Denver Law Review

Volume 39 | Issue 5 Article 4

April 2021

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URBAN RENEWAL OF BUSINESS PROPERTY – THE PREDOMINANTLY RESIDENTIAL REQUIREMENT

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The substance and character of legislation at a given point in history is often a revealing reflection of the times. Usually, as ideas and principles in legislation become outmoded, the legislation is eliminated, or remains unimplemented. In this process of legislative evolution, however, all too often there remain a substantial number of laws enacted in days gone by that stay vigorously alive although they have outlived their usefulness. They are, as it were, "legalistic impedimenta," or more popularly, "deadwood legislation." With the disappearance of the rationale under which they were initiated, they become an unnecessary obstacle to the orderly development of and compliance with the law.

Few pieces of legislation appear to be immune to this infirmity, if for no other reason than that there is seldom a complete meeting of the minds on the merits of a given measure. Congressional legislation on housing and urban renewal appears to be no exception, even though these programs since their inception have enjoyed substantial bi-partisan political support.

There has been, for example, continued criticism of a provision originally enacted in the Housing Act of 1949[2] which limited federal aid for urban redevelopment to project areas that are predominantly residential either prior to or after redevelopment.[3] This provision was evidence of a strong Congressional preference for renewal programs involving residential areas; renewal of industrial and commerical property was, from the beginning, not only of secondary importance, but of significance *only* as it related to housing.

Although modified in form, this requirement is still vigorously applied today, some thirteen years later. In considering current urban renewal legislation in order to determine the scope of obtainable federal aid, the city official will be confronted with this provision. He may understand its effect, but other aspects and questions concerning the provision may remain: Why was it enacted? How was it applied? What was its development? Is it necessary today? These are only a few of the questions that are posed and discussed, if not answered, in the following.

I. ORIGIN OF THE REQUIREMENT

It should be mentioned by way of introduction that the 1949 Housing Act, in which the predominantly residential requirement

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1 Johnstone, *The Federal Urban Renewal Program*, 25 U. Chi. L. Rev. 301, 313 (1958).

2 63 Stat. 413, 414 (1949), 42 U.S.C. §§1441 and 1450 et. seq. (1958), as amended, 42 U.S.C. §§1450 - 63 (Supp. II, 1959-60).

3 As originally enacted, Section 110(c) read as follows: (c) 'Project' may include (1) acquisition of (i) a slum area or a deteriorated or deteriorating area which is predominantly residential in character, or (ii) any other deteriorated or deteriorating area which is to be developed or redeveloped for predominantly residential uses, or (iii) land which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise substantially impairs or arrests the sound growth of the community and which is to be developed for predominantly residential uses, or (iv) open land necessary for sound community growth which is to be developed for predominantly residential uses (in which event the project thereon, as provided in the proviso of section 103(a) hereof, shall not be eligible for any capital grant); 63 Stat. 420 (1949), as amended, 42 U.S.C. §1460(c) (Supp. II, 1959-60).

first appeared, forms the basis for existing Congressional legislation on urban renewal. The Act has been amended several times since 1949, most significantly in 1954,[4] but the basic legislation is still referred to as the Housing Act of 1949, as amended.

The rationale behind the predominantly residential requirement was formulated several years before enactment of the 1949 legislation. To a certain extent the proviso emerged with other fundamental features of the federal urban renewal program. It is interesting to note, however, that the so-called "Thomas bill," one of the earlier proposals espousing federal aid for urban redevelopment, did not contain a proviso discriminating between residential and non-residential property.[5]

The Thomas bill was one of several proposals containing urban renewal provisions that were considered by the important Subcommittee on Housing and Urban Redevelopment of the Senate Special Committee on Post-War Economic Policy and Planning.[6] This subcommittee, chaired by the influential Senator Robert A. Taft, established the theoretical framework for the predominantly residential requirement in extensive hearings held in 1944 and 1945 on matters relating to housing and urban redevelopment.

In hearings of the subcommittee, urban planners voiced the view that proposed legislation should be aimed at obtaining the highest and best use for a re-developed area, and should not be limited merely to fulfilling the post-war need for housing. Mr. Alfred Bettman, Chairman of the American Institute of Planners, stated the classic, oft-reiterated view of the planners:

> A serious warning needs to be issued against conceiving urban redevelopment as a subject identical with housing or housing with little variations — housing the theme, urban redevelopment the varaitions. Of the uses of the land of an urban area, habitation is the largest running, I believe, from 60 to 75 percent; but this is just as true of . . . the whole urban territory as of the blighted portion thereof. So, while housing construction will always form the larger proportion of all urban redevelopment . . . , a costly

4 68 Stat. 590, 622 (1954), 42 U.S.C. §§1451 et seq. (1958), as amended, 42 U.S.C. §§1451-63 (Supp. II, 1959-60).

5 S. 953, 78th Cong., 1st Sess. §18 (1943). "Project area is an area of such extent and location as is deemed appropriate as a unit of development project planning and for a development project separate from the developments of the other parts of the municipality of urban area . . . "

6 Hereafter referred to as the Taft Subcommittee.

> mistake will be made if urban redevelopment be conceived of as . . . replanning or rebuilding for housing only. *The . . . process needs to be applied to all areas which need it* and for all the classes of uses which, according to good city planning principles, are appropriate to those areas . . . [7]

Mr. Bettman illustrated his proposition by referring to a hypothetical situation involving decayed areas immediately surrounding railroad yards. Perhaps it would be better if these areas, only minimally residential, were redeveloped for non-residential or business uses. This would, of course, depend on the overall planning scheme. But if such a decision were made, Mr. Bettman thought, the limitation to residential redevelopment only would unduly restrict the redevelopment of the entire area, since the non-residential district was banned from federal aid.[8] Thus, the situation could well occur in which a decaying central business district, surrounded by residential areas in process of redevelopment, would continue to be neglected due to lack of federal funds. This then would raise the next question concerning the merits of surgery on the fringes of a cancer that is allowed to continue to exist.

Mr. Bettman's reasoning failed to impress Senator Taft, who appeared to be primarily concerned with the lack of federal funds for urban renewal activity. He was also reluctant to levy a heavier tax burden upon the voter and generally unwilling to impose federal programs and controls upon urban communities.[9] Senator Taft opined that if the city had no funds left for redeveloping non-residential property, it would be difficult to surmise that the hard-pressed federal government would have any either.

The virtually complete divergence of views concerning the merits of improving blighted business as well as residential areas became evident in an important exchange in which Mr. Bettman and Senator Taft were again discussing the hypothetical non-residential area around the city's railroad yards.[10]

> Senator Taft: For every structure that is destroyed around the railroad yard a new one has been built somewhere that is more valuable for that use. The tax revenue has steadily increased, except in a very recent period. Surely, I think the city ought to do something about it, but I do not see any economic disease affecting the United States of America in any respect.
>
> Mr. Bettman: If 25 percent of your urban territory is blighted, I do think that affects the national economy.
>
> Senator Taft: I do not see where it affects the national income in any way. As a whole, the city is still sound. The city has more people, more manufacturing establishments. It does not spend vast sums on these areas. Just as any man who bought real estate there and perhaps made a profit when it went up in value, and now it is going down in value and he loses, so the city loses in a particular area,

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7 Hearings before the Subcommittee on Housing and Urban Redevelopment of the Senate Special Committee on Post-War Economic Policy and Planning, 79th Cong., 1st Sess. pt. 9, at 1606 (1945). These hearings hereafter will be cited as Taft Subcommittee Hearings. (Emphasis added.)

8 *Id.* at 1607.

9 *Id.* at 1609.

10 *Id.* at 1614.

but it can more than make up for it in some other part of the city.

Mr. Bettman: What are you going to do with that area?

Senator Taft: I don't care what you do with that area. That is a local concern. I cannot see how it affects the national economy in any way.

Senator Ellender: Usually, you have a lot of poor people living in those blighted areas.

Senator Taft: I am willing to do something to the extent that the blight is a housing blight.

The concept of federal aid toward urban renewal of areas on a city wide basis appeared doomed until Senator Taft mentioned, significantly, that perhaps there was a *middle ground,* between redevelopment of housing only, which he favored, and redevelopment of whole cities, which he disapproved. He said that there was the possibility "that the Federal Government might finance the acquisition where, by doing so, they eliminate a comparatively large amount of slum housing, where *two-thirds of the place is residential . . .*"[11]

Thus, Senator Taft's conciliatory statement became the genesis of the predominantly residential requirement, by which it was at least theoretically possible for a city to gain federal aid for an industrial and commercial area, if at the same time it increased the size of the redevelopment area to include a sufficient number of blighted residential dwellings.

Needless to say, Mr. Bettman agreed to this somewhat strained approach,[12] since it represented a considerable softening of the relatively rigid atitude of Congress toward federal participation in any kind of redevelopment program involving business property. As we shall see, however, planners coming before Congressional committees on subsequent housing legislation were not disposed to consider Senator Taft's suggestion or the predominantly residential requirement as the final answer.

II. Evolution and Erosion of the Requirement

As a result of the Taft Subcommittee's recommendation, a predominantly residential requirement was incorporated into the Housing Act of 1949.[13] Implied in the term "predominantly," however, was the Congressional interpretation that this meant that the majority of the area must be residential, as opposed to Senator Taft's suggestion of two-thirds.

As indicated previously, the Housing Act of 1949 was primarily a housing bill, and only incidentally was it concerned with urban redevelopment. There was open recognition of the responsibility of the federal government to help in the effort to provide adequate housing for millions who had been deprived of this necessity of life due to World War II and the concomitant curtailment of dwelling construction.[14] Of course, adequate housing meant that the greatest effort would necessarily be devoted to rehabilitation of exist-

11 *Id.* at 1618. (Emphasis added.)

12 In speaking of the "middle ground" possibility, Mr. Bettman agreed that such a plan might be feasible since "all urban development is predominantly housing." *Ibid.*

13 63 Stat. 420 (1949).

14 S. Rep. No. 84, 81st Cong., 1st Sess. 10 (1949).

ing housing, as neither the community nor the federal government had the resources to put everyone in a new home. Therefore, the focus of activity on both the federal and local level would be upon the area of greatest need—substandard housing.

In carrying out this objective, however, the Congress injected the caveat that it did not feel "that the Federal Government should embark on a general program of aid to cities looking to their rebuilding in more attractive and economical patterns. But . . . there is a national interest in housing conditions . . . therefore, the Government should provide aid where the area in question is to be redeveloped primarily for residential use . . . ."[15]

Moreover, it was expressly stated that the scope of the legislation was based on the fundamental premise that the housing situation was primarily a local problem. The first responsibility rested with the local community, to determine what action was necessary to improve the housing situation. Then, although federal aid was conditioned upon the project meeting certain federal requirements, the local community would continue to bear the major burden of bringing the project into fruition.[16]

The expressed desire of Congress to prevent a federal program from infringing upon local and state sovereignty coincided with Senator Taft's personal views on the purpose of the housing legislation. It also helped form the basic rationale supporting the predominantly residential requirement.[17]

The House and Senate reports on the 1949 Housing Act were in accord supporting the predominantly residential requirement. In the House Report, the concern for federal non-involvement in local affairs was again mentioned, along with the now familiar palliative to the effect that localities need not be overly concerned about the requirement, since most blighted areas are predominantly residential, anyway, and if not, all the community has to do is include non-residential areas in with residential projects to obtain the requisite "predominance."[18]

The position of the federal agency primarily concerned with urban redevelopment, the Housing and Home Finance Agency, conformed with Congressional views on the requirement.[19] Raymond M. Foley, HHFA Administrator, stated that he believed the requirement was sound; that studies indicated that from sixty to eighty percent of all urban land uses, whether residential, commercial or industrial, involved housing. Therefore, Mr. Foley felt, the ma-

15 *Id.* at 13.

16 *Id.* at 2.

17 "At the same time this requirement will not interfere with the carrying out of effective local programs which will combine the clearance of slums with sound local plans for the development and redevelopment of communities. Most slums and blighted areas are predominantly residential in character and, in these cases, the bill would permit their redevelopment for whatever new uses are considered most appropriate by the locality. It is to be noted, of course, that here the test is whether the area is predominantly residential in character rather than in use. Where blighted commercial or industrial areas are isolated from residential slum areas and hence must be redeveloped separately, Federal financial assistance also would be authorized for their assembly and clearance where they are to be redeveloped for predominantly residential uses. This does not mean that cases of isolated blighted areas of business, industrial or commercial use, or open land, cannot be developed for an appropriate combination of uses under the provisions of the bill." *Id.* at 13.

18 "[T]his requirement will not interfere with but will rather assist the broad-scale redevelopment of our urban areas. Slums and blighted areas as they exist today are predominantly residential. It is also true that in residential slum-clearance projects, it will normally be necessary to include some adjacent non-residential blighted areas in order to assure the proper kind of redevelopment." H.R. Rep. No. 590, 81st Cong., 1st Sess. 17 (1949).

19 Hearings on H.R. 4009 Before the House Committee on Banking and Currency, 81st Cong., 1st Sess. 45 (1949).

jority of potential projects for clearance and redevelopment will be predominantly residential anyway. In an appearance before the Senate Subcommittee discussing the Housing Bill, Mr. Foley raised the economic rationale for the requirement, stating, "I do not feel that any substantial portion of this *initial* program should be diverted from our greatest need—the improvement of the immediate living environment of American citizens."[20]

Opposition to the solid front of the legislative and executive branches was indeed scanty in the period immediately following passage of the 1949 Act. Attention seemed to be focused on other more controversial aspects of the Act. [21] However, enough criticism has been generated in the years between 1949 and 1961 to spur Congress to modify the requirement, and to inaugurate exceptions to its scope of operation.

The first major change was enacted in the Housing Act of 1954.[22] The predominantly residential restriction was amended to the extent that the HHFA Administrator could devote up to ten percent of available federal urban renewal funds to non-residential projects.[23] There was, however, a serious limitation upon this provision. Only an area containing a "substantial number of slum,

20 Hearings on General Housing Legislation Before the Senate Subcommittee of the Committee on Banking and Currency, 81st Cong., 1st Sess. 92 (1949). (Emphasis supplied.)

21 E.g., toward the HHFA's interpretation of eligibility of a project involving "open land necessary for sound community growth . . . " Foard and Fefferman, *Federal Urban Renewal Legislation*, 25 Law & Contemp. Prob. 635, 668 (1960).

22 68 Stat. 590 (1954), 42 U.S.C. §§1441-83 (1958), as amended, 42 U.S.C. §§1450-63, 1471, and 1476 (Supp. II, 1959-60).

23 68 Stat. 626 (1954), 42 U.S.C. §1460 (1958), as amended, 42 U.S.C. §1460(b)-(e), (g), and (k), (Supp. II, 1959-60).

blighted, deteriorated, or deteriorating dwellings" could qualify for the ten percent exception, and only if the elimination of these dwellings "would tend to promote the public health, safety and welfare in the locality involved and such area is not appropriate for redevelopment for predominantly residential uses . . . ."

The Housing Act of 1959[24] increased the non-residential allocation provision from ten to twenty percent, and also removed the cumbersome limitation to areas having a substantial number of substandard dwellings. Then, in the Housing Act of 1961,[25] the non-residential allocation was raised to thirty percent.

Erosion of the requirement was further accomplished by the addition of a number of exceptions, which in the areas involved, entirely removed the effect of the predominantly residential requirement.

Thus, in 1956, under what is now Section III of the Housing Act,[26] Congress authorized the HHFA Administrator "to extend financial assistance under this title for an urban renewal project with respect to such disaster area without regard to . . . (6) the requirements in section 110 with respect to the predominantly residential character or predominantly residential re-use of urban renewal area . . . ."

Also, in 1959, an additional exception was accorded to areas involving colleges or universities; the Administrator was authorized to waive the requirement if "the undertaking of an urban renewal project in such area will further promote the public welfare and the proper development of the community . . . ."[27] This particular exception was broadened in 1961 to include hospitals "in or near an urban renewal project."[28]

The most significant, current provision made by Congress to expand federal urban renewal participation was added by Section 14 of the Area Redevelopment Act, approved May 1, 1961.[29] Under this exception, an area which is certified by the Secretary of Commerce as a redevelopment area will be eligible for financial assistance under the federal urban renewal program notwithstanding its designation for predominantly industrial or commercial uses. Furthermore, once a contract for federal financial assistance is signed, it will be continued to completion of the project, even though the area ceases to be a redevelopment area.

III. EFFICACY OF THE REQUIREMENT

Opposition and criticism to the predominantly residential requirement was neither concerted nor well developed. Not only was

24 73 Stat. 675 (1959), 42 U.S.C. §1460 (Supp. II, 1959-60).

25 75 Stat. 149, 168 (1961). The present text of the relevant article (110(c)) is as follows:"Financial assistance shall not be extended under this title with respect to any urban renewal area which is not predominantly residential in character and which, under the urban renewal plan therefor, is not to be redeveloped for predominantly residential uses: Provided, That, if the governing body of the local public agency determines that the redevelopment of such an area for predominantly non-residential uses is necessary for the proper development of the community, the Administrator may extend financial assistance under this title for such a project: *Provided further*, That the aggregate amount of capital grants contracted to be made pursuant to this title with respect to such projects after the date of the enactment of the Housing Act of 1959 shall not exceed 30 percentum of the aggregate amount of grants authorized by this title to be contracted for after such date."

26 Sec. 111 of the Housing Act of 1949, as amended, added by sec. 307(a) of the Housing Act of 1956, 70 Stat. 1091, 1101, (1956), 42 U.S.C. §1462 (1958).

27 Sec. 112 added by sec. 418 of the Housing Act of 1959, 73 Stat. 677, (1959), 42 U.S.C. §1463 (Supp. II, 1959-60).

28 Sec. 309 of the Housing Act of 1961 amended sec. 112. 75 Stat. 149, 169 (1961).

29 Sec. 113 added by Sec. 14, Area Redevelopment Act, 75 Stat. 47, 57 (1961).

opinion generally directed toward other, more controversial, aspects of the Act,[30] but the reasons for the provision in the economic atmosphere of post-war 1949 appeared fairly sound.

This is not to say that a state of complete euphoria prevailed. On the contrary, the city planners and developers, those individuals most closely involved with long range urban needs, were against it from the start.[31] The testimony of Mr. Louis Justement of the American Institute of Architects during Congressional hearings on the 1949 Act was indicative. Mr. Justement deplored the heavy emphasis upon housing and the resultant subordination of urban redevelopment:

> Housing is only one part of urban redevelopment and should not become the controlling factor. We believe that the administration of Federal aid for urban redevelopment should not be under the Housing and Home Finance Administration. A sound program for urban redevelopment must be based on effective city planning and industrial and commercial as well as residential land use.[32]

Mr. Justement also attacked the "piecemeal approach" of Congress toward urban redevelopment. Under the 1949 Act, the federal program was aimed at detection and removal of blighted portions of the city, the slums, without regard to the state of the surrounding areas, or concern for improvement of the city as a whole. The predominantly residential requirement was but another one of many aspects of the bill that would result in preventing urban redevelopment by misplacing emphasis upon blighted residential areas. "What is needed is urban redevelopment, the replanning and rebuilding of our cities on a more logical pattern . . . ." A first step in the right direction would be elimination of the predominantly residential proviso.[33]

The planners and developers were not alone in their opposition to initiation of the requirement. Spokesmen for business interests,[34] non-profit associations,[35] and citizens groups[36] were similarly in accord on the lack of merit of the provision. The crux of the criticism was the fear that the approach taken by Congress was an unreasoned singling out of one area of need, to the probable detriment of another equally deserving area.[37] Furthermore, the question was raised as to the need for an artifical federal restriction of this type where the community itself was the best able to judge whether and how certain land uses should be changed.[38]

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30 68 Stat. 590 (1954), 42 U.S.C. §§1441-83 (1958), as amended, 42 U.S.C. §§1450-63 (Supp. II, 1959-60).

31 Mr. Alfred E. Bettman's comments before the Taft Subcommittee, supra, are representative.

32 Hearings on General Housing Legislation Before the Sub-Committee of the Senate Committee on Banking and Currency, 81st Cong., 1st Sess. 700 (1949).

33 *Id.* at 704.

34 Statement of John F. Everitt, Long-Bell Lumber Co., Enid, Oklahoma: "If the Federal Government insists upon collecting the taxes and turning them back to the States for slum-clearance projects, then it should be done without a lot of strings attached." *Id.* at 634.

35 Statement of Elbert H. Burns, The American Legion: "[T]he title would be improved if it did not limit general land assembly to residential purposes and made possible the eradication of slums in our cities without regard to any connection with the housing program." *Id.* at 671.

36 Statement of Edward Weinfeld, National Public Housing Conference. *Id.* at 233.

37 Hearings on H.R. 4009 Before the House Committee on Banking and Currency, 81st Cong., 1st Sess. 124 (1949).

38 The customary result of redevelopment projects has been to replace slums with upper-income housing or commercial or industrial structures. Re-use of project areas for low-income housing has been limited, partially due to inapplicability of such areas for housing purposes. Johnstone, *The Federal Urban Renewal Program*, 25 U. Chi. L. Rev. 301, 321 (1958).

Disenchantment with the requirement appeared to increase in more recent years. Undoubtedly, this dissatisfaction has been the moving force behind the several legislative "accommodations" made by Congress which have tended to mute the severity of the provision. The 1958 hearings on new housing legislation revealed several direct recommendations to eliminate the requirement accompanied by sundry observations that the provision was obsolete, ineffectual and that it impeded progress.[39]

A savings and loan official declared:

> In the same way, I feel very strongly that the requirement that redevelopment must be primarily to erase substandard dwellings is ill advised. Decay in a city can lodge quite as much in its rundown business property as its housing. Usually, the replacement in a redeveloped area is business, not residential. To insist that only redevelopment which clears substandard dwellings shall be permitted is, I think, a mistake.[40]

The basic difference between the advocates of the predominantly residential requirement and those who favor its elimination appears to reside in the determination of what role the Federal Government should play in redeveloping cities. From the beginning of the federal program up until the present day, congressional intent may be clearly interpreted to favor an over-all housing approach, with urban renewal affixed as a necessary but subordinate adjunct. What were the reasons for this approach? As we have seen, there was a good deal of reluctance on the part of the legislators in 1949 to create a further substantial drain upon the already beleaguered federal budget. Viewing the economic situation in 1949, with the considerable defense commitments of that year, plus the funds still allocated for post-war rehabilitation programs, we must conclude that there was substance to this rationale. This, of

39 Hearings on Slum Clearance and Related Housing Problems Before the Subcommittee on Housing of the Senate Committee on Banking and Currency, 85th Cong., 2d Sess. 46, 47, 93, 128, 191 (1958).

40 Statement of Raymond P. Harold, President, Worcester Federal Savings and Loan Association, Worcester, Massachusetts. *Id.* at 169.

course, was the fundamental basis for instituting the predominantly residential requirement. If funds for urban redevelopment were limited, the requirement would be instrumental in channeling such funds to the area of greatest need, namely, blighted housing. While accepting the validity of this reasoning, the question must then be posed, is the economic rationale, forwarded some thirteen years ago during times of financial difficulties, still valid under present economically prosperous circumstances?

The second major rationale that is offered to support establishment of the requirement, namely, reluctance of the Federal Government to interfere in local affairs, is much less tenable. First, the federal program has always been a strictly voluntary one, with complete discretion in local communities to take advantage of the federal benefits or to "go it alone." The Federal Government has decided to "interfere" to the extent of offering these benefits to those communities complying with certain important requirements, among them the predominantly residential provision. In this light, it is inconceivable that any *more* autonomy could be extracted from local governments by *eliminating* a requirement than by demanding compliance with it. On the contrary, it is more likely that a large measure of interference is provided by the requirement in that it substitutes a degree of federal discretion for local by saying, in essence, that only a project that is "predominantly residential" is deserving of combined federal-local effort.

On the reverse side of the coin, it must be admitted that the predominantly residential requirement poses an ever-present real or potential limitation upon urban renewal. It is true that relaxation of the rigors of the requirement since 1954 raises the issue of whether the limitation now has any real significance. According to a 1955 analysis of fifty-three cities cited by Foard and Fefferman,[41] land use of developed areas constituted the following proportions:

Residential	About 73%
Commercial	About 6%
Industrial	About 21%

If these figures may be accepted as representative, then the present thirty percent exception for non-residential projects, along with the complete exemption of certain types of projects, should be sufficient to cover most projects involving solely industrial and commercial redevelopment. Furthermore, there always remains the questionable yet apparently sanctioned tactic available to proposers of urban renewal projects, simply to enlarge the essentially non-residential project area to include enough housing to meet the "predominantly" limitation.

If it may be concluded that the requirement has been emasculated, then a strong case can be made for its removal from otherwise effective legislation. On the other hand, if the provision still has any limiting effect at all, we must continue to ascertain and judge whether it is justified in present-day circumstances.

It has been stated that "a certain narrowness pervaded most of the discussion and consideration leading to enactment of the

41 Foard and Fefferman, *Federal Urban Renewal Legislation*, 25 Law & Contemp. Prob. 635, 671 (1960).

predominantly residential requirement,"[42] and that Congress has repeatedly avoided a realistic appraisal of long range urban needs. It seems evident that in its continued fostering of *housing* redevelopment as opposed to *urban* redevelopment, Congress has not recognized the fundamental nature of the urban living environment. In virtually all of its pronouncements, little attention has been given by Congress to the basic problem of *redeveloping the city as a whole*. In general, the tendency has been to view the urban blight problem as matter that could be handled in a limited geographical area, a city block, or neighborhood. Simply remove the "sore spot" and the problem must vanish.

Opposed to this view are those maintaining that the character, patterns and condition of industrial and commerical areas vitally influence residential areas, and efforts to renew such areas. Frequently, residential areas that are most in need of renewal are those that border industrial and commercial areas, for example, the "downtown commercial district," or the industrial "enclaves" and "fingers" along rails and waterways. Is it realistic to carry out redevelopment of these blighted residential areas while avoiding the neighboring, probably causative, industrial blight? What are the effects of selective or "piecemeal" renewal upon the city's presumably unified transportation and utility systems? Are all of these matters separable, so that development of one will not affect the other?

There is a strong current of opinion that all of these elements are interrelated, and that "the urban renewal process should be made sufficiently flexible to permit our cities to deal with commercial and industrial blight and to effectuate broad plans for rebuilding their cores."[43] For example, owners of deteriorating centrally located small business are being faced with increasing competition from more modern suburban facilities. Needless to say, not all of these businesses will be permitted to relocate. Those that stay are faced with gradual economic extinction if the city is financially unable to take steps to eliminate blight and make the surroundings more attractive. Among the larger centrally located industrial concerns, the tendency will be to move to a city where there is no blight problem, occasioning a probable economic loss to the abandoned city.

As has been shown, Congress has not stood absolutely still in adapting to changing needs of the urban community, which now comprises over seventy percent of the nation's population. The emphasis on housing still exists, but urban renewal programs have been changed and broadened almost annually. Throughout all of this progress, however, the predominantly residential requirement still remains, somewhat like the awkward prehistoric animal that has somehow learned to adapt to the modern environment. Although inroads have been made diminishing its effectiveness, it continues to be a force that must be considered today, if not respected. The question now remains, whether mere necessity to consider the requirement is sufficient justification for its continued existence.

42 *Id.* at 666.
43 Hearings on Slum Clearance, op. cit. supra at 22.