Urban Redevelopment

The Ohio Urban Redevelopment Law, designated here as Amended Substitute House Bill No. 195, became effective September 29, 1949.[1] In its original form H. B. 195 contained a policy section which read, in part:

> It is hereby found and declared that large areas in the municipalities of the state have become blighted, with the consequent impairment of taxable values upon which, in large part, municipal revenues depend; that such blighted areas are detrimental or inimical to the health, safety, morals or general welfare of the citizens, and to the economic welfare of the municipality; and that in order to improve and maintain the general character of the municipality, it is necessary to redevelop or rehabilitate such blighted areas.[2]

This identifies the positive philosophy of urban redevelopment.

After nearly a quarter century of community planning and of control of private land use through zoning and regulation of subdivisional platting, the nation's over-all problem of urban blight had become more aggravated than ever. Those police power techniques were useful in bringing about the ordered development of the newer, growing areas on the urban periphery. In older sections suffering from social and economic deterioration, however, zoning, even retroactive zoning,[3] could do no more than proscribe undesirable construction and uses. It offered no assurance of rehabilitation of the depressed areas.

The first major governmental attack of a positive nature upon urban blight developed in the 1930's with the Federal program of subsidy for public housing for people of low incomes. Public housing was tied to slum clearance; the policy pursued entailed the equivalent retirement of slum dwellings to match the new units.[4]

---

[1] Several urban redevelopment bills were introduced in the 1947 regular session of the General Assembly, but none was enacted. See S.B. 343, H.B. 35 and H.B. 253.

[2] The bill, as enacted, has no separate policy section.

[3] Retroactive zoning would not be valid in Ohio. State *ex rel.* The Fairmount Center Co. v. Arnold, 138 Ohio St. 259, 34 N.E. 2d 777 (1941). See generally Noel, *Retroactive Zoning and Nuisances,* 41 COL. L. REV. 457 (1941). The conventional zoning theory that to forbid extension or enlargement of non-conforming uses will tend to effect their gradual elimination has not worked; generally speaking, non-conforming uses have not been discontinued and inability of owners to improve their buildings has been conducive to blight. Brown, *Urban Redevelopment,* 29 B. U. L. REV. 318, 319, 320 (1949); Note 9 U. OF CHI. L. REV. 477 (1942).

[4] Section 307 of the Housing Act of 1949 so amended the United States Housing Act of 1937 as to permit postponement of equivalent elimination.

Public housing projects have not uncommonly been constructed on slum-cleared sites. The emphasis, however, has been upon adequate housing and the rehabilitation achieved has been largely confined to residential slums. Urban redevelopment is a much broader conception; it embraces rehabilitation of any sort of blighted area by redevelopment for any appropriate uses.

Unaided private effort has been handicapped in at least two important respects. In the first place it may be very difficult, if not impossible, to acquire all of the parcels in a blighted area without the use of the power of eminent domain. The second difficulty has been that the cost of land acquisition and clearance is so high in relation to use value for redevelopment purposes that private venture capital could not readily be attracted.[5]

The earlier form of urban redevelopment legislation, beginning with the New York Act of 1941,[6] cleared the first of the two hurdles just noted. Those pioneer acts provided for the organization of private redevelopment corporations and either conferred the power of eminent domain upon such corporations or made provision for the exercise of the power by a municipality in aid of a redevelopment corporation.[7] Both methods of making eminent domain available have been upheld in other jurisdictions against the objection that the taking would not be for public purposes.[8]

These early enactments did not meet the second difficulty we have noted; they did not provide any means of obviating the discrepancy between the cost of land assembly and clearance on the one hand and its use value for redevelopment on the other.[9] It was this deficiency which, in 1945, brought about an important shift in

[5] "An even greater obstacle to the performance of the job by private enterprise alone is the circumstance that the blighted land usually has a high present value because of the income produced from its present intensive use. As the redevelopment plans and sound theory call for a new, far less intensive use of the land in order to provide more pleasant surroundings and forestall any future blight, the prospective value of the land after redevelopment will be much lower than its acquisition cost. No private interests are going voluntarily to assume this loss." Brown, *Urban Redevelopment,* 29 B. U. L. REV. 318, 321 (1949).

[6] N. Y. LAWS OF 1941, c. 892; LAWS OF 1942, c. 845, as amended by LAWS OF 1943, c. 234.

[7] See the *Comparative Digest of the Principal Provisions of State Urban Redevelopment Legislation* issued by the Federal Housing and Home Finance Agency as of April 1, 1947, and the May 15, 1948, supplement thereto.

[8] Zurn v. City of Chicago, 389 Ill. 114, 59 N.E. 2d 18 (1945) (first method); Murray v. La Guardia, 291 N. Y. 320, 52 N.E. 2d 884 (1943), *cert. den.* 231 U.S. 771 (1944) (second method).

[9] It is true that some effort was made to bridge the gap by tax exemption, as in New York. See Dorsey v. Stuyvesant Town Corporation, 87 N.E. 2d 541 (N. Y. 1949).

redevelopment policy. In that year a number of states adopted legislation which placed responsibility for land assembly and clearance upon local public agencies and left actual redevelopment, with limited exceptions, to private enterprise. These measures were of two principal types, classified in terms of the public agency employed for redevelopment purposes. One type makes use of existing local housing authorities. The other, and more widely embraced type, places responsibility for land assembly and clearance upon the local governing bodies or upon other local public instrumentalities such as a land clearance commission under the Illinois pattern.[10] The 1949 Ohio Act which has provoked this commentary falls in this latter class. At the present time several states have enabling statutes of both major types, that is, laws providing for private redevelopment corporations and laws placing responsibility for land assembly and clearance in the hands of some local public authority. Some form of urban redevelopment legislation exists in at least twenty-seven states and the District of Columbia.[11]

Statutes of the second class are better adapted to a subsidy policy calculated to obviate the disparity between the cost of land assembly and clearance and use value for redevelopment. More will be said about this at a later juncture.

Constitutional Questions

In test cases conducted in over half the states the constitutionality of public housing was uniformly sustained.[12] With the exception of Ohio,[13] moreover, tax exemption of public housing properties was upheld. An obvious distinction between public housing and urban redevelopment is that the former involves construction, ownership and operation by a public agency, whereas the prevailing redevelopment pattern contemplates that the actual redevelopment be done by private hands and with private capital. This difference has not grounded adverse rulings on the constitutionality of urban redevelopment legislation. In only one instance has a court of last resort declared an urban redevelopment law uncon-

---

[10] Blighted Areas Redevelopment Act of 1947, Ill. Laws of 1947, p. 1072.

[11] For citations to statutes see the *Comparative Digest* cited in note 7, *supra*, and Bollens and McCarty, *Urban Redevelopment Laws and Action* (Univ. of Calif. Bureau of Pub. Admin., May, 1949). There are two 1949 additions to the list in Ohio and Oregon. The Oregon measure, reported as H.B. No. 160, has not been available to the writer. New Jersey and New York have pertinent constitutional provisions. N. J. Const. of 1947, Art. VIII, § 3, ¶ 1; N. Y. Const., Art. 18, § 2.

[12] For a collection of cases see Notes 172 A.L.R. 966 (1948) and 130 A.L.R. 1069 (1941).

[13] Columbus Metropolitan Housing Authority v. Thatcher, 140 Ohio St. 38, 42 N.E. 2d 437 (1942).

stitutional and the constitutional infirmity involved in that case had no bearing on the larger questions involved in the urban redevelopment idea. The Supreme Court of Alabama declared an urban redevelopment law, which applied only to cities of over 300,000 population, as of the next preceding federal census, and which prospectively denied to housing authorities the power to acquire property for slum clearance or housing projects within a city to which the statute applied, invalid as a local law not passed with the formalities required by the constitution.[14] In every other reported case in point urban redevelopment legislation has been upheld.

The Supreme Court of Illinois upheld the grant of the power of eminent domain to a private redevelopment corporation even though there was no assured public use after redevelopment as in public housing.[15] The court thought that the very redevelopment removing blight was a public purpose. A like conclusion was reached in a New Jersey case. The City of Jersey City, acting within the terms of an enabling statute, provided by ordinance for the acquisition of land in the city for a redevelopment housing project and by a separate ordinance for the leasing of the land to the Prudential Insurance Company of America under a lease which committed the Prudential to build and operate the housing project until the amortization of the cost of the facility to it. It was stipulated that when amortization was completed title to the improvements was to vest in the city. On certiorari to review the validity of the ordinances the charge that the acquisition and letting were for private purposes was rejected on the theory that to provide housing in this way to meet the serious housing shortage in the city was a public purpose.[16] A provision in the statute authorizing tax exemption of the project was also sustained on the public use theory.

An urban redevelopment law of the same general type as the Ohio statute has been upheld by the Supreme Court of Pennsylvania, one judge dissenting.[17] The court specifically upheld the grant of the power of eminent domain for purposes of the statute. The court met the contention that the redevelopment scheme involved simply a taking of private property from one or more individuals and transferring it to others with the observation that

---

[14] City of Birmingham v. Moore, 248 Ala. 422, 27 So. 2d 869 (1946).

[15] Zurn v. City of Chicago, 389 Ill. 114, 59 N.E. 2d 18 (1945).

[16] Redfern v. Board of Commissioners of Jersey City, 137 N.J.L. 356, 59 A. 2d 641 (1948).

[17] Belovsky v. Redevelopment Authority of The City of Philadelphia, 357 Pa. 329, 54 A. 2d 277 (1949). See also General Development Co. v. City of Detroit, 322 Mich. 495, 33 N.W. 2d 919 (1948).

the shift in private ownership so effected was not the object of the statute but a mere incident to the fundamental purpose of rehabilitation; the need for public ownership went no further than the accomplishment of land assembly and clearance.

There was another constitutional point of more than local significance in this Pennsylvania case. It was contended that there was an improper delegation of legislative power to the local authorities. The dissenting judge thought this contention well taken. He thought that the provisions of the act, set out below,[18] devolved upon the local authorities power to determine what should constitute the very jurisdictional facts (existence of blighted areas) upon the basis of which redevelopment activities might be carried on under the Act, or, in other words, that they were left free to make the law which was to be administered by them.

In 1947 Illinois adopted legislation which embraced the plan of land assembly and clearance by public authority. In a test case the statute authorizing the creation of municipal land clearance commissions was upheld against four constitutional objections of no crucial significance to urban redevelopment.[19]

Provisions of the Ohio Act

The Act is obviously grounded on the assumption that the home rule grant to municipalities, made by Section 3 of Article XVIII of the Constitution, is not adequate for present purposes. The statute, at the same time, serves to subject municipal action to state policy as to both powers and procedures. Is urban redevelopment so far a state concern as to support this assertion of legislative supremacy over municipalities?[20]

The act applies solely to cities, that is, municipalities of 5,000 or more population. H.B. 195 originally extended to all municipalities and also to counties and townships. The acute need for redevelopment is to be found in the larger cities but it was necessary to make the statute applicable to all cities since the constitutional classification of municipalities into villages and cities is, for present

---

[18] An area might be chosen for redevelopment which was "blighted because of the unsafe, unsanitary, inadequate or over-crowded condition of the dwellings therein, or because of inadequate planning of the area, or excessive land coverage by the buildings thereon, or the lack of proper light and air and open space, or because of the defective design and arrangement of the buildings thereon, or faulty street or lot layout, or economically or socially undesirable land uses." Pa. Stats. Ann., § 1702(a) (Purdon, 1949).

[19] People *ex rel.* Tuohy v. City of Chicago, 399 Ill. 551, 78 N.E. 2d 285 (1948).

[20] See Fordham and Asher, *Home Rule Powers in Theory and Practice*, 9 Ohio St. L. J. 18, 34-38, 61-66 (1948).

purposes,[21] exclusive. Authority is conferred in relation to blighted areas within the corporate limits of a city. There is no extraterritoriality. Nor is there any provision for inter-local co-operation. Thus, the act does not cover peripheral blight as in an ill-conceived or ill-developed subdivision, nor does it facilitate co-operation with other local units such as a Metropolitan Housing Authority.

1. Administration

Unlike the plans which exist in some states, the Ohio statute does not provide for the organization of separate *ad hoc* units of government to administer redevelopment programs. The act confers powers upon the city and leaves policy matters in the hands of the city governing body, which may, in turn, designate an existing office, department, division, commission or agency of the city as the "department" to perform the executive and managerial functions under the act or establish a new one for the purpose. The act contemplates the employment of a city planning commission, established under the general law or by home rule charter, to perform general and redevelopment planning functions.

2. Powers Conferred

There is but one basic grant of primary authority in the Act. Section 2 authorizes a city to acquire real property in a development area, to clear or otherwise prepare it for redevelopment and to sell or exchange it for purposes of redevelopment in accordance with a development plan. The method of acquisition may be purchase, gift, devise, exchange or appropriation (eminent domain). The statute does not grant power to lease property for redevelopment. It does confer incidental authority to lease for any uses deemed desirable during the period of development of a project.

The statute defines a development plan as a plan for redevelopment of all or part of a blighted area and a development area as the portion of a blighted area to which a development plan applies. There is a fixed four-acre minimum. The definition of "blighted area" involves both (1) a majority of the structures in an area being affected by overcrowding or other blight elements and (2) nonconformity of a majority of the structures in the area, in one or more respects, with the building code or the ordinances relating to safety, health or sanitation. While the emphasis here seems to be laid upon the character and condition of structures the wording is literally broad enough to cover a predominantly open area which had, for example, been poorly and prematurely platted, as well as slum areas. There is a practical question whether the second factor

[21] City of Mansfield v. Endly, 38 Ohio App. 528 (1931), *aff'd* 124 Ohio St. 652, 181 N.E. 886 (1931); City of Elyria v. Vandemark, 100 Ohio St. 365, 126 N.E. 314 (1919).

can ordinarily be made out even though serious blight exists. Much depends on the meaning of the words "fails to conform." A prospective zoning ordinance permits the continuance of existing nonconforming uses. If that type of non-conformity is intended perhaps statutory "blight" could usually be established where actual blight existed.

Section 9 authorizes a city to sell, exchange or otherwise transfer any real property acquired under the act to public bodies for use in accordance with the development plan. The remaining property, which, under a plan, is to be devoted to other uses, must be sold or exchanged by the city. Section 3 contemplates that a plan designate public as well as private land uses proposed for the development area. Obviously new streets as well as squares and recreational areas may be desired. How can the city provide them consistently with Section 9?

The ancillary power of eminent domain is granted with respect to any real property not owned by the state or by the United States.

An unusual feature of the Ohio legislation is a provision for agreements with owners of land in a development area to conform their property and its use to the development plan, or if already in conformity, to keep it that way. Planning commission approval is required. Land covered by such an agreement may not be appropriated by the city for purposes of the act, unless the owner fails to keep his agreement.

3. The Planning Phase

Planned rehabilitation is a core idea in urban redevelopment. The Ohio Act requires certain planning steps as conditions to the exercise of the powers granted. There must be a general plan of the city adopted by the city planning commission. The act defines the general plan as a broad and general guide and pattern for future city growth and development, which must be reduced to maps, plats and charts and supported by data and descriptive and interpretive analytical matter. The term "master plan" familiar to planning law and practice, is not used, nor is there the specification which appears in some urban redevelopment laws. Thus, under the California Act, there must be a master plan or a general community plan which includes, at the minimum, (1) the general location and extent of the existing and proposed major thoroughfares, transportation routes and other major public utilities and facilities, (2) a land use plan which designates the proposed general distribution and location as well as extent of public and private land uses and (3) a statement of the standards of population density, building intensity recommended in and for the various districts together with estimates of population growth within the territory covered

by the plan.[22] The question as to the Ohio requirement is whether it is definite enough to mean much.

There must be a plan adopted by the planning commission showing the co-ordination of the development plan with the proposed future development of the territory surrounding the development area or the co-ordination with the present development, if no future development is planned.

It is required that there be a development plan for the redevelopment of a proposed development area showing, by map, plat, or chart, the limits of the area and designating the location, character and extent of land ownership and uses "such as street, sewer, public transportation, school, recreation, dwelling, business, industry." It may prove significant that the plan need not be specific as to types of industrial uses, for example.

4. The Housing Nexus

The Act contemplates broad-gauged redevelopment for any appropriate use, not simply residential slum clearance or rehabilitation for residential purposes. In order, however, to protect "displaced families" the city council must, as a preliminary step, make a finding that (1) there is a feasible method for their temporary relocation and (2) there are or are being provided, in the development area or other areas not less desirable as to public, public utility and commercial facilities and at a cost the displaced families can afford, decent, safe and sanitary dwellings for them. The city must reimburse all occupants for their reasonable moving expense. This applies, presumably, to owner occupants as well as tenants, but not, in view of the context, to non-residential occupants.

The Housing Act of 1949 conditions Federal aid for redevelopment upon provision being made for displaced families. It reads, in this respect, much like the Ohio Act except that it does not require reimbursement for moving expenses but exacts that the "new" housing be reasonably accessible to the places of employment of those displaced.[23] The Federal Act, moreover, stipulates that there shall be no demolition of residential structures prior to July 11, 1951, if the local governing body determines that it would reasonably be expected to create undue housing hardship. More important is the fact that, except for areas predominantly residential in character, Federal aid may be extended only for redevelopment for predominantly residential uses.[24] These provisions are faithful to the House Committee thesis that the primary justification for Fed-

[22] DEERING'S CALIF. GEN. LAWS, Act. 1500, § 20.

[23] PUBLIC LAW 170, 81st Cong., 1st Sess., § 105 (c).

[24] *Ibid.* § 110(b).

eral assistance is the improvement of housing conditions for urban families.[25]

Neither the Ohio act nor the Federal Housing Act of 1949 lay down any conditions or restrictions designed to prevent race discrimination in redevelopment housing. Would such discrimination by a private developer so far involve governmental action as to constitute a denial of equal protection of the laws to persons denied housing on racial grounds?[26]

5. Redevelopment Procedure

1. The city council, prior to determining that an area is blighted, prior to adopting a development plan and prior to making a protective finding as to displaced families, must hold not less than two public hearings "thereon" at which all persons interested are afforded an opportunity to be heard. Presumably "thereon" refers to all three matters previously mentioned. Notice must be given by newspaper publication and, with respect to the first hearing, by mailing to the last known owner of each parcel of land on the area. Non-receipt of a copy is not an invalidating circumstance.

2. The next step is council determination that an area is blighted and adoption of the development plan. Both must be by majority vote of all "elected or appointed" members. (Does this refer to total council seats or are vacant seats excluded?)[27]

3. Conformity agreements are made with landowners who propose to take the responsibility of effecting or maintaining conformity with the plan.

4. The "department" administering the act next makes or obtains appraisals of all real property in the area subject to appropriation under the act. Appraisals are open to public inspection and serve simply as guides in buying the property.

5. The department makes or obtains an estimate of the cost of clearing or otherwise preparing the area in keeping with the plan.

6. The department certifies to council an estimate of the total cost required of the city for the redevelopment as a guide to council in providing funds. There is no specific reference here to the cost of clearing but it is embraced within the generality of the provision.

---

[25] *Report from the Committee on Banking and Currency* to accompany H.R. 4009, H.R. REP. No. 590, 81st Cong., 1st Sess. 16 (1949).

[26] The New York Court of Appeals has, by a four-to-three vote, rejected this constitutional objection as to the Stuyvesant Town project in New York City which was constructed by Metropolitan Life under the earlier type of redevelopment law with a twenty-five year tax exemption to the extent of value added by the project. Dorsey v. Stuyvesant Town Corporation, 87 N.E. 2d 541 (N. Y. 1949).

[27] See State *ex rel.* Attorney General v. Orr, 61 Ohio St. 384, 56 N.E. 14 (1899).

7. The city acquires and clears or otherwise prepares for development the property in the area not covered by conformity agreements nor owned by the United States or the state.

8. Property not transferred to other public bodies must be sold or exchanged within six years after the adoption of the development plan. The court of common pleas of the county may, however, upon written application extend the period for a maximum of five more years. No standard is provided to guide the court in the exercise of this discretion.[28] The city is required to obtain, prior to sale or exchange, independent appraisals based upon the new uses established under the plan. Transfer is made at fair value based on those uses. Instead of public bidding the law exacts that council hold a public hearing upon a proposed sale or exchange and approve it by a majority vote of all members appointed or elected to the body.[29] Council may impose conditions by zoning ordinance or otherwise.

9. Section 10 is designed to permit modification of a development plan. It first authorizes modification if written application is made to the planning commission before the city has disposed of any real property in the area. (A hearing must be held before council may adopt a modification.) Then it provides that if the city has sold or exchanged property to which a proposed modification relates the council shall have no authority to modify the plan without the written consent of the owner! This does not "jell" with the first part of the section.

6. *Financing — Federal Aid*

Administrative expenses may be included in the city's annual operating budget.

Both current and capital costs in connection with streets, sidewalks, and gutters may be paid from gasoline tax funds and motor vehicle revenues allocated by the state to the city.

Project costs may be met by resort to general tax revenues and by issuing general obligation bonds under the Uniform Bond Act. Authority for special assessment financing was eliminated from the bill before final enactment.

A bond issue for redevelopment must be approved by not less than fifty-five per centum of the electors voting thereon at the next November election to be held more than sixty days after the adoption of the development plan. The act relaxes the initial and maximum maturity requirements of the Uniform Bond Act and permits the issuance of bonds up to two per centum of taxable values without regard to the general (5%) debt limitation. The proceeds of

[28] Does this impose non-judicial business upon the court?

[29] Section 105 (d) of the Housing Act of 1949 exacts such a hearing.

property acquired and sold under the act constitute a retirement fund for payment of principal of bonds issued pursuant to the act. Does this mean that proceeds of sale in project *A* may be used to pay bonds issued to finance project *B*?

There is no provision in the act for revenue bonds or for mortgaging property acquired by a city for redevelopment.

The Housing Act of 1949 authorizes temporary and definitive loans to local public agencies to cover the capital costs of land assembly and clearance.[30]

Since it is a fundamental assumption of the Ohio type of redevelopment law that the difference between the cost of land assembly and clearance and the use value of property for redevelopment will be absorbed by the city, Federal aid may prove to be a vital factor in a given redevelopment project. The Housing Act of 1949 authorizes the Government to make grants covering two-thirds of this difference.[31] The local unit may provide its one-third in cash value of land acquired for the project, in land clearance work or site improvement or in public improvements in the area which are primarily of direct benefit to the project and necessary for the new land uses.

The Ohio Act authorizes cities to accept "advances or loans" from the Federal Government and "gifts and grants" for purposes of the act. It says nothing about submitting to conditions which the Government may exact. Would this make any difference so long as the conditions did not require action in excess of city powers under other provisions of the state act?

In determining costs a city must take into account damages to public utility and common carrier systems incident to redevelopment. Section 7 of the act requires compensation for damages to such facilities involving the necessity of relocation or other substantial changes subject to a deduction in the amount of the net value to the owner of direct and special benefits arising from the changes.

7. *Safeguards to Assure Effectuation of Plan*

After adoption of a development plan a building permit for construction in the area may be issued only upon written approval of the planning commission based on a finding that the construction would not be inconsistent with the plan. This approval is dispensed with where the work is necessary for the immediate protection of the public health or safety. Nothing is said as to who determines necessity nor as to possible judicial review. Since the exception is expressed in this way without reference to the authority which

[30] Section 102 (a).

[31] Sections 103 and 104.

determines necessity it is likely that the courts would consider "necessity" a matter of law for their ultimate determination.

With respect to assurances that private developers will carry through within a reasonable time span and in accordance with the plan the act is extremely meager. It simply provides that sale or exchange by a city shall be pursuant to such terms and conditions as council may fix by zoning ordinances or otherwise. Doubtless this is broad enough to enable a city to exact ample assurances as by convenants or restrictions in deeds or by separate contracts, but it is merely permissive. It is in sharp contrast with the Pennsylvania Act, which has substantial minimum requirements in this respect.[32]

8. Separability

The act does not have a separability clause. Perhaps the draftsmen were relying upon Section 26-2 of the General Code, added in 1947. That section purports to make every section and part of a section of the Code separable so that if any section or part of a section were to be declared unconstitutional, void or ineffective the remainder should be unaffected. Will the courts take a "code-wide" separability clause seriously? Does it mean that every subsequent enactment of a general and permanent character will be deemed to have been made with reference to the clause in the absence of an express provision to the contrary?

J. B. F.

[32] PA. STATS. ANN., § 1711 (Purdon, 1949).