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10th Circuit Revises Urban Renewal Decision

A new footnote in the opinion clarifies when a municipality is required to notify a property owner of a blight finding

BY **CHRIS OUTCALT**
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The U.S. Court of Appeals for the 10th Circuit on July 31, revised its opinion in M.A.K Investment Group v. City of Glendale and Glendale Urban Renewal Authority, narrowing the application of the earlier decision that held municipalities must notify individual property owners after determining their property is blighted.

The original opinion issued on May 14 seemingly applied to any finding of blight by a municipality. However, a footnote in the recent revised opinion clarified that the decision "only concerns the notice due when a property owner has a right to challenge a blight determination that can lead to transfer of the property."

Barring a petition for cert to the U.S. Supreme Court, the case will be remanded to the trial court for further proceedings.

Brownstein Hyatt Farber Schreck shareholder Carolynne White, co-chair of the firm's real estate department, said the initial decision was "surprising." She said several of her clients were concerned about what they felt was a new broad requirement for notice. "There are somewhere in the neighborhood of 150 urban renewal plans all adopted prior to this court case, and I would wager that none of them provided that individual notice because it was never required," White said. "I still think the original decision was wrong, but the clarification significantly improves the situation for everyone who wants to do an urban renewal project."

Lawyers from Ireland Stapleton Pryor & Pascoe as well as Kirkland & Ellis represented M.A.K. in the case. Ireland Stapleton associate James Silvestro said he was still happy with the revised opinion. "It's a huge deal for the clients and a huge deal across the state," Silvestro said. "The 10th Circuit has put some guardrails on the urban renewal law we felt like were always missing. For this client in particular, what happened, in our view, was very unfair."

M.A.K. Investment group filed its district court complaint in 2015. The company argued that its due process rights were violated when the city of Glendale found at a public meeting that property owned by M.A.K. was blighted but did not tell M.A.K. about the finding. That determination switched on two important clocks. The first was a 30-day countdown during which M.A.K. could appeal the decision; the second was a seven-year span in which the city could condemn the property under Colorado's urban renewal law.

M.A.K did not learn about the blight finding until about five months after the 30-day appeal window had closed. In its complaint, M.A.K. alleged that prior to the meeting someone from the company met with a Glendale representative and "asked what 'blight' meant and whether M.A.K. should take any action in response." The city rep, M.A.K. alleged, said the company "did not need to worry about the notice."

Colorado's urban renewal statute allows a municipality to find a property blighted if it meets at least five of 11 blight factors. The determination "must be made at a public hearing." Additional notice is required "(1) when the city begins a study regarding blight involving their properties, and (2) when the city will hold a hearing regarding its intention to acquire the property for public or private redevelopment." Additionally, as the 10th Circuit notes in its opinion, "strangely enough, Colorado's statute requires a city to mail notice to those whose property it does not find blighted, but does not require a city to notify those whose property it does find blighted."

In its suit, M.A.K contended the urban renewal statute violated the due process and equal protection clauses of the 14th Amendment. The district court, however, ruled in favor of Glendale, stating that M.A.K. "did not have due process rights at stake because the blight determination was legislative in nature."

The 10th Circuit reversed the district court's decision to grant Glendale's motion to dismiss, finding in favor of M.A.K. Judge Timothy Tymkovich wrote the opinion. "Accepting M.A.K.'s allegations as true, we hold M.A.K. has a protected property interest in the statutory cause of action for abuse-of-discretion review. Because Glendale's failure to notify M.A.K. of the blight determination effectively deprived M.A.K. of this right, Glendale violated M.A.K.'s right to due process. Had M.A.K. learned about the blight determination, M.A.K. could have found out for itself what remedies it could pursue."

The 10th Circuit Court of Appeals issued a revised opinion that narrows an earlier ruling that changes how municipalities must notify property owners of blight determinations. / **LAW WEEK FILE**

Tymkovich went on, "What the Due Process Clause required here was not so much to ask — merely a letter, an envelope, and a stamp. The Supreme Court has repeatedly held that notice by mail is practically 'a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party."

Following the initial ruling, White filed an amicus brief in the case on behalf of the Colorado Municipal Bond Dealers Association. She said she didn't think for a minute that Glendale was unreasonable not to provide notice because "it's never been required before."

"The court obviously felt there was a due process issue here even though this has never been held to be a due process issue previously," White said. "There's no question in my mind that the court was influenced by the facts as they were alleged in the complaint." White added, "I think as a practical matter, cities and urban renewal authorities going forward are going to rely on the side of over-noticing because of this decision."

Glendale deputy city manager Chuck Line said the city still disagrees with the ruling but that he feels it's a lot cleaner than it was originally. "The city of Glendale is confident in this case, but that doesn't necessarily mean we're happy with the ruling," Line said. "It's a huge change; it's a paradigm shift in how the urban renewal law has been administered."

Line said he believes there's "still a lot of meat on the bone" for the district court, and that Glendale is prepared to refute some of the allegations in the initial complaint. "When we get into the case I think a lot of facts will come out that will show a lot of those are exaggerations or not true," Line said. "But that's what cases are for — people make allegations and the court gets to determine which ones are true and which ones are not."

Regardless of the revisions to the opinion, Silvestro said from M.A.K.'s perspective the headline remains the same: "This is a huge win for us that says the government needs to provide sufficient notice from the get-go." •

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