

# INTRODUCTION OF RESOLUTION 2019-18, FORMATION OF URA AUTHORITY AND PRESE...

## HOT SPRINGS BLVD URBAN RENEWAL AUTHORITY CONDITIONS SURVEY

### 1.0 INTRODUCTION AND LEGAL BACKGROUND

Urban renewal is frequently identified as a slum clearance program operating in large cities and not in places like Colorado. However, the Colorado Urban Renewal Law, §§ 31-25-101 through 116, C.R.S. (the “Act”), has been in effect since 1958 and the program has evolved from mostly large federally funded projects to local projects of varying size financed with tax increment (“TIF”) revenues. According to the Department of Local Affairs, there are urban renewal authorities (“URAs”) in 61 Colorado municipalities (one URA may be formed per municipality).

Because there are few slum areas in Colorado, most, if not all, findings related to organizing URAs and approving urban renewal plans rely on meeting the requirements, findings, and declarations contained in the definition of “blighted area” in § 31-25-103 (2), C.R.S.

Not every property in a blighted area must be blighted for the area to qualify as an urban renewal area under the Act. It is the condition of the areas as a whole and not each individual property that is determinative. It is also worth noting that undeveloped or open lands can qualify as a blighted area under the Act. These are areas that are undeveloped and lack buildings, streets, utilities or other site improvements whether platted or not.

A blighted area means an area that, in its present condition and use, contains at least four of the following factors (or five in the unlikely event that eminent domain is approved by the municipal governing body as part of an urban renewal plan). Eminent domain will not be authorized as part of the URA contemplated herein.

There are two provisions that help smaller areas to qualify for urban renewal treatment. First, a condition that qualifies under one of the factors may be found to be blighted if there is no objection by the owners or tenants of the area surveyed. Second, the Act permits any particular condition found to be present may satisfy as many of the factors in § 31-25-103 (2), C.R.S., as are applicable to each condition. For example, the presence of vacant buildings included in a list of deteriorated structures may also pose a danger by fire. They would also qualify separately as an unsafe condition.

The following list of statutory factors is from the definition of “blighted area” in § 31-25-103(2), C.R.S. The subparagraphs are lettered as they are in the statute and contain examples of conditions evidencing blight. The examples are not a complete list, but merely illustrate conditions that qualify under each statutory category or factor. As noted, some conditions fit multiple categories.

(a) Slum, deteriorated, or deteriorating structures. It is the process of deterioration or the existence of substandard structures that constitutes blight. Included are conditions evidenced

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by an exterior inspection such items as roof damage, broken windows, vacant buildings, damaged or deteriorated siding or exterior walls. Lack of code required life safety facilities such as sprinkler systems, ADA requirements, defective electrical wiring, and presence of hazardous substances such as asbestos are also conditions that qualify. Under this factor, the emphasis is upon the condition of structures in the area as a whole and not each individual building or structure.

(b) Predominance of defective or inadequate street layout. This factor includes such conditions as lack of streets; inadequate street widths; dead ends; deterioration of existing streets; poor provisions or unsafe conditions for the flow of traffic, including pedestrians and bicycles; traffic congestion; inadequate emergency vehicle access; missing, obsolete and impractical street layout; or inadequate facilities for traffic flow or movement through the area.

(c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness. Included in this condition are long, narrow or irregularly sized properties, fractional lots, obsolete and impractical lot layout; and configurations resulting in unproductive and underutilization of the land.

(d) Unsanitary or unsafe conditions. Elements of this factor may include the existence of a floodplain or flood prone area; dangerous traffic or pedestrian conditions; inadequate storm drainage systems; poor fire protection facilities; high or unusual crime statistics; above average incidences of public safety responses; inadequate utility systems; lack of water or sanitary sewer systems; or existence of contaminants or hazardous materials or conditions on the ground or in buildings.

(e) Deterioration of site or other improvements. Elements of this factor may include deteriorated or obsolete streets, sidewalks, alleyways or other public infrastructure; damaged or missing public utilities; and some of the conditions listed in factors (b) and (d).

(f) Unusual topography or inadequate public improvements or utilities. Severe and significant slopes making use of property difficult, very expensive, or impractical may be included in this factor; and some conditions listed under (b), (d) and (e) involving public improvements or utilities may also apply to this factor.

(g) Defective or unusual conditions of title rendering the title unmarketable. This factor includes diversity and multiplicity of ownership making assemblage of land or redevelopment of a site difficult or impossible; title covenants or restrictions that inhibit or prevent redevelopment; and title problems such as the interruption of the chain of ownership or tracing of the ownership of the property.

(h) The existence of conditions that endanger life or property by fire or other causes. Factors such as buildings or property not in compliance with fire codes, building codes or environmental regulations (asbestos or soil contamination), flood hazards, and conditions found in other factors (such as unsanitary or unsafe conditions) may also apply here.

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(i) Buildings that are unsafe or unhealthy for persons to live or work in because of building code violations, dilapidation, deterioration, defective design, physical construction, or faulty or inadequate facilities. Some of the factors listed in (a), (d), (e) and (h) may also apply here.

(j) Environmental contamination of buildings or property. Aspects of the site qualifying as blight under (d) or (h) may also qualify here.

(k.5) The existence of health, safety, or welfare factors requiring high levels of municipal services or substantial physical underutilization or vacancy of sites, buildings, or other improvements. Many of the conditions listed above can also apply here. In addition, evidence of higher than normal fire and other public service calls can be listed as well as the presence of numerous vacant buildings (regardless of physical condition). Open land and predominantly open lands also qualify under this category.

(l) If there is no objection by the property owner(s) and tenants of such owner(s), if any, to the inclusion of such property in an urban renewal area, "blighted area" also means an area that, in its present condition and use, and by reason of the presence of any one of the blight factors, substantially impairs or arrests the sound growth of the city, retards the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals or welfare.

When it added factor (k.5) in 2005, the Colorado General Assembly deleted a previous factor that read "inadequate public improvements or facilities" and combined it with "unusual topography." Thus, the absence of public improvements or facilities alone may not constitute a factor that can contribute to a finding of blight. No court has ruled on whether use of the disjunctive "or" makes unusual topography and inadequate public improvements separate factors. However, as stated above, if there is no objection by a property owner and any tenants, only one of the factors (a) through (k.5) is necessary to qualify as a blighted area.

## 2.0 SURVEY RESULTS

This Conditions Survey was conducted in the area (the "Survey Area") as depicted in Exhibit A, attached to and made a part of this Conditions Survey. The Survey Area includes approximately nine (9) separate parcels of land covering approximately forty-five (45) acres including the adjoining Hot Springs Boulevard public right-of-way.

Although the Survey Area contains seven buildings, they are not considered deteriorated or deteriorating to qualify under that factor of the statutory definition of blighted area. Of the 45 acres, approximately 27 acres is open land, some of which is in the 100-year flood plain and flood way as defined by the Federal Emergency Management Agency ("FEMA"). The threat of flooding is identified in the Comprehensive Plan Update 2017 as the most significant natural hazard in the Town. The river is also a valuable amenity that benefits the community and the surrounding region and development in the area should enhance its use and protect its banks while providing a free

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and clear flood way. There are some topographical challenges to development of the open land area.

The open land portion of the Survey Area lacks streets, utilities, and has areas where dumping has occurred in the past. There are unusual conditions that are dangerous including discharge of scalding mineral water from hot springs and underground voids/caverns that are known to exist below the surface of the undeveloped land.

The following conditions that are evidence of a blighted area as defined in the Act were found to be present in the Survey Area.

## 2.1 Predominance of Defective or Inadequate Street Layout

The large open land portion of the Survey Area lacks streets and related improvements such as curbs, gutter, and sidewalks. Inadequate vehicle and pedestrian ingress and egress and lack of circulation through the large open land portion of the Survey Area exists. Hot Springs Boulevard needs vehicular and pedestrian improvements to meet current and future demand in the Survey Area, including improvements to the vehicular bridge over the San Juan River that will become functionally deficient due to the proposed development and additional development activities on Hot Springs Blvd. Additional roadways and related infrastructure will be required to develop the Study Area as required by Town code.

## 2.2 Faulty Lot Layout in Relation to Size, Adequacy, Accessibility, or Usefulness

Faulty lot layout is often the result of access problems and inadequate streets. The Survey Area includes a large undeveloped parcel containing 27 acres. Redevelopment of that parcel will require platting into parcels conducive to proposed uses as well as mitigation of site problems caused by flood danger, vehicular and pedestrian access.

## 2.3 Unsanitary or Unsafe Conditions.

As shown on Exhibit B, the northerly and westerly borders of the Survey Area are in the 100-year flood plain and floodway area. Such areas are designated by FEMA as Areas of Special Flood Hazard. These problems in the Survey Area qualify as an unsafe condition under the Act. Areas of natural hot springs that emit scalding water exist on the open land area. Also present in the Survey Area is evidence of voids / caverns beneath the ground surface of the open land area. There is evidence of materials dumping in parts of the Survey Area These conditions constitute unsafe conditions in the Survey Area.

## 2.4 Deterioration of Site or Other Improvements.

The Hot Springs Boulevard vehicular bridge will become functionally deficient due to the proposed development and the additional development expected along Hot Springs Blvd. Some areas along Hot Springs Boulevard have deficient road surface conditions and deficient or non-existent sidewalks, curb, gutter and storm drainage facilities. Vehicular and pedestrian access and interior infrastructure is deficient or lacking in capacity to serve the expected development. Roadways lack sufficient width to safely support joint use by automobiles and bicycles.

## 2.5 Unusual Topography or Inadequate Public Improvements or Utilities.

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Topographical problems exist in the Survey Area because of the existence of voids /caverns beneath the ground surface. The 27-acre undeveloped portion of the Survey Area lacks the internal street, sidewalk, and access improvements necessary to serve any proposed development. There are not adequate water, gas and sewer utilities to serve development of the Survey Area as contemplated by the Comprehensive Plan. The same is true of electric service needed to serve potential commercial uses with infrastructure necessary to meet electrical demands of current technology and appliances. The Survey Area qualifies under both factors listed in this subsection of the Act.

## 2.6 The Existence of Conditions that Endanger Life or Property by Fire or Other Causes.

Section 107(1)(c)(I) of the Act states that any particular condition found to be present may satisfy as many of the factors listed in the definition of blighted area as are applicable to such condition. Applying this provision, the dangers posed by the potential for flooding, and scalding hot springs, and underground voids/caverns in the area constitute conditions that could endanger life and/or property.

## 2.7 The Existence of Health, Safety, or Welfare Factors Requiring High Levels of Municipal Services or Substantial Physical Underutilization or Vacancy of Sites, Buildings, or Other Improvements.

While the Survey Area lacks deteriorated buildings, the barriers to development evidenced by dangerous conditions, inadequate streets, utilities, and other infrastructure, site deterioration, traffic and access problems all contribute to substantial underutilization of the Survey Area. The conditions listed above in Sections 2.1 through 2.6 also qualify under this factor as authorized by § 107(1)(c)(I) of the Act.

Because the Survey Area contains an area of predominantly open land there is substantial physical underutilization of the area, that may require a significant planning and financial commitment from public and private sources to correct.

## **3.0 SUMMARY**

The Conditions Survey shows that seven of a possible eleven factors listed in the Act are present in the Survey Area. This documentation will support the designation of the Area as a “blighted area” if the Town Council elects to designate it as an urban renewal area under the Act.