IN THE COURT OF COMMON PLEAS

PROBATE DIVISION

CLARK COUNTY, OHIO

In The Matter Of

The City of Springfield

Plaintiff

vs.

Dot.Com Investment Holdings, Limited, et al

Defendants

Case No.20074012, 20074016, 20074017 and 20074018

DECISION AND ENTRY

This matter came before this Court for hearing pursuant to RC Sec. 163.09. At issue is whether the City of Springfield, Ohio (hereinafter the "City") may appropriate certain parcels of real estate owned by the defendants (hereinafter the "landowners").[1] More specifically, the landowners have challenged the "right" of the City to appropriate their property, the "necessity" for this appropriation, and whether or not there was an "inability" of the parties to agree to the terms of a sale. After hearing and reviewing the testimony presented by the parties over the course of several days of hearing between February 4th and February 21st, 2008, reviewing several thousand pages of exhibits, and after considering the trial briefs of counsel, the Court now renders the following Decision.

[1] The parcels of property in question were owned by Garth and Jennifer Robinson when the City first conducted its title exams; but most had been transferred to Dot.Com Investments by October 5, 2007—a company closely owned by the Robinsons

Some history. The City of Springfield, Ohio is an urban community of approximately 65,000 residents. It has long been served by two separate acute care hospitals—formerly known as Community Hospital, located on the east end of the City, and Mercy Hospital, located on its north end. In 2002, rumors of a potential merger of the two hospitals into one facility[2] hereinafter, the "Hospital", began circulating, as well as the rumor that this new hospital facility might be located outside of the City.

In response, the City began courting the hospitals to locate the new hospital facility in the center of the City. The City considered a central downtown location to be of the utmost importance for the following reasons: first, that it would serve as a major downtown revitalization building project which would serve to eliminate one of the blighted areas of the community; second, that it was important to locate the only area acute care hospital in the center of the City; third, that such a location would best facilitate a quick emergency response time; and fourth, as that the City might keep its largest employer within the City.

After a long and tenuous process, the Hospital and the City agreed that the best location for a new hospital campus would be in a 49 acre downtown area, abutted by Buck Creek to the north, Columbia St. to the south, Wittenberg Ave. to the east, and Yellow Springs St. to the west. The landowners own five acres within this proposed site—generally located along the north rim of the proposed development, abutting Buck Creek and Veteran's Park. The site is a scenic one, home of the historic Foos Mill, and a

[2] Indeed, the hospital merger came to fruition on June 30, 2004, and the new corporation became known as "Community Mercy Health Partners". Thereafter, specifically on January 1, 2008, Community Mercy Health Partners became a subsidiary of "Community Mercy Health System" which was owned by Catholic Health Care Partners and Community Health Services Foundation. (Ex. Z-4)

choice location for their Robinson Insulation Company--- a seven million dollar a year business producing insulation, steal studding, and dry wall. And thus, their challenge herein.

I. Right to Appropriate

The threshold question before this Court is whether or not the City has the "right" to appropriate the landowners' property. Courts have long struggled with the balancing of the individual's constitutional right to possession and security of property with the sovereign's constitutional power to take that private property for the benefit of the community. The crux of this balancing is the determination as to the existence of a public purpose. That is to say, that in order to prevail upon a petition to appropriate private property, the city must first demonstrate a "public purpose" motivating the appropriation. *Kelo v. New London* (2005), 545 U.S. 469; *Norwood v. Horney* (2006), 110 Ohio St.3d 353. While the city is entitled to deference, ultimately, this issue is one of law for the Court.

The *Norwood* Court reminds us that, generally, "a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within the municipal corporation." (*Norwood, supra,* p. 369.) To this end, a city normally may take a slum, blighted, or deteriorated property for redevelopment. *State ex rel. Bruestle v. Rich* (1953), 159 Ohio St. 13. Indeed, it is such a finding of "slum" and "blight" which permits a city, pursuant to RC Sec. 725.01(I), to commence an "urban renewal project" which then affords the City the statutory right to *acquire* the real property within the "urban renewal area", clear the area of all structures, and redevelop the same in accordance with an

"urban renewal plan." The plan in this instance? To construct a hospital, which has also been enumerated as a valid public purpose, in and of itself, for which a city becomes empowered to appropriate property under .Revised Code Sec. 719.01(E).[3] For its part, the City, in this case, has declared these as its purposes for the appropriation herein, to wit: first, that it seeks appropriation to abate the blight encompassing the area in which the landowners' property is located by redeveloping the same; and second, that the City intends that there be placed thereon a hospital for the benefit of its residents. The Court now examines these purposes

A. Public Hospital

The City first contends that its primary purpose for the appropriation is to assure that Springfield community has a twenty-four hour, acute care hospital facility. "Acute care" has been defined as meaning emergency services and inpatient care—as opposed to long term nursing care. Should the hospital not be built within Springfield, the City would not have an acute care facility as no other such facility exists. The Court notes here that 80% of the patients at the two current hospital campuses are residents of the City. The objective of maintaining a hospital within the City strikes the Court, therefore, as clearly one embracing and promoting the public health, safety, contentment, and the general welfare of the City's residents.

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[3] The landowners contend that while a city may appropriate property for a hospital, it may not transfer that property to another entity for development of the same, citing this Court to *Eighth & Walnut Corp. v. Public Library of Cincinnati* (1977), 57 Ohio App.2d 137. This Court is not persuaded by the reasoning of that decision. What is of consequence is that the public purpose, here a hospital, be accomplished. Unlike many of the projects enumerated in RC 719.01, hospitals are no longer expected to be municipal entities. If a municipality may properly transfer appropriated property to a private developer as part of an urban renewal project to eliminate blight, it surely may do so for purposes of building a hospital—already considered to be a public purpose. The Court also notes that Art. I, Sec. 13 of the Ohio Constitution permits the sale of property by a city to preserve jobs—one of the goals listed for building the hospital in the Core Area.

The landowners have challenged the City's characterization of the Hospital as a "public hospital," contending that it is, instead, a "private, religious institution" which will not serve the health care needs of "all" of the area residents insofar as it is "Catholic". On this issue, however, the evidence suggests the contrary. The Hospital is an acute care facility which will be open to the public seven days per week, twenty-four hours per days, providing medical care funded in part by various federal and state programs, including Medicare and Medicaid. Indeed, the Hospital received over $100 million from these programs in 2007. It is the sole provider of such services in the Clark County area. (Ex. W-2) The Hospital, once merged into a single, new hospital campus, will afford the same health care services which it provided prior to merger—other than sterilization procedures and birth control services,[4] which will be afforded on the Hospital Campus, albeit not in the principle building, by the Community Health Foundation. All health care services will be offered to every individual seeking the same regardless of ability to pay, and whether it be ambulatory outpatient treatments or inpatient heart surgeries.

While it does appear as though the hospital merger required the signature of the Archbishop of the Catholic Church of the Cincinnati Diocese, (Ex. 61) and that the Hospital will have a Catholic "presence", all services will be offered without respect to religion. There is no religious instruction given to patients or staff. Rather, the Hospital adheres to the tenants of the Catholic Church with respect to its mission to provide health care to all in need, regardless of ability to pay. (Ex. Y-4, p.8) Indeed, the Hospital has estimated that it has provided over $19 million in true charity; and it actively engages in

[4] The landowners also noted that there would be no abortions conducted on this Hospital Campus. However, this Court finds this to be a restriction common to most hospitals.

outreach programs to the poor, to immigrants, to the elderly, to parents with infants, and to those with alcohol and drug dependency.

The few limitations raised by the landowners are not enough to overcome the significant indicia of the Hospital's history and role as a provider of medical services to the residents of the City, and the general public. The Hospital is, for purposes of this review, a public hospital.

B. Blighted Area

The secondary purpose for the appropriation herein, as stated by the City, concerns its goal to redevelop one of several "blighted" areas within its corporate limits. During the years between 2002 and 2007, the City examined three of these areas as possible locations for redevelopment into a hospital campus. Some additional history may be warranted.

The first site was the area commonly referred to as the "Crowell-Collier" area—a couple of square blocks generally located south of Columbia St. and west of Wittenberg Ave.—and anchored by the rather formidable building which once housed the national Crowell-Collier magazine publishing company. To that end, and in 2002, a study to formally determine the existence of "slum" and/or "blight" was conducted in this area—formally designated as the "Southwest Downtown Urban Renewal Area" (hereinafter the "SDUR Area").

To guide the inspectors, the City employed the following statutory definitions of slum and blight as presented in RC Sec. 725.01:

> (A) "Slum area" means an area within a municipal corporation, in which area there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open

spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property, by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to public health, safety, morals, or welfare.

(B) "Blighted area" means an area within a municipal corporation, which area by reason of the presence of a substantial number of slums, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions to title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipal corporation, 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 in its present condition and use.

The City's Planning Director oversaw a review of each and every building within the SDUR Area and graded the same as "good," "fair", or "poor" with respect to exterior conditions, or "features", such as roofing, foundation, doors and framing, and exterior finish. Buildings rated "poor" with respect to two or more exterior conditions, or, rated "poor" or "fair" with respect to three or more exterior conditions were classified as being in a dilapidated and deteriorated condition.[5] Using this grading system, the Planning Director concluded that of the 64 buildings in this SDUR Area, 34 were classified as "dilapidated and deteriorated structures." He referred, in his report, to traditional Federal guidelines for designating areas as "urban renewal areas"—specifically, that such a designation was appropriate if at least 20% of the buildings in the area had deficiencies.

[5] The Planning Director's studies were conducted applying the definitions of "deteriorated and dilapidated" as they existed in the City ordinances at that time: "poor" meaning broken, loose, hanging, [illegible] or missing; "fair" meaning damaged, frayed, worn, peeled, or visibly deteriorated; "good" meaning [illegible] violation of a regulation, faults or flaws. (Ex. K-1, V-1, F-2, and S-2)

and there were at least two environmental deficiencies. He concluded that these conditions had been met therein. (Ex. F-1) [6]

The City and the Hospital, however, concluded that this "Crowell-Collier" site would not be an acceptable site for a new facility. This decision was based on several reasons. First, the location of the railroad tracks to the south would prohibit future expansion in that direction—an option that the Hospital assigned high priority. Second, the location of the railroad tracks would be too close to the hospital; and would cause unacceptable vibrations which would be incompatible with healthy surgery conditions. The parties also were concerned that a hazardous waste accident along these tracks would be disastrous to the operation of the Hospital.

Accordingly, the City considered adjusting the site north and east, generally adding blocks *east* of Wittenberg Ave. and north of Columbia St. to Buck Creek. The City referred to this expanded area as the "2003 expansion or Amendment #1." To this end, the City Planning Director conducted a second study to determine the potential blight and slum conditions existing within this expanded area. It appears that the Planning Director utilized the same approach and grading system as the first study—albeit with an increase in the descriptive remarks accompanying each structure therein. (Ex. M-1). Again, the Planning Director concluded that this 2003 *expansion* area was a blighted and slum area. He noted that of the 54 buildings therein, 28 buildings were classified as

[6] On October 15th, 2002, the City, by and through its commissioners, voted to approve these findings and to declare the SDUR area to be a slum and blighted area. The City passed Ord. 02-394, adopting "an urban renewal plan" which would authorize, in general terms, the redevelopment of this area by the City for the purpose of eliminating blight and slum conditions and preventing the reoccurrence of the same. (Ex. K-I)

dilapidated and deteriorated structures; and that the aforementioned Federal guidelines, therefore, supported his findings of blight. (Ex. Q-1). [7]

The City and the Hospital, however, concluded that the 2003 expansion area as per Amendment #1 would not be a suitable location for the new hospital facility because of the difficulties pertaining to a cemetery, the historic National Trail (Main St.), and the historic St. John's Lutheran Church which were located therein.

After further discussions, the City Planning Director commenced a third study in 2004— adding for examination approximately 49 acres west of the area in Amendment #1 Expansion, and north of Columbia St. to Buck Creek. This area became known as the area within Amendment #2. While the grading system remained the same, the forms used in this third study appear to have been upgraded and better defined. (Ex. X-1) Additionally, each building report was accompanied by a reference to a 2002 building survey, as well as a photograph of the individual structure. In this third study, the Planning Director noted that of the 171 buildings in this *expanded* area, he classified 87 buildings as dilapidated and/or deteriorated structures. Accordingly, and consistent with the Federal guideline, the Planning Director concluded that the area was a blighted area. (Ex. A-2)[8]

The Hospital and the City began to focus their attention specifically on this second expanded 49 acre area, which then began to be referred to as the "Core Area".

[7] On November 25th, 2003, the City, again by and through its commissioners, passed Ord. #03-380, which adopted the findings of the City Planning Director declaring this area in Amendment #1 (the 2003 expansion) to be a blighted and slum area. The City further adopted essentially the same urban renewal plan, thereby authorizing the general development of the expanded area for the purpose of eliminating and preventing the reoccurrence of slum and blight therein.

[8] On April 12th, 2005, the City, by and through its commissioners, passed Ord. #05-109, which adopted the findings of the City Planning Director declaring this area in Amendment #2 to be a blighted and slum area. The City further adopted the same urban renewal plan to cover the original *and* expanded area now comprising the SDUR Area, and for the same purposes (Ex. F-2).

is within this Core Area that the land owners herein owned eight (8) parcels of real property—six being commercial lots and two being residential lots. It was this location that the Hospital and the City agreed best fit the parameters of the interests and priorities listed for a new hospital facility. This facility would be located along the northern edge of the Core Area and specifically along the rim of Buck Creek—the location of the landowners' parcels of property. To that end, the City Commission, by May of 2006, noted that it had reviewed the third study of the City's Engineering and Planning Department, had personally examined the area in question, and had reviewed the recommendations of the City Planning Board. It declared that the SDUR Area, as expanded, was a "slum" and "blighted" area as defined by RC Sec. 725.01; and that in its condition was detrimental and a menace to the public health, safety and welfare of the inhabitants and users thereof and to the City at large. The City reaffirmed the *entire* SDUR Area as an urban renewal area and affirmed and adopted the following Urban Renewal Plan regarding Amendment #3 for the redevelopment of the Core Area:

> "to establish the plan parameters for abating blighting conditions within the approximately 49.16 acres at the northwestern end of the Southwest Downtown Urban Renewal Area (herein called the 'Core Area') by acquiring title to the Core Area, preparing the Core Area for redevelopment by demolishing structures located thereon, remediating environmental contamination found thereon, reconfiguring public utility infrastructure located on and about the Core Area, reconfiguring public thoroughfares in the vicinity of the Core Area and disposition of the cleared Core Area to a redeveloper who will construct a new acute care regional medical center (i.e. a hospital), a reproductive health services medical facility and medical office building containing offices and facilities for the rendering of medical services which, together, will serve to prevent the reoccurrence of blight within the Core Area..." (Ex. S-2)

Soon thereafter, specifically May 31st, 2006, the City and the Hospital entered into a formal "Redevelopment Agreement" (Ex. W-2), which essentially provided that the City would acquire and prepare the land within the Core Area of the urban renewal

area, and that the Hospital would then purchase the land from the City, at fair market value, and for the purpose of developing and constructing thereon a new regional medical-health care campus.

The City had already acquired a fair number of the parcels of property within the Core Area and had signed the above-mentioned Redevelopment Agreement when the Ohio Supreme Court published its decision in *Norwood v. Horney*, (2006) 110 Ohio St.3d 353. The Supreme Court therein increased the scrutiny to be applied to eminent domain statutes, ruling that economic benefit to a community, standing alone, would no longer satisfy the "public use" requirement of Art. I, Sec. 19 of the Ohio Constitution.[9] The Norwood City Ordinance, which had employed the term "deteriorating area", was also found to be unconstitutionally void for vagueness. This case, and the Ohio General Assembly's stated intention to revisit the eminent domain laws of Ohio, led to the City's May 21st, 2007 decision to adopt a more detailed definition of "blighted area", specifically that from RC Sec. 1728.01(E):

> "...the term 'blighted area' means an area within the City of Springfield containing a majority of structures that ..., *by reason of* [1] dilapidation, deterioration, age or obsolescence,[2] inadequate provision for ventilation, light, air, sanitation, or open spaces, [3] unsafe and unsanitary conditions or [4] the existence of conditions which endanger lives or properties by fire or other hazards and causes, or... [5] location in an area with inadequate street layout, incompatible land uses or land use relationships, [6] overcrowding of buildings on the land, [7] excessive dwelling unit density, or [8] other identified hazards to health and safety [—] are conducive to ill health, transmission of disease, juvenile delinquency and crime and are detrimental to the public health, safety, morals and general welfare." (This Court has added the emphasis and delineations within the [] for the sake of clarity only). (Ex. Z-2)

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[9] While the City recognizes that the hospital is the number one employer of workers in the area, followed by the Assurant Group, International Corp. and Wright Patterson Air Force Base, it nevertheless did not rely on this factor as a principle factor in its considerations. In fact, the City's evidence was that it did not receive real estate taxes on the hospital buildings.

In applying this new definition, the City adopted the following definitions of "deterioration" and "dilapidation":

> "...'deterioration' means the condition of a structure wherein the structure has *substantial defects* due to degeneration, decay, corrosion, erosion, environmental contamination, disintegration, an infestation by a pathogen harmful to human health, faultiness of material or to vandalism or other intentional harm.
>
> If the structure is a building, the structure [1] has *substantial defects* when the building has at least two building features which are in poor condition or the building has at least *three building features* which are in either poor or damaged condition. A building feature which is in violation of a provision of either the International Property Maintenance Code, as adopted in Chapter 1305 of Springfield's Codified Ordinances, or the Ohio Fire Code, as adopted in Chapter 1501 of Springfield's Codified Ordinances, (the said Property collectively as the 'Safety Codes') is in poor condition; with the exception that if the inspector is able to determine that the building feature in violation of the Safety Codes is still partially fulfilling its essential function as part of the building, though the building needs repair, then that feature may be rated as in damaged condition. [2] A building will also be found in a state of deterioration if it possesses attributes, other than those mentioned above, which cause the building to be detrimental to the public health, safety, morals and general welfare. [3] With respect to structures which are surface structures, such as roadways, alleys, curbs, gutters, sidewalks, off-street parking and surface storage areas, the structure has substantial defects when the structure evidences surface cracking, surface crumbling, potholes, depressions, loose paving material, broken down road base, weeds protruding through road surfaces or the structure is subject to any other condition rendering the structure detrimental to the public health, safety, morals or general welfare...." (The Court has added emphasis and the delineations with the [ ]s for the sake of clarity only.)
>
> "...'dilapidation' means a condition of severe deterioration."

The City then directed that the Core Area should be reexamined once again applying this amended definition. To that end, the City employed the professional services of Leighty and Snider, Inc. to update the survey of conditions in the SDUR Area,

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[10] The Court notes that the City adopted specific definitions with respect to "age and obsolescence", "inadequate provision for ventilation, light, air, sanitation, or open spaces", "inadequate street layout", "incompatible land uses or land use relationships", and "overcrowding of buildings on the land or excessive dwelling unit density". The Court has chosen not to republish the same here.(See Ex. Z-2)

and to expand upon the same, to determine the degree of deterioration within the area, and to determine if conditions qualifying it as a "blighted area" existed. (Ex. B-3)[11] Francis Leighty, the chief partner, testified that he had been conducting blight studies for forty-two years. Formerly with the Dept. of Housing and Urban Development, Leighty had worked nationwide over those years with urban development firms. His experience was thought to be extensive. (Ex. N-5)

For the first time, the Leighty Study applied the new definition of "blight" adopted by the City in 2007—a definition he compared favorably to that used in many other states. The Leighty Study also employed a 4-tier grading system used by the Dept. of Housing and Urban Development. Buildings were graded either with a "1" for good or sound condition, "2" for minor defects or some wear and tear, "3" for serious problems or major defects, and "4" for failing or substandard. Three building feature grades of "3" or "4"could render a building "deteriorated," or the same combination of building code violations The Leighty study, much more comprehensive in scope than the previous three studies, concluded that, as of August, 2007, there existed compelling evidence to declare the *entire* SDUR Area to be a "blighted area" as defined in the amended Ohio statutes of Springfield, Ohio. (Ex. D-3)

As this study is an issue of no small consternation with the landowners, the Court here reviews the same in more detail. The Leighty study characterized the SDUR Area as one of the oldest sections of the City. Most of the buildings date to the mid to late 1800's to the early 1900's, and are fairly equally split between residential and commercial. The

[11] In their trial brief, the landowners charge that the outcome of the study was "pre-ordained" by the City. The Court does not think it unfair that the City, after personal knowledge of the SDUR Area and after three building surveys, might reasonably anticipate the ultimate conclusion of the Leighty study. This having been said, there was no evidence that Leighty and the City conspired to insure a particular outcome.

Leighty study considered and addressed a number of different factors, which the Court summarizes as follows.

Profiles

The Leighty study considered a demographics report which yielded the following comparative statistics: while the general statistics of all of Springfield reveal that 43% of the structures are "renter" occupied, the SDUR Area structures are 75.8% renter occupied; while 25.7% of the types of structures in Springfield are 2 - 20 unit structures, 52.5% of the SDUR Area are multi-unit structures; while 50.6% of the structures in - *Springfield were constructed before 1950, 76.8% of the structures in the SDUR Area were built prior to 1950; while 34.9% of the owner occupied structures in Springfield have a value of under $60,000, 78.3% of the owner occupied buildings in the SDUR Area had a value of under $60,000. Median household income in Springfield was $32,193; while in the SDUR Area, it was but $20,240. The study concluded that the SDUR Area had become a "low income renter population where over a third of the residents are below poverty, property values are low, and residential structures have been converted from single family to duplexes and more." (Ex. D-3 p. 9)

Condition of Buildings

There are 260 principle "structures" in the SDUR Area. Many are multiple unit buildings—i.e., duplexes or triplexes. One hundred eighty-nine (189), or 67%, of the principle structures were found to be in a "state of major deterioration". Of the 70 garages and outbuildings in the area, 39, or 56%, were found to be deteriorated. The Leighty study found 41 of the 82 buildings examined to have the presence of "friable" asbestos—that which could be hazardous upon human touch. (Ex. B-3, page 5) The study estimated

that 90% of the residential buildings were likely to contain lead based paint—much of which was not "controlled"—suggesting a hazardous state of peeling or chipping. Most of the residential buildings were constructed on very narrow lots. Pillars Nursing Home, located at 324-338 W. Columbia, self-reported the inadequacies of its structure and acknowledged that it needed to be replaced. The three largest buildings--- the Crowell Collier building, the Robertson Can Company and the Springfield Metallic Casket Company--- have remained vacant but for some cold storage for many years. The Springfield Metallic Casket Co.—perhaps the second largest building within the SDUR Area, and located at the corner of North and Center Sts.--- was noted to have serious structural problems during two separate building inspections conducted in 1998 and 2000.

The study noted that a majority of the buildings within the Core Area were boarded up in anticipation of the City's plans for redevelopment. As might be expected, the study revealed many problems arising around those buildings. Many of these structures showed signs of being regularly broken into, looted and vandalized, with significant damage done to their interiors. They had become structures containing mold, vermin, snakes, cats, insects, birds, etc. There appeared to be many vagrant and/or homeless individuals wandering the Core Area.

Incidents of Criminal Activity

The City is divided up into approximately 48 sectors for purposes of law enforcement. Five of those sectors, to wit: 309, 402, 501, 503 and 306, overlap the SDUR Area. The first three of these sectors have suffered the worst incidents of crime from 2000 to 2006. There was evidence of drug use in the area, as well as the regular public

consumption of alcohol. The study also noted several instances of extensive graffiti, both on buildings and road infrastructure. (Ex. D-3 p.14).

Fire Division

The biggest building within the SDUR Area—the Crowell Collier building—was noted to have multiple fire code violations from an inspection conducted on May 30, 2007. Fire Chief J. Mike Beers delivered a report of the entire SDUR Area on June 12, 2007 revealing that while this area comprised merely 6 of the 132 quadrants used to identify statistical police related EMS data relative to various neighborhoods in the City, it accounted for 19% of all "events" reported from 1/1/02 to 12/31/06. As to the Core Area, Chief Beers noted that of the few streets running through this area, two streets are substandard in terms of the width of the street ("Little Place St.") and one for the lack of a proper turnaround area ("Baltimore St."), which consequently impeded emergency vehicles responding to the area. Of no surprise is the fact that, as a result in part of the structures having been boarded up, the Core Area had become an increased fire hazard.

Unsafe and/or Unsanitary Conditions

The Leighty study found a number of conditions of concern, including trash, debris, numerous stray and unkempt cats roaming the area, discarded vehicle tires, and eighteen unlicensed and apparently inoperable and abandoned motor vehicles in the SDUR Area. (Ex. B-3, page 5) Portions of the north side of the Core Area hillside were strewn with trash, debris, old appliances, furniture, and vehicle tires. Leighty felt that this would be a detriment to the health and safety of the neighborhood. In general, the public and private parking lots in the area were "mostly deteriorated", with considerable cracking, weeds growing in cracks, missing material, sprawling, worn and deteriorated

coating. The study cites numerous vacant lots which have become sites for chronic illegal dumping, collecting litter, trash and uncontrolled foliage—finding the same to be a threat to public health and safety.

Leighty also noted his observations of regular public consumption of alcohol, as well as certain public signs of drug usage and homelessness. (Ex. B-3, page 5) The study concluded that there were numerous conditions which "substantially impair and arrest the sound growth of the municipality, retard the provisions of housing accommodations, or constitute an economic or social liability." The study described these conditions within the SDUR Area as constituting hazards to health and safety, which were "conducive to ill health, transmission of disease, juvenile delinquency and crime and...detrimental to the public health, safety, morals and general welfare of the" SDUR Area. (Ex. D-3 p. 17). With these observations, the Leighty study concluded that the SDUR Area was a "slum" area and "blighted" area as of August, 2007. Indeed, he characterized the same as one of two of the worst areas for blight that he has studied [12]

The Leighty study was reviewed by the City Commission at its September 4th, 2007 meeting. Additionally, the City was presented a report from the City's Code Enforcement Manager indicating that between January 1, 2000 and December 31, 2006, there were 1,403 code violations which largely went unaddressed in the SDUR Area. (Ex. E-3) Moreover, the City had employed Hull and Associates, Inc. ("Hull") to conduct Phase I and Phase II Environmental Site Assessments for the Core Area from 2005 to

[12] There were a number of factors that the Leighty Study did not consider: drops of value in real estate; whether there were dead end streets—other than to the extent it impeded emergency vehicles; number or nature of nonconforming uses; percentages of home ownership; the moratoria imposed by the City; and the age of the structures.

2007 and in accordance with the Ohio Voluntary Action Program. [13] The purpose of this was to determine the environmental condition of the Core Area as well as the availability of funds to remediate any contaminated sites. The Hull report, after conducting 54 soil borings, cited three instances of contamination, (Ex. G-5 and K-5) two of which were found upon the defendant-landowners' Cliff St. property, and involving Benzo (a) pyrene, arsenic and lead. The study concluded that the concentration of these chemicals exceeded the "GDCS" Standards[14] for commercial/industrial land use and would have to be remediated[15] before any redevelopment—such as for the Hospital---could proceed. (Ex. D-3) One other site—the former Citgo Gasoline Station at the northeast corner of North St. and Plum St.—also revealed some contamination which would have to be remediated.[16]

The City Commission, believing the SDUR Area had long been a blighted area, again declared the same to be blighted by way of Ordinance No. 07-264, unanimously passed on September 4th, 2007. (Ex. G-3) This followed, however, two events of import to the Court's consideration herein: first, the City had imposed the first of a series of moratoria on March 1st, 2004, restricting the issuance of building permits in the original

[13] A Phase I assessment is a property review executed in anticipation of change of ownership, wherein historical data, environmental records, and ownership records are reviewed to determine the potential presence of environmental conditions. If there is such a potential, a Phase II assessment is conducted wherein soil samples are collected and tested to consider the actual extent of contamination. Ohio's Voluntary Action Program is an administration which permits credible oversight of a voluntary clean up project which, if properly executed, will lead to an EPA promise not to sue.

[14] This would be short for the Ohio Voluntary Action Program Generic Direct Contact Soil Standards. See, e.g. Ex. G-5, page 13.

[15] In remediation, Hull and Associates anticipated excavation of the property, as well as other clean up expenditures which might cost anywhere from several hundred thousand to over one million dollars. (Ex. L-5)

[16] The landowners presented the testimony of Mike Westerfield, an expert in environmental assessments and Voluntary Action Program compliance. Westerfield testified that there was remarkably less contamination discovered than what he would have expected in light of the history of the area. He believed the City's testing was too preliminary to accurately gauge the cost to remediate the area, or even the necessity for the same. However, what he did not do was deny the presence of contamination as found by the City's experts.

SDUR Area (Ex. J-3); and second, the City began purchasing and boarding up property in the Core Area in October of 2005. (Ex. 237)

The significance of these two events is found in the nature of the landowners' objections to the determination of blight. Specifically, the landowners charge that by imposing the moratoria in the SDUR Area, and by purchasing and boarding up properties therein, the City *caused* the SDUR Area to be blighted,[17] if indeed it can be so fairly characterized. To that end, the landowners presented anecdotal evidence concerning the Core Area from various residents who essentially testified that the area was generally in "pretty good shape" until the City began purchasing and boarding up homes. Thereafter, there were more instances of vandalism, theft, vagrancy and homelessness; and residents were less inclined to improve and maintain their properties. The landowners also presented the testimony of their expert planner, C. Gregory Dale, who noted that the Leighty study was conducted, and the declaration of blight by the City passed, after the Core Area had already suffered under a "designation" of blight and under a moratorium for several years, and the City had been boarding up buildings for two years. Dale believed that these actions by the City "facilitated" blight; and that the City, as an agent of blight, could not, now, in good faith declare this area blighted.

This Court is reluctant to give great weight to this argument for a number of reasons. First, the Court finds moratoria to be tools commonly used as part of redevelopment projects--- their general purposes being to ultimately protect the public treasury as well as to protect the individual land owner from improvidently improving

[17] In their trial brief, the landowners allege that 74 of the 189 buildings declared to be deteriorated were those owned and boarded up by the City. Assuming this were the case, the landowners have nevertheless failed to offer testimony of the conditions of these buildings before the City purchased the same—which began occurring, the Court notes, nearly one year after the landowners became aware that the City was considering the Core Area as a potential hospital site.

property to his/her loss—purposes accepted and approved by the United States Supreme Court. See, *Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency* (2002), 535 U.S. 302.[18] Second, the bulk of the anecdotal accounts were limited to the Plum St. area, north of the 200 block—a small portion of the blocks, arguably the least deteriorated within the SDUR Area; and found to be so, this Court notes, by the Leighty study.[19] And, on the other hand, the Court received evidence of vagrant occupied "homeless camps" set up along the hill of the north rim of the SDUR Area as early as 2002—long before the City had taken any action herein. Third, Mr. Dale, who did not conduct a pre-moratoria study of the SDUR Area, is left to offer mere speculation as to the extent of its effects. As to the preferred protocol the City should have followed upon implementing an urban renewal plan and purchasing properties in the Core Area, Mr. Dale was regrettably moot.

Nor is the City's reliance on the Leighty study fatally flawed as a result of the moratoria and the City's purchase of the buildings. The purpose of the Leighty study was not to ascertain the *cause* of the condition of the SDUR Area, so much as it was to

[18] While the landowners challenge the reasonableness and length of time of the moratoria, the Court notes that the moratorium was originally initiated on the southern part of the SDUR Area only. It did not affect the Core Area, and thus the landowners in this case, until its third extension, on April 18, 2005. (Ex. N-3) Moreover, the Court notes that the City did permit a review of the restriction if challenged for a particular project. The Court finds evidence that the City denied one such review; but approved another. (Ex. R-3 and V-3) Moreover, the moratoria did not prohibit routine maintenance, which included painting, as well as roof or gutter repairs. The Court also notes that the landowners herein never sought relief from the moratorium as it applied to their properties—a moratorium which, indeed, expired in August of 2007--- when the new zoning regulations took effect, and well before the case at bar was filed. Finally, the Court notes that the reasons for the extensions of the moratoria were articulated and facially valid and included a lack of definition in the final plans for the hospital complex, personnel changes within the City's planning department, and the need for additional environmental studies and historical building demolition clearance. (See, for instance, Ex. P-3, p. 6) These environmental and historical building issues—pre-conditions to receiving federal funding--- were finally resolved in February, 2008. (Ex. X-5)

[19] This is also consistent with the 2005 Study which suggested that the bulk of the buildings along North Plum Street were found to be in "good" condition. Indeed of the 30 buildings north of the 200 block, merely 10 were in less than good condition. (Ex. X-1)

determine the condition of the SDUR Area as it existed at the time of the study.[20] Moreover, the Court here observes the relevance of the 2005 blight study (Ex. X-1)—a study conducted before the moratoria was imposed upon the Core Area and before the City had purchased any properties therein---which found that a majority of the buildings were already in a state of deterioration. This Court simply is not persuaded that the actions of the City caused the blight in the SDUR Area.[21]

The landowners, however, have presented other objections to the blight studies conducted by the City. With respect to the 2002 and 2003 studies, it is argued that the grading system produced rather vague results, permitting buildings in relatively "good" condition to be characterized as "dilapidated". While the planning director did make reference to considering the entire exterior of the buildings, nevertheless the Court agrees that the written reports were not particularly clear or thorough. However, insofar as these studies were ultimately usurped by the Leighty study, they form merely a backdrop and are of passing relevance.

The 2005 study, as previously noted, appeared more precise and included photographs of the buildings, as well as market valuations and lot dimensions. The reports were organized by blocks, and for the first time, included the properties of the landowners in this case. The landowners again challenge the reliability of that study's grading system, which might allow a building with merely three "fair" marks—and no "poor" marks--- to be characterized as "dilapidated." A closer look, however, reveals a

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[20] The Court thinks it a dangerous precedent to open up an analysis regarding the existence of blight to mandatory studies concerning causation. Nor is this Court aware of any common law or state law which suggests the viability of such a requirement. It seems the same would merely subject the process to conjecture, speculation, and blame. Interesting, perhaps, in the world of academia; not so useful in the constitutional analysis of eminent domain.

[21] This Court finds here that even if it were appropriately determined that the City had contributed to the blight in the SDUR Area, that the City did not do so in bad faith

definition of "fair" to mean "damaged, frayed, worn, peeled, or visibly deteriorated." (Ex. X-1) With this definition, it is less surprising that a building with three exterior features graded as "fair", meaning "damaged", for instance, might reasonably yield a conclusion that said building was dilapidated. The Court also notes here that this study—unlike the previous two, which were conducted in part by college interns--- was conducted by members of the code enforcement department, whose daily responsibilities involved the examination of building features.

The landowners ask the Court to rely on the insight of their expert, C. Gregory Dale, who afforded the above criticisms, as well as the following criticisms of the Leighty study: the inappropriateness of considering factors such as deterioration of infrastructure—the upkeep of which is normally the responsibility of the City; Leighty's alleged adoption of the prior studies—which Dale believed to be inadequate; that Leighty considered police sectors which encompassed areas beyond the SDUR geographic Area; that Leighty's grading system struck Dale as occasionally indistinct as between whether a defect was "minor" or "major"; that Leighty graded the City's boarded up buildings as part of his determination of blight; that Leighty did not sufficiently define the terms used in grading a building; that Leighty did not use the same grading system for the outbuildings; that most building surveys did not have interior reviews; and that Leighty incorrectly calculated the marks on several building surveys.

The Court first notes again that Leighty's task was to survey the SDUR Area as it existed in 2007. Thus, his observations of the state of the infrastructure and boarded up buildings was appropriate. It was also appropriate for Leighty to reference the former studies—not as independent factors—but as a relevant backdrop for his general

observations of the condition of buildings, and to show their pre-moratoria condition.[22] As to the police sectors, while it is not precise as to the specific SDUR Area only, it remains compelling evidence that the SDUR Area was located in the heart of the highest amount of criminal activity for the City. As to the grading system executed herein, there was no need to differentiate between "minor" and "major" defects for purposes of the survey definitions. And while errors occurred, the Court notes a fair amount of written commentary, and, additionally, pictorial evidence provided in the study, which support Leighty's conclusions.. Even the two erroneous surveys referenced by Dale (See Ex. B-3, pages 73 and 609) afford extra summary comments which could justify Leighty's ultimate building assessment.

Candidly, this Court holds certain reservations about Mr. Dale's criticisms. He has not conducted a field survey of an area for over 20 years; and he has offered no comparative study on this occasion—this despite the landowners having knowledge of the City's interest in their property long before any moratorium or purchases within the Core Area. The Court also finds his approach of averaging building surveys for purposes of blight assessment to be suspect. On this point, what is important is not the average condition of the buildings within an area, but rather the *number* of those buildings in a state of disrepair.

The Court was impressed, on the other hand, with Francis Leighty's testimony that, of all of the studies he had performed over his 42 years in the field, the SDUR Area was one of two of the worst with respect to the blight conditions therein. The Court also takes note that his review of the structures did not appear to be slanted toward a

[22] The Court observes, for example, buildings which Leighty found to be deteriorated from his survey of the building exterior, consistent with the prior studies; and which betrayed even more damage upon the interior inspection. (See, e.g., Ex. X-1 re: 320 Baltimore Place, and, Ex. C-3, Tab 6, page 7-8)

predetermination of blight. See, for instance, his report found in Ex. B-3, Tab 5, page 47, which seems to note several problems with the building, yet declares the building "sound". Indeed, the study declared many of the buildings to be sound. It also struck the Court that Leighty considered the "total structure" and noted many observations beyond the basic building features. (See, e.g., Ex. B-3, page 73)

Finally, even Mr. Dale conceded that building code violations could be good evidence of blight. The Court observes that the City directed one of its building code enforcement officers to double check the Leighty findings in August of 2007 as well as in January of 2008; and he confirmed the existence of at least three code violations on each building declared to be deteriorated.

C. Conclusion Regarding Blight

While the *Norwood* Court emphasized the role of the trial court to review whether there is a sufficient public purpose to the appropriation efforts of the government, it specifically retained the responsibility of the trial court to afford "great deference" to the government. The task at hand for this Court, therefore, is not to independently determine if the SDUR Area is a "blighted" area so much as it is to review whether the City abused its discretion in making a determination of blight. *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.* (1950), 50 Ohio St. 3d 157. That is to say, was the City's determination unreasonable or arbitrary under the circumstances herein. See *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St.3d 83. The issue is absolutely not whether this Court would have reached the same determination; but rather whether the City employed a sound reasoning process in making its determination of blight.

The City Commission had long considered the SDUR Area to be a blighted area. (Ex. G-3) Over a period of five years, from 2002 to 2007, the commission toured the area, conducted four different blight studies, an environmental study, and a review of building code violations. It considered at least six different potential sites for the location of the Hospital. Following the lead of the Ohio Supreme Court and the signals of the Ohio General Assembly, the City revised its definitions of blight to be more objective and complete, and then authorized the Leighty study.

The *Norwood* Court reminded us that the "fundamental determination" is whether the SDUR Area, in its "existing state" of disrepair, poses a threat to the City's public health, safety, or general *welfare*. (See, *Norwood, infra*, p. 383) The City fairly considered this issue and declared the SDUR Area to be a blighted area threatening the City's health, safety, and general welfare; thus subjected it to redevelopment pursuant to an urban renewal plan. This Court cannot find this decision to be unreasonable or arbitrary. Indeed, the Court believes that the City has demonstrated that it followed a sound reasoning process herein; and has, therefore, met its burden of showing the SDUR Area to be blighted.

Accordingly, for the reason that the City has shown the SDUR Area to be blighted, and properly an urban renewal area subject to redevelopment, and for the reason that the City intends to prepare the land for the development of a hospital thereon, the Court finds that the City has established its constitutional right to appropriate the property within the Core Area, and specifically that of the landowners herein, for these purposes.

II. Necessity to Appropriate

It has long been an accepted proposition of law that a court should not substitute its judgment for legislative discretion. *Allion v. City of Toledo* (1919), 99 Ohio St. 416. The local authorities are presumed to be well-acquainted with local conditions and to know what the needs of the community demand.

The United States Supreme Court has noted: "[w]hen the legislature's purpose is legitimate and its means are not irrational, our cases make clear that empirical debates over the wisdom of takings—no less than debates over the wisdom of other kinds of socioeconomic legislation—are not to be carried out in the ...courts." *Hawaii Housing Authority v. Midkiff* (1984), 467 U.S. 229, at 242 (fn 20). In our system of government, the legislature, and not the judiciary, is the main guardian of the public needs to be served by social legislation. As Justice O'Connor noted in her dissent in *Kelo v. New London* (2005), 545 U.S. 469: "we recognized our inability to evaluate whether, in a given case, eminent domain is a necessary means by which to pursue the legislature's ends." To that end, a court would be reduced to merely one more voice amongst many in a debate over social policy. These debates, therefore, are better left to venues other than the courtroom. It is with this in mind that this Court considers the "necessity" of the City to make the appropriation herein in order to secure the end in view—the construction of a hospital to serve the public and the abatement of an area fairly considered to be blighted.

What is appropriate, however, is that the City's legislative decision be reviewed to assure there was no abuse of discretion by the City in making its decision.[23] To that end, this Court believes the threshold question to be whether the City's decision that it is necesary to appropriate herein can fairly be characterized as reasonable as opposed to "unreasonable," well-considered as opposed to "arbitrary." In the first instance, the Court must consider the City's determination that it is necessary to place a 24 hour, acute care hospital facility in the Core Area; and secondly, whether the City's determination to cure a blighted area with an urban renewal project was reasonable.

As recounted above, the City had long been served by two acute care hospitals. The City considered it essential to the health and general welfare of its residents that it assure the continued presence of a hospital within the City. To that end, in May of 2006, the City entered into a Redevelopment Agreement with the Hospital to build a twenty-four hour, seven days per week, acute-care medical facility in the Core Area of downtown Springfield. The City declared the following justifications for entering into this Agreement:

> First, that it would eliminate slum and blight in the Core Area by demolishing deteriorated buildings;
> Second, that it would permit the remediation of environmental conditions within said area;
> Third, that it would eliminate defective title interests and fragmented ownership interests which otherwise would be detrimental to large scale development;
> Fourth, that it would lead to large scale development in the form of a new medical complex;
> Fifth, that it would facilitate the reconfiguration of traffic patterns to afford consolidated space sufficient for large scale development;
> Sixth, that it would afford excellent hospital services needed by the Springfield community which would be equitably accessible to all geographic areas of the City;

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[23] This, of course, is consistent with the statutory directives of R.C. Sec. 163.09 that the City's Ordinance declaring the "necessity" for an appropriation "shall be prima-facie evidence of such necessity in the absence of proof showing an abuse of discretion by the ...[City] in determining such necessity."

> Seventh, that it would secure a long term, stable employer of a large workforce within the City which would attract additional commercial and retail economic activity and help to foster good economic health. (Ex. U-2)

But, why downtown, and why specifically in the Core Area? The landowners contend that the Hospital easily, and perhaps more efficiently and inexpensively, could have located elsewhere. The Court has previously discussed two other potential sites within the SDUR Area. However, there were several alternate locations on the table along the perimeter of the City limits. (Ex. R-4) While each offered certain attractive qualities, however, they were ultimately rejected for such reasons as poor access, lack of public transportation, limited infrastructure, poor community support, proximity to railroad tracks, soil issues, issues of former contamination, airport fly zones, insufficient width of servicing roads, and/or unacceptable EMS transportation "run" times.

A downtown location became the preferred location for a number of reasons. It had long been the position of the City that a central location within the City would best serve the health care needs of its residents, who historically comprised 80% of the patients served by the two hospital facilities. It was thought that a central location in the Core Area would best serve the needs of the poor and under served. And thus, also, public transportation and infrastructure became a factor—well in place with respect to the Core Area; non-existent with the potential perimeter sites.[24] The Core Area was near the geographic mean center for all emergency medical service "runs" compiled over a 2 1/2 year study period. The Core Area was part of the "heart" of downtown, and commonly

[24]The landowners argue that issues of infrastructure and transportation could have been addressed by the City if it was so inclined. However, this would ignore the many other factors which warranted the City to press for a location in the Core Area.

thought to be a great location option for a revitalization project;[25] and indeed, there was significant interest from the Springfield community to place the Hospital in the central downtown area. (Ex. T-4) Moreover, the City was also aware that the availability of federal grants was conditioned upon the decision for a downtown location. Finally, the Core Area was especially attractive to the hospital design firm because of its setting next to the park, the availability of a functional circulation of traffic, and the availability of acreage for expansion.

The landowners argue that, even in the event that it is warranted to place the Hospital in the Core Area, that it is not necessary to place it along its north rim, along the edge of the park—whereon the landowners' property sits. On this point, the City offers three reasons. First, the Hospital's design/architecture firm sought a site that would incorporate a natural setting to afford a "healing environment"—born of research which supports the supposition that exposure to nature, such as a park, reduces stress, necessary medications, and recovery time of hospital patients. The firm also sought a design which would integrate the hospital with the cancer treatment facility.[26] And finally, of great significance to the Hospital, was the need within the Core Area to secure enough acreage to permit expansion and regeneration.[27]

[25] The Court notes here that a study of the downtown area, to wit: "the Regional/Urban Design Assistance Team study"—which had been completed in March of 2002--- found that the area in question should be redeveloped, and had the potential for serving large project needs that could bring employment and ancillary businesses to the Center City. Major institutions requiring campuses and large facilities, such as a hospital, were deemed to be the kind of developments that should be accommodated in this area, supporting both downtown and neighborhood revitalization goals.(Ex. A-4)

[26] This is a new facility located on the northeast corner of North St. and Wittenberg, directly adjacent to the Core Area.

[27] The landowners have challenged the City to secure enough acreage for future expansion of the Hospital, characterizing this as speculative. The Court first notes that the acreage set aside for future expansion is not that owned by the landowners. The Court also wonders if, abiding by the landowners constraints, a sovereignty might never be able to secure enough property by eminent domain for future expansion of public projects; thereby, insuring the constant mantra of the people frustrated with the inability of their leaders to plan for the future?

Larry Helman, the consulting partner of the "NBBJ" national design/architecture firm employed by the hospital—a consultant who has developed fifty to sixty hospital campuses--- testified that every study indicated the necessity of securing at least 40 acres for the design and the future of a viable hospital campus. The landowners' property, per his assessment, would be absolutely necessary to perfecting a proper "healing environment", integrating the hospital campus with the new cancer treatment facility, and ensuring the viable future of the hospital. The landowners did not offer this Court any professional opinion to the contrary.

The City has exercised its discretion and decided to place the Hospital in the Core Area of the SDUR Area. It is not incumbent upon this Court to adjudge the wisdom of the City's decision. Rather, the task at hand is to consider whether the City abused its discretion in making this decision.

It is clear to the Court that the City afforded a considerable amount of time, money, effort, and thought to this "hospital project." Indeed it took three years merely to come to an agreement regarding the preferred site of the hospital. It reviewed multiple project sites, engaged four blight studies to be conducted, held numerous public forums concerning the issue, studied traffic patterns and parking areas as they might support a hospital campus, engaged environmental studies of the Core Area, conducted railroad noise studies, emergency medical service transportation studies, received the input of several entities of import—such as Wittenberg University, the Turner Foundation, and the Center City Association--- and passed many ordinances in furtherance of the same. Notwithstanding the blight studies conducted herein, the City commissioners were of the opinion that SDUR Area had long been in a blighted condition. (See, Ex. F-3) Moreover,

the City was well aware of a 2002 study conducted by the American Institute of Architects, by and through its Regional/Urban Design Assistance Team, which had suggested that the area now within the SDUR Area would be well-suited for major institutions requiring large campuses and facilities, such as a hospital. (Ex. A-4) Finally, at its September 4th, 2007 meeting, the City commissioners voted unanimously finding and determining that the SDUR Area was "a blighted area under Springfield Codified Ordinance Section 129.08". (Ex. H-3) The commission then voted unanimously to appropriate those properties it deemed necessary to implement its renewal plan and to build a hospital.[28]

In light of the interests of the City, and its protracted effort and consideration of this matter, it is difficult for the Court to agree with the landowners that the City's ultimate decision was unreasonable or arbitrary. Indeed, the City has made its case that this redevelopment project is necessary for the public's health, safety, and general welfare; and that the appropriation is necessary to fairly accomplish this project. While the landowners may have preferred an alternative site, the City did not abuse its discretion in selecting the Core Area as the site for the Hospital, or for deciding that the landowners' property was an integral part of the same. Thus, the Court finds that the appropriation of the landowners' property is necessary in this case.

III. Failure of the Parties to Agree

The third issue before this Court concerns the negotiations as between the City and the landowners regarding the purchase price of the properties in this case. Ohio

[28] The Court finally notes on this issue that the City and the Hospital must have been sufficiently convinced of the necessity to build the hospital on the Core Area, as the decision would demand the extra expenditure of an estimated $32 million to perfect such a location.

Revised Code Sec. 163.04 provides that "[a]ppropriations shall be made only after the agency is unable to agree, *for any reason*, with the owner..." (emphasis added) The City has represented that the parties were unable to agree as to the terms of the sale herein. The landowners challenge that assessment.

The City's protocol in the SDUR Area was to secure two appraisals for each property, which then would be reviewed by a third appraiser, and then to offer, as a purchase price, the higher of these appraisals. Adhering to that protocol, the City mailed on January 19th, 2006 a proposed offer and purchase price to the landowners herein—LLP solely for their commercial property—in the amount of $751,000. (Ex. I-4) The landowners did not formally respond. On July 19, 2007, the City sent a second written proposal—which then included the residential property—in the amount of $1,946,700 (Ex. J-4)[29] The landowners, by and through counsel, gave a counter-offer of $5.5 million in a written correspondence dated September 7, 2008, and added that this figure was a "starting point." (Ex. L-4) While there was testimony that there were other meetings between the parties about this issue, there were no other official offers or counteroffers; and the City considered its efforts at reaching a settlement to be "fruitless."

This Court previously observed, in its December 12th Decision regarding the motions for summary judgment, that it had rejected the proposition that the City was required to tender its "last and best offer" before proceeding with this appropriation. Rather, and as this Court continues to believe, the task at hand is to discern whether the City acted "reasonably" in concluding that the parties were unable to agree. This Court believes that it did.

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[29] This offer was reissued on September 12, 2007 to Dot.com Investment Holdings, Limited—which is a company closely owned by Garth and Jennifer Robinson.

The City tendered two offers to the landowners. Both were bona fide offers supported by the fair-market valuation of three appraisers. When the landowners tendered their first counter offer in September of 2008, they, in effect, did two things: first, they formally rejected the City's offer; and second, they tendered a counteroffer which was over *five* times the amount of the highest appraisal secured by the City.

The law does not demand that the City enter into protracted and likely fruitless negotiations with landowners. *City of Wadsworth v. Yannerilla* (2006), 170 Ohio App.3d 264. This is especially true in this case when it is not clear that the landowners were negotiating in good faith. The Court thinks it noteworthy that the landowners had long been aware that their properties were being considered as part of a potential site for the Hospital. Indeed, they introduced Exhibit 66—a December 6th, 2004 front page article in the local Springfield News-Sun newspaper—headlining an article about the possibility of such a location. Yet, as of the date of this hearing, the landowners had yet to execute, or otherwise present, an appraisal of their properties by a licensed appraiser, despite being requested to do so on multiple occasions.

Moreover, this Court's review cannot ignore the playing field on which these negotiations evolved. Both parties were well versed on the new Ohio eminent domain law (S.B. 7) which was to take effect on October 10th, 2007. The landowners clearly were aware that the City wanted to file its case under the former laws. The City clearly was aware that the landowners preferred the new laws. It surprised no one that negotiations produced no settlement before this October10th deadline. Finally, the Court observes the testimony of Jennifer Robinson, who admitted that there was no response to the City's initial offer because they didn't want to move "until they had to." This Court will not

now find that the City acted unreasonably in recognizing the *de facto* impasse which divided the parties herein.[30]

IV. OTHER CONSIDERATIONS

Void for Vagueness

The landowners have challenged the right of the City to appropriate their property for the reason that the definition of "blight" as considered by the City in this matter is unconstitutionally vague; and as such, that it permitted the City to be arbitrary and discriminatory in its application herein. In addressing this challenge, the Court notes that the essence of its review must be whether the definition affords a reasonable individual of ordinary intelligence "fair notice," or warning, and is sufficiently specific to enable that individual to understand and apply that definition. *Grayned v. Rockford* (1972), 482 U.S. 104. As a whole, so this inquiry goes, does the definition of "blight," as taken from the state statute and the City's ordinances and applied herein, afford a "reasonable opportunity" to an individual to know what it means. Or, in the alternative, is this definition so impermissibly imprecise, indefinite, or incomprehensible, that it offers no fair guidance to the citizenry and permits the City such broad discretion that its application becomes ad hoc and/or subjective.

Taken as a whole, the Court first notes that the definition guides the individual to a general consideration: do conditions exist within an area which are "conducive to ill health, transmission of disease, juvenile delinquency and crime and are detrimental to the public health, safety, morals and general welfare." The definition then specifically lists

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[30] The Court also believes that the true purpose behind the requirement that there be an inability to agree is to discourage routine lawsuits being filed by a government against its people—a purpose not particularly applicable in the case at bar.

eight potential conditions, the presence of which must be reviewed to determine if they are so "conducive." (Ex. Z-2) Much of the terminology of these eight conditions was specifically and clearly defined, including the terms "dilapidation," "deterioration," "poor," and "damaged." The primary consideration of the City in this case—the presence and number of buildings suffering dilapidation or deterioration—was specifically tied to a formula adding the number of "poor" and "damaged" exterior building features observed.

In the *Norwood* case, the City of Norwood had used the word "deteriorating" within its definition of "blight." Indeed, the *Norwood* trial court had specifically found that the city had failed to prove the existence of an area which had already suffered dilapidation or deterioration but had found, instead, that the area was deteriorating. The Supreme Court found the word "deteriorating" to be too subjective and speculative in nature; and thus found Norwood's ordinance to be void, as too vague.

The definition of blight employed by the City of Springfield herein does not lend itself to such subjectivity or speculation. Rather, this Court finds that it is sufficiently clear and precise to give fair notice of its meaning to any reasonable individual of ordinary intelligence. Thus, it survives this Court's due process "void for vagueness" review.

FAIRNESS

As part and parcel of this Court's review, the Norwood Court has reminded the trial courts that we should also ensure that the city takes no more than that which is necessary, that the City proceeds fairly and in good faith, and that the City does not abuse its power by irregular or oppressive use. This Court has closely reviewed the long history

leading up to the appropriation sought in this case and finds that the City has acted in good faith in its declarations herein; and that there has not been a manifest abuse of power. The City has taken reasonable steps to maintain the status quo of the Core Area during the lengthy process of obtaining all of the property herein. A great deal of consideration was given to the location of the hospital, its esthetic design and interests to afford a healing environment, its future needs for expansion, and its infrastructure needs. The landowners believe that the hospital could be built "around" their insulation business. Perhaps—but clearly not without significantly compromising the integrity of this redevelopment project—something for which the law does not call.

The landowners have suggested that they have become victims of a "conspiracy" of undue harassment and coercion from the City to sell their property. They cite the loss of a construction contract with the Springfield Metropolitan Housing Authority, as well as pressure from other businessmen in the form of a boycott of their business. The City has adamantly denied its involvement in any such tactics. Upon consideration, this Court, while it believes it conceivable that individual pressure may have been exerted upon the landowners to sell, finds that there is no evidence linking the City to any such unfair exertion. The City was not involved with the construction contract in question; nor with those charged with implementing the same. Indeed, the lead contractor for the job neither currently has, nor previously had, any relationship with the City. The Court, quite frankly, finds no conspiracy.

Finally, the landowners contend that the City's actions have violated its affirmative duty to treat all landowners "fairly and equitably". They site at least one source of this duty, to wit: the Uniform Relocation and Real Property Acquisition Act of

1970. There have been well over 100 families and/or businesses relocated during this redevelopment campaign; yet no anecdotal evidence of unfair or inequitable treatment. To the contrary, the evidence suggests that the residents within the Core Area have generally been treated fairly and in accordance with federal law and the City's purchasing protocol.

LEGAL DESCRIPTION

The landowners, in their Answer, alleged that the City had failed to properly identify and/or describe the property petitioned to be appropriated herein. The City presented Attorney Tammi Angle, who testified that she had conducted the title searches with respect to the properties herein, and that the legal descriptions consistently and properly describe the properties in the City's authorizing legislation and pleadings herein. This testimony was not rebutted. This Court finds no issue with respect to the property descriptions in this matter.

ESTABLISHMENT CLAUSE

The Court now considers whether the development agreement entered into between the City and the Hospital violates the Establishment Clause of the United States Constitution or Article I, Section 7 of the Ohio Constitution. Though this challenge was raised within the Answer of the landowners, the Court received no testimony which would suggest that the City's redevelopment project had a religious purpose, or that its primary effect would advance or inhibit religion, or that it would foster any sort of entanglement between the City and religion. See *Agostini v. Felton* (1997), 521 U.S. 203. To the contrary, this Court finds that the City's purposes herein were to eliminate blight and to provide a 24 hour acute care hospital for the general public. While this Hospital

has a Catholic "presence," it offers its hospital services to all who seek the same, regardless of an individual's religious preference, and without any religious instruction or indoctrination. There are no further religious mandates or obligations on the City or its residents from this redevelopment agreement. In short, there is no violation of any constitutional provision, federal or state, manifested herein.

Lending Aid and Credit

The landowners have challenged the City's Redevelopment Agreement with the Hospital on the grounds that it is an unconstitutional lending of the City's aid and credit to a corporation in violation of Article VIII of the Ohio Constitution. That Article provides, in pertinent part, that "[n]o laws shall be passed authorizing any...city...to become a stockholder in any...corporation...or to raise money for, or to loan its credit to, or in aid of , any such...corporation..." The only evidence presented this Court, however, is that the City is expending money to clear blight from an area which will then be purchased by the Hospital at a value which exceeds its fair market value. This falls within the province of the City's authority (see *State ex rel. Bruestle v. Rich* (195[illegible] 15 Ohio St. 13); and thus this challenge is not well-taken.

Equal Protection

The question has been posed whether there has been a violation of the Equal Protection Clause of the United States Constitution. The question arises from the effective date of Senate Bill 7, to wit: October 10th, 2007, which affords greater *potential* benefits to the property owners of eminent domain applications filed on or thereafter. The landowners do not challenge the constitutionality of Senate Bill 7, but rather the constitutionality of the City's decision to file the instant petitions under the law as it

existed prior to the effective date of Senate Bill 7. This decision, they argue, potentially gives rise to the creation of two different classifications of property owners insofar as property owners might receive different treatment depending on which side of Senate Bill 7 a particular case is filed.

However, the Court notes two things. First, the classifications potentially created herein are not based on a suspect class, that is, race or national origin, which would demand the Court to conduct a strict-scrutiny inquiry. *State v. Thompson* (2002), 95 Ohio St.3d 264. Second, the landowners' Equal Protection challenge does not implicate legislation enacted by the government, but rather, and merely, the government's decision to proceed with filing its petition herein under the law as it existed on October 5th, 2007. Moreover, this decision does not affect the landowners' fundamental right to demand the City to establish that its appropriation be for a public purpose and in exchange for just compensation. And so, this Court believes it appropriate to review the City's decision under the less rigorous "rational-basis" scrutiny. That is to say, to consider whether or not City's decision was rationally related to a legitimate governmental purpose.

First, the Court finds that the Redevelopment Agreement, which, the Court notes, was entered into in May of 2006—well before Senate Bill 7 became law—called for "phase one" of the Core Area to be delivered to the Hospital by October 1, 2007. (Ex. W-2, Sec. 2.7) Toward that end, the City filed the instant petitions on October 5th, 2007. Secondly, the Court acknowledges—as do the landowners--- the advantages to the City of availing itself of the pre-Senate Bill 7 law regarding appropriations.[31] Those

[31] The Court finds the advantages to be more procedural than substantive. For instance, the law does not affect the basic two components of the eminent domain process: that there be a public purpose; and that there be just compensation for the appropriation. The procedural changes affect appellate issues, mediation, and attorney fees if there is bad faith by the sovereignty.

enumerated by the City include avoiding delays and expenses necessitated by new mediation and appellate requirements, retaining favorable allocation of the burden of proof, avoiding exposure to payment for lost goodwill and economic losses resulting from relocation, and avoiding exposure to attorney fees and litigation expenses---all newly created under Senate Bill 7. This Court thinks these to be fairly related to the City's responsibility to protect its treasury, and therefore legitimate purposes justifying its decision.

Moreover, as noted, the classifications conceived by the landowners may well be speculative in nature. It is quite conceivable, for instance, that the City successfully negotiates the sale of all remaining properties within the Core Area. And even should there be litigation in the future it may not yield any substantive differences concerning the treatment of property owners. See footnote 31 above. Finally, in the event that such classifications materialize, the Court cannot find an arbitrary element to the creation of the same. There appears to be a rational relationship between the timing of the City's appropriations and the City's legitimate interests. As such, the Court finds no violations of the Equal Protection clause.

Certainty of Redevelopment

The landowners have expressed their suspicions as to the probability that the Hospital will become a reality even in the event that the City owned their land. They charge that the City has failed to give reasonable assurances that the intended use "will come to pass." The only evidence that this Court received on this issue was that suggesting that the Hospital and the City were clearly on course to build this new hospital facility. The two entities have already invested years and over $18 million to date toward

the same. Over $260 million has been set aside for the implementation of this Redevelopment Agreement. The Court recognizes that there are never any fast and final guarantees. Yet, there has been no evidence of either the Hospital's or the City's inclination to terminate their Redevelopment Agreement. Accordingly, the Court does not find the landowners' doubts sufficient to defeat the City's right to appropriate their property.

V. CONCLUSION

Generally speaking, the Court has viewed its statutory role in this matter to scrutinize the following three issues: the right of the City to appropriate the landowners' property; the necessity to so appropriate; and the inability of the landowners and the City to agree upon the terms of the sale of said property to the City. Whether there is indeed a "right" hinges on the nature of the City's purpose underlying the appropriation---and specifically whether that is a "public" purpose---a question of law for the Court. Whether there is a "necessity" for an appropriation, however, while subject to Court review, is more a legislative question; and therefore one deserving of great deference by the Court.

The City has set forth two purposes in support of their petitions to appropriate the landowners' property: first, to build a hospital which would serve the residents of Springfield; second, to eradicate a blighted area within the City and to redevelop the same. This Court is satisfied that the City has met its burden, as assigned by this Court, to establish that these are legitimate public purposes affording the City the right to appropriate the properties herein.

The City has determined that it is necessary to appropriate the properties herein for purposes of accomplishing this redevelopment project. While there was evidence

suggesting that there were, indeed, other possible locations for this project, the landowners have failed to show this Court that the City abused its discretion when it decided upon the Core Area and the landowners' property. This Court, giving due deference to this legislative decision by those presumed to know the needs of the Springfield community, finds that it is necessary for the City to appropriate the properties herein.

Finally, the Court considers whether there was an inability to agree to the terms of the sale of the landowners' properties herein. The City has presented evidence that it believed that, two bona fide offers having been tendered and rejected, and the parties having met on a number of occasions to discuss the same, that further negotiations were "fruitless." The landowners claim that there was no impasse; but admit that the parties remained $4 ½ million apart after nearly three years of knowing the City's interest in their properties. The Court believes that it is reasonable to conclude that the parties herein were not going to reach an accord. Thus, the Court finds there was an inability to agree as to the sale of the properties herein.

The Court recognizes that there are those who will welcome this decision with great enthusiasm---seeing only the gain in building a new hospital campus. Others will cradle only the loss of an old and storied neighborhood. Such is the nature of things when competing constitutional interests collide. And there is merit to both. Nevertheless the law and the evidence have dictated the outcome of this case.

ENTRY

For the foregoing reasons, this Court finds that the City has the right to appropriate the properties herein; that the appropriation of the same is necessary; and that

the parties were unable to agree as to the sale of the properties prior to the filing of the petitions herein. Accordingly, this Court orders the appropriations to proceed and the matter to be assigned for hearing concerning the assessment of just compensation for the same.

IT IS SO ORDERED.

RICHARD P. CAREY, JUDGE

cc: A. Burkholder
M. Fellerhoff
W. Hoffman

FILED
CLARK COUNTY PROBATE COURT
MAR 28
RICHARD P. CAREY
PROBATE JUDGE