COMMUNITY DEVELOPMENT AND URBAN RENEWAL (AKA REDEVELOPMENT): An Explanation of the Tax Increment Process in Utah

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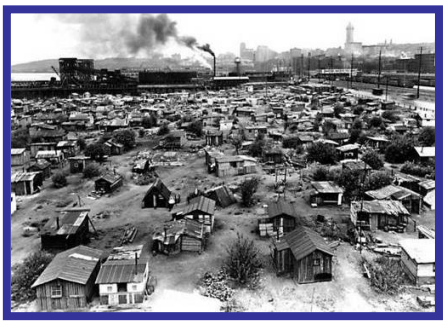
Introduction

Tax increment financing—also commonly referred to as TIF, Redevelopment, RDA, Community Development, Economic Development, Urban Renewal, CDRA, or CDUR—helps local governments turn the corner on unproductive, undeveloped, or blighted property. In a nutshell, tax increment financing allows local governments to funnel property tax revenues toward specific areas where the money can help achieve targeted, planned development goals. The goal may be job creation, increased tax base, or enhanced quality of life. In brief, tax increment financing is the legal tool provided to local governments in Utah for the development and redevelopment of thriving communities.

1. The History of Redevelopment in Utah.

1.1 Federal Roots.



Redevelopment first came to Utah in 1969 as the Utah Neighborhood Development Act, derived from California's Community Redevelopment Law.[1] The impetus behind both the Utah law and its California template was a growing concern for the urban decay eating away at American cities in the late '30s (but about which no one could really do anything until war spending ended in 1945). In 1937, for example, before the war had begun, the federal government had budgeted a significant sum to the subsidy of low-rent housing developments—driven by the misery of the Great Depression. California's 1945 redevelopment enactment was followed four years later by the 1949 partial federal subsidy of local government slum clearance,[2] itself followed by the 1954 federal mandate requiring the adoption of local relocation regulations.

1.2 Utah Redevelopment—the Early Years.

Utah's first, somewhat timid, foray into this area began in 1965, with the passage of the Utah

[1] Passed in 1945, and now codified at CAL. HEALTH & SAFETY CODE § 33000 *et seq*.

[2] This was the a result of the federal Housing Act of 1949, which funded 2/3 of city acquisition of slum areas which were then turned over to private developers to construct new housing. It was actually called "urban redevelopment" at the time. "Urban renewal," *http://en.wikipedia.org/w/index.php?title=Urban_re newal & oldid=204828472*.

Community Redevelopment Act, which allowed certain development projects upon community approval. It was not until 1969, however, that the Utah legislature adopted a set of full-blown redevelopment provisions: the 1969 Neighborhood Development Act provided for the creation of local redevelopment agencies and the establishment of tax-increment financing.[3]

Eight years later, in 1977, the Utah legislature empowered redevelopment agencies to issue bonds to cover housing rehabilitation loans. In 1983, in response to various concerns about lengthy diversion of tax-increment, the Utah legislature limited the length and size of projects to 32 years and 100 acres, unless a committee of affected taxing agencies—now called the Taxing Entity Committee—agrees to waive the limitation (*see* UCA § 17C-1-402). The 1983 legislation also limited the time during which tax increment could be collected to 25 years, in decreasing percentages (called the "Haircut") every five years over the life of the project.[4] 1983 also saw the beginning of owner participation in project development, in response to the agencies' power of eminent domain.

1.3 EDAs, TACs, and Affordable Housing.

In 1993, ten years later, the legislature created another species of tax increment financing called economic development. Created specifically to create jobs, the economic development track forbids the use of eminent domain. Also banned from economic development areas was retail development: retail sales beef up a local tax base, but they don't create nearly as many jobs as manufacturing and office uses do. The 1993 act also changed tax increment financing, removing the haircut provisions and requiring a carefully planned budget specifying how much increment an agency planned to use.

1993 also saw taxing agency committees (or TACs, as they were then called) empowered to review and approve project area budgets. But five years later, in 1998, the legislature created an

[3] *See* § 3.1, below.

[4] This provision meant that an agency had to begin taking increment within seven years after initiating a project, or lose increment years at the end.

exception to assist Lt. Governor Olene Walker's initiative for the creation of more affordable housing in Utah. As an incentive, taxing agency committee approval was made unnecessary if a project area budget allocated to the Olene Walker Housing Loan Fund 20% of the tax increment arising from a project area. In the 2000 general session, SB186 (Sen. Stephenson), reinstated the taxing agency committee approval requirement. When the Olene Walker Housing Loan Fund Board learned of the bill, they lobbied to keep their 20% allocation. The result, unsurprisingly perhaps, was to change the thitherto optional 20% allocation into a mandate.[5]

1.4 Renaissance—The Redevelopment Agencies Act.

In 2001, after more than a year of discussion, the Neighborhood Development Act was entirely repealed and replaced by the Redevelopment Agencies Act (HB007S01, Rep. Harper), which deleted much of the unnecessarily complicated, often recursive ormolu that cluttered the earlier act. The Byzantine convolutions of the pre-amendment act were sometimes wryly described as "land mines," because of the seemingly innumerable ways to get it wrong.[6] This year also saw the enactment of SB 70 (Sen. Stephenson), which required any taxing agency committee representative of a school district to justify any vote in favor:

> Each time a school district representative or a State School Board representative votes as a member of a taxing agency committee to allow an agency to be paid tax increment or

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[5] Another bill, SB230 (sponsored by Sen. Valentine) created a new development track called "education housing development," the purpose of which was the creation of student housing. No agency ever used this track, however, and it was repealed by 2006 SB 196 (Sen. Bramble).

[6] The consequences of error in the redevelopment process are disproportionately severe, for the Utah Supreme Court has declared meticulous adherence to the provisions of the Act to be jurisdictional:

> "because redevelopment is a serious action that may be in derogation of individual property rights, ... ***strict compliance*** with the enabling legislation is required to enact an ordinance setting up a redevelopment plan." Although the Utah Neighborhood Development Act "is broad in scope and must be interpreted to delegate to the agencies ample power to serve the purposes of the Act, *i.e.*, to alleviate blight, it is necessary that the legislation enabling this grant of authority be strictly followed."

Johnson v. Redevelopment Agency of Salt Lake County, 913 P.2d 723, 729 (Utah 1995) (quoting *Murray City Redevelopment,* 598 P.2d at 1344 (Utah 1979) (emphasis added). Since the various notice provisions under the old act were alarmingly complex and distressingly expensive: repeated published notices, including sizable budget hearing display ads; certified mail notices to owners within, as well as within 300 feet of, a project area (amounting sometimes to hundreds of parcels and as many hours gathering owner names from County recorders); notices to all of the taxing entities levying taxes in the project area; published notice for the (nearly always necessary) local government assistance (usually a loan to the agency to be paid from tax increment); and the fact that all but one of these were required for each hearing. The wonder of the thing, frankly, was that any projects ever even got off the ground—a fact we may justly ascribe as much to potential challengers' inability to navigate the labyrinthine statutory maze of redevelopment law as to the several agencies' successfully doing so.

> to increase the amount or length of time that an agency may be paid tax increment, that representative shall, within 45 days after the vote, provide to the representative's respective school board an explanation in writing of the representative's vote and the reasons for the vote.

(SB 70 (2001 General Session), § 1 (UCA § 17A-2-1247.5(2)(d)).) Many observers saw in this language calculated intimidation of school district representatives so as to deter them from voting in favor of any project area budget. The language, however, has not been challenged in the seven years since its enactment.

1.5 Blight by Definition.

2003 saw superfund sites declared blighted by definition. This made it possible to undertake redevelopment (using tax increment financing to cover clean up, at least partially) without the trouble of a blight hearing without regard to the presence or absence of other blight factors.

1.6 The Battle for Eminent Domain—Round One

Just a few moments before midnight on the last evening of the 2005 general legislative session, in a close-fought legislative battle involving various procedural questions and vote changes, SB184S02 (Sen. Bramble) forbade the use of eminent domain by redevelopment agencies (except where obtaining land from a member of an agency board). Anti-redevelopment groups were ecstatic, declaring victory over what they saw as abusive and unconstitutional corporate welfare, while partisans of redevelopment darkly foretold that individual owners of blighted properties would be able to hold agencies hostage by refusing property remediation or participation—essentially thumbing their noses at legislative blight policy and eviscerating the act. To add to the victory, SB184S02 also required agencies to submit their findings of blight to the taxing entity committee for ratification, turning the TEC (as it is called) essentially into an oversight committee.

Anti-RDA feeling ran high at the 2005 General Session

1.7 Inactive Industrial Sites.

The 2006 legislature passed SB245 (Sen. Bramble), which recognized "inactive industrial sites" as blighted by definition (much as the 2003 legislature had done with superfund sites). An inactive industrial site is at least 1,000 acres (surrounded by a perimeter up to 1,500 feet wide) occupied by "an inactive or abandoned factory, smelter, or other heavy industrial facility … require[ing] remediation because of the presence of hazardous or solid waste." UCA § 17C-1-102 (21)(2008). This was small comfort for the beleaguered pro-redevelopment camp, however, for although the automatic blight status made TEC ratification unnecessary, the bill was specifically aimed at the brownfield remediation of the abandoned Geneva Steel land in Utah County. And there simply aren't all that many inactive industrial sites awaiting remediation out there.[7]

1.8 The New 17C: Urban Renewal and the New Community Development Track.

The biggest change in redevelopment law since 1993, however, was the 2006 legislature's enactment of SB 196S02 (Senator Curtis S. Bramble), throwing out the Redevelopment Agencies Act entirely, enacting in its place Title 17C, entitled "Limited Purpose Local Government Entities—Community Development and Renewal Agencies," UCA § 17C-1-101. The new Title did away with the term *redevelopment*,[8] rechristening the mechanism "community development and urban renewal," a rather awkward moniker which has yet to catch on. *Redevelopment* agencies (termed *RDAs*) became *community development and urban renewal* agencies or CDURs (pronounced like "cedars").

With the new title came a new development track: "Community Development" (UCA Chapter 17C-4), a far less restrictive approach to tax increment finance focusing on negotiation

[7] SB 245 (2006) defines and "inactive industrial site" as at least 1,000 acres occupied by "an inactive or abandoned factory, smelter, or other heavy industrial facility" which "requires remediation because of the presence of hazardous or solid waste" industrial site." Such a site "includes a perimeter of up to 1,500 feet around" it.

between agencies and individual taxing entities. Itself the result of many long hours of negotiation, the community development provisions complemented the other two—Urban Renewal (*i.e.*, Redevelopment)("URA" or "RDA" for us habituated to the earlier name) aimed at blight remediation, and Economic Development ("EDA") aimed at job creation—with its much looser restrictions and lighter creation burden.

1.9 The Battle for Eminent Domain—Round Two.

A holdout

Community Development, although hailed as the great compromise in the ongoing RDA war, did not resolve the eminent domain issue. As it turned out, the anti-redevelopment party was forced to concede that the absolute ban on eminent domain took things too far, and that recalcitrant property owners were in fact refusing to budge (making blight remediation extremely difficult, if not impossible), and that those owners who wanted the tax advantages the "threat of eminent domain" bestows, found themselves out of luck.

In what reads rather like a peace treaty, the 2007 legislature enacted HB 365S01 and SB 0218S02, returning (a severely restricted form of) eminent domain to CDUR agencies as well as, on the other hand, mandating TEC ratification of a finding of blight unless the committee can demonstrate that the blight conditions found by the agency either do not exist within the project area or don't constitute blight, UCA § 17C-2-101(1)(b)(ii)(2008). This proviso, however, was countered on the other side by a provision allowing the TEC to hire a consultant, at agency expense, to determine whether blight does in fact exist, *id.*[9]

1.10 The 2008-2011 Legislatures

The tradition to tinker with redevelopment was observed yet again in 2008, 2009, 2010, and 2011. In 2008, SB 294 (Senator Curtis S. Bramble), simply added **"inactive airport sites"** to the 17C-2-303(1)(b) list of sites blighted by definition: superfund sites, inactive industrial sites, and inactive

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[8] Everyone involved in local government still calls it *redevelopment* though, or *RDA*.

[9] The Blue Book, of course, doesn't like people to use *id.* for statutory references, but I don't care.

airport sites. The bill's House sponsor, Rep. Stephen H. Urquhart, anticipating a potential political issue, added the following amendment to the law's provisions about governing boards:

Tremonton Airport

(1) The governing body of an agency is a board consisting of the current members of the legislative body of the community that created the agency.

(4) The mayor of a municipality operating under a council-mayor form of government, as described in Subsection 10-3-101(2): [10]

(a) serves as the executive director of an agency created by the municipality; and

(b) exercises the executive powers of the agency.

UCA § 17C-1-203. This amendment puts a council-mayor mayor in the same position relative to the agency board (in CDUR matters) as to the council (in municipal matters), avoiding the messy wrangling and possible lawsuits involved in giving all power over community development and urban renewal to the city council alone, as well as providing an executive to carry out adopted project plans—city councils in council-mayor government have no (lawful) executive power at all—which would otherwise sit forever pristine and executory, like Keats's Grecian Urn, with never a chance at realization.

In 2009, SB 205 (Senator Curtis S. Bramble), among other things, authorized agencies created by Counties to undertake redevelopment activities within a city or town, and also eliminated the 20% housing requirement in economic development project area budgets.

The Legislature in 2010, via SB 197S01 (Senator Curtis S. Bramble), enhanced the relationship between multiple project areas created by a single agency by allowing the agency to authorize loans of tax increment revenues created from one project area to another. The catch, however, is

[10] "The government of a municipality operating under the council-mayor form of government is vested in two separate, independent, and equal branches of municipal government consisting of: (a) the mayor, who exercises

that the local legislative body that created the agency must backstop the loan by pledging repayment of the loan from general funds if the recipient project area does not create sufficient tax increment revenues to repay the loan. SB 197S01 also provided an added layer of oversight to the project area creation process by imposing a new requirement for a licensed Utah attorney to provide a written opinion that all official actions taken by a taxing entity committee in connection with a project area fully comply with the Community Development and Urban Renewal laws.

In a continuing effort to work out kinks under the new three-track regime created in 2006, the 2011 Legislature again amended the Community Development and Urban Renewal laws by adopting SB 70S01 (Senator Curtis S. Bramble), which authorized extensions to existing project area budgets, and authorized mandatory tax increment funding for Closed Military Bases. SB 70S01 also made technical corrections, including narrowing the definition of Municipal Buildings—which an agency is generally not authorized to pay for with tax increment—and clarifying that taxing entity committee approvals are final and not subject to further review or repeal. Finally, SB 70S01 clarified that any estimates or reports created by an agency in relation to a project area are for informational purposes, which will help address a perpetuating problem with the way agencies have been underpaid on tax increment created in some project areas.[11]

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2. The Three Tracks.

Beginning in 2006, the Community Development and Urban Renewal law distinguishes three types of development: traditional REDEVELOPMENT (*quondam* "RDA"), now called **URBAN RENEWAL** ("URA"), the aim of which is the removal of "blight" (a statutorily defined term); **ECONOMIC DEVELOPMENT** ("EDA"), designed to create of jobs; and **COMMUNITY DEVELOPMENT** ("CDA"), providing for a much looser structure for tailoring individual projects to individual circumstances.

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executive powers and, under the mayor's supervision, the administrative departments and officers; and (b) a council of five or seven members, who exercise the legislative powers." UCA § 10-3-101(2).

[11] SB 70 also accommodated a change requested by the Utah State Office of Education to prohibit the scheduling of taxing entity committee meetings on a day on which the Legislature is in session. Of course, the taxing entity committee may agree, by unanimous consent, to waive this restriction. UCA § 17C-1-402(c).

2.1 Urban Renewal (the erstwhile Redevelopment): Blight Remediation.

Urban Renewal ("URA") laws are designed to facilitate revitalization of run-down, "blighted"[12] urban areas by giving special powers and incentives to do so. Special powers include eminent domain. Incentives include tax increment financing. The theory of Urban Renewal is that without special powers and incentives, blighted urban areas would remain blighted while development occurred in less expensive undeveloped areas.

2.2 Economic Development: Job Creation.

Economic Development Areas ("EDA's") sprang into existence in 1993. Part of the reasoning behind the legislation that allows the creation of EDA's was perceived misuse of traditional Urban Renewal and desire to create a new program better tailored to meet economic development rather than Urban Renewal of blighted areas. As Redevelopment (now Urban Renewal) was the only program available prior to 1993, many agencies sought to stretch the RDA law to meet situations it was likely not intended to address. A prime example was the use of RDA law to develop previously ***un***developed areas. The legislature determined that so-called "open field" Redevelopment was inappropriate but also recognized the municipal need to create projects where economic stimulus tools could be used.

These competing desires led to both the restriction of Redevelopment by tightening blight requirements and the creation of the EDA track, the goal of which was (and remains) job creation rather than blight elimination.

> "Economic development" means to promote the creation or retention of public or private jobs within the state through: **(a)** planning, design, development, construction, rehabilitation, business relocation, or any combination of these, within a community; and **(b)** the provision of office, industrial, manufacturing, warehousing, distribution, parking, public, or other facilities, or other improvements that benefit the state or a community.

See UCA § 17C-1-102(16).

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[12] "Blight" is a technical legal term. *See* § 4.2 below.

2.3 Community Development: A Separate Peace.

The 2006 legislature, as noted above (§ 1.8) created Community Development ("CDA") This third development track bears little of the step-by-step rigor of URA, or even the much less strict EDA; instead, CDA contemplates agency negotiation with one, some, or all of the relevant taxing entities regarding specific, desired projects. Because, like EDA, there is no eminent domain power connected with a CDA, and the fact that, or various reasons, taxing entities may find themselves unable or unwilling to take part, the legislature has granted CDA projects local sales taxes as an added source of funding.

In keeping with its much more relaxed approach, community development has a rather vanilla definition, unlike its URA and EDA siblings: "'Community development' means development activities within a community, including the encouragement, promotion, or provision of development." UCA § 17C-1-102(15). Of course, this tautological (and somewhat unhelpful) definition is fleshed out in much more useful detail in UCA Chapter 17C-4.

2.4 Conclusion to Part 2.

This paper reviews each of these tracks in turn: URA, EDA, and CDA. Before that, however, we must first examine the mechanism that makes redevelopment go: tax increment financing.

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3. Tax Increment: What Makes it All Go.

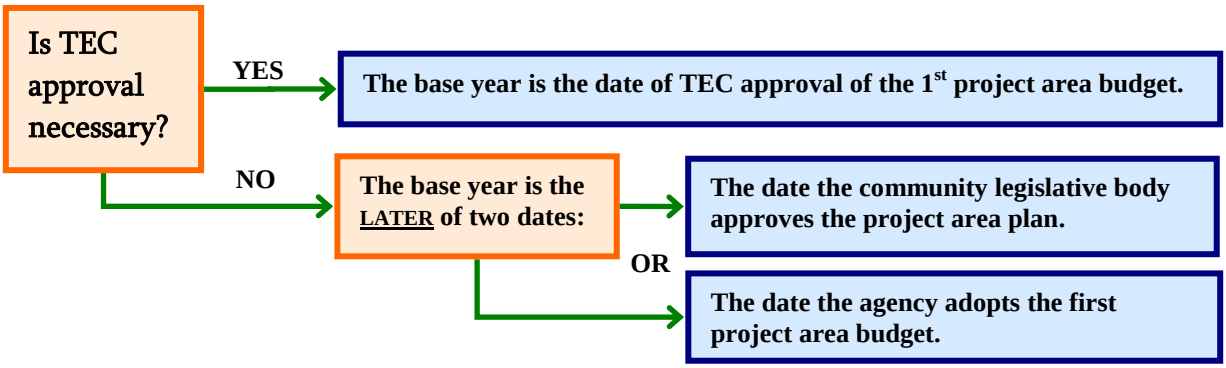
Tax increment financing (or "TIF")—the use of taxes arising from increased value as development capital—is the mechanism that makes redevelopment[13] go. In a sense, it is self-funding development, rotating available revenue back into the development which created it.

3.1 What Exactly *is* Tax Increment?

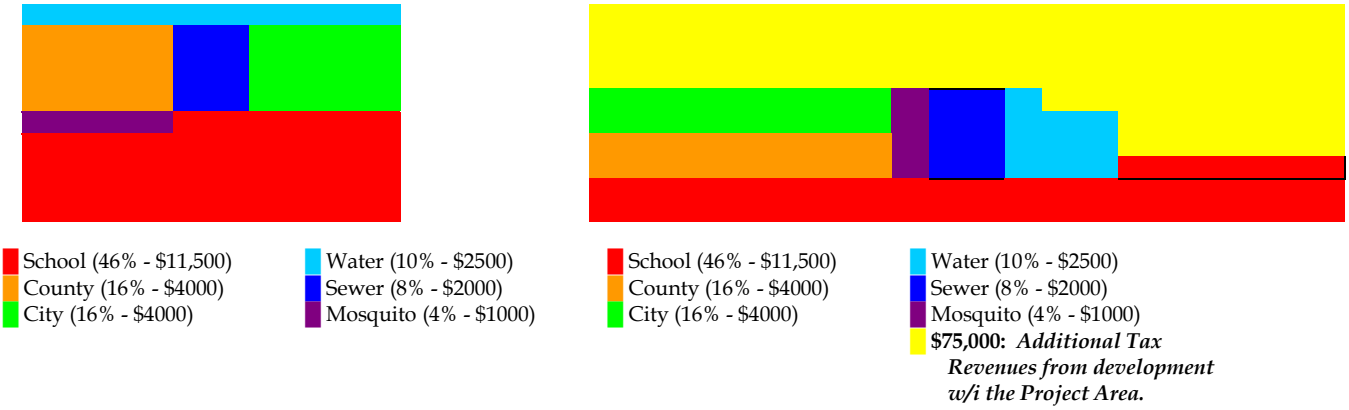
Tax increment financing is the diversion to an agency, throughout the term of a project, of property taxes arising from new development on the land within a project area. First, a base year must be established. The mechanism generally relies upon TEC approval of the project budget, but

[13] If it's all the same to you, I'm going to call what agencies do "redevelopment," and treat each of the different tracks as subsets under that heading. Thus, there would be three species under the genus Redevelopment: Urban Renewal, Economic Development, and Community Development. There. That makes much more sense to me than calling it "community development and urban renewal." Redevelopment—or CDUR: We should all get used to saying it, I suppose.

there are certain alternatives:



TEC approval of a project area budget "freezes" the amount of tax revenue going to the relevant taxing entities at the amount flowing to them at the time of budget approval. So, if we assume a project area producing revenue throughflow of, say, $25,000 per year, and an allocation of that revenue like this:



The above bar graph represents the tax revenue from our hypothetical project area prior to any redevelopment. TEC budget approval freezes these levies as of the time of approval, and this amount constitutes the "base taxable value" for the project area. UCA § 17C-1-102(6). All ***additional*** tax revenue arising from development pursuant to the project area plan (in this example, some $75,000 per year) are generally received by the agency to be put to whatever uses may be or become necessary or desirable for the prosecution of the project. Note, however, that the base taxable value continues to flow to the taxing entities throughout the project. The cumulative outlay over the life of the project—let us say 15 years—would be approximately as follows:

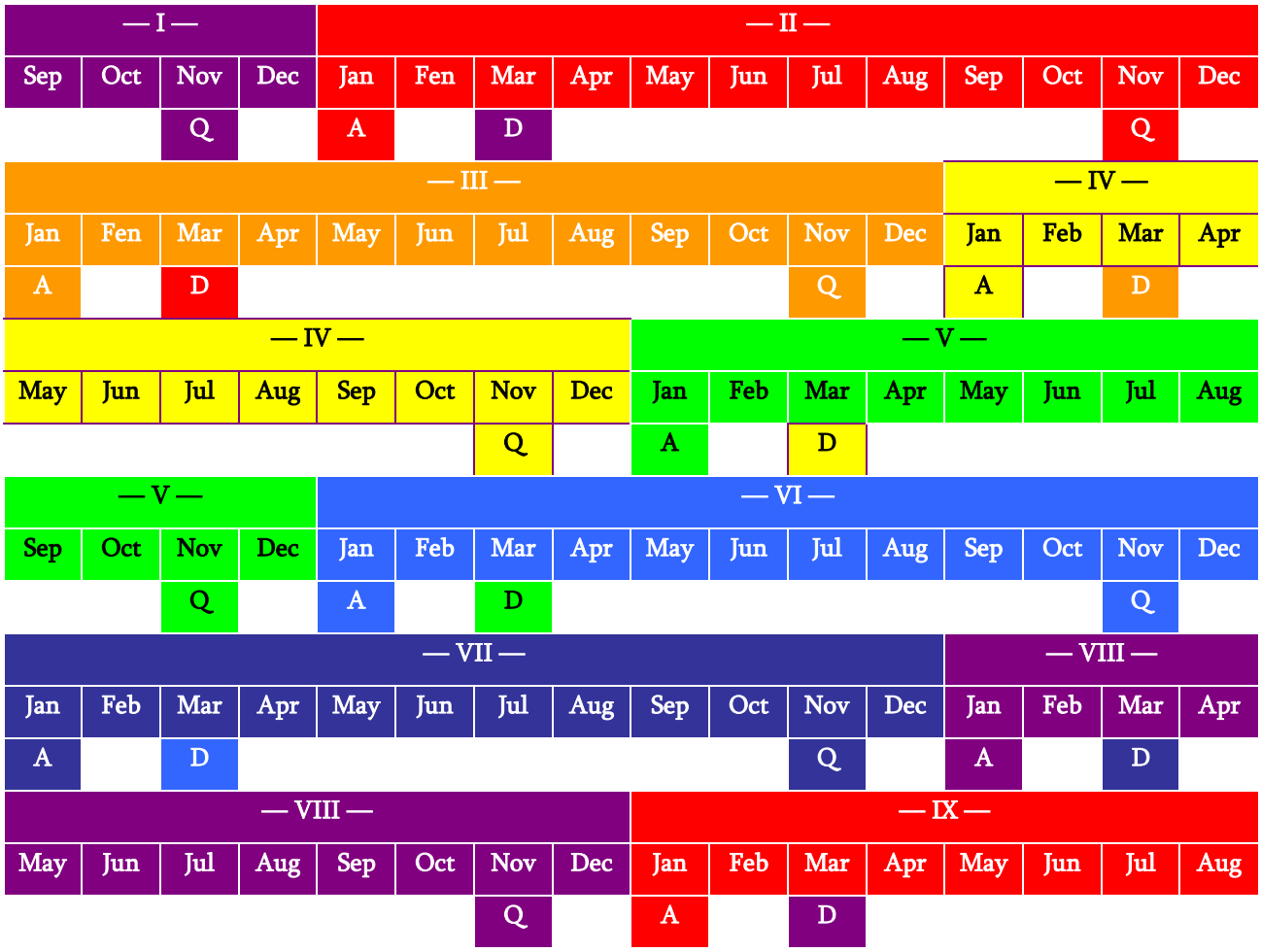
Years	School	County	City	Water	Sewer	Mosquito	Add'l Value
1	$ 11,500	$ 4,000	$ 4,000	$ 2,500	$ 2,000	$ 1,000	$ 75,000
2	23,000	8,000	8,000	5,000	4,000	2,000	150,000
3	34,500	12,000	12,000	7,500	6,000	3,000	225,000
4	46,000	16,000	16,000	10,000	8,000	4,000	300,000
5	57,500	20,000	20,000	12,500	10,000	5,000	375,000
6	69,000	24,000	24,000	15,000	12,000	6,000	450,000
7	80,500	28,000	28,000	17,500	14,000	7,000	525,000
8	92,000	32,000	32,000	20,000	16,000	8,000	600,000
9	103,500	36,000	36,000	22,500	18,000	9,000	675,000
10	115,000	40,000	40,000	25,000	20,000	10,000	750,000
11	126,500	44,000	44,000	27,500	22,000	11,000	825,000
12	138,000	48,000	48,000	30,000	24,000	12,000	900,000
13	149,500	52,000	52,000	32,500	26,000	13,000	975,000
14	161,000	56,000	56,000	35,000	28,000	14,000	1,050,000
15	172,500	60,000	60,000	37,500	30,000	15,000	1,125,000
Total	**$ 172,000**	**$ 60,000**	**$ 60,000**	**$ 37,500**	**$ 30,000**	**$ 15,000**	**$1,125,000**

By the 15th tax year following the agency's first year of taking TIF, the agency has received—and almost certainly disbursed—$1.125 million to finance all or some part of the contemplated project. Meanwhile, the relevant taxing entities have continued to receive their established share of the $25,000 long since established by the taxing entities themselves. And this is exactly the same amount they would have received had no new development taken place. Their 15-year total comes to some $374,500.

3.2 A Note on TIF Payments.

UCA § 17C-1-401(2)(b)(i) specifies that tax increment may not be paid to an agency "for a tax year *prior to* the tax year *following* … the effective date of the project area plan"[14] (emphasis added). This (rather dense) legispeak references the (relatively complicated) Utah property tax calendar. This is best explained graphically:

[14] UCA § 17C-1-401(2)(b)(ii) explains the differences between this requirement, which applies to UR and ED, but not to CD, where the trigger is the "effective date of the interlocal agreement … establish[ing]" receipt of tax increment. Of course, this can't apply when CD increment is based, not upon an interlocal agreement, but upon taxing entity resolution (pursuant to UCA§17C-4-201). Obviously, the Legislature will need to deal with this oversight, as well as that in the definition of "base taxable value," which it defines, where no taxing-entity budget-approval is required, as "the later of … the date the project area plan is adopted by the community legislative body; and the date the agency adopts the first project area budget." While CD requires plan adoption, it does not require a budget. The problem is that the plan-adoption requirement conflicts with the interlocal-agreement / taxing-entity resolution mandate for CDs.



In the above table, A = "Assessment"; D = "Disbursement"; Q = "Equalization"

As shown in the above table, assessments are prepared by January 1st of each year; these values, and the taxes due thereon—after ten months for objections, appeals, etc.—must be equalized by October 31st as those values take effect on November 1st. Taxes are due by or before November 30th, and these sums are disbursed to the various taxing entities the following March 31st.

Thus, for example, for a plan taking effect in, say, August of Year II, the first year the agency could receive tax increment from the project area would be at the end of March of Year IV, when the taxes collected for Year III are disbursed.

3.3 TIF Applications.

And what could our hypothetical agency do with its $1,125,000? Depending on the provisions of the approved budget, it could apply these TIF funds to infrastructure installation, land

purchase, tax refunds, business incentives, etc. The specifics are set forth in UCA § 17C-1-409:

1. Any purpose for which TIF is authorized under Title 17C;
2. Administrative costs, overhead, legal fees, agency operating expenses, consultant fees, business resource centers and so forth;
3. Financing or refinancing
    a. Urban Renewal, including environmental remediation before or after project plan adoption;
    b. Economic and Community Development activities in the project area;
    c. Housing expenditures, projects, or programs;
    d. The purchase of the land for, and the cost of the installation and construction of, publicly owned buildings, facilities, structures, landscaping, or other improvements within the project area (with local legislative approval);
    e. The costs of installation of publicly owned infrastructure and improvements outside the project area if the agency board and the local legislative body find that such will benefit the project area (the finding is final and conclusive);
4. An agency may **NOT** use tax increment to construct **MUNICIPAL BUILDINGS**, which the statute narrowly defines as a building owned and operated by a municipality for the purpose of providing one or more primary municipal functions, including: (i) a fire station; (ii) a police station; (iii) a city hall; or (iv) a court or other judicial building.[15]

Furthermore, the expected revenue stream from this tax increment can be bonded upon, thus creating a substantial sum that can be used at the front end. *See* UCA § 17C-4-501 *et seq*. And, as noted above in Section 1.10, an agency may authorize a loan of tax increment proceeds from one project area to another project area, so long as the agency projects that the borrowing project area will generate sufficient tax increment revenues to repay the loan in time for use of the tax increment according to the plan for the loaning project area.

3.4 The Taxing Entity Committee.

As part of the legislative effort to assure that incentives under the Act were properly used, the 1993 Act created the watchdog TEC committee. The TEC is comprised of **two** representatives

[15] The statutory definition also conveniently notes that "Municipal Building" does not include cultural or recreation buildings. UCA § 17C-1-102(30)(b).

from the municipality (if the agency was created by a city or town), **two** from the County, **two** from the local school district and **one** from the state school board, and one representing any other local taxing entities collectively. The respective governing bodies choose and appoint their representatives.

1 2	**Municipality (City or Town)** [16]
3 4	**County**
5 6	Local **School District**
7	State **Board of Education**
8	All the **Other Taxing Entities**

Vote Required for Action: 2/3 of Members Present	
3 out of 4	1 2 3 4 ○ ○ (county only)
4 out of 5	1 2 3 4 5 ○/○ ○ (county/city or town)
4 out of 6	1 2 3 4 5 6 /○ ○ (county/city or town)
5 out of 7	1 2 3 4 5 6 7 ○ (city or town only)
6 out of 8	1 2 3 4 5 6 7 8 (city or town only)

See UCA § 17C-1-402(2), (4), & (5).

The taxing entity committee must generally approve the project area multi-year budget. *See* UCA §§ 17C-1-402(3)(c), 17C-2-204 (URA budget) & 17C-3-203. Until a budget is approved by the taxing entity committee, no tax increment may be taken and no base year may be established.

The theory in giving this veto power to the taxing entity committee is to assure that tax increment is properly used to eliminate blight or create jobs. By having those taxing entities which would, otherwise, be the beneficiaries of the tax dollars at issue, there is, at least in theory, some assurance that the redirected tax revenues shall be put to lawful and proper use. Practically speaking, however, no matter how lawful and proper some contemplated uses may be, only such uses as are agreeable to the members of the TEC have any chance of approval.

TECs have various other powers as well:

> A taxing entity committee represents all taxing entities regarding an urban renewal or economic development project area and may:
>
> **(a)** cast votes that will be binding on all taxing entities;
> **(b)** negotiate with the agency concerning a draft project area plan;
> **(c)** approve or disapprove a project area budget;
> **(d)** approve or disapprove amendments to a project area budget;
> **(e)** approve exceptions to the limits on project area value and size;
> **(f)** approve exceptions to the percentage and term of tax increment;
> **(g)** approve TIF application outside a project area for publicly owned infrastructure and improvements the agency and community legislature find beneficial

[16] There is no municipal (city or town) representation on the TEC for a project area created by a County.

to the project area;[17]

(h) waive the value restriction on URA budgets;[18]

(i) approve forgiveness of inter-project area loans; and

(j) give other TEC approval or consent required or allowed under this title.

UCA § 17C-1-402(3).

Unless an Agency submits a report pursuant to UCA § 17C-1-402(9)(b), TECs are required to meet annually throughout the term the agency receives tax increment, in order to review the status of the project area and the application of the redirected revenues. UCA § 17C-1-402(9)(c).

TECs fall within the purview of the Open and Public Meetings Act (UCA Chapter 52-4). UCA § 17C-1-402(10).

3.5 The Olene Walker Housing Loan Fund Board.

The Olene Walker Loan Fund Board was created under Title 9 Chapter 4 part 7 to oversee the Olene Walker Housing Loan Fund—the low income housing fund. *See* § 1.3, above.

The Act gives specific powers and duties to the Loan Fund Board. Projects which create more than $100,000 in tax increment annually are required, by UCA §§ 17C-2-203, and -3-202, to allocate at least 20% of the increment for housing as provided in §17C-1-412, including Income Targeted Housing as defined in UCA § 17C-1-102(22), and create a housing plan under UCA §§ 17C-2-204(2) and -3-203(2). The plan, of course, could be no more than simply paying a fifth of the revenue to the Housing Loan Fund.

The Board—with the consent of the TEC—may waive the 20% requirement in whole or in part if they determine that a fifth of the increment arising from the project area "is more than is needed to address the community's need for income targeted housing." UCA §§ 17C-2-203(1)(b)

[17] *See* UCA § 17C-1-409(1)(a)(iii)(D).

[18] UCA § 17C-2-202(1): An agency can't adopt an urban renewal project area budget if the combined incremental value for the agency exceeds 10% of the total taxable value of property within the agency boundaries in the year the budget is being considered.

and -3-202(b)(i).[19]

Under UCA §§ 17C-2-204(2)(a) & -3-203(2)(a), if a project area budget allocates tax increment for housing, the agency must file a housing plan "showing the uses for the housing funds" with the TEC and the Loan Fund Board. The legislature gave the housing plan requirement some teeth by empowering the Board to bring legal action to compel an agency to provide the housing funds allocated under a project area budget and housing plan. UCA § 17C-1-412(5)(a). Moreover, in such an action, the court must award the Loan Fund Board "a reasonable attorney fee, unless the court finds that the action was frivolous." *Id.* -1-412(5)(b)(i). Conversely, however, a court "may ***not*** award the agency its attorney fees, ***unless*** the court finds that the action was frivolous." *Id.* -1-412(5)(b)(ii).

4. Organizing (and Dissolving) an Agency.

4.1 Agency Creation.

In order to take advantage of the TIF mechanism, a municipality or county must have a planning commission and must create a Community Development and Urban Renewal Agency (still commonly referred to as Redevelopment Agencies). Although it is an entirely separate legal entity, an agency board is comprised of local government's legislature, whether that be a city or town council or a county commission or council or whatever.[20]

The steps to create an agency are found in UCA §17C-1-201. Creating an agency requires the passage of an ordinance by the local legislative body. *Id.* 1-201(1). Within 10 days after adoption of the ordinance, the adopting body must file a notice of adoption (together with a copy of the

[19] In 5th- & 6th-class counties, the 5th-part housing levy may be waived unilaterally (apparently) by the TEC for post-2002 EDA projects, if the project area contains no housing units. UCA § 17C-3-202(1)(b)(ii). This does not appear to apply to project areas in *municipalities **in*** 5th- & 6th-class counties. Nor is it clear why the loan fund board should have no say in the decision simply because the project area lies in a 5th- & 6th-class county.

[20] I say "or whatever" advisedly, believe it or not, because of the various forms local governments are permitted to take these days: county commission, county mayor & council, traditional city council, council-manager, and council-mayor (and more that I missed, no doubt). You'll recall, from § 1.10 (*above*), that in a city under a council-mayor (*i.e.*, separation of powers) administration, the mayor "serves as the executive director of [the] agency" and exercises the agency's executive powers. UCA § 17C-1-203. One question this raises is why this same principle doesn't apply to a county mayor. UCA § 17C-1-203 (2008).

ordinance) in the Lieutenant Governor's office.[21] *Id.* 1-201(2)(a). The Lieutenant Governor's office issues a Certificate of Creation (pursuant to UCA § 67-1a-6.5), formally creating the agency. *Id.* 1-201(2)(b). A copy of the Certificate of Creation and notice of creation should be filed by the agency with the State Tax Commission and State Auditor.

Legally, of course, an agency cannot take any action aimed at redevelopment until the Lt. Governor's office has issued the Certificate of Creation: the agency does not technically exist to do anything until after the Certificate has been executed.[22]

4.2 Agency Dissolution.

Unmaking an agency also requires an ordinance.[23] UCA § 17C-1-701(1)(a). Such an ordinance, however, cannot be adopted unless the ordaining legislative body "has no outstanding bonded indebtedness, other unpaid loans, indebtedness, or advances, and no legally binding contractual obligations with persons or entities other than the community." *Id.* 1-701(1)(b).

As with agency creation, the local legislature must file a certified copy of the dissolving ordinance with the Lt. Governor, *id.* 1-701(2)(a), and dissolution takes effect upon the Lt. Governor's issuance of a Certificate of Dissolution, *id.* 1-701(2)(b). Within 10 days of receiving the Certificate, the local legislature must send copies to the State Board of Education and each taxing entity. *Id.* 1-701(2)(c). Notice must be published, *id.* 1-701(2)(d), and all documents deposited with the dissolving community's recorder, *id.* 1-701(3).[24]

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[21] Somewhat frustratingly, the statute also requires the preparation of an official plat, signed by a licensed surveyor, showing the boundaries of the new agency. Because the boundaries of the agency are always coterminous with the boundaries of the creating local government entity, this seems to be a duplicative expense that probably ought to be removed by future legislation.

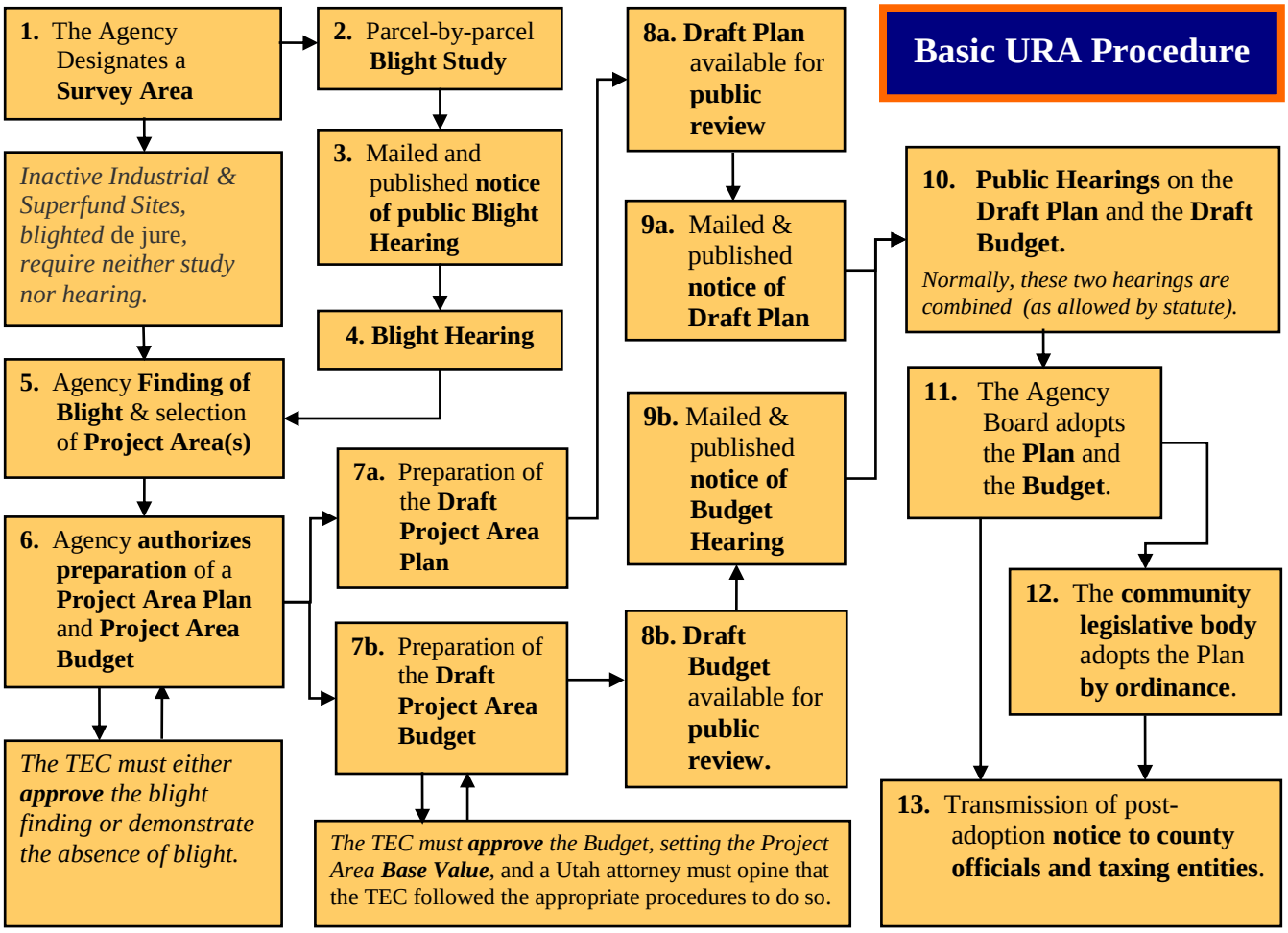
[22] There does not appear to be any law (case, statute, or regulation) regarding the question as to whether an agency may undertake redevelopment activity upon mailing or whether an agency must wait to act until actual receipt of the Certificate. As yet, at least to my knowledge, no one's been in that much of a hurry, and the delay between the Lt. Governor's pen and the local government's letter opener, that the question has never arisen (and probably never would have if I hadn't written this footnote ... *tant pis, trop tard, c'est dommage*).

[23] I've not heard of this happening anywhere yet, although the Utah State Board of Education website declares that the Santa Clara City Redevelopment Agency has been "dissolved" and that the Sunset City Redevelopment Agency "has ended."

[24] All costs are to be borne, oddly enough, by the agency being dissolved! UCA § 17C-1-701(4): "The agency shall pay all expenses of the deactivation and dissolution." But then, how do you go about dissolving an agency without money from any past projects in its coffers? Won't the dissolving community wind up bearing all the costs?

5. The Steps of Urban Renewal.

Once an agency is created it may pursue URA, EDA, or CDA Projects. Project areas **must** be created by the following steps outlined in the Act. Remember, Utah case law holds these requirements jurisdictional. *Johnson v. Redevelopment Agency of Salt Lake County*, 913 P.2d 723, 729 (Utah 1995): this means strict adherence to the letter of the law, or it's back to square one … minus the tax increment you were planning on (or worse, have already received and spent).



5.1 The Survey Area

Creating an urban renewal project area begins with the establishment of a survey area. An agency may designate a survey area, or the designation may be requested by another entity or person. Establishment of survey areas is governed by UCA § 17C-2-101(2). The agency must designate a survey area by way of a resolution declaring that a particular area within the agency's boundaries—described and set forth in an attached map—requires further study to determine

whether blight exists there. *Id.* 2-101(1).

5.2 The Blight Study

An urban renewal project area requires a finding of blight. This is the reason for the survey—technically called a blight study. Preparation of the blight study is required by UCA § 17C-2-102(1)(a)(i)(A) and governed by UCA § 17C-2-301. A blight study must be a parcel-by-parcel survey of the existence or nonexistence of blight factors in the survey area. UCA § 17C-2-301(1)(a). Specifically, the blight study is meant to provide the agency board with sufficient data for them to determine whether blight exists in the survey area (or part of the survey area) sufficient to justify the creation of an urban renewal project area. Id. 2-301(1)(b).

Note well, however, that the conditions comprising blight must exist *in the survey area*, not upon *each parcel*. Often, angry residents will object during blight hearings, loudly declaring that their property "is not a blight." But it is not parcels that are blighted, but whole survey areas.[25] But a survey area may be infected by numerous blight factors, although there may be only one—or perhaps none—on any one particular parcel.

5.2.1 The Elements of Blight

For many landowners, the term "blight" conjures up images of ruinous dilapidation, gang tags, and rats.[26] While such an egregious situation would most certainly constitute "blight" under Chapter 17C-2, the term is rather broader than this stereotype. "Blight" is a technical term under the Act, denoting a set of specific circumstances—design or construction flaws, deterioration or abandonment, conflicting uses, absence of sanitation, topographical problems, etc.—which, in combination, "substantially impair[] the sound growth of the municipality, retard[] the provision of housing accommodations, or constitute[] an economic liability or [are] detrimental to the public health, safety, or welfare …." UCA § 17C-2-303(1)(a)(iv).

5.2.1.1 The Thresholds

Before a finding of blight can be made, any proposed project area (within a survey area) must satisfy three critical thresholds. **First**, the potential project area must "consist predominantly of

[25] It is, of course, possible for sufficient blight factors to exist on a single parcel; but while I have seen badly infected parcels, I have yet to see a survey area of only one parcel.

[26] I must admit that I still think of the Irish potato blight of 1845–1850, and the resulting famine.

nongreenfield parcels," *id.* 2-303(1)(a)(i), that is, land previously developed beyond agricultural or forestry use. It would, obviously, run contrary to the policy of blight remediation to declare "blighted" a perfectly healthy meadow, a white-sand beach, or an old-growth forest. As yet, there is neither case law nor amendment addressing the meaning of "predominantly," so we're pretty much stuck with a showing that at least 51% of the parcels are brownfield (already developed).

Second, the proposed project area must be zoned for "urban" purposes and be "generally" served by utilities. UCA § 17C-2-303(1)(a)(ii). By "urban," the statute must mean industrial, commercial, or residential—that is, essentially nonagricultural uses, since there's no other definition of "urban purposes." "Generally," on the other hand, is pretty vague. Again, we are still waiting for case law or a fortuitous amendment to tell us what "generally" means. Does it mean a single trunk line? Does it mean more than half the area has electricity and water? Would a set of sewer connections under half of the land suffice?

Third, at least 50% of the parcels in the proposed project area must "contain nonagricultural or non-accessory buildings or improvements used or intended for residential, commercial, industrial, or other urban purposes. *Id.* 2-303(1)(a)(iii). This third threshold appears really to be a restatement of the other two, with the 51% line brightly drawn. In short, the survey area cannot consist of mostly vacant land, nor land under agricultural use. Barns and silos, for example, would probably not constitute "residential, commercial, industrial, or other urban" uses.

5.2.1.2 The Blight Factors

If (and only if) the three thresholds are satisfied can the blight study turn to investigating the statutory blight factors, of which at least four[27] must burden the proposed project area:

> **(A)** one of the following, although sometimes interspersed with well-maintained buildings and infrastructure:
>
> > **(I)** substantial physical dilapidation, deterioration, or defective construction of buildings or infrastructure; or
> >
> > **(II)** significant noncompliance with current building code, safety code, health code, or fire code requirements or local ordinances;
>
> **(B)** unsanitary or unsafe conditions in the proposed project area that threaten the

[27] The number of blight factors requisite to a finding of blight has risen from two under the original act to four under Chapter 17C-2, a reflection of mounting hostility against the eminent domain power wielded by local government under the redevelopment acts.

health, safety, or welfare of the community;

(C) environmental hazards, as defined in state or federal law, that require remediation as a condition for current or future use and development;

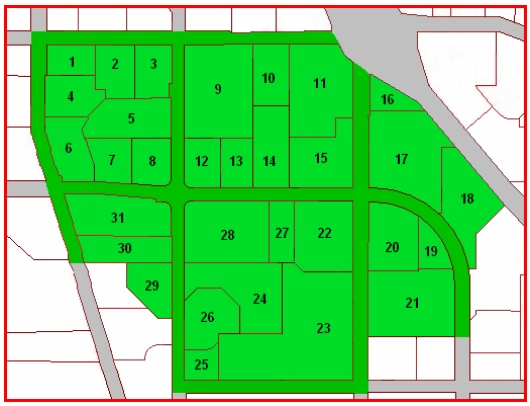
(D) excessive vacancy, abandoned buildings, or vacant lots within an area zoned for urban use and served by utilities;

(E) abandoned or outdated facilities that pose a threat to public health, safety, or welfare;

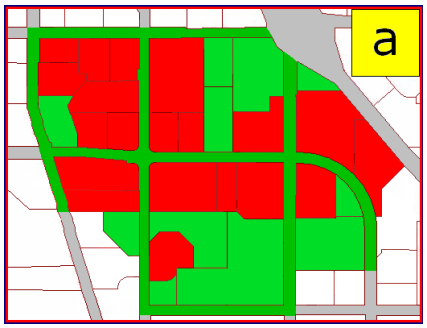
(F) criminal activity in the project area, higher than that of comparable nonblighted areas in the municipality or county; and

(G) defective or unusual conditions of title rendering the title nonmarketable.

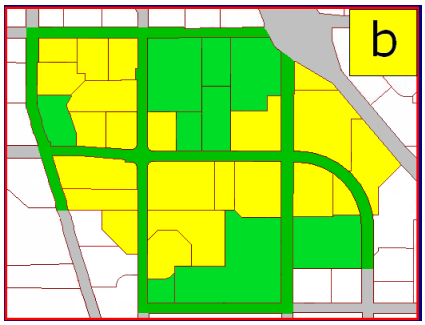
UCA § 17C-2-303(1)(a)(iv).

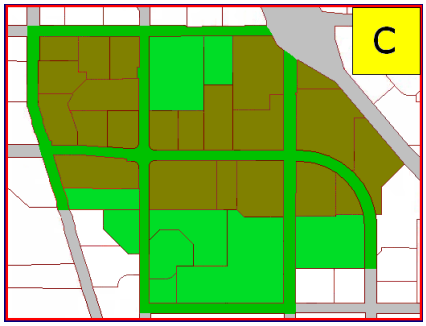


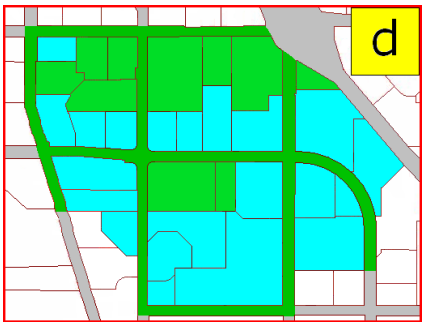
With the survey of the parcels in the proposed project area complete, the next step is to verify another set of thresholds—call them exit thresholds—as to the extent of the blight: one or another of the seven blight factors must affect at least half the privately-owned parcels, and those parcels must comprise at least two-thirds of the privately-owned acreage within the project area. *Id.* 2-303(1)(a)(v).

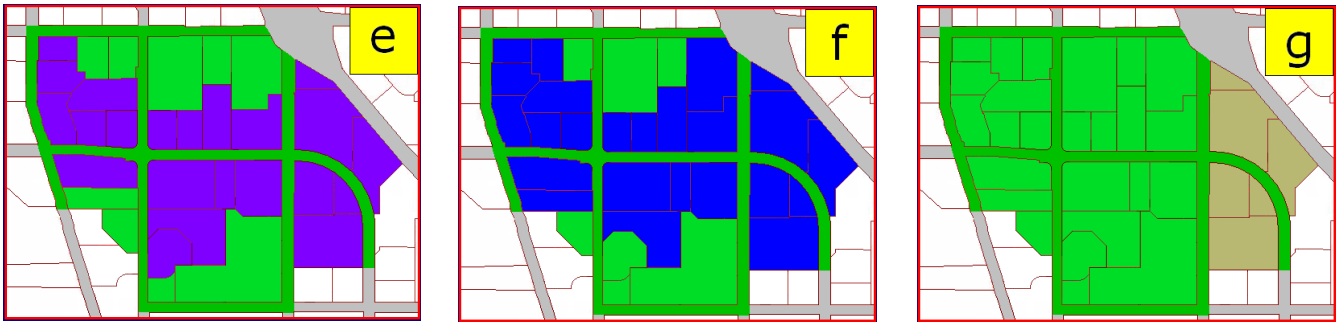


Suppose, for example, the blight study on a proposed 31-parcel project area (A) shows blight-factor distribution thus (F):









Having established that sufficient blight exists all over our hypothetical potential project area to declare it a proper project area (several of the parcels in the above blight maps are affected by all seven blight factors), we turn to the exit thresholds:

1. No single parcel comprising 10% or more of the acreage of the proposed project area may be counted as satisfying [the statutory number and parcel size requirements] unless at least 50% of the area of that parcel is occupied by buildings or improvements.

2. A condition created by a developer involved in the project cannot be counted in the tally of blight factors. (This does not apply, however, to conditions caused by an owner or tenant who becomes a developer.)

UCA § 17C-2-303(2) & (3). If both of these restrictions are met, all the preceding factors having been satisfied, a finding of blight may be made on the proposed project area.

5.2.1.3 The Other Way to Establish Blight

Of course, as noted back in §§ 1.5 and 1.7 (above), under certain circumstances, a blight study need not be conducted at all. In fact, UCA § 17C-2-303(1) provides that an agency may make a finding regarding ***either*** the various blight factors ***or*** the site's including "some or all of a superfund site, inactive industrial site, or inactive airport site" (*see also* SB 294 (2008) amendments).

Oddly, however, UCA § 17C-2-301, which governs the making of blight studies, appears to contradict § 2-303(1), requiring a blight study to determine "whether the survey area contains all or part of a superfund site, an inactive industrial site, or inactive airport site." UCA § 17C-2-301(1)(b)(ii). There appears to be no clear way to reconcile these contradictory provisions.

5.2.2 The Written Report

At the end of the blight study, the maker of the survey (the "blight consultant") must present to the agency board "a written report setting forth (i) the conclusions reached; (ii) recommended project areas in the survey area; and (iii) any other information the agency requests to determine

the feasibility of an urban renewal project." UCA § 17C-2-301(1)(c).

The blight study and the written report must be completed within **ONE YEAR** after the adoption of the survey area resolution. *Id.* § 2-301(1)(d). If it is not, the agency can't adopt a URA plan unless and until it goes back to the beginning and adopts a new survey area resolution. *Id.* § 2-301(2).

5.3 The Blight Hearing

Without question, the best thing the several recent redevelopment revisions have accomplished has been to reduce the number of required hearings involved from an arguable **SIX(!)**[28] (for URAs) to a much more manageable three: **1.** a blight hearing, **2.** a plan hearing, and **3.** a budget hearing.[29] UCA §§ 17C-2-102(1)(a)(i)(C)&(vi) and 2-201(2)(d). And, theoretically, all three of these hearing may be lawfully held at the same time. See UCA § 17C-2-401: "A board may combine any combination of a blight hearing, a plan hearing, and a budget hearing."[30] In general practice, however, it is customary to hold the blight hearing first and separately, and then to set things in motion for a combined plan and budget hearing.

5.3.1 Notice

The issuance of the several required notices for the various hearings has always been most complicated part of redevelopment. It has therefore always been the most dangerous part of the redevelopment minefield. Like the number of hearings, the labyrinth of necessary notice has been greatly simplified over the last eight years. As of this writing, Chapter 17C-2 requires three types of notice for the blight hearing.

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[28] **1.** A Public-Input hearing, **2.** a Blight hearing, **3.** a Preliminary-Plan hearing, **4.** a Final-Plan hearing, and **5.** a Budget hearing. The budget hearing could be combined with the final-plan hearing, and the public-input with the blight hearing; but the impenetrable prose of the old act (specifically 17A-2-1222 (1996)), implied ***yet another*** hearing (making for ***four***, even taking advantage of the permitted combinations), and one did not dare fall foul of any of the mandated steps involved in the creation of a project area, for fear of judicial invalidation of a whole project and the concomitant loss of hundreds of thousands of dollars worth of development.

[29] Technically, neither budget hearing nor budget is required unless the agency "anticipates funding all or a portion of a project area plan with tax increment. I have seen this happen only once, however, under some rather remarkable circumstances. Usually, the whole idea is to apply TIF to the project area.

[30] This would require some careful planning and extensive preparations, but it is certainly possible, as well as being permitted by the law.

5.3.1.1 Basic Contents

All of the notices required by Chapter 17C-2 must include everything in the following list:

(a) EITHER

(i) a specific description of the boundaries of the (proposed) project area; OR

(ii) **(A)** an address or telephone number where a person may request that a copy of the description be sent them at no cost by mail or fax; and

(B) if the agency has an Internet website, an Internet address where a person may gain access to an electronic, printable copy of the description;

(b) a map of the boundaries of the (proposed) project area;

(c) an explanation of the purpose of the hearing; and

(d) a statement of the date, time, and location of the hearing.

UCA § 17C-2-502(3).

Additional content is added for each of the various types of notices or hearings. So, for example, notice of a blight hearing must also state that

(e) an urban renewal project area is being proposed;

(f) the proposed urban renewal project area may be declared to have blight;

(g) at the blight hearing, the owner of property in the proposed project area may present evidence contesting the existence of blight;

(h) the agency will notify property owners of each additional public hearing concerning the urban renewal project prior to project area plan adoption; and

(i) at the blight hearing, persons contesting the existence of blight in the proposed project area may appear and show cause why the proposed project area should not be designated an urban renewal project area.

UCA § 17C-2-503(1). In addition, IF the agency anticipates that eminent domain may be necessary, the notice must also include "a clear and plain statement that"

(j) the project area plan may require the agency to use eminent domain; and

(k) the proposed use of eminent domain will be discussed at the blight hearing.

Id. § 2-503(2). The agency may also include "any other information it considers necessary or advisable, including," suggests the statute, "the public purpose served by the project and any future tax benefits expected to result from the project." *Id.* § 2-502(5).

5.3.1.2 Published Notice

Published notice of the blight hearing requires 14-day advance notice by one of the following methods: (i) publication of at least one notice in a newspaper of general circulation within the county in which the project area or proposed project area is located, (ii) if there is no newspaper of general circulation, posting notice in at least three conspicuous places within the county in which the project area or proposed project area is located, or (iii) posting notice, excluding the map described in Subsection (3)(b), at least 14 days before the day on which the hearing is held on: (A) the Utah Public Notice Website described in Section 63F-1-701; and (B) the public website of a community located within the boundaries of the project area. UCA § 17C-2-502(1)(a)(i).[31] Published notice must include the 11 points on the list above, although it need not include the map (item *b* on the list) mandated for other notices.

5.3.1.3 Mailed Notice

/a. To Property Owners

Chapter 17C-2 also requires that the agency mail notice to each of the owners of property within the proposed project area. This notice must be sent[32] at least 30 days before the blight hearing to each record owner of property in the proposed project area. UCA § 17C-2-502(1)(b)(i). This mailing is "conclusively considered to have been properly completed" if

> **(a)** the agency mails the notice to the property owners as shown in the records, including an electronic database, of the county recorder's office and at the addresses shown in those records; **AND**
>
> **(b)** the county recorder's office records used by the agency in identifying owners to whom the notice is mailed and their addresses were obtained or accessed from the county recorder's office no earlier than **30 days** before the mailing.

UCA § 17C-2-502(2) (emphasis added).

/b. To the Taxing Entities

Mailed notice must also be sent, 30 days prior to the blight hearing, to each of the taxing entities levying taxes on land within the project area, as well as to county and state officials. The

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[31] Subsection 2-502(1)(a)(ii) allows for the posting of notice where there is no paper of general circulation in the county, but it does not appear that this condition exists in Utah anywhere.

[32] Note that the notice must be ***SENT***, not ***RECEIVED***, at least 30 days before the hearing. It doesn't hurt, of course, to send notices out, say, 35 days before the hearing, to avoid having to explain this point to landowners (or their attorneys) who have not read the law carefully.

actual list runs as follows:

- the State Tax Commission;
- the county assessor and county auditor; and
- the State Board of Education, and
- the legislative body or governing board of each taxing entity.

UCA § 17C-2-502(1)(b)(ii). This notice must also include, along with the required 11 obligatory points listed above (§ 5.3.1.1),

> a statement that property tax revenues resulting from an increase in valuation of property within the … proposed project area will be paid to the agency for urban renewal purposes rather than to the taxing entit[ies] … the tax revenues would otherwise have been paid [to] if **(i)** a majority of the taxing entity committee consents to the project area budget; and **(ii)** the project area plan provides for the agency to receive tax increment … [along with] an invitation to the recipient of the notice to submit to the agency comments concerning the subject matter of the hearing before the date of the hearing.

UCA § 17C-2-502(4).

5.3.1.4 The Notice that's Not Notice

During this same 30-day period—the 30 days prior to the blight hearing—an agency must allow owners of property in a proposed project area to review the blight evidence compiled by or for the agency, including any expert report. UCA § 17C-2-302(2).

5.3.2 The Hearing

5.3.2.1 Hearing Procedures

At a Blight Hearing, an agency must "permit all evidence of the existence or nonexistence of blight to be presented." UCA § 17C-2-302(1)(a). Practically speaking, this means the agency board cannot set any definite limits on the length of the hearing—at least, not if such limits deny someone the chance to present evidence. This provision may also forbid any limitation on how long someone can spend presenting evidence: the agency board, for example, probably cannot hold anyone presenting evidence to only a few minutes' presentation time.

Record owners of property within the proposed urban renewal project area must likewise be permitted to examine and to cross-examine witnesses and to provide evidence and testimony, including expert testimony. *Id.* § 2-302(1)(b).

5.3.2.2 A Finding of Blight

Having heard or received all the evidence as to blight within the proposed project area, the agency closes the hearing. Thereafter, at the same meeting or at a later one, the agency must consider the evidence presented, *id.* § 2-102(1)(a)(ii), and, if warranted, by resolution, make a finding that the proposed area is in fact "blighted," *id.* § 2-102(1)(a)(ii)(B)(I). Once a finding of blight has been made, it must be submitted to the TEC for approval. Believing perhaps that this veto power was too great, the legislature passed the present provisions regarding TEC approval and rejection:

> A taxing entity committee may not disapprove an agency's finding of blight unless the committee demonstrates that the conditions the agency found to exist in the urban renewal project area that support the agency's finding of blight … [either] do not exist[,] or do not constitute blight.
>
> If the taxing entity committee questions or disputes the existence of some or all of the blight conditions that the agency found to exist … or that those conditions constitute blight, the taxing entity committee may hire a consultant, mutually agreed upon by the taxing entity committee and the agency, with the necessary expertise to assist the taxing entity committee to make a determination as to the existence of the questioned or disputed blight conditions. The agency shall pay the fees and expenses of each consultant … . The findings of a consultant … shall be binding on the taxing entity committee and the agency.

UCA § 17C-2-102(1)(b).

5.3.2.3 Challenging a Finding of Blight

Once an agency board makes a finding of blight, and the TEC has approved it by resolution, any record owner of property inside the proposed project area may file an action in district court (in the county in which the property is located) challenging the finding. The challenge must be brought within 30 days after the TEC has approved the agency blight finding. UCA § 17C-2-304(1)&(2).

In reviewing a finding of blight, a district court must presume the finding valid and determine only whether it is arbitrary and capricious (*i.e.*, supported by substantial evidence in the record) or illegal. UCA §§ 17C-2-304(3) & 10-9a-801(3).

5.4 The Urban Renewal Plan

Once a finding of blight has been made and approved, an agency may, by resolution, at or

after the same meeting wherein it adopted the finding of blight, select one or more project areas "comprising all or part of the survey area," UCA § 17C2-102(1)(a)(ii)(B)(II) and authorize "the preparation of a draft project area plan for each project area," *id.* § 2-102(1)(a)(ii)(B)(III).

5.4.1 Content Requirement

The agency then proceeds to prepare a "Draft Urban Renewal Project Area Plan" setting forth various aspects of the anticipated project. The draft and final plans must

- **(a)** describe the boundaries of the project area;[33]
- **(b)** state generally the project area land uses, principal street layout, population densities, and building intensities and how the project will affect them;
- **(c)** state the standards that will guide the urban renewal;
- **(d)** show how the project will fulfill the purposes of Chapter 17C-2;
- **(e)** show that the project will comport with the community's general plan;
- **(f)** describe how the project will reduce or eliminate blight in the project area;
- **(g)** describe any specific venture that is the object of the proposed project;
- **(h)** explain how the agency will select any private developers to undertake all or part of the project and identify each private developer currently involved;
- **(i)** state the reasons for the selection of the project area;
- **(j)** describe the physical, social, and economic conditions in the project area;
- **(k)** describe any tax incentives offered private entities for facilities in the project area;
- **(l)** include a benefit analysis;[34]
- **(m)** if any of the buildings or uses in the project area are or could be included in the National Register of Historic Places or the State Register, state that the agency shall comply with historic preservation laws as if it were a state agency; and

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[33] Speaking of boundary descriptions, one very important point to bear in mind: UCA § 17C-1-414 declares that "[i]f the boundaries of a project area, as described in the project area plan, include part of a tax parcel and exclude part of the same tax parcel, the agency ***shall provide the assessor of the county in which the project area is located a metes and bounds description of the part of the tax parcel included within the project area boundaries***. If an agency fails to comply with th[is] requirement, the assessor … may ***exclude th[e] parcel*** from the project area for purposes of calculating tax increment to be paid to the agency until the agency complies …."

[34] The benefit analysis must consider **(a)** the benefit of any financial assistance or other public subsidy proposed to be provided by the agency, including **(i)** an evaluation of the reasonableness of the costs of the urban renewal, **(ii)** agency or developer efforts to maximize private investment, **(iii)** the rationale for use of tax increment, including an analysis of the likelihood that the proposed development might reasonably occur in the foreseeable future solely through private investment; and **(iv)** an estimate of how much and for how long the project will expend tax increment; AND **(b)** the anticipated public benefit of the project, including **(i)** its projected benefit upon the community tax base, **(ii)** associated business and economic activity it is likely to stimulated, and **(iii)** how the project area plan is necessary and appropriate to reduce or eliminate blight.

(n) include any other information the agency determines necessary or advisable.

UCA § 17C-2-103. The draft plan is a fairly large and complex document, generally including numerous attachments, and requiring quite some time to prepare. Care should be taken, however, to ensure that the draft plan does not exceed a reasonable size, since it will need to be read and understood by quite a few people.

5.4.2 Notice

5.4.2.1 Notice Requirements for a Plan Hearing

Notice of the plan hearing, like all other notices under Chapter 17C-2, must include the mandated particulars:

(a) **(i)** specific boundary description **OR**

(ii) address & telephone-number where a description may be requested + virtual copy on community website (if any);

(b) a map of the boundaries of the (proposed) project area;

(c) an explanation of the purpose of the hearing; and

(d) a statement of the date, time, and location of the hearing.

UCA § 17C-2-502(3). The additionals required for a plan hearing are the following two:

(e) a statement that any person objecting to the plan or contesting the regularity of any of the proceedings to adopt it may appear at the hearing to show cause why the plan should not be adopted; **AND**

(f) a statement that the proposed project area plan is available for inspection at the agency offices.

Id. § 17C-2-504. Finally, as always, the agency may also include "any other information it considers necessary or advisable, including," suggests the statute, "the public purpose served by the project and any future tax benefits expected to result from the project." *Id.* § 2-502(5).

5.4.2.2 Published Notice

As with the blight-hearing notice, Published notice of the plan hearing requires 14-day advance notice by one of the following methods: (i) publication of at least one notice in a newspaper of general circulation within the county in which the project area or proposed project area is located, (ii) if there is no newspaper of general circulation, posting notice in at least three conspicuous places within the county in which the project area or proposed project area is located, or (iii) posting notice, excluding the map described in Subsection (3)(b), at least 14 days before the day on

which the hearing is held on: (A) the Utah Public Notice Website described in Section 63F-1-701; and (B) the public website of a community located within the boundaries of the project area. UCA § 17C-2-502(1)(a)(i). Published notice must include the six listed points above, although it need not include the map (item *b*).

5.4.2.3 Mailed Notice

/a. To Property Owners

As before, the agency must mail notice to each of the owners of property within the project area. This notice must be sent, at least 30 days before the hearing, to each record owner of property in the proposed project area. UCA § 17C-2-502(1)(b)(i). This mailing, as with all mailed notice under Chapter 17C-2, is "conclusively considered to have been properly completed" if

> **(a)** the agency mails the notice to the property owners as shown in the records, including an electronic database, of the county recorder's office and at the addresses shown in those records; **AND**
>
> **(b)** the county recorder's office records used by the agency in identifying owners to whom the notice is mailed and their addresses were obtained or accessed from the county recorder's office no earlier than **30 days** before the mailing.

UCA § 17C-2-502(2) (emphasis added).

/b. To the Taxing Entities

And again, as before, notice must also be mailed, 30 days prior to the blight hearing, to

- the State Tax Commission;
- the county assessor and county auditor; and
- the State Board of Education, and
- the legislative body or governing board of each taxing entity.

UCA § 17C-2-502(1)(b)(ii). This notice must also include, along with the six plan-notice points listed above (§ 5.4.2.1),

> a statement that property tax revenues resulting from an increase in valuation of property within the … proposed project area will be paid to the agency for urban renewal purposes rather than to the taxing entit[ies] … the tax revenues would otherwise have been paid [to] if **(i)** a majority of the taxing entity committee consents to the project area budget; and **(ii)** the project area plan provides for the agency to receive tax increment … [along with] an invitation to the recipient of the notice to submit to the agency comments concerning the subject matter of the hearing before the date of the hearing.

UCA § 17C-2-502(4).

5.4.2.4 The Notice that isn't Notice: Public Review

Upon completion of the plan, the agency must make it available for public review at the agency's offices during regular business hours. *Id.* § 2-102(1)(a)(iv). The plan should be completed and made available before the required notices go out, since the notices inform their recipients of its availability for review. Not having it available can be not only embarrassing, but dangerous: litigation can be triggered by such omissions.

5.4.3 The Hearing

5.4.3.1 Procedure

At the hearing (same as before), the agency board must "**(A)** allow public comment on **(I)** the draft project area plan[,] and **(II)** whether the draft project area plan should be revised, approved, or rejected; and **(B)** receive all written and hear all oral objections to the draft project area plan," UCA § 17C-2-102(1)(a)(vi), as well as accepting comments from the taxing entities, *id.* § 2-102(1)(a)(vii).[35]

[35] "[B]efore holding the plan hearing, [the agency must] provide an opportunity for the State Board of Education and each taxing entity that levies a tax on property within the proposed project area to consult with the agency regarding the draft project area plan."

5.4.3.2 Objections

Among other comments, the agency board must also accept objections. Anyone can file a written objection to the plan at any time prior to the plan hearing. UCA § 17C-2-105(1). If the record owners of a majority of the private real property included within the project area file propose an alternative plan (either before or at the hearing), the agency must consider their proposal in conjunction with the agency's plan. *Id.* § 2-105(2).

If an agency receives, at some point prior to or at the hearing, a written objection from the owners of at least 40% of the private land area within the project area, and these owners do not withdraw the objection, then an agency board can't approve the plan until it is approved by the voters within the agency boundary, *id.* § 2-105(3)(a), at an election held pursuant to the Utah Election Code (Title 20A), *id.* § 2-105(3)(b)(i).[36] A majority vote in favor of the plan constitutes automatic approval of the plan, which the agency then must confirm by resolution. *Id.* § 2-105(3)(b)(iii).

On the other hand, If an agency receives, at some point prior to or at the hearing, a written objection from the owners of at least 2/3 (*i.e.*, 27% more than the 40% lower end) of the private land area within the project area, and these owners do not withdraw the objection, then an agency board can't approve the plan at all, nor may the agency even so much as reconsider the project area plan for three years. *Id.* § 2-105(4).

OBJECTION LEVEL
≥ 66.7% The Plan may not be approved
≥ 40% The Plan must be submitted to the voters
< 40% No required response

5.4.3.3 Plan Adoption

/a. Agency Board Adoption

Having heard and received comments on, evidence about, and objections to the plan, the agency board closes the hearing, and thereafter, at the same or a subsequent meeting, the board

must consider the comments, evidence, and objections offered for and against adoption of the draft plan, and must then determine whether to approve the plan, revise the plan, or reject the plan. Once any modifications have been made that the agency board believes appropriate, the board adopts the plan by resolution.

The adopting resolution must include all of the following:

(1) a legal description of the boundaries of the project area that is the subject of the project area plan;

(2) the agency's purposes and intent with respect to the project area;

(3) the project area plan incorporated by reference;

(4) a statement that the board previously made a finding of blight within the project area and the date of the board's finding of blight; and

(5) the board findings and determinations that:

  (a) there is a need to effectuate a public purpose;

  (b) there is a public benefit under the analysis described in Subsection 17C-2-103(2);

  (c) it is economically sound and feasible to adopt and carry out the project area plan;

  (d) the project area plan conforms to the community's general plan; and

  (e) carrying out the project area plan will promote the public peace, health, safety, and welfare of the community in which the project area is located.

UCA § 17C-2-106.

/b. Local Legislative Body Adoption

Once the agency board has approved and adopted the project area plan by resolution, it must send the plan on to the local legislative body for adoption by ordinance (apparently in order to give the project force of law). The plan may not, in fact, take effect until the ordinance is adopted. Far from the complicated document it used to be, the ordinance has since become very simple, and requires nothing more than recognition of the agency resolution and a declaration that the plan is the “official” plan.

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[36] An election under Subsection (3)(a) may be held on the same day and with the same election officials as an election held by the community in which the proposed project area is located. UCA § 17C-2-105(3)(b)(ii).

5.4.4 Post-Adoption Notice

5.4.4.1 Local Legislature Notice

Once the adopting ordinance has been passed, the local legislative body must give notice by publication (or posting, if there's no generally circulating paper), setting forth the ordinance or a summary of it and stating that the plan is available for general public inspection (and the hours that it will be available. UCA § 17C-2-108(1)(a)&(5). No one, in sum, may be required to fill out GRAMA forms or requests to view the project area plans.

The plan takes effect upon publication. *Id.* § 2-108(2).

5.4.4.2 Agency Notice

Within 30 days after the community legislature adopts the project area plan by ordinance, the agency must also give notice of the fact by

(1) recording with the county recorder a document containing:
   (a) a description of the land within the project area;
   (b) a statement that the project area plan has been adopted; and
   (c) the date of adoption;
(2) transmitting a copy of the description and an accurate map or plat of the project area boundaries to Utah's Automated Geographic Reference Center; and
(3) transmitting[37] a copy of the project area description, a copy of the adopting ordinance, and a map or plat of the project area boundaries:
   (a) the auditor, recorder, attorney, surveyor, and assessor of each county in which any part of the project area is located;
   (b) the auditor or assessor for each taxing entity that does not use the county assessment roll or collect its taxes through the county;
   (c) the legislative body or governing board of each taxing entity;
   (d) the State Tax Commission; and
   (e) the State Board of Education.

UCA § 17C-2-108.

5.4.5 Challenging Plan Adoption

In much the same way as a challenge to a blight finding, any person in interest may challenge the adoption of the project area plan for a period of 30 days after the plan's effective date. After the

[37] Whatever "transmit" means.

30-day challenge period expires, the plan cannot be contested by anyone for any reason. UCA § 17C-2-108(3)(b).

5.5 The Project Area Budget

If an agency plans to fund a URA project with tax increment (which is virtually always), it must prepare and adopt a project area budget. UCA § 17C-2-201(1). Project area budgets should be prepared at the same time the plan is being prepared, since even an adopted plan will accomplish nothing at all if there's no budget to fund it. Generally speaking, "an agency is entitled to receive tax increment as authorized by … a project area budget approved by the taxing entity committee." UCA § 17C-1-401(5)(a).

5.5.1 Required Contents

A URA project area budget is "a multiyear projection or annual or cumulative revenues and expenses," UCA § 17C-1-102(32), including

- **(a)** the base taxable value of the project area;
- **(b)** projected tax increment expected to be generated in the project area;
- **(c)** the amount of tax increment to be shared with other taxing entities;
- **(d)** the amount of tax increment to be used to implement the plan, including the estimated amount to be used for land acquisition, public improvements, infrastructure improvements, and loans, grants, or other incentives to private and public entities;
- **(e)** the tax increment expected to be used to cover the cost of administering the project area plan;
- **(f)** if the area from which tax increment is to be collected is less than the entire project area:
  - **(i)** the tax identification numbers of the parcels from which tax increment will be collected; or
  - **(ii)** a legal description of the portion of the project area from which tax increment will be collected; and
- **(g)** for property that the agency owns and expects to sell, the expected total cost of the property to the agency and the expected selling price.

Additionally, a URA budget must specify "(i) the number of tax years for which the agency will be allowed to receive tax increment from the project area; and (ii) the percentage of tax increment or maximum cumulative dollar amount of tax increment the agency is

entitled to receive from the project area under the project area budget. UCA 17C-2-201(b).

5.5.2 Notice and Hearing

Conveniently, the statute allows the agency to combine both the notices and the hearings regarding the URA plan and budget, with one small addition. The combined notice must contain the six points required in connection with the plan hearing, and it also must include the following statement in connection with the budget hearing:

> The (name of agency) has requested $_____ in property tax revenues that will be generated by development within the (name of project area) to fund a portion of project costs within the (name of project area). These property tax revenues will be used for the following: (list major budget categories and amounts). These property taxes will be taxes levied by the following governmental entities, and, assuming current tax rates, the taxes paid to the agency for this project area from each taxing entity will be as follows: (list each taxing entity levying taxes and the amount of total taxes that would be paid from each taxing entity). All of the property taxes to be paid to the agency for the urban renewal in the project area are taxes that will be generated only if the project area is developed.
>
> All concerned citizens are invited to attend the project area budget hearing scheduled for (date, time, and place of hearing). A copy of the (name of project area) project area budget is available at the offices of (name of agency and office address).

UCA § 17C-4-404(1). At the hearing, the agency board must "allow public comment on **(I)** the draft project area budget; and **(II)** whether the draft project area budget should be revised, approved, or rejected." UCA § 17C-4-102(1)(d).

5.5.3 Agency Adoption

At any time after the agency has held the budget hearing, the agency may then proceed to adopt the Draft URA Project Area Budget as the Official URA Project Area Budget. The agency adopts the URA budget by resolution. Unlike the URA plan, the URA budget need not be adopted by ordinance of the community legislature.

5.5.4 Post-Adoption Notice

Within 30 days after adopting a URA project area budget, the agency needs to file a copy of the approved budget with the following:

- the State Tax Commission;
- the state auditor;
- the county auditor;
- the State Board of Education;

- the legislative body or governing board of each taxing entity; and
- if the project area budget allocates tax increment for housing under Section 17C-1-412, with the loan fund board.

5.5.5 Taxing Entity Committee Approval and Attorney Certification

Just as a URA project area budget needs approval of the TEC before the agency can collect any tax increment from the project area, so also does a URA project area budget require approval of the TEC. The statute does not specify whether the TEC must approve the URA budget before or after the agency approves the budget, but the statute does specify that an agency cannot collect any tax increment from an URA project area until a corresponding URA budget has been approved by the TEC. The TEC approves the URA budget by resolution approved by 2/3 of a quorum of TEC members.

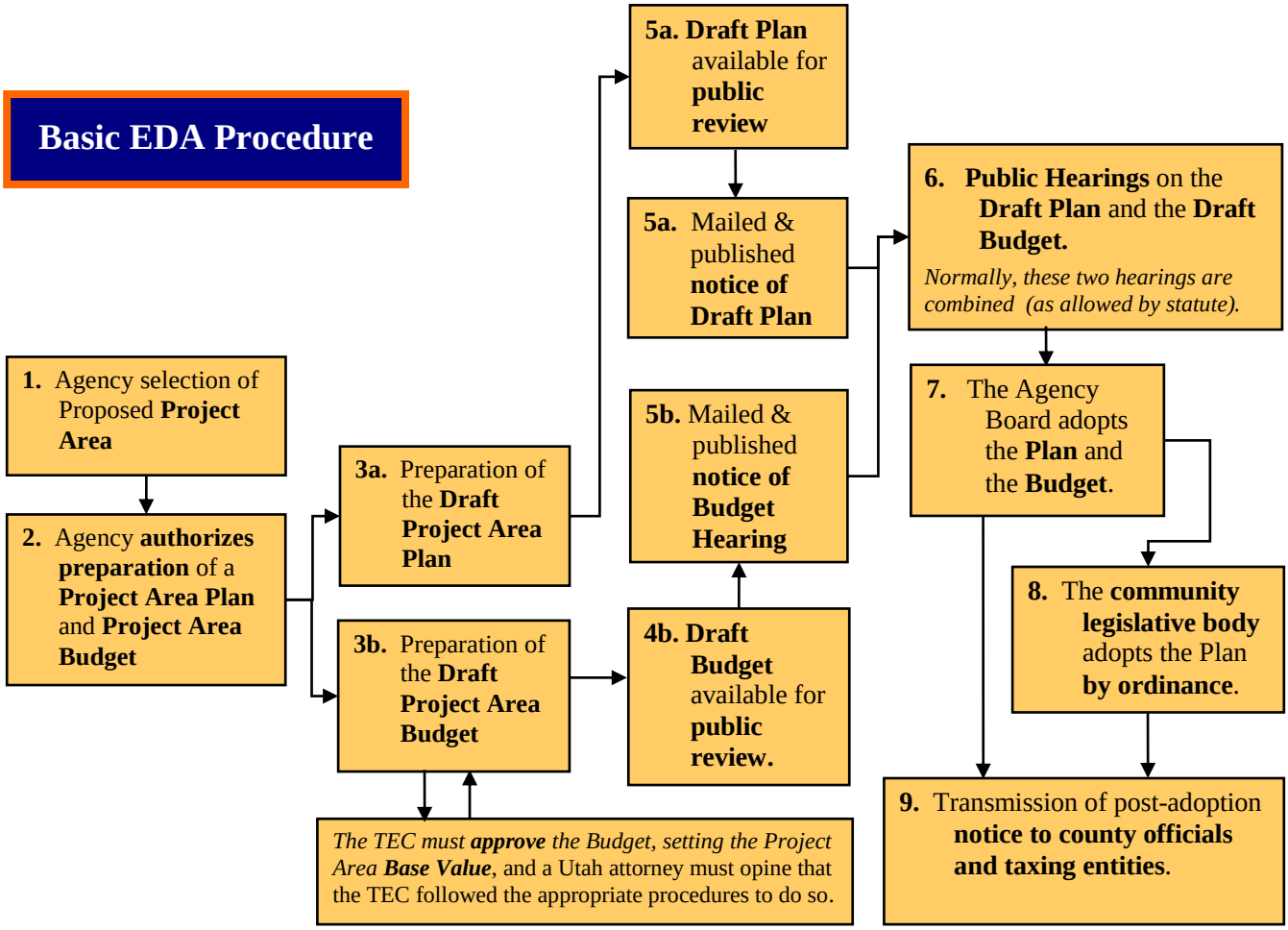
Presumably because of the unique nature of the TEC as a rather disorganized oversight and approval authority, the statute requires an attorney, licensed to practice law in Utah, to provide a written certification (*i.e.*, opinion) "stating that the taxing entity committee followed the appropriate procedures to approve the project area budget." UCA 17C-4-201(f).

5.5.6 Challenging Budget Adoption

Any person in interest may challenge the adoption of the project area budget for a period of 30 days after the budget's effective date. After the 30-day challenge period expires, the budget, a payment made to the agency under the budget, or the agency's use of tax increment under the budget, cannot be contested by anyone for any reason. UCA § 17C-4-201(3)(b).

6. The Steps of Economic Development.

6.1 Basic Economic Development.



6.2 The Economic Development Plan.

Unlike an urban renewal project area, an economic development project area does not begin with a blight study; indeed, blight is not even a relevant inquiry in economic development. Instead, economic development is geared toward the creation of jobs and increased tax base through the promotion of new development on vacant, underdeveloped, or underutilized land. To begin the economic development project area creation process, the agency, by resolution, may designate a proposed economic development project area and authorize the preparation of a draft project area plan and budget within that proposed area.

6.2.1 Content Requirement

The agency then proceeds to prepare a "Draft Economic Development Project Area Plan"

setting forth various aspects of the anticipated project. The draft and final plans must

(a) describe the boundaries of the project area; [38]

(b) state generally the project area land uses, principal street layout, population densities, and building intensities and how the project will affect them;

(c) state the standards that will guide the economic development;

(d) show how the project will fulfill the purposes of Chapter 17C-3;

(e) show that the project will comport with the community's general plan;

(f) describe how the economic development will create additional jobs;

(g) describe any specific venture that is the object of the proposed project;

(h) explain how the agency will select any private developers to undertake all or part of the project and identify each private developer currently involved;

(i) state the reasons for the selection of the project area;

(j) describe the physical, social, and economic conditions in the project area;

(k) describe any tax incentives offered private entities for facilities in the project area;

(l) include a benefit analysis;[39]

(m) if any of the buildings or uses in the project area are or could be included in the National Register of Historic Places or the State Register, state that the agency shall comply with historic preservation laws as if it were a state agency; and

(n) include any other information the agency determines necessary or advisable.

UCA § 17C-2-103. The draft plan is a fairly large and complex document, generally including numerous attachments, and requiring quite some time to prepare. Care should be taken, however, to ensure that the draft plan does not exceed a reasonable size, since it will need to be read and understood by quite a few people.

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[38] Speaking of boundary descriptions, one very important point to bear in mind: UCA § 17C-1-414 declares that "[i]f the boundaries of a project area, as described in the project area plan, include part of a tax parcel and exclude part of the same tax parcel, the agency ***shall provide the assessor of the county in which the project area is located a metes and bounds description of the part of the tax parcel included within the project area boundaries***. If an agency fails to comply with th[is] requirement, the assessor … may ***exclude th[e] parcel*** from the project area for purposes of calculating tax increment to be paid to the agency until the agency complies …."

[39] The benefit analysis must consider **(a)** the benefit of any financial assistance or other public subsidy proposed to be provided by the agency, including **(i)** an evaluation of the reasonableness of the costs of the urban renewal, **(ii)** agency or developer efforts to maximize private investment, **(iii)** the rationale for use of tax increment, including an analysis of the likelihood that the proposed development might reasonably occur in the foreseeable future solely through private investment; and **(iv)** an estimate of how much and for how long the project will expend tax increment; **AND (b)** the anticipated public benefit of the project, including **(i)** its projected benefit upon the community tax base, **(ii)** associated business and economic activity it is likely to stimulated, and **(iii)** the number of jobs or employment anticipated to be generated or preserved.

6.2.2 Notice

6.2.2.1 Notice Requirements for a Plan Hearing

Notice of the plan hearing must include the mandated particulars:

(a) **(i)** specific boundary description **OR**

(ii) address & telephone-number where a description may be requested + virtual copy on community website (if any);

(b) a map of the boundaries of the (proposed) project area;

(c) an explanation of the purpose of the hearing; and

(d) a statement of the date, time, and location of the hearing.

UCA § 17C-3-402(3). The additionals required for a plan hearing are the following two:

(e) a statement that any person objecting to the plan or contesting the regularity of any of the proceedings to adopt it may appear at the hearing to show cause why the plan should not be adopted; **AND**

(f) a statement that the proposed project area plan is available for inspection at the agency offices.

Id. § 17C-4-404. Finally, as always, the agency may also include "any other information it considers necessary or advisable, including," suggests the statute, "the public purpose served by the project and any future tax benefits expected to result from the project." *Id.* § 3-402(5).

6.2.2.2 Published Notice

Published notice of the plan hearing requires 14-day advance notice by one of the following methods: (i) publication of at least one notice in a newspaper of general circulation within the county in which the project area or proposed project area is located, (ii) if there is no newspaper of general circulation, posting notice in at least three conspicuous places within the county in which the project area or proposed project area is located, or (iii) posting notice, excluding the map described in Subsection (3)(b), at least 14 days before the day on which the hearing is held on: (A) the Utah Public Notice Website described in Section 63F-1-701; and (B) the public website of a community located within the boundaries of the project area. UCA § 17C-3-402(1)(a)(i). Published notice must include the six listed points above, although it need not include the map (item *b*).

6.2.2.3 Mailed Notice

/a. To Property Owners

As before, the agency must mail notice to each of the owners of property within the project

area. This notice must be sent, at least 30 days before the hearing, to each record owner of property in the proposed project area. UCA § 17C-3-402(1)(b)(i). This mailing, as with all mailed notice under Chapter 17C-3, is "conclusively considered to have been properly completed" if

> **(a)** the agency mails the notice to the property owners as shown in the records, including an electronic database, of the county recorder's office and at the addresses shown in those records; **AND**
>
> **(b)** the county recorder's office records used by the agency in identifying owners to whom the notice is mailed and their addresses were obtained or accessed from the county recorder's office no earlier than **30 days** before the mailing.

UCA § 17C-3-402(2) (emphasis added).

/b. To the Taxing Entities

And again, as before, notice must also be mailed, 30 days prior to the blight hearing, to

- the State Tax Commission;
- the county assessor and county auditor; and
- the State Board of Education, and
- the legislative body or governing board of each taxing entity.

UCA § 17C-3-402(1)(b)(ii). This notice must also include, along with the six plan-notice points listed above,

> a statement that property tax revenues resulting from an increase in valuation of property within the … proposed project area will be paid to the agency for economic development purposes rather than to the taxing entit[ies] … the tax revenues would otherwise have been paid [to] if **(i)** a majority of the taxing entity committee consents to the project area budget; and **(ii)** the project area plan provides for the agency to receive tax increment … [along with] an invitation to the recipient of the notice to submit to the agency comments concerning the subject matter of the hearing before the date of the hearing.

UCA § 17C-3-402(4).

6.2.2.4 The Notice that isn't Notice: Public Review

Upon completion of the plan, the agency must make it available for public review at the agency's offices during regular business hours. *Id.* § 3-102(1)(b). The plan should be completed and made available before the required notices go out, since the notices inform their recipients of its availability for review. Not having it available can be not only embarrassing, but dangerous:

litigation can be triggered by such omissions.

6.2.3 The Hearing

6.2.3.1 Procedure

At the hearing (same as before), the agency board must "**(A)** allow public comment on **(I)** the draft project area plan[,] and **(II)** whether the draft project area plan should be revised, approved, or rejected; and **(B)** receive all written and hear all oral objections to the draft project area plan," UCA § 17C-3-102(1)(d), as well as accepting comments from the taxing entities, *id.* § 3-102(e).[40]

6.2.3.2 Plan Adoption

/a. Agency Board Adoption

Having heard and received comments on, evidence about, and objections to the plan, the agency board closes the hearing, and thereafter, at the same or a subsequent meeting, the board must consider the comments, evidence, and objections offered for and against adoption of the draft plan, and must then determine whether to approve the plan, revise the plan, or reject the plan. Once any modifications have been made that the agency board believes appropriate, the board adopts the plan by resolution.

The adopting resolution must include all of the following:

(1) a legal description of the boundaries of the project area that is the subject of the project area plan;

(2) the agency's purposes and intent with respect to the project area;

(3) the project area plan incorporated by reference;; and

(4) the board findings and determinations that:

- **(a)** there is a need to effectuate a public purpose;
- **(b)** there is a public benefit under the analysis described in Subsection 17C-3-103(2);
- **(c)** it is economically sound and feasible to adopt and carry out the project area plan;
- **(d)** the project area plan conforms to the community's general plan; and
- **(e)** carrying out the project area plan will promote the public peace, health, safety, and welfare of the community in which the project area is located.

[40] "[B]efore holding the plan hearing, [the agency must] provide an opportunity for the State Board of Education and each taxing entity that levies a tax on property within the proposed project area to consult with the agency regarding the draft project area plan."

UCA § 17C-3-105.

/b. Local Legislative Body Adoption

Once the agency board has approved and adopted the project area plan by resolution, it must send the plan on to the local legislative body for adoption by ordinance (apparently in order to give the project force of law). The plan may not, in fact, take effect until the ordinance is adopted. Far from the complicated document it used to be, the ordinance has since become very simple, and requires nothing more than recognition of the agency resolution and a declaration that the plan is the "official" plan.

6.2.4 Post-Adoption Notice

6.2.4.1 Local Legislature Notice

Once the adopting ordinance has been passed, the local legislative body must give notice by publication (or posting, if there's no generally circulating paper), setting forth the ordinance or a summary of it and stating that the plan is available for general public inspection (and the hours that it will be available. UCA § 17C-3-107(1)(a)&(5). No one, in sum, may be required to fill out GRAMA forms or requests to view the project area plans.

The plan takes effect upon publication. *Id.* § 3-107(2).

6.2.4.2 Agency Notice

Within 30 days after the community legislature adopts the project area plan by ordinance, the agency must also give notice of the fact by

(1) recording with the county recorder a document containing:
   (a) a description of the land within the project area;
   (b) a statement that the project area plan has been adopted; and
   (c) the date of adoption;
(2) transmitting[41] a copy of the description and an accurate map or plat of the project area boundaries to Utah's Automated Geographic Reference Center; and
(3) transmitting a copy of the project area description, a copy of the adopting ordinance, and a map or plat of the project area boundaries:
   (a) the auditor, recorder, attorney, surveyor, and assessor of each county in which any part of the project area is located;

[41] Whatever "transmit" means.

(b) the auditor or assessor for each taxing entity that does not use the county assessment roll or collect its taxes through the county;

(c) the legislative body or governing board of each taxing entity;

(d) the State Tax Commission; and

(e) the State Board of Education.

UCA § 17C-3-108.

6.2.5 Challenging Plan Adoption

Any person in interest may challenge the adoption of the project area plan for a period of 30 days after the plan's effective date. After the 30-day challenge period expires, the plan cannot be contested by anyone for any reason. UCA § 17C-3-107(3)(b).

6.3 The Project Area Budget

If an agency plans to fund a EDA project with tax increment (which is virtually always), it must prepare and adopt a project area budget. UCA § 17C-3-201(1). Project area budgets should be prepared at the same time the plan is being prepared, since even an adopted plan will accomplish nothing at all if there's no budget to fund it. Generally speaking, "an agency is entitled to receive tax increment as authorized by … a project area budget approved by the taxing entity committee." UCA § 17C-1-401(5)(a).

6.3.1 Required Contents

A EDA project area budget is "a multiyear projection or annual or cumulative revenues and expenses," UCA § 17C-1-102(32), including

(a) the base taxable value of the project area;

(b) projected tax increment expected to be generated in the project area;

(c) the amount of tax increment to be shared with other taxing entities;

(d) the amount of tax increment to be used to implement the plan, including the estimated amount to be used for land acquisition, public improvements, infrastructure improvements, and loans, grants, or other incentives to private and public entities;

(e) the tax increment expected to be used to cover the cost of administering the project area plan;

(f) if the area from which tax increment is to be collected is less than the entire project area:

(i) the tax identification numbers of the parcels from which tax increment will

be collected; or

(ii) a legal description of the portion of the project area from which tax increment will be collected; and

(g) for property that the agency owns and expects to sell, the expected total cost of the property to the agency and the expected selling price.

Additionally, a EDA budget must specify "(i) the number of tax years for which the agency will be allowed to receive tax increment from the project area; and (ii) the percentage of tax increment or maximum cumulative dollar amount of tax increment the agency is entitled to receive from the project area under the project area budget." UCA 17C-2-201(b).

6.3.2 Notice and Hearing

Conveniently, the statute allows the agency to combine both the notices and the hearings regarding the EDA plan and budget, with one small addition. The combined notice must contain the six points required in connection with the plan hearing, and it also must include the following statement in connection with the budget hearing:

> The (name of agency) has requested $_____ in property tax revenues that will be generated by development within the (name of project area) to fund a portion of project costs within the (name of project area). These property tax revenues will be used for the following: (list major budget categories and amounts). These property taxes will be taxes levied by the following governmental entities, and, assuming current tax rates, the taxes paid to the agency for this project area from each taxing entity will be as follows: (list each taxing entity levying taxes and the amount of total taxes that would be paid from each taxing entity). All of the property taxes to be paid to the agency for the economic development in the project area are taxes that will be generated only if the project area is developed.
>
> All concerned citizens are invited to attend the project area budget hearing scheduled for (date, time, and place of hearing). A copy of the (name of project area) project area budget is available at the offices of (name of agency and office address).

UCA § 17C-3-404(1). At the hearing, the agency board must "allow public comment on **(I)** the draft project area budget; and **(II)** whether the draft project area budget should be revised, approved, or rejected." UCA § 17C-3-102(1)(d).

6.3.3 Agency Adoption

At any time after the agency has held the budget hearing, the agency may then proceed to adopt the Draft EDA Project Area Budget as the Official EDA Project Area Budget. The agency adopts the EDA budget by resolution. Unlike the EDA plan, the EDA budget need not be adopted

by ordinance of the community legislature.

6.3.4 Post-Adoption Notice

Within 30 days after adopting a EDA project area budget, the agency needs to file a copy of the approved budget with the following:

- the State Tax Commission;
- the state auditor;
- the county auditor;
- the State Board of Education;
- the legislative body or governing board of each taxing entity; and
- if the project area budget allocates tax increment for housing under Section 17C-1-412, with the loan fund board.

6.3.5 Taxing Entity Committee Approval and Attorney Certification

Just as a URA project area budget needs approval of the TEC before the agency can collect any tax increment from the project area, so also does a EDA project area budget require approval of the TEC. The statute does not specify whether the TEC must approve the EDA budget before or after the agency approves the budget, but the statute does specify that an agency cannot collect any tax increment from an EDA project area until a corresponding EDA budget has been approved by the TEC. The TEC approves the EDA budget by resolution approved by 2/3 of a quorum of TEC members.

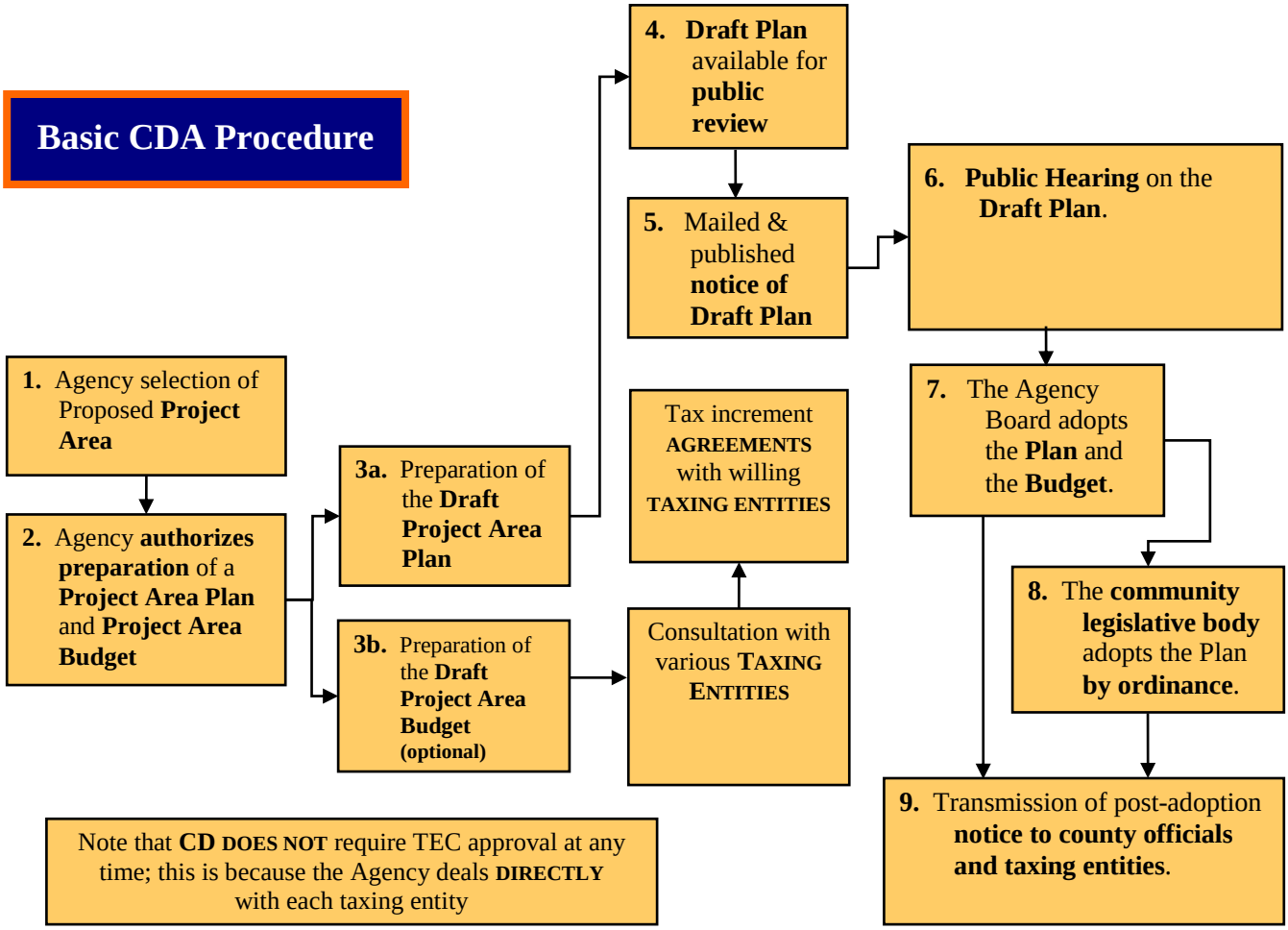
Presumably because of the unique nature of the TEC as a rather disorganized oversight and approval authority, the statute requires an attorney, licensed to practice law in Utah, to provide a written certification (*i.e.*, opinion) "stating that the taxing entity committee followed the appropriate procedures to approve the project area budget." UCA 17C-3-201(f).

6.3.6 Challenging Budget Adoption

Any person in interest may challenge the adoption of the project area budget for a period of 30 days after the budget's effective date. After the 30-day challenge period expires, the budget, a payment made to the agency under the budget, or the agency's use of tax increment under the budget, cannot be contested by anyone for any reason. UCA § 17C-3-201(3)(b).

7. The Steps of Community Development.

7.1 Basic Community Development.



7.2 The Community Development Plan.

Community development provides an entirely new approach to tax increment finance. Community development replaces the URA/EDA taxing entity committee approval requirement with a taxing entity opt-in procedure. Like an urban renewal or economic development project, a community development project also requires a project area plan. However, unlike an urban renewal or economic development plan, the community development plan is funded through tax increment sharing negotiated by separate interlocal agreement with each taxing entity within the CDA project area boundaries. The CDA process begins with the adoption by the agency of a resolution designating the proposed CDA project area boundaries and authorizing the preparation of the CDA plan.

7.2.1 Content Requirement

The agency then proceeds to prepare a "Draft Community Development Project Area Plan" setting forth various aspects of the anticipated project. The draft and final plans must

- **(a)** describe the boundaries of the project area; [42]
- **(b)** state generally the project area land uses, principal street layout, population densities, and building intensities and how the project will affect them;
- **(c)** state the standards that will guide the economic development;
- **(d)** show that the project will comport with the community's general plan;
- **(e)** describe how the plan will promote community development;
- **(f)** describe any specific venture that is the object of the proposed project;
- **(g)** explain how the agency will select any private developers to undertake all or part of the project and identify each private developer currently involved;
- **(h)** state the reasons for the selection of the project area;
- **(i)** describe the physical, social, and economic conditions in the project area;
- **(j)** describe any tax incentives offered private entities for facilities in the project area;
- **(k)** include a benefit analysis;[43] and
- **(l)** include any other information the agency determines necessary or advisable.

UCA § 17C-4-103. The draft plan is a fairly large and complex document, generally including numerous attachments, and requiring quite some time to prepare. Care should be taken, however, to ensure that the draft plan does not exceed a reasonable size, since it will need to be read and understood by quite a few people.

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[42] Speaking of boundary descriptions, one very important point to bear in mind: UCA § 17C-1-414 declares that "[i]f the boundaries of a project area, as described in the project area plan, include part of a tax parcel and exclude part of the same tax parcel, the agency ***shall provide the assessor of the county in which the project area is located a metes and bounds description of the part of the tax parcel included within the project area boundaries***. If an agency fails to comply with th[is] requirement, the assessor … may ***exclude th[e] parcel*** from the project area for purposes of calculating tax increment to be paid to the agency until the agency complies …."

[43] The benefit analysis must consider **(a)** the benefit of any financial assistance or other public subsidy proposed to be provided by the agency, including **(i)** an evaluation of the reasonableness of the costs of the urban renewal, **(ii)** agency or developer efforts to maximize private investment, **(iii)** the rationale for use of tax increment, including an analysis of the likelihood that the proposed development might reasonably occur in the foreseeable future solely through private investment; and **(iv)** an estimate of how much and for how long the project will expend tax increment; **AND (b)** the anticipated public benefit of the project, including **(i)** its projected benefit upon the community tax base, **(ii)** associated business and economic activity it is likely to stimulated, and **(iii)** the number of jobs or employment anticipated to be generated or preserved.

7.2.2 Notice

7.2.2.1 Notice Requirements for a Plan Hearing

Notice of the plan hearing must include the mandated particulars:

(a) **(i)** specific boundary description **OR**

(ii) address & telephone-number where a description may be requested + virtual copy on community website (if any);

(b) a map of the boundaries of the (proposed) project area;

(c) an explanation of the purpose of the hearing; and

(d) a statement of the date, time, and location of the hearing.

UCA § 17C-3-402(3). The additionals required for a plan hearing are the following two:

(e) a statement that any person objecting to the plan or contesting the regularity of any of the proceedings to adopt it may appear at the hearing to show cause why the plan should not be adopted; **AND**

(f) a statement that the proposed project area plan is available for inspection at the agency offices.

Id. § 17C-4-404. Finally, as always, the agency may also include "any other information it considers necessary or advisable, including," suggests the statute, "the public purpose served by the project and any future tax benefits expected to result from the project." *Id.* § 3-402(5).

7.2.2.2 Published Notice

Published notice of the plan hearing requires 14-day advance notice by one of the following methods: (i) publication of at least one notice in a newspaper of general circulation within the county in which the project area or proposed project area is located, (ii) if there is no newspaper of general circulation, posting notice in at least three conspicuous places within the county in which the project area or proposed project area is located, or (iii) posting notice, excluding the map described in Subsection (3)(b), at least 14 days before the day on which the hearing is held on: (A) the Utah Public Notice Website described in Section 63F-1-701; and (B) the public website of a community located within the boundaries of the project area. UCA § 17C-4-402(1)(a)(i). Published notice must include the six listed points above, although it need not include the map (item *b*).

7.2.2.3 Mailed Notice

/a. To Property Owners

As before, the agency must mail notice to each of the owners of property within the project

area. This notice must be sent, at least 30 days before the hearing, to each record owner of property in the proposed project area. UCA § 17C-4-402(1)(b)(i). This mailing, as with all mailed notice under Chapter 17C-4, is "conclusively considered to have been properly completed" if

(a) the agency mails the notice to the property owners as shown in the records, including an electronic database, of the county recorder's office and at the addresses shown in those records; **AND**

(b) the county recorder's office records used by the agency in identifying owners to whom the notice is mailed and their addresses were obtained or accessed from the county recorder's office no earlier than **30 days** before the mailing.

UCA § 17C-4-402(2) (emphasis added).

/b. To the Taxing Entities

And again, as before, notice must also be mailed, 30 days prior to the blight hearing, to

- the State Tax Commission;
- the county assessor and county auditor; and
- the State Board of Education, and
- the legislative body or governing board of each taxing entity.

UCA § 17C-4-402(1)(b)(ii).

7.2.2.4 The Notice that isn't Notice: Public Review

Upon completion of the plan, the agency must make it available for public review at the agency's offices during regular business hours. *Id.* § 4-102(1)(b). The plan should be completed and made available before the required notices go out, since the notices inform their recipients of its availability for review. Not having it available can be not only embarrassing, but dangerous: litigation can be triggered by such omissions.

7.2.3 The Hearing

7.2.3.1 Procedure

At the hearing (same as before), the agency board must "**(A)** allow public comment on **(I)** the draft project area plan[,] and **(II)** whether the draft project area plan should be revised, approved, or rejected; and **(B)** receive all written and hear all oral objections to the draft project area plan,"

UCA § 17C-3-102(1)(d), as well as accepting comments from the taxing entities, *id.* § 3-102(e).[44]

7.2.3.2 Plan Adoption

/a. Agency Board Adoption

Having heard and received comments on, evidence about, and objections to the plan, the agency board closes the hearing, and thereafter, at the same or a subsequent meeting, the board must consider the comments, evidence, and objections offered for and against adoption of the draft plan, and must then determine whether to approve the plan, revise the plan, or reject the plan. Once any modifications have been made that the agency board believes appropriate, the board adopts the plan by resolution.

The adopting resolution must include all of the following:

(1) a legal description of the boundaries of the project area that is the subject of the project area plan;

(2) the agency's purposes and intent with respect to the project area;

(3) the project area plan incorporated by reference;; and

(4) the board findings and determinations that:

  (a) there is a need to effectuate a public purpose;

  (b) there is a public benefit under the analysis described in Subsection 17C-3-103(2);

  (c) it is economically sound and feasible to adopt and carry out the project area plan;

  (d) the project area plan conforms to the community's general plan; and

  (e) carrying out the project area plan will promote the public peace, health, safety, and welfare of the community in which the project area is located.

UCA § 17C-4-104.

/b. Local Legislative Body Adoption

Once the agency board has approved and adopted the project area plan by resolution, it must send the plan on to the local legislative body for adoption by ordinance (apparently in order to give the project force of law). The plan may not, in fact, take effect until the ordinance is adopted. Far from the complicated document it used to be, the ordinance has since become very simple, and

[44] "[B]efore holding the plan hearing, [the agency must] provide an opportunity for the State Board of Education and each taxing entity that levies a tax on property within the proposed project area to consult with the agency

requires nothing more than recognition of the agency resolution and a declaration that the plan is the "official" plan.

7.2.4 Post-Adoption Notice

7.2.4.1 Local Legislature Notice

Once the adopting ordinance has been passed, the local legislative body must give notice by publication (or posting, if there's no generally circulating paper), setting forth the ordinance or a summary of it and stating that the plan is available for general public inspection (and the hours that it will be available. UCA § 17C-4-106(1)(a)&(5). No one, in sum, may be required to fill out GRAMA forms or requests to view the project area plans.

The plan takes effect upon publication. *Id.* § 4-106(2).

7.2.4.2 Agency Notice

Within 30 days after the community legislature adopts the project area plan by ordinance, the agency must also give notice of the fact by

(1) recording with the county recorder a document containing:
  (a) a description of the land within the project area;
  (b) a statement that the project area plan has been adopted; and
  (c) the date of adoption;
(2) transmitting[45] a copy of the description and an accurate map or plat of the project area boundaries to Utah's Automated Geographic Reference Center; and
(3) transmitting a copy of the project area description, a copy of the adopting ordinance, and a map or plat of the project area boundaries:
  (a) the auditor, recorder, attorney, surveyor, and assessor of each county in which any part of the project area is located;
  (b) the auditor or assessor for each taxing entity that does not use the county assessment roll or collect its taxes through the county;
  (c) the legislative body or governing board of each taxing entity;
  (d) the State Tax Commission; and
  (e) the State Board of Education.

UCA § 17C-4-107.

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regarding the draft project area plan."

[45] Whatever "transmit" means.

7.2.5 Challenging Plan Adoption

Any person in interest may challenge the adoption of the project area plan for a period of 30 days after the plan's effective date. After the 30-day challenge period expires, the plan cannot be contested by anyone for any reason. UCA § 17C-4-106(3)(b).

7.3 The Project Area Budget and Interlocal Agreements

The CDA project area budget is optional, because the CDA plan is funded through interlocal agreements negotiated directly with each taxing entity. The agency does not call a taxing entity committee meeting to review and approve a CDA budget. Rather, each taxing entity can pledge any amount of tax increment participation from 0% to 100%, for as many years at the taxing entity believes appropriate. The interlocal agreement also provides an opportunity for taxing entities to share other revenues, such as sales tax revenues, in addition to tax increment revenues. An interlocal agreement may be executed by the agency and taxing entity at any time, but the interlocal agreement does not become effective for purposes of funding the CDA plan until either the agency or the taxing entity, or both, publish in the newspaper a notice describing the terms of the interlocal agreement.

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8. Encouraging Development Activity—Participation Agreements.

The purpose for obtaining tax increment financing is to encourage development in a URA, EDA, or CDA. The tax increment (and, potentially, sales tax) revenues diverted to the project area can leverage private investment in the project area. To maximize the leveraging power of the public investment, and to protect the agency and the tax revenues, the agency should work with property owners, developers, and other participants in the project area through a written, signed Participation Agreement.

A Participation Agreement is an extensive contract between the agency and the participant. Of course, the details of each Participation Agreement vary from one agency to another, and from one participant to another, but in general, the Participation Agreement provides a tax incentive to the participant in exchange for the participant's pledge to perform development according to plans and a schedule of performance agreed to by the agency. Tax increment can leverage private

development through infrastructure installation, land purchases, tax refunds, business incentives, business and housing loans and grants, and many other creative uses.

The Participation Agreement is entirely performance based, which means the participant receives no incentive from the agency unless the participant first increases the tax base by actually developing property within the project area. Any tax incentives may also be conditioned on other performance obligations, such as the participant's pledge to create a certain number of new jobs each year, or to add a certain amount of assessed value to the tax rolls in the project area.

9. Conclusion.

Tax increment financing has a long and storied history in the United States in general, and in Utah more specifically. Fortunately, the Utah legislature has created the current three-track system that allows local communities to tailor tax increment financing projects to the unique nature of the community and development projects within the community. In many ways, tax increment financing may be an underutilized resource by communities across the state. Tax increment financing can encourage development that maybe would not occur at all, would not occur within the state or community, or would not occur within the foreseeable future, without public investment to leverage private investment.