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## URBAN RENEWAL – A PARTNERSHIP OF PUBLIC AND PRIVATE INTERESTS FOR URBAN BETTERMENT

BY MAXINE KURTZ\*

Classical real estate theory predicates the existence of cyclical development and redevelopment of a free market in urban land. When the demand is sufficient, the vacant land will be improved with the private construction of buildings. As time passes, the investment in the buildings will be realized, and the value of the property (including the buildings) will fall below the value of the land in a vacant state. Theoretically, income will similarly fall, and eventually, the costs (taxes, insurance, maintenance) will exceed the return, and the building will be demolished. The land will then be available for new private construction when the demand arises. In many instances, this theory works in practice.

There can be, however, major roadblocks to the practical operation of this theory. The demand may be overestimated, as happened in Miami and in Chicago, two spectacular past examples. Thus, land is platted, utilities and other improvements are installed, and a few scattered buildings are constructed. Then the speculative bubble bursts, and the land becomes paralyzed. Some of the sites are abandoned by the owners and revert to the public on tax foreclosures. Ownership of the remaining sites becomes scattered among hundreds of owners all over the world.

Another major roadblock may be improper zoning. Prior to and during World War II, Denver suffered from a shortage of land where apartment construction was permitted. This resulted in "boot-leg" basement apartments springing up all over the city, while normal construction of standard apartments was suppressed. Another example dating from about the same period was a sudden increase in the demand for offices and clinics in the vicinity of our major hospitals, caused by the changing technology of medical practice. This demand for land development was held down for a number of years by prohibitive zoning in the desired areas.

A third major impediment to normal recycling of the physical plant of a community is what might be termed "milking" of slum properties. This consists of the owners of such properties purchasing them for a minimum price, making no repairs on them, overcrowding the premises with tenants (many on public welfare), enjoying minimal real estate tax rates because the structures have been depreciated by the assessor, and collecting rents which make such investments among the most stable and profitable in the modern money market. As a result of this combination of factors, these properties are not being demolished as hypothesized in the real estate theory stated at the head of this article.

Social reformers have been calling attention to this problem since the turn of the century. Such names as Jacob Riis, Lincoln Steffans, and Jane Addams were prominent in this movement. In-

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terest has not abated, as witness the recent series of articles on slum housing in Denver appearing in the *Denver Post*,<sup>1</sup> and the analysis of the effect of the money market policies on the rehabilitation of marginal areas, appearing in the *Reporter* magazine a year ago.<sup>2</sup> Housing codes, zoning ordinances, building codes, and capital improvement budgets based on comprehensive plans were among the tools which were developed in response to the needs pointed out by the early reformers.<sup>3</sup>

Heralded by President Franklin Roosevelt's challenge to the country to aid the one-third of the nation which was ill-fed, ill-clothed and ill-housed,<sup>4</sup> the federal government entered the field of improvement of urban communities in the mid-1930's. In cooperation with varying combinations of private and local governmental groups, the federal government is now operating a veritable galaxy of programs under the Housing and Home Finance Agency, including FHA and other similar loan insurance programs,<sup>5</sup> housing repair loan insurance,<sup>6</sup> interest-free loans for planning of community facilities,<sup>7</sup> loans and grants-in-aid for urban renewal (consisting of urban redevelopment and urban rehabilitation),<sup>8</sup> grants-in-aid for acquisition of open space,<sup>9</sup> grants-in-aid for certain public planning programs,<sup>10</sup> and low-rental public housing loans.<sup>11</sup>

<sup>1</sup> *Denver Post*, issues of October 9, 1961, through October 14, 1961, inclusive.

<sup>2</sup> Jacobs, *How Money Can Make or Break Our Cities*, 25 *Reporter* 6: 38-40 (Oct. 12, 1961).

<sup>3</sup> A brief history of the regulatory ordinances is found in Kurtz, *The Effect of Land Use Legislation on the Common Law of Nuisance in Urban Areas*, 36 *DICTA* 414, 417 (1959).

<sup>4</sup> Roosevelt, Franklin Delano, *Second Inaugural Address*, 1937.

<sup>5</sup> 48 Stat. 1248 (1934), as amended, 12 U.S.C. § 1709 *et seq.* (1958, and 1959-1960 Supp.). See U.S.C. citations for amendments through 1960, and 75 Stat. 149 (1961), 8 F.C.A. Supp. 195 (July, 1961) for amendments made in the Housing Act of 1961. See also 73 Stat. 667 (1959) as amended by 75 Stat. 149 (1961), 8 F.C.A. Supp. 179 (July, 1961), 12 U.S.C. § 1701a (1959-1960 Supp.) re housing for the elderly; 64 Stat. 54 (1950) as amended by 65 Stat. 648 (1951), 67 Stat. 123 (1953), 68 Stat. 595 (1954), 60 Stat. 635 (1953), 70 Stat. 1094 (1956), 71 Stat. 297 (1957), 73 Stat. 655, 664 (1959), and 75 Stat. 149 (1961), 8 F.C.A. Supp. 177 (July, 1961), 12 U.S.C. § 1715e (1958, and 1959-1960 Cum. Supp.), re cooperative housing; 62 Stat. 1276 (1948), as amended by 64 Stat. 59 (1950) and 74 Stat. 664 (1959), 12 U.S.C. § 1747 (1958, and 1959-1960 Cum. Supp.) re rental housing for moderate income families; and 64 Stat. 77 (1950), as amended, 12 U.S.C. § 1749 re housing by educational institutions (See U.S.C. reference for numerous amendment citations).

<sup>6</sup> 64 Stat. 48, as amended by 65 Stat. 173 (1951), 67 Stat. 121 (1953), 68 Stat. 591 (1954), 73 Stat. 664 (1959), 12 U.S.C. 1706c (1958, and 1959-1960 Cum. Supp.).

<sup>7</sup> 55 Stat. 361 (1941), 42 U.S.C. § 1531 (1958) as amended by 75 Stat. 149, 8 F.C.A. Supp. 191 (July, 1961).

<sup>8</sup> 63 Stat. 413 (1949), 42 U.S.C. § 1441 (1958), as amended by 75 Stat. 149 (1961), 8 F.C.A. Supp. 182 (July, 1961).

<sup>9</sup> 75 Stat. 149 (1961), 8 F.C.A. Supp. 202 (July, 1961).

<sup>10</sup> 68 Stat. 640 (1954), as amended by 70 Stat. 1102 (1956), 71 Stat. 305 (1957), 73 Stat. 678 (1959), 75 Stat. 149 (1961), 40 U.S.C. § 460 (1958, and 1959-1960 Cum. Supp.), 8 F.C.A. Supp. 187 (July, 1961).

<sup>11</sup> 50 Stat. 888 (1937), as amended, 42 U.S.C. §§ 1401-1435 (1958 and 1959-1960 Cum. Supp.). See U.S.C. citations for numerous amendments to almost every section.

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The multiplicity of programs resulted from the eventual recognition of the fact that no one of these programs was a panacea for the cure of all urban ills, though each has its role. Hence, each program should be clearly understood and examined in the light of what it is, and what it is intended to accomplish. Misuse is both disillusioning and expensive.

Urban renewal is one of the newer programs. Basically, it involves two kinds of activities: (1) urban redevelopment, and (2) urban rehabilitation.

"Urban redevelopment," as a technical term, has come to mean generally the elimination of substandard structures through acquisition (by purchase or by eminent domain) and clearance. It differs from public housing primarily in that the principal public purpose ceases when the land has been cleared.<sup>12</sup> Usually, the land is then sold to private enterprise for the construction of new buildings under such terms and conditions as will minimize the likelihood of the eventual recurrence of slums. Because of the great amount of capital required, most urban redevelopment projects have federal participation, but there are notable exceptions, especially in Chicago and Baltimore.

"Urban rehabilitation," as a technical term, refers to a program to restore and renovate marginal properties, although some spot clearance may also occur. Special long term repair loan insurance is made available to the landowners, but the loans must still be floated by private lending agencies under the "special assistance of FHA program." Both the private lenders and local FHA officials have shown marked reluctance to use this program, even with a guaranteed "take-out" (mortgage purchase) by the FNMA. In addition to financial aid, special technical staff services are provided by the local urban renewal authority to analyze deficiencies in structures, to recommend proper steps to remedy these deficiencies, and to assist the residents or owners in taking these steps (on a self-help or on a hired-help basis). Property acquisition is kept to a minimum.

These two programs are intended to be a kind of "partnership" between the public and the private interests in a community to achieve a better quality of urban development.<sup>13</sup> They are basically remedial in character and do not substitute for the regulatory measures designed to prevent slum formation on the one hand, or for the measures to rehouse the economically submarginal families on the other.

As observed recently by William Slayton, U.S. Commissioner of Urban Renewal,<sup>14</sup> the municipality's action is the keystone of the urban renewal effort. Colorado authorized such activities by

<sup>12</sup> "The main object of this legislation is to eliminate slum and blighted areas as defined in the act . . . . The General Assembly has selected a method whereby the object shall be accomplished not by public ownership of the land but rather through private endeavor and ownership under the direction of authorized officials. The acquisition and transfer to private parties is a mere incident of the chief purpose of the act which is rehabilitation of the area." *Rabinoff v. District Court*, 360 P.2d 114, 118-119 (Colo., 1961).

<sup>13</sup> Colo. Rev. Stat. § 69-4-1 (1953): "[T]his article is enacted to provide means whereby said areas may be redeveloped by private enterprise with such assistance from public funds as may be furnished in accordance with the provisions of this article"; 63 Stat. 413 (1949), 42 U.S.C. § 1441 (1958): "The policy to be followed in attaining the national housing objective established shall be (1) private enterprise shall be encouraged to serve as large a part of the total need as it can; (2) governmental assistance shall be utilized where feasible to enable private enterprise to serve more of the total need . . . ."

<sup>14</sup> Reported in the *Denver Post*, Dec. 14, 1961.

its municipal corporations by the "Rehabilitation Act of 1945."<sup>15</sup> In essence, this statute requires that the municipal planning commission establish a plan for the redevelopment of any "substandard or unsanitary area" in the municipality. The city council or town board then adopts the plan, and establishes an authority to carry out the plan. This authority has the following nine special powers:

(1) To acquire the area by purchase, gift, condemnation or otherwise;

(2) To designate and set aside such part or parts of the area as may be necessary or desirable for public grounds;

(3) To vacate existing plats of part or all of the area, and to replat the same, and to establish streets, parks, and other public grounds;

(4) To remove any of the existing structures in the area so as to permit reconstruction, and to construct public improvements on the public grounds;

(5) To secure the necessary funds for the execution of the program, including borrowing money, receiving grants, and obtaining financial assistance by such other means or methods as may be provided in the development plan for the area;

(6) To issue revenue or general obligation bonds or debentures in payment of money borrowed. A mortgage may be given on the property in an area, except the public grounds, and the proceeds and rentals therefrom pledged to secure the debentures;

(7) To sell or give long term leases on all or any part of the property in the area, except the public grounds, to a "reconstruction agency" to erect improvements thereon in accordance with the development plan;

(8) To make such contracts as may be needed to execute the other powers of the authority;

(9) To initiate and prosecute proceedings for the assessment of part of the cost of the land in the area to other property specially benefited by the redevelopment of the area.<sup>16</sup> The power described in No. 7 above is also a duty.

The other powers of the authority are the usual grants of suing and defending in litigation and of exercising the power of eminent domain (including the power of superior eminent domain).

Home rule cities may use this statute if they so desire,<sup>17</sup> but it is not essential.<sup>18</sup> The need for the authority as a structural form to accomplish this program can be questioned. The creation of such a body is not conducive to the maximum coordination of the program with general city operations, and the potential exists for a program which is irrelevant or antagonistic to the other programs and objectives of the municipal government.

The prevalent opinion among the federal officials seems to favor authorities because the centralization of the activity in this way reduces the number of different policy-level officials who are working on the local program at various phases. This author's experience has been that any attempt by a home rule city to use its

<sup>15</sup> Colo. Rev. Stat., ch. 69, art. 4 (1953).

<sup>16</sup> Colo. Rev. Stat. § 69-4-7 (1953).

<sup>17</sup> Rabinoff v. District Court, *supra* note 12, at 122 (Colo., 1961).

<sup>18</sup> Mimeo material prepared by the Denver city attorney's office which accompanied Denver's initial application for urban redevelopment loan and grant funds during 1949-1950.

powers to devise a different local organization is strongly resisted by the federal officials, and delays of many months occur before any agreement is reached. The possible greater local efficiency which might result from using the freedom of a home rule city in managing its own affairs is thus negated by interminable arguments with the federal officials (the financial incentive of federal aid being too great to "go it alone").

Since the Housing and Home Finance Agency will advance loans for the planning and execution of an urban renewal program, and will give grants-in-aid for either two-thirds<sup>19</sup> or three-fourths<sup>20</sup> of the net cost of an urban renewal project (the gross cost of the project less the proceeds from the sale of the cleared land), most communities orient their urban renewal (synonymous with the state term "rehabilitation") programs around the federal standards and requirements.

The attorney confronted with the task of securing federal urban renewal assistance can rapidly secure a library on the subject by securing the pertinent statutes, regulations, handbooks and forms from his regional HHFA office.<sup>21</sup>

Urban renewal measures will not improve the quality of the urban community unless simultaneous steps are taken for preventing the same condition from recurring in other areas. In order to secure the maximum effectiveness from its aid, the federal government requires as a condition precedent to receiving aid that the municipality develop what is known as a "workable program for community improvement."<sup>22</sup> The objectives to be achieved by this program have been stated in one HHFA form to be:

(1) To assure adequate standards of health, sanitation, and safety through a comprehensive system of codes and ordinances which state the minimum conditions under which dwellings may lawfully be occupied;

(2) The formulation and official recognition of a comprehensive general plan for the community as a whole;

(3) To determine what areas are blighted or in danger of becoming blighted and the identification of the nature, intensity, and causes of blight as a basis for the planning of neighborhoods of decent homes in a suitable living environment;

(4) To identify and establish the administrative responsibility and capacity for carrying out overall Program for Community Improvement activities and for the enforcement of codes and ordinances;

(5) The recognition of need by the community and the development of the means for meeting the costs of carrying out an effective program for the elimination and prevention of slums and blight;

(6) A community program to relocate families displaced by governmental action in decent, safe, and sanitary housing

<sup>19</sup> 71 Stat. 299 (1954), 42 U.S.C. § 1453 (1958).

<sup>20</sup> 75 Stat. 149 (1961), 8 F.C.A. Supp. 182 (July, 1961).

<sup>21</sup> Colorado is located in Region V. The office of the Regional Administrator is located at 300 West Vickery Boulevard, Fort Worth 4, Texas.

<sup>22</sup> 63 Stat. 414 (1949), as amended by 68 Stat. 623 (1954), 69 Stat. 638 (1955), 70 Stat. 1103 (1956), 73 Stat. 659, 670, 677 (1959), 42 U.S.C. § 1451c (1958, and 1959-1960 Supp.). See also Rhyme, *The Workable Program—A Challenge for Community Improvement*, 25 *Law and Contemporary Problems* 685 (1960).

within their means. Governmental action includes code enforcement, slum clearance, and the construction of highways and other public works;

(7) Community-wide participation on the part of individuals and representative citizens' organizations which will help to provide, both in the community generally and in selected areas, the understanding and support necessary to insure success.<sup>23</sup>

The purpose of this last requirement is to assure to the maximum, feasible extent the coordinated utilization of all local tools for the improvement of urban quality in order to have an effective attack on the problem of urban slums. In practice the results have been uneven, as financing problems, relocation problems, problems of land resale, and occasionally adverse community reaction have affected the program. The program has also been somewhat hampered by the lack of coordination among the great variety of federal programs dealing with urban quality, as described at the beginning of this discussion.

The urban renewal project itself must have reasonable prospects for maintaining sound quality. Numerous unfortunate experiences with public housing project locations largely dispelled the naive idea that a small island of sound construction in the midst of a sea of blight could maintain its high standards, or encourage adjacent private landowners to improve their properties. In order to achieve these objectives, an urban renewal project must have two characteristics: (1) standard quality of development must be attained throughout the project area, and (2) it must either be firmly anchored in existing standard areas or be of sufficiently large size to create its own self-contained environment. Reconstruction in accordance with a unified development plan is a major aid in attaining stability of good quality development,<sup>24</sup> and the acquisition of sound structures within the project area, by eminent domain if necessary, in order to assemble the land for a planned reconstruction is a proper exercise of local governmental powers in support of the general objective of developing a "better balanced, more attractive community."<sup>25</sup>

<sup>23</sup> HHFA Form H-1082.

<sup>24</sup> Required in Calo. Rev. Stat. § 69-4.4 (1953), and in 63 Stat. 414 (1949), as amended by 68 Stat. 624 (1954), 70 Stat. 1097, 1099 (1956), 42 U.S.C. § 1452d.

<sup>25</sup> *Berman v. Parker*, 348 U.S. 26, 32 (1954).

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The Colorado Constitution provides safeguards for the rights of one whose property is taken under an urban renewal project.<sup>26</sup> The U.S. Housing Act, in section 106(f) as amended,<sup>27</sup> provides additional assistance for the occupants of such property whether or not they are owners. This relocation assistance is outlined in some detail in the regulations issued by the Federal Urban Renewal Administration.<sup>28</sup> Basically, they provide (1) that the local agency must assist in relocating displaced families in standard housing, (2) that moving expenses can be paid both for residential and business occupants, and (3) that direct losses of personal property can be reimbursed. In addition, the Small Business Administration may aid in the relocation of eligible businesses.<sup>29</sup> Timing is of the essence for the preservation of some of these rights, and the attorney representing a client owning or occupying property which will be taken in an urban renewal project will do well to determine the current regulations *before* the client makes any overt acts toward relocation.

In urban rehabilitation projects, special mortgage insurance provisions are available to minimize the need for acquisition (so-called "Sec. 220 loans").<sup>30</sup> In urban redevelopment projects, "Sec. 221 loans" assist in the financing of housing earmarked for relocation of persons displaced in the course of the clearance process.<sup>31</sup> The only relationship between urban renewal projects and public housing projects is found in this phase, because in many renewal projects a sizeable minority of the families which must be relocated are eligible for admission to public housing projects.

Once the land has been cleared, it is prepared for resale to private enterprise. This involves the allocation of any land reserved for public use, possibly replatting of the land, and possibly installation of various public improvements. A development plan is prepared as a guide to the prospective purchaser indicating generally the type of proposed land use. Three types of bidding are commonly used, depending on the circumstances:

- (1) Fixed purchase price, with the competition on the development plan;
- (2) Open competitive bidding on price, based on the general land use plan proposed by the local urban renewal authority; or
- (3) Negotiated sale under special circumstances (as for instance, when the land for sale is too small to be a separate building site and the only logical purchasers are the adjacent land owners).

The successful bidder is bound to the execution of his proposed development plan or of the general plan of the local urban renewal authority. The first land to be sold in Colorado under this program will be from the Avondale redevelopment project in Denver in 1962.

<sup>26</sup> Colo. Const., art. 11, § 15.

<sup>27</sup> 70 Stat. 1100 (1956), as amended by 71 Stat. 300 (1957), 73 Stat. 673, 674, 676 (1959), 75 Stat. 149 (1961), 42 U.S.C. § 1456f (1958, and 1959-1960 *Cumm. Supp.*), 8 F.C.A. *Supp.* 170 (July, 1961).

<sup>28</sup> 26 F.R. 5712-15 (June 27, 1961), as amended by 26 F.R. 7826 (Aug. 23, 1961).

<sup>29</sup> 75 Stat. 149, 167 (1961), 8 F.C.A. *Supp.* 164, 168 (July, 1961).

<sup>30</sup> 68 Stat. 596 (1954), as amended by 69 Stat. 635 (1955), 70 Stat. 1094, 1102 (1956), 71 Stat. 8 (1957), 71 Stat. 295, 297 (1957), 72 Stat. 73 (1958), 73 Stat. 657, 664 (1959), 75 Stat. 149 (1961), 12 U.S.C. 1715k (1958, and 1959-1960 *Supp.*), 8 F.C.A. *Supp.* 185 (July, 1961).

<sup>31</sup> 68 Stat. 599 (1954), as amended by 69 Stat. 635 (1955), 70 Stat. 1094, 1102 (1956), 71 Stat. 297 (1957), 73 Stat. 658 (1959), 75 Stat. 149 (1961), 12 U.S.C. 1715l (1958, and 1959-1960 *Cumm. Supp.*), 8 F.C.A. 185 (July, 1961).

Urban renewal projects were an outgrowth of housing reform legislation. The early statutes required that almost all of the funds (90%) be devoted to predominantly residential projects. Gradually, a more sophisticated approach to urban quality has been developed, and the 1961 Housing Act authorized 30% of the federal funds for non-residential projects.<sup>32</sup> This affords new possibilities in such projects as downtown redevelopment, but it provides an equally great challenge for the development of techniques to renew such areas.

Urban renewal has been a constantly developing and changing program since its inception in 1949. Case law is minimal except on constitutional questions.<sup>33</sup> Much of the controlling law is contained in the regulations issued by the Urban Renewal Administration of the Housing and Home Finance Agency. It is imperative for an attorney having contact with an urban renewal project, whether as a city attorney, as counsel for the owner of land in a project, or as counsel for a prospective bidder on land in a project, to determine the *current* law on the subject.

Properly handled, urban renewal represents a promising partnership among the federal government, local units of government, and private enterprise, to restore and maintain the vitality of our urban communities while at the same time safeguarding the rights of private landowners involved in such projects.

<sup>32</sup> 75 Stat. 149, 168 (1961), 8 F.C.A. Supp. 186 (July, 1961).

<sup>33</sup> *Rabinoff v. District Court*, 360 P.2d 114 (Colo., 1961); *Berman v. Parker*, 348 U.S. 26 (1954); see annotation at 44 A.L.R.2d 1414 (1955), 2 A.L.R.2d Supp. Serv. 2999 (1960), A.L.R.2d Supp. Serv. 561 (Jan, 1961), A.R.S.2d Supp. Serv. 247 (midyear, 1961), for an extensive collection of cases on the constitutional issues.

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