAs to mitigate with all taxing entities proportionally on property tax distribution or not mitigate with any taxing entity.

- (j) **Cities Need an Instrument for Land Assembly:** Because acquiring land can be essential to viable projects, the audit states that the Legislature should reconsider the decision to eliminate the use of eminent domain for land assembly.

## V. PROPOSED CHANGES IN RDA LAW

### A. SALT LAKE COUNTY AUDITOR'S OFFICE PROPOSAL

The Auditor's office proposed that an RDA have direct taxing authority so that the tax would be more transparent and taxpayers living outside of an RDA but within a taxing entity affected by the RDA would not be impacted. The proposal included reduction in some taxes so that the tax effect would be as neutral as possible.

This proposal was not considered.

### B. STATE OFFICE OF EDUCATION PROPOSAL

The State Office of Education's proposal included the following items:

- Economic development limited to jobs new to the State;
- No retail allowed in Economic Development Areas;
- Office buildings allowed in Economic Development Areas only if they contribute new jobs to the area;
- Objective criteria for definition of blight;
- Important decisions on length of project and amount of tax increment approved by a supermajority of the taxing entity committee;
- RDA projects limited to 5% of property tax in community;
- No use of statewide School District Basic Rate for Community Development projects; and
- Annual filing requirements developed by the state auditor to provide a basis for reviewing compliance.

The blight criteria were addressed in the new legislation. Specific reporting requirements are included in the new law. Other items were not considered.

## VI. 2006 LEGISLATION

In the 2006 session, the Legislature passed S.B. 196 which addressed the concerns of the state Legislature, made permanent most of the interim changes passed in the 2005 legislature, changed the term redevelopment to urban renewal and introduced a completely new category of development, Community Development.

## A. TAXING ENTITY COMMITTEES

The major change in 2006 was a higher voting requirement for the use of *property* tax increment in redevelopment and economic development project areas. Formerly, a majority of the taxing entity committee had to approve using *property* tax increment. Under the 2006 law, two-thirds of the members present at the meeting must approve its use. For a city, at least five members must be present for the vote to occur; for a county, at least four members must be present.

The taxing entity committee must review and approve RDA project area budgets annually. The much higher hurdle to obtain approval for the use of tax increment appears to have given the Legislature comfort that the taxing entity committees would now have the power to control the proliferation of RDAs. Therefore, several legislative limitations on the use of redevelopment and economic development authority were removed. These include:

- No limitation on the time period that tax increment can be collected. The 2005 limitation of 25 years was removed in 2006.
- Plans and project area budgets can be amended with appropriate approvals. The 2005 prohibition on amendments was removed in 2006.
- No limitation on the percent of the property tax base that can be subject to tax increment collection for economic development and community development project areas. The previous limitation of 10% of the tax base being devoted to fund all types of project areas now only applies to redevelopment project areas.
- No limitation on the size of project areas. Previously, project areas could include no more than 100 acres of privately owned property.
- Elimination of requirement that the redevelopment or economic development begin within 3 years of plan adoption.

## B. USE OF SALES TAX

The 2006 law also allows RDAs to use sales tax to fund project areas. But, use of *sales* tax is not determined by the taxing entity committee; it is determined by the elected legislative body which would normally include the sales tax in its budget. Retail is no longer forbidden in economic development project areas, although RDAs may not use *property* tax increment to subsidize a retail project within an economic development project areas. RDAs can now use *sales* tax to subsidize retail within all types of project areas, if approved by the appropriate elected legislative body. RDAs are also specifically exempt from the 2005 law forbidding cities from using sales tax to lure big box stores to town. We can anticipate significant use of RDAs in the future to attract big box retail developments.

## C. COMMUNITY DEVELOPMENT TRACK

The 2006 Legislature introduced a new, third track for projects that are not in blighted areas or do not create jobs. Cities and counties can now create Community Development Project Areas to pursue any community development objective that the city or county feels is an appropriate use of public funds. Under the community development track, a project area is established and a project area plan is adopted, but sales or property tax increment can be used only if the board of each taxing entity approves the use of its levy for the community development purpose. Therefore, in a community development project area, it will be possible for one or two taxing entities to permit the use of their tax increment from the area while the remaining taxing entities make no contribution. Theoretically, if it is a good project, the urban renewal agency may be able to obtain the funding; if it is not a good project, the other agencies will choose not to fund. For good projects, it will be less expensive to the taxing entities to fund projects under the community development track since there is no requirement that 20% of the funding be used for affordable housing.

The 2006 Legislature imposed no restraint on the type of project that can be funded under the community development track. As a result, several areas which were identified as problems under the old law may reassert themselves as problems again. However, the difficult process to obtain funding under the community development track is expected to dramatically limit the use of increment from all taxing entities except cities. But, it may open many new ways to use the tax increment from municipalities. Two examples may illustrate the breadth of the new law.

The new law creates a loophole through which municipalities may directly subsidize a private development. In the past, municipalities could contribute whatever funding they felt appropriate to an RDA project, but the project had to achieve the public goals of bringing back a blighted area or job creation. For a community development project, these limitations no longer exist. Thus, through an RDA, a municipality can now subsidize a greenfields, high income, housing development if they choose to do so.

The new law also creates a loophole allowing municipalities to use both city property tax and sales tax to directly fund big box stores since there is no restriction on the use of local taxes to subsidize retail development under the community development track. There is also a specific release from the section of the law that forbids the use of local sales tax for big box stores if the money is funneled through an urban renewal (RDA) agency. It is probable that cities will have many requests for using taxes in previously unacceptable ways under the community development track.

#### D. CHANGES RELATED TO REMOVAL OF EMINENT DOMAIN

When RDA's had the power of eminent domain, the law included several protections for property owners. Most of these protections were removed in the

2006 legislation. The protections removed include: receiving notices by certified mail; a requirement that the agency have a hearing to better understand the plans of the property owners; and requirements that existing property owners be given first right to redevelop if they can do so in accordance with the adopted plan. Without eminent domain, the RDAs have no way to force owners to redevelop if they do not wish to do so.

Without the ability to use eminent domain for development, the fact that the Office of Property Rights Ombudsman was moved to the Department of Commerce is not important to the effect of the law on property owners.

### **Those interviewed for this study:**

Bramble, Senator Curtis  
Business Owner, Eddie Stegen, Stegen's Auto Parts and Service  
Community Activist, Dorothy Littrell, Property Owner, 21<sup>st</sup>-22<sup>nd</sup> Street Project Area  
Economic Development Corporation of Utah, Jeff Edwards, Executive Director  
Ogden Redevelopment Agency, Richard McConkie, Deputy Director  
Ogden Resident, Cris Rodriguez, Property Owner, 21<sup>st</sup>-22<sup>nd</sup> Street Project Area  
Ogden School District, Eugene Hart, Business Administrator  
Utah League of Cities and Towns, Lincoln Schurtz  
Utah State Office of Education, Larry Newton, School Finance Director  
Utah State Office of Private Property Ombudsman, Craig Call, State Ombudsman  
Utah Taxpayers Association, Mike Jerman  
Weber County Commission, Camille Caine, Commissioner

### **League of Women Voters of Utah Redevelopment Agency Study Committee:**

Marilyn O'Dell, Chair  
Alice Steiner  
Pat Nielsen  
Marilyn Smith

### **League of Women Voters of Utah Study Editing Committee:**

Pat Brim, Chair  
Nanette Benowitz