

# LAW AND CONTEMPORARY PROBLEMS

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VOLUME 26

WINTER, 1961

NUMBER 1

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## FOREWORD

The harassed city officials charged with planning and execution of an urban renewal project seldom have time to meditate on what they have wrought (or even to read a *Law and Contemporary Problems* symposium). Yet, in the rare moments such an official may have for reflection, a succession of thoughts and questions about urban renewal will rush into his mind. He may begin by pondering: Whence came this urban renewal program? He is aware of the tortuous path followed in the late 1940's by urban renewal legislation,<sup>1</sup> and he knows the basic provisions of the Housing Acts of 1949,<sup>2</sup> 1954,<sup>3</sup> and 1959.<sup>4</sup> With respect to the history of urban renewal in his own state, he may recall political compromises that finally led a rural-oriented and rural-dominated legislature—probably chiefly persuaded by the availability of federal subsidies—to give statutory authorization for some form of urban renewal. And he may remember court tests wherein conservative judges were laboriously convinced that under some circumstances, the state and federal constitutions allow property to be taken from one man and transferred through the hands of a local governmental agency to another private citizen—and even permit tax revenues to be spent and municipal bond issues to be floated to facilitate this process.

But how did the local program of our imagined urban renewal official come into being? Probably its genealogy was confused, and at birth it had appeared "all things to all men." To the city's humanitarians, urban renewal seemed an effective weapon forged by aid of the police power to eliminate slums and blight—and their accompanying health, safety, and moral hazards. To hardheaded, somewhat skeptical taxpayers, it justified itself by its proposed exchange of slums, which drain off city tax dollars, for modern, redeveloped areas, providing substantial new property values and accompanying tax revenues.<sup>5</sup> To civic promoters, urban renewal promised a means to resuscitate the downtown business area, already woefully weakened by suburban shopping centers; to provide prime commercial and industrial sites with which to lure new business; to revise and remove horse-and-buggy traffic patterns;

<sup>1</sup> See Foard & Fefferman, *Federal Urban Renewal Legislation*, 25 LAW & CONTEMP. PROB. 635 (1960).

<sup>2</sup> 63 Stat. 413, 42 U.S.C. §§ 1441-83 (1958).

<sup>3</sup> 68 Stat. 623, 42 U.S.C. §§ 1450-60 (1958).

<sup>4</sup> 73 Stat. 672, 42 U.S.C. §§ 1450-60 (Supp. 1960).

<sup>5</sup> For a discussion of the economics of urban renewal and economic criteria in evaluating it, see Davis & Whinston, *The Economics of Urban Renewal*, *infra*, p. 105.

and, generally, to enhance the city's attractiveness. To builders, the availability under urban renewal of new construction opportunities, together with unique financial assistance, afforded ample incentive to push the program. To some property owners, it presented an unexpected market for their run-down properties. To pump-primers generally, urban renewal's appeal of new jobs and more money in circulation was well-nigh irresistible. And, last but certainly not least, to persons—mostly members of minority groups—living in the blighted areas, the program appeared to offer a federally-paved escape route from long-experienced squalor into a promised land of decent housing.

As he looks back, the urban renewal official may marvel that his program has managed to overcome so many formidable obstacles. For instance, the structure of the city government may originally have been antiquated and unsuited for a strenuous urban renewal enterprise.<sup>6</sup> Although the formulation of a Workable Program aided in focussing on the problem,<sup>7</sup> it may have proved difficult to coordinate urban renewal with the city's planning and building inspection activity. The mayor or city manager and the board of aldermen may have delayed to the utmost in facing up to the unpleasant budgetary realities of effectuating urban renewal. Public housing officials may sometimes have been out of step with urban renewal, or else have treated it merely as a stepchild of their own program. Some members of minority groups, either by political action in connection with bond issue votes or by legal action, may have protested certain features of the urban renewal plan that they felt sacrificed their own interests on the altar of general city progress. Some property owners, unable to find suitable reinvestments, disturbed by possible tax implications for them of a sale of their slum property, and cherishing exaggerated opinions of the value of such property—usually owned for investment purposes rather than as residences—may have necessitated a series of troublesome condemnation proceedings.

There may also be memories of trips to the state capital to testify or lobby for amendments to the state urban renewal law in order to facilitate the city's urban renewal program—by streamlining eminent domain procedures through authorization of "quick-taking";<sup>8</sup> by providing for conservation and rehabilitation projects as supplements, and sometimes alternatives, to acquisition and clearance;<sup>9</sup> by obtaining a mandate from the legislature to renew business areas in the city's downtown core; by seeking more flexible and varied means for disposing of urban renewal property;<sup>10</sup>

<sup>6</sup>The public administration problems in executing the urban renewal program are discussed in Duggar, *The Relation of Local Government Structure to Urban Renewal*, *infra*, p. 49.

<sup>7</sup>See Rhync, *The Workable Program—A Challenge for Community Improvement*, 25 *LAW & CONTEMP. PROB.* 685 (1960).

<sup>8</sup>Some of the problems connected with the use of eminent domain for urban renewal, including proper compensation for the property owner, are dealt with in Dagen & Cody, *Property, et al. versus Nuisance, et al.*, *infra*, p. 70, and Berger, *Current Problems Affecting Costs of Condemnation*, *infra*, p. 85.

<sup>9</sup>See the increasing importance of conservation and rehabilitation, as emphasized by Zwerner & Osgood, *Rehabilitation and Conservation*, 25 *LAW & CONTEMP. PROB.* 705 (1960).

<sup>10</sup>The need for greater flexibility and less red tape in disposition of urban renewal land is stressed in Brownfield, *The Disposition Problem in Urban Renewal*, 25 *LAW & CONTEMP. PROB.* 732 (1960).

and so on. Perhaps the trips had been made to appear before the state's highway authority or commission to urge that its planning and programming be coordinated with the city's urban renewal activities. Sometimes they may have extended to the Urban Renewal Administration's regional office to discuss the planning or execution of a project; to the nearest Federal Housing Administration office to discuss requested loan guarantees for a redeveloper or for a builder of relocation housing; or even to Washington to seek information or assistance.

Then there has been the problem—a very significant contemporary one—of clearing away a mountain of paperwork, which accompanies any federal program and in urban renewal is all the heavier by reason of the additional participation of local government and private entrepreneurs. Add to this the public hearings on urban renewal and the innumerable speeches and reports which an urban renewal official must make—to the board of aldermen, to property owners' associations and the board of realtors, to citizens' committees organized as a means of liaison with persons in blighted areas, to civic clubs, and so on—and on.

Our retrospective urban renewal official may remember the first demolition performed in execution of the urban renewal plan—although, owing to the usual unexpected delays, perhaps a year behind the schedule that he had optimistically, but unrealistically, set for himself at the outset. With clearance begun there was at last something tangible to show as a product of urban renewal; but long before then, relocation problems had been posed.<sup>11</sup> When should the intended relocatee move? Should he wait until the bulldozer reached his front door? How should reimbursable moving costs for relocating individuals and businesses be computed? Although the loan guarantee programs under sections 220<sup>12</sup> and 221<sup>13</sup> made available special financial assistance at relatively low interest and with extraordinarily lengthy amortization, difficulties often may have occurred in establishing that the relocatee had a credit rating that would qualify him for such a loan—this task often being especially hard where members of minority groups are involved. FHA officials may have not rushed forward to make loans under programs with which they were relatively unfamiliar; sometimes their appraisals of relocation housing may have fallen so low as to slice away the builder's profit margin and discourage him; some builders also may have eased away from an unfamiliar type of loan guarantee program.

To some extent, shortages of relocation housing possibly could have been met by public housing facilities. However, public relations problems may often have been created by the circumstance that some persons favorable to urban renewal vigorously opposed public housing and could not be persuaded that in providing "decent, safe, and sanitary" housing for relocation,<sup>14</sup> urban renewal can seldom be completely inde-

<sup>11</sup> See Millspaugh, *Problems and Opportunities of Relocation*, *infra*, p. 6, for a general treatment of relocation.

<sup>12</sup> Sec. 220, 68 Stat. 596 (1954), 12 U.S.C. § 1715k (1958).

<sup>13</sup> Sec. 221, 68 Stat. 599 (1954), 12 U.S.C. § 1215t (1958).

<sup>14</sup> 63 Stat. 416 (1949), as amended, 68 Stat. 625 (1954), 42 U.S.C. § 1455(c) (1958).

pendent of public housing facilities. To the extent that sufficient public housing units were available to shelter relocatees for whom other relocation housing was unavailable, there may often have been further problems. For instance, public housing officials may not especially have welcomed relocatees whose low income qualified them for public housing but who had lengthy records of crime and misconduct. Weighing the entire process of relocation, the renewal official may ask himself: "Was enough done in taking advantage of the aids that have been made available for relocation—in seizing the opportunity presented by relocation?<sup>15</sup> Or did we simply relocate persons from an old slum into a newer one?"

As for property disposition, this hypothetical official may recall many a headache—some still throbbing. Although studies of land marketability had been made as the original project planning proceeded, the necessary time lag in executing urban renewal projects may have rendered obsolete some of the data. In several instances, new businesses had proposed to purchase land acquired for urban renewal by the Local Public Agency and to build impressive buildings thereon; but, as an inducement, they may have sought either a writedown in the sales price of the land far below its fair value, or else an exemption from future property taxes on the land to be acquired. Granting such concessions was infeasible—even assuming that the state constitution authorized the giving of special privileges of this sort.<sup>16</sup> In other instances there may have been negotiations for long-term leases of urban renewal land,<sup>17</sup> so that the lessee could acquire federal income tax deductions for the rental payments and the Local Public Agency could capitalize on its tax-exempt status with respect to the rental payments. And there has been the perennial problem of balancing the qualifications of redevelopers who would be sure to do a high-quality, aesthetic job against those of redevelopers who have made the highest offers for the property to be disposed of. Moreover, some of the persons who had owned land acquired for urban renewal may not have understood why they could not automatically repurchase their own land after clearance occurred; they may have remained unimpressed by explanations that state law and the state constitution would not allow them to receive any sales preference with respect to the public at large, and that, besides, their former tracts of land had been irrevocably and inextricably merged with other urban renewal land.

After pondering on these and other formidable contemporary problems with which urban renewal may thus far have confronted him, our supposititious official will undoubtedly experience pride and satisfaction at what he has already accomplished against sometimes tremendous odds—along with a realization that he will be challenged in the future by many other, often now unsuspected, problems.

<sup>15</sup> Millspaugh makes a special contribution in his article, *infra* note 11, by stressing the opportunities implicit in urban renewal.

<sup>16</sup> See Slayton, *State and Local Incentives and Techniques for Urban Renewal*, 25 LAW & CONTEMP. PROB. 793 (1960).

<sup>17</sup> The use of leases in urban renewal disposition is analyzed in Brownfield & Rosen, *Leasing in the Disposition of Urban Renewal Land*, *infra*, p. 37.

The editors of *Law and Contemporary Problems* hope that any such official—and many other persons—will deem the present symposium to be of aid in evaluating the tumultuous and confusing past experiences in urban renewal and the correctness of past solutions,<sup>18</sup> in analyzing present problems and foreseeing new ones,<sup>19</sup> and in recognizing the magnitude and importance of the task that lies ahead.<sup>20</sup>

ROBINSON O. EVERETT.

<sup>18</sup> For a critical evaluation of some past solutions, see Leach, *The Federal Urban Renewal Program: A Ten Year Critique*, 25 LAW & CONTEMP. PROB. 777 (1960).

<sup>19</sup> From the redeveloper's standpoint, the problems of urban renewal are analyzed in Goldston, Hunter & Rothrauff, *The Viewpoint of Counsel for a Private Redeveloper*, *infra*, p. 118.

<sup>20</sup> See Walker, *A New Pattern for Urban Renewal*, 25 LAW & CONTEMP. PROB. 633 (1960).