May 22, 2018

10th Circuit Holds Colorado's Urban Renewal Statute Violates Due Process in M.A.K. Investment Group v. City of Glendale

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. Accordingly, this ruling creates a requirement that a municipality provide notice to property owners both before *and after* the condition survey (blight study) is performed, even though the after-notice is not required by statute.

The case, ***M.A.K. Investment Group, LLC v. City of Glendale and Glendale Urban Renewal Authority***, originated in the U.S. District Court for the District of Colorado, where the plaintiffs alleged that Colorado's Urban Renewal Statute violates due process because it does not require municipalities to notify property owners about an adverse blight determination or the 30 days owners have to seek review. No. 15-CV-02353 (D. Colo. 2015). Although the statute provides that both public and individual notice be provided whenever a city council will hold a hearing to consider an urban renewal plan, and individual notice of the commencement of a blight study, it does not require individual notice to property owners *after* a city council determines that blight exists within an area that includes their property.

The district court granted Glendale's motion to dismiss on the due process claim, holding that M.A.K. did not have due process rights at stake because the blight determination was legislative in nature. However, on appeal to the 10th Circuit, M.A.K. argued that because the statute provides the right to seek review for abuse of discretion of a blight determination, it therefore has a state-created cause of action that cannot be affected without due process. The 10th Circuit agreed and reversed the district court's grant of the motion to dismiss, holding that M.A.K. has a procedural property interest in obtaining review. As such, the statute was unconstitutional as applied to M.A.K. because M.A.K. did not receive notice that Glendale found its property blighted.

Background

In 2004, the City of Glendale approved the adoption of the "Glendale Urban Renewal Plan," the purpose of which was to remediate blight within certain designated portions of Glendale. In 2013, the Glendale City Council redefined the boundaries of the Urban Renewal Plan Area, which included property owned by M.A.K., finding that the revised plan area was blighted and appropriate for urban renewal.

Procedural Due Process Inquiry

Prior to deciding the issue of sufficiency of notice under the statute, the court first determined that M.A.K. had a constitutionally protected property interest at stake because the statute provides the right to seek review for abuse of discretion. In other words, because the statute provides property owners the right to bring a cause of action within 30 days to challenge the blight determination process for abuse of discretion, such state-created cause of action is deemed an entitlement that cannot be removed without due process. Glendale argued that M.A.K. cannot have a property interest in judicial review because the blight determination does not adversely affect its property value. However, the court disagreed and held that M.A.K. has a procedural property interest in obtaining review simply because the statute provides an entitlement to reversal for abuse of discretion, regardless of the effect such determination has on its property values. The court emphasized the fact that a blight determination creates the legal authorization for an urban renewal authority to acquire private property by eminent domain for a period of up to seven years following such determination

The court then inquired as to the type of notice required by due process. The court concluded that due process required the city to provide M.A.K. with individual notice of the adverse blight determination by means of mail, email or personal delivery.

Glendale also argued that the statutory right to review is not lost because the statute allows a property owner to challenge the original blight determination if and when condemnation proceedings begin if that is after the 30-day challenge period in the statute. The court rejected this argument, reasoning that such challenge during condemnation proceedings does not preserve the cause of action for immediate review of the blight determination itself.

Practical Implications and Recommendations

For new urban renewal plans adopted from this point forward, it is recommended that municipalities now need to provide the additional, individual notice required by the court, in addition to all of the other notices required by the urban renewal statute. In particular, upon adoption of a determination of blight by the municipality's governing body, the urban renewal authority should provide individual notice to property owners whose property is determined to be blighted.

However, for existing urban renewal plans, the court's holding has created considerable uncertainty among municipalities, urban renewal authorities, property owners, developers and lenders about whether they can proceed with planned activities and undertakings. For such activities, an individualized analysis of the potential applicability of the court's holding to the facts of each situation will need to be undertaken. It may be possible to distinguish the facts of this case from those in other urban renewal activities such that remediation of blighted conditions can proceed in some situations.

Along those lines, it should be noted that this case reached the 10th Circuit by means of an appeal from a Motion to Dismiss, which means the court had to accept all of the facts alleged by the plaintiffs in the complaint as true.

Carolynne C. White
Shareholder
cwhite@bhfs.com
303.223.1197

Tai J. Palacio
Associate
tpalacio@bhfs.com
303.223.1276

Catherine A. Hildreth
Associate
childreth@bhfs.com
303.223.1263