

August 3, 2018

10th Circuit Issues Revised Opinion Clarifying When Individual Notice of Blight Determination Required

Court Clarifies Individual Notice Requirements in M.A.K. Investment Group, LLC v. City of Glendale and Glendale Urban Renewal Authority

As we discussed in a [previous alert](#), on May 14, 2018, the U.S. Court of Appeals for the 10th Circuit issued a surprising ruling establishing that a municipality must provide individual notice to property owners whose property is located within an area determined to be blighted after such determination is made, despite Colorado's urban renewal statute providing for numerous other notice requirements.

However, on July 31, 2018, the court issued an amended opinion in which it clarified the circumstances under which individual notice is required by adding the following footnote:

Our 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. We do not here decide how much notice due process would require if a property owner had a cause of action to challenge a blight determination, but that blight determination could not lead to a transfer of the property.

With the addition of this footnote, the court limits the potential application of its decision to only those circumstances where a blight determination could lead to a transfer of property. Although it is not express in this language, presumably the court means an involuntary transfer of property, because it is unlikely that a property owner engaging in a voluntary transfer of his or her property would have any reason to challenge a blight determination.

With this change, urban renewal projects that will not result in an involuntary transfer of property should be able to proceed, even if individual notice of a blight finding was not provided when the plan was originally adopted.

The court also made a few other minor changes to the opinion regarding which changes apply to issues specific to Glendale.

The revised decision was issued following the filing of briefs requesting rehearing by several amici, including the Colorado Municipal Bond Dealers Association (CMBDA), the Colorado Municipal League (CML), the Special District Association (SDA) and Downtown Colorado Inc. (DCI). These briefs pointed out the potential harm to numerous pending real estate and financing transactions throughout the state that could result from the ambiguity of the original opinion.

The entire opinion can be read [here](#).

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