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OVERVIEW OF EMINENT DOMAIN POWERS AND PROCEDURES WITH A FOCUS ON URBAN RENEWAL

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I. SOURCE OF POWER OF EMINENT DOMAIN

- A. Eminent Domain is an inherent sovereign power. The Constitution does not create the power, but simply places limitations upon its use. City of Thornton v. Farmers Reservoir & Irrigation Co., 194 Colo. 526, 575 P.2d 382 (1978); Town of Parker v. Colorado Division of Parks and Outdoor Recreation, 860 P.2d 584 (Colo. App. 1993).
- B. The power of condemnation lies dormant in the state until the legislature speaks. Potashnik v. Public Service Co., 247 P.2d. 137 (Colo. 1952).

II. CONSTITUTIONAL PROVISIONS

- A. Federal:
 1. Fifth Amendment to the United States Constitution states: “. . . nor shall private property be taken for public use, without just compensation.”
 2. Made applicable to the states through the Fourteenth Amendment.
- B. State (Colorado):
 1. Article II, Section 15 authorizes condemnation by public entities subject to payment of compensation for “taking or damage” to property. Thus, the Colorado Constitution may offer greater protection to property owners than the Federal Constitution as it provides for compensation in the event of “taking” or “damage” to property. Mosher v. City of Boulder, 225 F. Supp. 32 (D. Colo. 1964).
 2. Article II, Section 14 authorizes condemnation by private persons or private entities in limited circumstances. (See also C.R.S. § 38-1-102.)
 3. Article XX, Section 1 authorizes condemnation by Home Rule cities.
 - (a) Home Rule Charters give governmental entities authority to condemn pursuant to Article XX or authority to condemn pursuant to the statutes.

- (b) Enumeration of purposes for condemnation in Article XX are illustrations, not limitations, on the purposes for which condemnation can be used. Fishel v. City and County of Denver, 106 Colo. 576, 108 P.2d 236 (1940).
- (c) Condemnation pursuant to Article XX authorizes condemnation inside as well as outside the municipal boundaries.
- (d) Home Rule City may not be bound by the state statute enabling condemnation in certain circumstances. Thornton v. Farmers Reservoir, 575 P.2d 382 (Colo. 1978).

III. STATUTORY AUTHORITY TO CONDEMN

- A. Condemnation power lies dormant until expressly delegated by legislature. Potashnick v. Public Service Co. of Colorado, 126 Colo. 98, 247 P.2d 137 (1952).
- B. Numerous statutes exist vesting the power to condemn in favor of various governmental, quasi-governmental and private entities.
- C. Right or power to condemn must be expressly delegated or necessarily implied. Mack v. Town of Craig, 68 Colo. 337, 191 P. 101 (1920); Town of Parker v. Colorado Division of Parks, 860 P.2d 584 (Colo. App. 1993) (General grant of eminent domain power to home rule municipality confers no condemnation power over state-owned lands. Eminent domain power must be “expressly” given.)
- D. C.R.S. §§ 38-1-101 et seq., 38-6-101 et seq., and 38-7-101 et seq. (Urban Renewal Vesting Procedure) outline the general statutory procedures for condemning property.
- E. For federal condemnations Rule 71A of the Federal Rules of Civil Procedure apply.

IV. LEGAL PREREQUISITES TO EXERCISING POWER OF EMINENT DOMAIN

- A. Public Use Doctrine
 - 1. Taking must be for a “public use”. Tanner v. Tresury Tunnel Mining & Reduction Co., 35 Colo. 593, 83 P. 464 (1906) (Public use doctrine must be sufficiently elastic to meet new conditions as the needs of society change.)
 - 2. Court to determine if use is public, but legislative declaration is given great weight. Board of Commissioners v. Intermountain, 655 P.2d 831 (Colo. 1982); City and County of Denver v. Block 173 Associates, 814 P.2d 824 (Colo. 1991) (In urban renewal context, if record supports that public purpose is being served, judicial inquiry ends.); Hawaii Housing Authority v. Midkiff, 104 S.Ct. 2321, 81 L.Ed.2d 186 (1984) (Great

deference is given to condemnor's determination that a "public" purpose is being served.)

B. Necessity

1. Court cannot inquire into determination unless made fraudulently or in bad faith. State Board of Land Commissioners v. District Court, 163 Colo. 338, 430 P.2d 617 (1967).

C. Good Faith Negotiations

1. Condemning authority must make a bona fide offer (generally based on an appraisal or at least an opinion of value from a valuation expert) and provide to the landowner a reasonable length of time to consider such offer (generally held that 14 days is sufficient).

Note: Colorado Supreme Court (1950) held that good faith negotiations is a jurisdictional prerequisite. Old Timers Baseball Association of Colorado v. Housing Authority of City and County of Denver, 122 Colo. 597, 224 P.2d 219 (1950). However, the Colorado Court of Appeals (1993) held that good faith negotiations is not a restriction on the court's subject matter jurisdiction, but merely a condition precedent or element of the right to condemn. Minto v. Lambert, 870 P.2d 572 (Colo. App. 1993).

2. Condemnor is excused from negotiating if negotiations would be futile. Vivian v. Board of Trustees of Colorado School of Mines, 152 Colo. 556, 383 P.2d 801 (1963).

V. **FUNDAMENTALS OF URBAN RENEWAL LAW**

A. Urban Renewal Authority Fundamentals-Formation

1. Petition expressing need for authority signed by 25 registered electors [§ 31-25-104(l)(a), C.R.S.]
2. Clerk gives notice of public hearing 10 days prior to hearing
3. City Council Hearing [§ 31-25-104(l)(b), C.R.S.]
 - (a) Council must find:
 - (1) One or more slum or blighted areas in the municipality
 - (2) Acquisition, clearance, rehab, conservation, development or redevelopment necessary
 - (3) In public interest to create URA
 - (b) Council adopts resolution authorizing mayor to appoint commissioners

- (c) Council may sit as URA commissioners [§ 31-26-115(1), C.R.S.]
- (d) If resolution is defeated, Council must wait six months before considering formation of an urban renewal authority [§ 31-25-104(l)(c), C.R.S.]

4. Creation

- (a) Authority created upon filing of certificate with Director of Division of Local Government [§ 31-25-104(l)(b), C.R.S.]
- (b) Boundaries of Authority are coterminous with municipality

5. Abolition

- (a) Must be abolished by ordinance [§ 31-25-115(2), C.R.S.]
- (b) Must arrange for payment of indebtedness
- (c) Ordinance to abolish can be initiated

B. Powers [§ 31-25-105, C.R.S.]

1. Adopt bylaws, rules and regulations
2. Enter into contracts with public and private entities
3. Work with city to plan, zone and rezone
4. Acquire property or interest in property through voluntary sale or condemnation
5. Borrow money (i.e., issue bonds)
6. Own, clear or prepare property for redevelopment
7. Mortgage or encumber property
8. Make and submit plans for development to city
9. Provide relocation assistance

C. Real Purposes

1. Acquire and assemble land for redevelopment
2. Power of Condemnation
3. Ability to convey to private parties
4. Finance redevelopment

- (a) Sales tax and property tax increments
- (b) Borrow money through bonds, loans or reimbursement agreements
- (c) Not limited by TABOR

D. Urban Renewal Project

- 1. Urban Renewal Plan - must be approved before the urban renewal authority can act
 - (a) Designates the urban renewal area and defines what powers can be exercised
 - (b) City Council approves the urban renewal plan by resolution [§ 31-25-107(1), C.R.S.]— not subject to referendum
 - (c) Plan must designate an urban renewal area where conditions of slum or blight exist
 - (d) Blighted area [§ 31-25-103(2), C.R.S.]
 - (1) Existence of at least one, four or five of the following factors:
 - (a) Predominance of slum, deteriorated, or deteriorating structures
 - (b) Predominance of defective or inadequate street layout
 - (c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness
 - (d) Unsanitary or unsafe conditions
 - (e) Deterioration of site or other improvement
 - (f) Unusual topography or inadequate public improvements or utilities
 - (g) Defective or unmarketable title
 - (h) Conditions which endanger life or property by fire
 - (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

- (j) Environmental contamination
 - (k) 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
- (2) Which:
- (a) Impairs sound growth
 - (b) Retards housing
 - (c) Constitutes an economic or social liability
 - (d) Is a menace to health, safety, morals and welfare
- (3) Symptoms and Causes
- (4) One factor: when the owner(s) and tenant(s) of 100% of the property in the urban renewal area do not object to designation [C.R.S. § 31-25-103(2)(1)]
- (5) Four factors: when all owner(s) and tenant(s) do not consent and condemnation will not be used [C.R.S. § 31-25-103(2)]
- (6) Five factors: when condemnation is used [C.R.S. § 31-25-105.5(5)(a)]
- (e) Slum area [§ 31-25-103(7), C.R.S.] - predominance of buildings which are:
- (1) Dilapidated, deteriorated, obsolete
 - (2) Inadequate provision of ventilation, light, air, sanitation or open space
 - (3) Which contributes to unhealthy conditions, juvenile delinquency or crime
 - (4) Detrimental to public health, safety, morals or welfare.

2. Approval of the Urban Renewal Plan

- (a) Prior to City Council consideration, Council must:
 - (1) Submit plan to planning commission [§ 31-25-107(2), C.R.S.]

- (2) Must have a general or master plan for the city
- (3) Must publish notice of the public hearing at least 30 days prior [C.R.S. § 31-25- 107(3)(a)].
- (4) Must provide take reasonable efforts to provide written notice to all property owners, residents and business owners in the proposed area [C.R.S. § 31-25- 107(4)(c)]
- (5) Must hold a public hearing [C.R.S. § 31-25-107(3)]
- (6) Must submit to county commissioners for review with information [C.R.S. § 31-25-107(3.5)]:
 - (a) Time to complete project
 - (b) Property tax increment and portion of incremental allocated to project
 - (c) Impact on county services
 - (d) Municipality can enter into intergovernmental agreement with county to rebate a portion of the TIF to reimburse for county services [C.R.S. §31-25-107(11)]
 - (e) County can require arbitration regarding the impact of the urban renewal plan on the county [C.R.S. § 31-25-107(12)]
- (b) City Council approves the urban renewal plan if [C.R.S. § 31-25-107(7)]:
 - (1) A feasible relocation plan exists for relocating individuals
 - (a) Relocation plan must provide for payments for actual and direct moving expenses
 - (b) Relocation plan must provide for payments for goodwill and lost profits of businesses [C.R.S. § 31-25-105(l)(j)]
 - (2) Conforms to general or master plan
 - (3) Affords maximum opportunity for rehab or redevelopment
 - (4) If open land to be developed for residential uses, must find there is a shortage of housing and plan is essential to housing for city [C.R.S. § 31-25-107(5)]

- (5) If open land to be developed for nonresidential uses, must find that these uses are necessary and appropriate [C.R.S. § 31-25-107(6)]
 - (6) Must draw the boundaries of the district as narrowly as feasible to accomplish the planning and development objectives of the plan. [C.R.S. § 31-25-107(1)]
- (c) Approval of the urban renewal plan fixes tax increment for the urban renewal area [C.R.S. § 31-25-107(9)]
- (1) Plan provides allocation of tax increment for sales tax and property tax for 25 years
 - (a) Fixes property tax assessment base at level for year prior to adoption of plan
 - (b) Fixes sales base based on collections for 12 months ending in month prior to adoption
 - (2) Must provide notice of the adoption of the urban renewal plan to the county assessor [C.R.S. § 31-25-107(10)]

3. Challenge to adoption

- (a) File C.R.C.P. 106(a)(4) action within 30 days “for judicial review of the exercise of discretion on the part of the governing body in making the determination of blight.” [C.R.S. § 31-25-105.5(2)(b)]
- (b) But governing body has burden of proving that it has not exceeded its jurisdiction or abused its discretion [C.R.S. § 31-25-105.5(2)(b)]
- (c) But the governing body’s determination is a “legislative determination and shall not be deemed a quasi-judicial determination.” [C.R.S. § 31-25-105.5(2)(c)]
- (d) C.R.C.P. 106(a)(4) is the exclusive remedy for challenging the blight determination
- (e) Existing case law: Determination of blight is a legislative decision. Tracy v. City of Boulder, 635 P.2d 907 (Colo. App. 1981)

E. Condemnation mechanics

- 1. Applies to private property acquired by condemnation for transfer to a private party [C.R.S. §31- 25-105.5(1)]

- (a) Exempts situations where landowner consents to condemnation [C.R.S. § 31-25- 105.5(l)(a)]
 - (b) Exempts situations where there is an uneconomic remainder [C.R.S. § 31-25-105.5(l)(d)]
2. Blight determination must be made no more than 7 years prior to the condemnation [C.R.S. § 31- 25-105.5(2)(a)(i)]
3. Preconditions to exercise of condemnation power [C.R.S. § 31-25-105.5(2)(a)(ii)]
- (a) Define the project—implied by the need to issue an RFP
 - (b) Issue a request for proposal
 - (c) Give all property owners, residents and owners of business concerns an opportunity to propose
 - (d) May invite others to submit proposals
 - (e) Must publish notice of the RFP
 - (f) No constraints on who is selected, but see C.R.S. § 31-25-106(2) which allows the Authority to accept the proposal it “deems to be in the public interest”
 - (g) An agreement for redevelopment with the private redeveloper is assumed [C.R.S. § 31- 25-105.5(2)(a)(ii)]
 - (h) Governing body must specifically authorize condemnation of specific properties [C.R.S. § 31-25-107(3)(b)]
 - (1) Individualized notice to each property owner 30 days in advance of the hearing
 - (2) Decision based on finding of slum or blighted conditions and not “economic performance” of the property
 - (3) Approval of the condemnation must include the following findings:
 - (a) The property is in a blighted area by reason of its present condition and use and by reason of the presence of at least five of the factors specified in C.R.S. § 31-25-103(2).
 - (b) The urban renewal authority has invited proposals pursuant to C.R.S. § 31-25-105.5(2)(a)(ii) including an invitation for proposals from the property

owners, residents and owners of businesses as well as developers.

- (c) The project is commenced no later than seven years after the blight determination. [C.R.S. § 31-25-105.5(2)(a)(i)]
- (d) Redevelopment requires the inclusion of the property to be condemned. [C.R.S. § 31-25-105.5(2)(a)(iii)]
- (e) The urban renewal authority has adopted relocation of land acquisition policies consistent with C.R.S. § 31-25-105.5(4)(a).
- (f) All of the requirements of C.R.S. § 31-25-105.5(2) have been satisfied.
- (g) The principal purpose of the use of the power of eminent domain is to facilitate redevelopment. [C.R.S. § 31-25-107(4.5)]

F. Special Urban Renewal Condemnation Procedure—C.R.S. § 38-7-101 et seq.

1. Can include a “motion for vesting” along with the petition in condemnation [C.R.S. § 38-7-101]
2. Court can hear objections to the motion for vesting within 20 days of filing but not less than 10 days after service [C.R.S. § 38-7-102(1)]
3. At the vesting hearing, court can hear and determine:
 - (a) The authority of the urban renewal authority to bring the condemnation [C.R.S. § 38-7-102(2)(a)]
 - (b) Whether the property is subject to the exercise of eminent domain [C.R.S. § 38-7-102(2)(b)]
 - (c) Whether eminent domain has been properly exercised [C.R.S. § 38-7-102(2)(c)]
4. Failure to raise these issues means they are waived [C.R.S. § 38-7-102(3)]
4. Court appoints a commission to determine preliminary just compensation [C.R.S. § 38-7-102(4)]
5. Commission holds a hearing and reports its determination of preliminary just compensation to court

6. The preliminary just compensation cannot be used as evidence in the final determination of just compensation [C.R.S. § 38-7-102(6)]
7. Upon payment of the preliminary just compensation, the court vests title and possession in the Authority [C.R.S. § 38-7-103(3)]
8. Final compensation is determined in accordance with C.R.S. § 38-1-101

VI. GENERAL PROCEDURES

- A. Relocation Assistance in addition to “just compensation” if federal funds involved in the project or if project is for Urban Renewal
- B. Condemnation is a special statutory proceeding
 1. Collateral issues cannot be introduced into the proceedings. Thornton Development Authority v. Utah, 640 F. Supp. 1071 (D. Colo. 1986).
- C. Procedural Rules
 1. Rules of Civil Procedure apply where statute is silent or not in conflict. Boxberger v. State Highway Commission, 126 Colo. 526, 251 P.2d 920 (1952).
 2. Rules of Evidence apply. Denver Urban Renewal Authority v. Berglund-Cherne Co., 568 P.2d 478 (Colo. 1977).
- D. Jury v. Commission
 1. The landowner has the option of presenting its case to a jury of freeholders or to a commission of three (3) disinterested persons who own property in the county in which the property is located (“Commissioners”).
 2. If a commission is selected, the court rules on all preliminary matters, leaving only the issue of value to be determined by the Commissioners at trial. The trial is conducted in its entirety without the judge being present. However, the Commissioners can submit evidentiary or legal issues to the judge for resolution.
- E. Immediate Possession – “Quick Take”
 1. No earlier than thirty days after the Petition is served on the respondents, the condemnor, upon depositing into the registry of the court an amount to be determined by the court (usually the amount of the condemning authority’s final offer), may seek to take immediate possession of the property sought to be taken and commence construction of the project. Immediate possession is tantamount to a court-ordered possessory license, and does not constitute a conveyance of the landowner’s interest.

F. Burden of Proof

1. On landowner to prove value of the property taken and amount of damages to the remainder, if any, in a partial take situation.
2. On condemnor to prove it has the right to condemn and to prove amount of special benefits to the remainder, if any, in a partial take situation. Otero Irrigation District v. Enderud, 122 Colo. 136, 220 P.2d 862 (1950); Board of Commissioners v. Noble, 117 Colo. 77, 184 P.2d 142 (1941).

G. Valuation Trial

1. Only issues related to value are presented at trial. All other issues are to be determined by the court *in limine*.
2. Results in Award, which is the “just compensation” payable to the landowners.
3. Apportionment Hearing C.R.S. § 38-1-105(3).
4. Claims of persons with interests in property resolved after the valuation trial.

H. Rule and Order

I. Recovery of Costs – Generally, No Recovery of Attorneys’ Fees

1. The landowner’s costs, appraisal fees and expert witness fees are recoverable to the extent they are reasonable as part of the “just compensation” due for the taking. Department of Highways v. Kelley, 151 Colo. 517, 379 P.2d 386 (1963); City of Colorado Springs v. Berl, 658 P.2d 280 (1982).
2. The landowner’s attorney fees are not generally recoverable. Leadville Water Co. v. Parkville Water District, 164 Colo. 362, 436 P.2d 659 (1967).
3. However, there are statutory exceptions, such as where the condemnation award is 30% more than the last written offer made by the condemnor prior to litigation being filed. See C.R.S. § 43-4-506(h)(2)(B) (applies only to public highway authorities) and C.R.S. § 38-1-122(1.5) (applies to most other condemnors, but with significant statutory exceptions).

J. Abandonment of Proceedings

1. Condemnor may abandon at any time before owner acquires a vested right to compensation, i.e., after award is paid into the court.

2. Right to abandon exists even if possession of property has been taken. Denver & New Orleans v. Lamborn, 8 Colo. 380, 8 P. 582 (1885).
3. Limited Exception: Estoppel. Piz v. Housing Authority of City and County of Denver, 132 Colo. 457, 289 P.2d 905 (1955).

VII. VALUATION ISSUES

A. Measure of Just Compensation

1. Full Take:

- (a) The landowner is entitled to the “reasonable market value” of the property taken as of the date of value. C.R.S. § 38-1-114(1) and (2); Vivian v. Board of Trustees, 152 Colo. 556, 383 P.2d 801 (1963).
- (b) “Reasonable market value” means the fair, actual, cash market value of the property. It is the price the property could have been sold for on the open market under the usual and ordinary circumstances, that is, under those circumstances where the owner was willing to sell and the purchaser was willing to buy, but neither was under an obligation to do so. Williams v. City and County of Denver, 363 P.2d 171 (Colo. 1961); Department of Highways v. Schulhoff, 167 Colo. 72, 445 P.2d 402 (1968).

2. Partial Take

(a) Non-Highway Cases

- (1) No offset of specific benefits against value of property taken.
- (2) In estimating the value of all property actually taken, the true and actual value at such time shall be allowed and awarded. No deduction therefrom shall be allowed for any benefits to the residue of said property. . . . In all cases the owner shall receive the full and actual value of all property actually taken. C.R.S. § 38-1-114(1).
- (3) Benefits may offset any or all damages to residue.
- (4) In estimating damages occasioned to other portions of the claimant’s property or any part thereof other than that actually taken, the value of the benefits, if any, may be deducted therefrom. . . . In case the benefit to the property not actually taken exceeds the damages sustained by the owner to the property not actually taken, the owner shall

not be required to pay or allow credit for the excess. C.R.S. § 38-1-114(1).

(b) Highway Cases

(1) Total Take

If an entire tract or parcel of property is condemned, the amount of compensation to be awarded is the reasonable market value of the said property on the date of valuation. C.R.S. § 38-1-114(2)(b).

(2) Partial Take

(a) If only a portion of a tract or parcel of land is taken, the damages and special benefits, if any, to the residue of said property shall be determined. C.R.S. § 38-1-114(2)(c).

(b) Special benefits offset damages and up to 50% of the value of the part taken.

(c) In determining the amount of compensation to be paid for such a partial taking, the compensation for the property taken and damages to the residue of said property shall be reduced by the amount of any special benefits which result from the improvement or project, but not to exceed fifty percent of the total amount of compensation to be paid for the property actually taken. C.R.S. § 38-1-114(2)(d).

B. Highest and Best Use

1. The property is to be valued at its highest and best use, even if the highest and best use is not the current use of the property. Stark v. Poudre School District, 560 P.2d 77 (Colo. 1977); City of Aurora v. Webb, 585 P.2d 288 (Colo. App. 1978).
2. The considerations are: legal permissibility, physical possibility, financial feasibility and maximum profitability.
3. The “reasonable probability” of zoning changes affecting highest and best use may be considered. Stark v. Poudre School District, 560 P.2d 77 (Colo. 1977).

C. Undivided Basis Rule

1. In valuing property in a condemnation action, the reasonable market value of the property must be determined without regard to the separate interests

to which it may be subject. Accordingly, property must be valued as if it is owned by a single party. C.R.S. § 38-1-105(3); Total Petroleum, Inc. v. Farrar, 787 P.2d 166 (Colo. 1988); Clifford v. City of Colorado Springs, 815 P.2d 1008 (Colo. App. 1991).

D. Project Influence – The Scope of the Project Rule

1. The market value of the property must be determined as if the public project for which the property is being condemned had never occurred, or never was to occur. Williams v. City and County of Denver, 363 P.2d 171 (Colo. 1961); Board of County Commissioners v. HAD Enterprises, Inc., 533 P.2d 45 (Colo. App. 1974).

E. Date of Value

1. Earlier of date on which condemnor takes possession or commencement of the valuation trial. C.R.S. § 38-1-114.

F. Comparable Sales Approach Most Accepted

1. Comparison of subject property to like properties that have recently sold in the marketplace.
 - (a) Must be “open market” transactions.
 - (b) Appraiser must have personally confirmed sales price and examined public record to testify about comparable sales.
 - (c) Cannot consider sales where purchase price was enhanced as a result of the project for which the property is being taken.
2. Landowner cannot recover profits generated by business on the property.

Chronological Summary of Fort Collins Redevelopment Project

- May 2007 – Foothills Urban Renewal Plan Adopted
 - ▶ Covered just the Foothills Mall property
- 2008 – Foothills Urban Renewal Plan Dissolved
 - ▶ Purpose was to protect against dilution of the TIF potential for redevelopment, and lack of action/interest in redevelopment by then-property owner, GGP



Chronological Summary continued

- October 2009 – May 2010 – Midtown Redevelopment Study Conducted
- ▶ Blight conditions studied; outreach to stakeholders; numerous public meetings
 - ▶ Results of study recommended new conditions survey and urban renewal plan
 - ▶ Council adopted resolution February 2011 directing staff to prepare same



Chronological Summary continued

September 6, 2011 – Midtown Urban Renewal Plan adopted

Includes Foothills Mall area as well as other areas – north to Prospect, and south to Horsetooth

In addition to the protections for property owners found in the eminent domain statute and urban renewal statute, City added additional protections of its own:

- ▶ In the event that the Authority finds it necessary to purchase any real property for an urban renewal project to remedy blight factors pursuant to the Urban Renewal Law and this Plan, the Authority may do so by any legal means available, including the exercise of the power of eminent domain, pursuant to the Urban Renewal Law. If the power of eminent domain is to be exercised for the purpose of transfer of property to another private person or entity, the Authority's decision whether to acquire the property through eminent domain shall be guided by the following criteria, with the understanding that these guidelines shall not be construed to constrain the Authority's legal ability to exercise the power of eminent domain:
 - All requirements of the Urban Renewal Law, including eminent domain procedures, have been met.
 - Other possible alternatives have been thoroughly considered by the Authority.
 - Good faith negotiations by the Authority and/or the project developer have been rejected by the property owner.
 - Reasonable efforts have been undertaken to: (a) understand and address the property owner's position and his or her desires for the property and for any existing business on the site, and (b) work with the owner to either include the owner in project planning or purchase the property and relocate the owner in accordance with the Urban Renewal Law on terms and conditions acceptable to the owner.

Chronological Summary continued

February 28, 2013 – two hearings

City Council will decide whether to:

- ▶ Ratify and reaffirm the area as blighted
- ▶ Ratify and reaffirm the adoption of the Prospect South Tax Increment Financing District
- ▶ Amend the Plan to allow for Tax Increment Financing for the Foothills Mall area, and
- ▶ Ratify and reaffirm that the Fort Collins Urban Renewal Authority is authorized to acquire real property by all legal means, including eminent domain

Fort Collins Urban Renewal Authority will decide whether to:

- ▶ Consider use of the eminent domain power as to specific properties
 - Question before them is whether the additional guidelines provided by the City in the Midtown Urban Renewal Plan (above) have been met



