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I. INTRODUCTION

The federal urban renewal program was established by the National Housing Act of 1949.[1] The Act set a national housing goal of providing "a decent home and a suitable living environment for every American family."[2] Twenty-five years later the nation is still struggling to show substantial progress toward fulfilling this commitment.

Urban renewal was conceived primarily as a categorical funding program to aid local municipalities in eliminating substandard housing through the clearance of slums and blighted areas. From the outset, the program exhibited numerous deficiencies resulting from local bureaucratic constraints and compounded by federal regulations and practices adopted to govern the local use of urban renewal funds. Project planning, initially required before any work could begin, routinely dragged on for years. Funding levels were consistently set too low to produce meaningful results early in the project. Relocation assistance payments, until the passage of a relocation assistance program,[3] were woefully inadequate. Some local units of government used the program to eliminate blacks and other minorities from their communities with federal involvement or acquiescence.[4] Measuring these developments against the expectations envisioned for the program reveals the obvious failure of the federal urban renewal effort. As the conditions in America's cities became worse and civil disturbances erupted in the early and mid-1960's, antagonism surfaced between local and federal officials with respect to the shortcomings of the urban renewal program, each blaming the other for ineffective performance.

II. COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

It was due to these circumstances that Congress, in 1974, re-

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1. 42 U.S.C. § 1441 *et seq.* (1970).
2. 42 U.S.C. § 1441(a) (1970).
3. 42 U.S.C. § 1455(c)(1) (1970).
4. *Cf.* Anderson, *The Federal Bulldozer,* in URBAN RENEWAL 491 (J. Wilson ed. 1966). *See generally* URBAN RENEWAL (J. Wilson ed. 1966).

structured its approach for providing communities with financial assistance for redevelopment. The urban renewal program was amended by the Housing and Community Development Act of 1974.[5] For the purposes of this Symposium, the Act will not be discussed in depth.

Briefly, the Act eliminates urban renewal and a number of other categorical community development programs including Open Space, Urban Beautification, Historic Preservation, Public Facility Loans, Water and Sewer Neighborhood Facilities Grants, Model Cities Supplemental Grants, and Rehabilitation Loans. In their place, there is provision for block grants to municipalities for locally determined community development projects selected from a general list of eligible activities such as acquisition, improvement and disposition of real property, code enforcement, property demolition, historic preservation, public works and open space. Generally these activities cover the same areas as the old categorical grant program.

The effect of the Act is to remove federal officials from the decisionmaking and supervisory roles they have historically played in local projects. The activities of condemnation, demolition, clearance, and resale of sites within blighted areas, initiated by municipalities under the original federal urban renewal approach, will undoubtedly be continued, though funding will no longer be provided through categorical programs. Most local governments can be expected to attempt to complete existing projects using community development block grant funds.

Although federal participation in urban redevelopment has been substantially altered, traditional legal issues involved in assembling redevelopment parcels remain unchanged. A review of recent significant cases in this area follows.

III. Proper Public Purpose

Municipalities may take private property in furtherance of a "proper public purpose"[6] through the exercise of the power of eminent domain. What constitutes such a purpose in connection with redevelopment has been the subject of considerable litigation.

Under early case law, the power of eminent domain was limited to taking property to facilitate public improvements.[7] As national

5. 42 U.S.C.A. § 5301 *et seq.* (Supp. 1975).

6. Housing and Redevelopment Authority v. Greenman, 255 Minn. 396, 96 N.W.2d 673 (1959); People *ex rel.* Gutknecht v. City of Chicago, 3 Ill. 2d 539, 121 N.E.2d 791 (1954); Housing Authority v. Muller, 270 N.Y. 333, 1 N.E.2d 153 (1936).

7. Gravelly Ford Canal Co. v. Pope & Talbot Land Co., 36 Cal. App. 556, 178 P. 150

attention turned to the squalor of American cities, courts began to accept the rationale that slums were detrimental to the health, safety, and welfare of the public and that their elimination would appropriately serve a "proper public purpose."[8] State legislatures,[9] with judicial approval,[10] went even further in expanding the concept of "proper public purpose" to include the clearance of "blighted," as well as slum property.

A. Appropriate Purpose

A variety of cases over the past several decades have helped shape the limits of the "proper public purpose" test as it relates to the elimination of blight. In *Berman v. Parker*[11] the United States Supreme Court announced the principle that an area of a city rather than a particular parcel may be deemed "blighted" and, pursuant to a plan, lots within that area might be condemned for redevelopment purposes. Based on this concept, redevelopment has justified the taking of vacant land,[12] as well as inoffensive structures.[13]

Flood control is a problem addressed infrequently through the use of eminent domain, but primarily through the use of the zoning power. Where proper, employing zoning restrictions rather than condemning a parcel allows municipalities to avoid expending public funds because the private property owner is not compensated for a taking. However, when flood control zoning involves substantial interference with private land use, eminent domain becomes the appropriate tool.

In the past year, the question of the condemnation of private property to control floods was raised in an urban renewal context. As exemplified by *Monroe Redevelopment Agency v. Faulk*,[14] condemnation of private property to control floods may constitute a proper public purpose when part of a redevelopment program.

Considering first the statute authorizing the creation of the Monroe Redevelopment Agency and deciding that the statute did not expressly vest in the Agency the power to expropriate private

(1918).

8. *See* cases cited note 6 *supra*.

9. *Cf.* ILL. ANN. STAT. ch. 67 ½, § 91.13 (Smith-Hurd 1959).

10. *Cf.* People *ex rel.* Gutknecht v. City of Chicago, 3 Ill. 2d 539, 121 N.E.2d 791 (1954).

11. Berman v. Parker, 348 U.S. 26 (1954).

12. People *ex rel.* Gutknecht v. City of Chicago, 414 Ill. 600, 111 N.E.2d 626 (1953).

13. Berman v. Parker, 348 U.S. 26 (1954); Ellis v. City of Grand Rapids, 256 F. Supp. 564 (W.D. Mich. 1966).

14. 287 So. 2d 578 (La. Ct. App. 1974).

property for flood protection or control purposes, the court held, nonetheless, that flood control was implied within the purpose of the Agency's enabling act. According to the court, the Act was designed to empower the city to use federal funds and programs for the elimination and redevelopment of slums and blighted areas, and that property threatened by floods within the Agency's redevelopment area could be included in a redevelopment plan designed to eliminate blight by condemnation.[15] Thus, a redevelopment plan may encompass more than slum clearance if a public purpose, consistent with the enabling act, can be found that will further redevelopment of a blighted area. Under this decision, local redevelopment agencies may enjoy a degree of flexibility in expanding the concept of public purpose as it is applied to unique local problems.

B. *Compliance with Federal Legislation*

When federal funds are involved, local condemnation procedures must comply with federal urban renewal regulations, as well as serving a proper public purpose. In *Bethune v. HUD,*[16] the owners of property proposed to be taken by a county for a public park brought an action alleging that the county had failed to comply with its contract with HUD and applicable statutory requirements. The plaintiffs were found to be donee third party beneficiaries of the contract between HUD and Jackson County, Missouri because of incorporation of certain federal statutory provisions into the contract[17] and, thus, to have standing to raise issues under it.

Upon a finding that the county had not followed the procedures required by one of the federal statutes, the court enjoined the condemnation of any property in the park site until the requirements of the statute had been met. The determination in *Bethune* that the property owners had standing as third party beneficiaries of a HUD contract to challenge compliance with the provisions of the contract may have considerable future significance in the standing area.

IV. Scope of Judicial Review

The question of what qualifies as a "blighted" area raises the important issue of the appropriate scope of judicial review of local government determinations. The United States Supreme Court squarely addressed this issue in *Berman v. Parker:*

15. *Id.* at 582.
16. 376 F. Supp. 1074 (W.D. Mo. 1972).
17. 42 U.S.C. §§ 4622-24, 4625(c)(3), 4651-54 (1970).

> [W]e do not sit to determine whether a particular housing project is or is not desirable. The concept of the public welfare is broad and inclusive. . . .The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy. . . . If those who govern the District of Columbia decide that the Nation's Capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way.[18]

The court further noted:

> [I]t is not for the courts to oversee the choice of the boundary line not to sit in review on the size of a particular project area. Once the question of the public purpose has been decided, the amount and character of land to be taken for the project and the need for a particular tract to complete the integrated plan rests in the discretion of the legislative branch. [19]

Notwithstanding that *Berman* is primarily precedent for condemnation within the District of Columbia, most states have followed it. Nevertheless, the matter remains a lively subject of litigation insofar as each state sets its own standard of review of administrative determinations.

As recently as 1974, the appellate courts of three states considered the issue. First, in *Housing Authority v. Nunn,*[20] property owners in the Cairo subdivision of Roosevelt City, Alabama brought a class action to enjoin the Roosevelt Housing Authority from applying for a Neighborhood Development Program[21] designation from the United States Department of Housing and Urban Development (HUD) and for a $214,000 federal housing grant for the Cairo subdivision. The trial court rejected the Roosevelt City officials' determination that the Cairo subdivision was a "blighted" area. The Supreme Court of Alabama, however, citing *Blakenship v. City of Decatur,*[22] held that a finding by an appropriate body under the urban renewal and redevelopment laws that an area is a slum or blighted area is legislative in character and must be upheld unless

18. 348 U.S. 26, 33 (1954).
19. *Id.* at 35 (citations omitted).
20. 292 Ala. 60, 288 So. 2d 775 (1974).
21. 42 U.S.C. § 1469 *et seq.* (1970).
22. 269 Ala. 670, 115 So. 2d 459 (1959).

it is shown that such finding is a result of arbitrary or capricious action or was induced by fraud or bad faith. Inasmuch as the trial court had not found that the Authority acted "arbitrarily" or "capriciously," its decision was reversed.

Second, the Commonwealth Court of Pennsylvania faced a similar issue in *Leo Realty Company v. Redevelopment Authority*,[23] where the owner of a warehouse that was structurally sound but located in an area that was deemed blighted because of "environmental deficiencies," appealed an order dismissing his objections to the declaration of taking. Like the Supreme Court of Alabama, the commonwealth court found that the Authority had not abused its discretion or acted in bad faith. Citing an earlier Pennsylvania case,[24] the court held:

> [t]he power of discretion over what areas are to be considered blighted is solely within the power of the Authority. The only function of the courts in this matter is to see that the Authority has not acted in bad faith; to see that the Authority has not acted arbitrarily. . . .[25]

A novel problem was introduced, however, in *Leo Realty*. The court was presented with the argument that, ipso facto, because the plaintiff had been relocated by the same authority to the presently condemned area, the prior relocation tainted the present condemnation, rendering it arbitrary and an act of bad faith. The argument was dismissed on the ground that there must be a showing of some act that was arbitrary, capricious, or in bad faith independent of the Authority's involvement in a prior relocation to property later condemned.[26]

On the other hand, in the related area of what may be appropriately included in a redevelopment plan, the court in *City of Jacksonville v. Moman*,[27] held that the determination of city planners and sociologists that a neighborhood needed to be eliminated in order to provide a "cohesive" area compatible with existing installations was not a valid basis for a taking. The Florida court, unlike the Pennsylvania and Alabama courts, followed an expanded scope of review.

The trial court found that the city had failed to carry its "bur-

23. 13 Pa. Commw. 288, 320 A.2d 149 (1974).
24. Crawford v. Redevelopment Authority, 418 Pa. 549, 211 A.2d 866 (1965).
25. 13 Pa. Commw., 288, 291, 320 A.2d 149, 151 (1974).
26. *Id.* at 292, 320 A.2d at 151-52.
27. 290 So. 2d 105 (Fla. Ct. App. 1974).

den of proving by competent and substantial evidence that the property described is needed for the redevelopment of a slum area."[28] The appeals court upheld this finding, apparently establishing that a Florida court may make a "de novo" review of a blight determination by a local agency. In so doing, it stated that "the city may designate an area as a slum, but such designation does not make it a slum . . . ."[29] In this particular case, although the city planners and sociologists decided to eliminate this neighborhood, the court concluded that this was not a basis for seizing private property.[30] In arriving at its conclusion the court stressed its role as the guardian of the rights of property owners:

> Even in this enlightened era of "big brother knows best," the right of an individual to own and acquire property must be safeguarded against an arbitrary taking by the sovereign.[31]

V. JUST COMPENSATION

A. *Valuation*

Proceedings for condemnation are rarely instituted without months and years of planning. Once plans are announced, many more months or years may ensue before the local authority condemns a particular parcel. Often the announcement that an urban renewal plan will affect a landlord's property, making it difficult if not impossible to get new tenants and causing a general decline of the neighborhood. Understandably, therefore, a property owner is concerned with the exact time at which his property is appraised for condemnation.

Three bases have evolved for relieving property owners of the injustice they may suffer if the property is valued at a date after the neighborhood has declined. Two have been created through judicial adoption and a third, discussed hereafter in connection with *Freeman v. Patterson Redevelopment Agency*,[32] has been created by state legislative enactment.

The first court-adopted theory, "de facto taking," was announced in the leading case of *Foster v. City of Detroit*.[33] Under this

28. *Id.* at 107.
29. *Id.*
30. *Id.*
31. *Id.*
32. 128 N.J. Super. 144, 320 A.2d 228 (1974).
33. 254 F. Supp. 655 (E.D. Mich. 1966), *aff'd*, 405 F.2d 138 (6th Cir. 1968).

theory compensation is awarded as of the date the condemning authority substantially interferes with the owner's enjoyment of his property, irrespective of when title was formally acquired by appropriate proceedings. The city had encouraged and aggravated the deterioration of the property by stating that property owners would receive no compensation for improvements made after the designation of the area for redevelopment, requiring, *inter alia*, the signing of a "Waiver of Claim for Damages" as a condition precedent to issuing a building permit and completing condemnation of several blocks in the area. The court stated:

> Generally, the term "taking" is construed in its literal sense, that is, a taking occurs when the verdict is confirmed, the deed executed, and the award paid. There are, however, special situations where the actions of a governmental body are such as to amount to a taking of private property, regardless of whether there is an eminent domain proceeding, and in such situations, compensation is given for the taking when it occurs.[34]

The second court-adopted theory is "condemnation blight." Under this theory, the date of taking is left unchanged, but the owner is compensated for the loss in value prior to the actual taking which can be traced to a grossly premature disclosure of the condemnation.[35]

The question of diminution in market value was reviewed in *Redevelopment Agency v. Del Camp Investments.*[36] In its decision, the court failed to indicate which of these two theories it had chosen to follow, although it appeared to adopt the "de facto" taking approach. The owner of a seven-story hotel building challenged the time at which his property was valued. Public announcements that the property would be condemned were made in 1961. Condemnation was commenced in 1969 and the trial started in 1970, the "valuation date." The trial court rejected the owner's proof that the long standing public knowledge of the property's impending condemnation greatly depressed its value. On appeal, the case was remanded based upon the California Supreme Court holding in *Klopping v. City of Whittier*,[37] decided while the principal case was pending:

34. *Id.* at 662.
35. 4 NICHOLS, EMINENT DOMAIN § 12.3151 (1973).
36. 36 Cal. App. 3d, 112 Cal. Rptr. 96 (1974).
37. 8 Cal. 3d 39, 500 P.2d 1345, 104 Cal. Rptr. 1 (1974).

> [A] condemnee must be provided with an opportunity to demonstrate that (1) the public authority acted improperly either by unreasonably delaying eminent domain action following an announcement of intent to condemn or by other unreasonable conduct prior to condemnation; and (2) as a result of such action the property in question suffered a diminution in market value.[38]

Reinforcing *Klopping*, the court of appeals required that evidence of value at the time of the announcement be admitted but, similar to the *Klopping* court, it failed to indicate in which direction California was proceeding in relation to these two theories. California is representative of a growing number of states following an expanded valuation approach without adopting a specific theory.

B. Inverse Condemnation

Before *Foster v. City of Detroit*,[39] two distinct types of condemnation actions were recognized. The most common was the eminent domain proceeding, a declaration by a governmental body that it intended to take private property for a public purpose followed by a formally initiated judicial proceeding.

The other cause of action was inverse condemnation. When a governmental body has taken or damaged private property, the owner could initiate an action against the governmental defendant to recover the value of the property taken, even though there was no formal exercise of the power of eminent domain.[40]

Usually, a property owner is entitled to the fair market value of his property at the time of the taking, normally deemed to be the time when the government brings its action. This formula, however, does not adequately compensate him in cases where the announcement of a redevelopment plan results in the decline of property values before the eminent domain proceeding is commenced. In order to provide redress, courts went a step further and began to apply actual taking rationales to the area of valuation. For example, the court in *Foster* used the principles of inverse condemnation in valuation cases to create the "de facto" taking theory. Unwittingly, the courts provided a fertile field for imaginative legal minds to stretch the concept of inverse condemnation itself.

38. *Id.* at 52, 500 P.2d at 1355, 104 Cal. Rptr. at 11.
39. 254 F. Supp. 655 (E.D. Mich. 1966), *aff'd*, 405 F.2d 138 (6th Cir. 1968).
40. Thornburg v. Port of Portland, 233 Ore. 178, 180 n.1, 376 P.2d 100, 101 n.1 (1962).

In *Freeman v. Redevelopment Agency*,[41] the New Jersey court faced this issue. The plaintiff-property owner, on the basis of facts that would clearly establish a "de facto" taking for valuation purposes, asked the court to declare that his property had actually been taken by inverse condemnation. He sought the immediate assessment of his property or immediate condemnation.[42]

The court examined both the "de facto" taking and "condemnation blight" theories, adopting the latter approach.[43] At the outset, the court discussed the hybrid *legislative* approach of those states whose constitutional provisions were so enlarged to require just compensation where private property was either *taken* or *damaged*.[44] The New Jersey constitutional provision was limited to the taking situation. The court concluded that under the New Jersey Constitution the facts relied upon to establish a constructive taking in *Freeman* "would be appropriate to establish the quantum of damages after initiation of condemnation, but do not justify the compelling of the condemnation itself."[45] There was no "taking" because the plaintiff was not deprived of all beneficial use of his property for an indeterminate time.

Although the concept of compensating a property owner for loss due to the announcement that his property is within a blighted area is now generally accepted, *Freeman* demonstrates the continued reluctance of courts to find an actual condemnation prior to the commencement of eminent domain proceedings. The court has attempted to balance the detriment to the municipality including the cost of condemning and acquiring the property, managing or demolishing structures on the property, and the loss of tax revenues against the owner's losses prior to condemnation, due to the decline in income and value of his property. Unfortunately, in most states there are no statutes, like New Jersey's, which compel the municipality to acquire all the property in an area designated as "blighted." Perhaps the best solution in this situation is to allow partial compensation for damage to the owner's property as provided by statute in some states.[46]

41. 128 N.J. Super. 148, 320 A.2d 228 (1974).
42. *Id.* at 453, 320 A.2d at 230-31.
43. *Id.* at 453-54, 320 A.2d at 231.
44. 7 NICHOLS, EMINENT DOMAIN § 14.02(5) (1973).
45. 128 N.J. Super. at 456, 320 A.2d at 232.
46. 7 NICHOLS, EMINENT DOMAIN § 14.02(5) (1973).

The Commonwealth Court of Pennsylvania considered the question of de facto condemnation from a different perspective in *Berman v. Urban Redevelopment Authority.*[47] In *Berman* the appellant was a scrap metal processor. Appellant carried on his business, a single integrated operation, on five contiguous parcels, one of which was leased from Sanford Steel Products Company. Pursuant to an urban renewal plan, the Authority filed a declaration of taking, condemning the Sanford Steel parcel. Berman received an award for his interest in this parcel.

Deeming his leasehold interest in the four adjoining properties useless, the appellant terminated his leases, vacated the properties, and was reimbursed.

Berman then brought this action contending the condemnation of the Sanford Steel parcel, leased and used in an integrated economic operation with supporting parcels, necessarily caused a de facto injury or destruction of his leasehold interests in the supporting properties. The court held that Berman was compensated in the prior condemnation proceeding and that the taking of the plant property was not a de facto taking of the supporting properties since it did not deprive him of the use or enjoyment of such properties.[48]

In these two 1974 cases, the courts faced an attempt to expand the scope of the de facto taking valuation theory. After cases like *In re Elmwood Park*[49] and *Foster v. City of Detroit*[50] where the doctrine of a constructive taking was liberally construed to provide owners with a more accurate and just compensation for loss due to the early announcement that their property was in an urban renewal area, the courts have been required to carefully scrutinize a new series of challenges. Based on the de facto taking theory, the new challenges seek an early declaration condemnation, pursuant to an inverse taking rationale. Perhaps, as *Freeman* and *Berman* indicate, the courts will rely on the argument that the owner has not been deprived of all beneficial use and enjoyment for an indeterminate period to avoid a declaration of an unintended taking by a municipality under the inverse condemnation theory.

47. 15 Pa. Cmwlth. 1, 324 A.2d 811 (1974).
48. *Id.* at 4, 324 A.2d at 813.
49. 376 Mich. 311, 136 N.W.2d 896 (1965).
50. 254 F. Supp. 655 (E.D. Mich. 1966), *aff'd,* 405 F.2d 138 (6th Cir. 1968).

C. Damages

Normally, a property owner's recovery is limited to just compensation with respect to the reduced value of his property interest. The issue of consequential damages is, as yet, an uncharted area. In *Parish of Jefferson v. Gonzales*[51] the court of appeals of Louisiana faced the novel question of whether a property owner's disability benefits under a mortgage insurance policy could be included as part of the owner's damages. There, the Mirons purchased property subject to a mortgage and were issued a form of mortgage insurance in favor of and payable to the mortgage holder. The policy provided, *inter alia,* that Miron would be paid a monthly sum for a period not to exceed 60 months in the event he became disabled. Under this policy payments would terminate before the end of the 60-month period upon prepayment of the mortgage. After judgment was rendered transferring title to the Parish, the mortgage was prepaid and the benefits discontinued. The court reviewed the rule that a "property owner is entitled to recover actual damages directly attributable to the expropriation," but that "[a]nticipated, remote or speculative damages are not recoverable,"[52] and found that Miron's right to 60 monthly benefit payments became *vested* when he became disabled. On this basis it held that he was entitled to compensation for the loss of these benefits, but compensable damages were limited to out-of-pocket loss caused by the premature termination of monthly benefits. This loss was determined to be only that portion of the monthly payment which would have been applied by the mortgage company to reduce the principal balance. The court held that funds apportioned to interest, taxes, and insurance were maintenance expenses from which the defendant was relieved by the taking.

The court, however, failed to appreciate the nature of the insurance policy which guaranteed continued mortgage payments during Miron's disability. The insurance was designed to protect him from a default on the mortgage and loss of his home due to his disability. The insurance provided for full mortgage payments, including interest, taxes, and insurance. The policy premium, paid as part of the monthly mortgage payment, was based on the amount required to pay principal, interest, taxes, and insurance. By prepaying the mortgage, the Parish forced him to lose these insurance benefits. If,

51. 288 So. 2d 65 (La. Ct. App. 1974).
52. *Id.* at 66.

as the court states, the property owner is entitled to recover actual damages directly attributable to the expropriation, then the Mirons should have been compensated for the fair market value of their home and all benefits lost as a result of the prepayment of the mortgage. Compensation for the loss of equity which would eventually accrue through insurance benefits does not compensate for interest, taxes, and insurance premiums, which the insurance company was obligated to pay. These benefits were lost due to the expropriation though Miron remained disabled. Using the cash received to purchase a new home would not reinstate these benefits. Thus, Miron was not fully compensated for the actual damage attributable to the expropriation.

VI. Relocation Assistance

Few aspects of the urban renewal program have created as much controversy as relocation. In respect to both the Urban Renewal Program and the Community Development Block Grant Program, the federal relocation statute requires, as a condition to receiving federal grants and loans, that there be a feasible method for the temporary relocation of individuals and families displaced from a "blighted" area as a result of condemnation. Each local agency must establish a relocation assistance program for each urban renewal project.[53] Before displacing any residents of the project area, the local agency must provide assurances to HUD that relocation housing is available.[54] The statute also provides for direct payments to individuals, families, business concerns, and nonprofit organizations displaced because of urban renewal acquisition, code enforcement, or voluntary rehabilitation activities.[55]

Two cases considered relocation issues. In *Parish of Jefferson v. Gonzales*,[56] after considering the just compensation issue, the court discussed a relocation problem. The Parish received a federal loan in 1965 to make a feasibility study of the proposed public improvement. The Mirons claimed that they were entitled to relocation assistance as a result of the taking of their home for an urban renewal project, but the court held that they were not entitled to such assistance under federal law.[57] The statute required state and

53. 42 U.S.C. § 1455(c)(1) (1970).
54. 42 U.S.C. § 1455(c)(2) (1970).
55. 42 U.S.C. § 1465(a) (1970).
56. 288 So. 2d 65 (La. Ct. App. 1974). Discussed p. 958 *supra*.
57. *Id.* at 68

local agencies undertaking public projects with federal financial assistance, including federal loans, to provide relocation assistance to displaced persons whose property was expropriated. Because the loan was granted before the relocation statute was enacted, the court took the position that the Parish was not required to provide relocation assistance for the project unless new federal funds were required. It felt that requiring the Parish to provide relocation assistance would be ex post facto impairment of the obligations under the original contract with HUD.[58]

In *King Athletic Goods Company v. Redevelopment Authority*,[59] two sporting goods companies alleged that the Redevelopment Authority had filed a declaration of taking but was delaying relocation by refusing to approve one of their moving bids. The Pennsylvania Supreme Court held that the Pennsylvania Eminent Domain Code expressly limited the amount the owner of a condemned property could receive to cover the costs of moving machinery, equipment, and fixtures from a condemned site to a new location to $25,000 and, that as a matter of law, the companies could not exceed this amount.[60] A written agreement to move between the companies and the Redevelopment Authority, provided that "the 'moving expenses' . . . and the expenses of disconnection, removal and reinstallation of King's machinery, equipment, and fixtures were to be processed the same as if both were 'regular and ordinary moving costs.' "[61]

The Authority accepted one of three bids and authorized the move by letter[62] on May 15, 1969. This company moved most of King's equipment by June 4, 1969. King then submitted bids to the Authority for the cost of moving the remaining machinery and equipment. The Authority made general objections and failed to select a bid. After other bids were submitted, the Authority still delayed the selection, so King filed suit in equity requesting that the Authority be compelled to comply with the agreement. King sought damages totalling $245,000, including relocation costs and the amount lost in its business operations. The Pennsylvania Supreme Court found that the language of the agreement between King and the Authority brought it within the Eminent Domain Code, which

58. *Id.*
59. 457 Pa. 17, 323 A.2d 727 (1974).
60. *Id.* at 21, 323 A.2d at 730.
61. *Id.* at 18, 323 A.2d at 728.
62. *Id.*

limited King's recovery for relocation to $25,000.

VII. NEPA AND URBAN RENEWAL

Two cases in 1974 discussed the application of the National Environmental Policy Act (NEPA)[63] to urban renewal programs. Both held the Act applicable to activities undertaken as part of a federal urban renewal program, but only one found that the Act's requirements had not been met.

In *Wilson v. Lynn*[64] residents of the Boston South End Renewal Plan Area brought an action against HUD officials to restrain further activity on a project to rehabilitate 36 buildings within the area to produce 185 dwelling units, claiming that the filing of an environmental impact statement was required by the NEPA.[65] The Act requires such a statement as a prerequisite to any major federal action significantly affecting the human environment.[66]

All parties agreed that the mortgage insurance undertaken by HUD and its guarantee of interest payments to the developer constituted "major federal action." Defendants contended there was no discretionary action left to HUD that could be influenced by the existence of an environmental impact statement.

The court found that the Commitment for Insurance of Advances, which HUD entered into December 28, 1973, became irrevocable on January 31, 1974 with the execution of the first certificate of mortgage insurance. HUD, however, reviews each application for a new mortgage insurance certificate covering each additional advance under the construction loan agreement. The purpose of this review is to determine whether all construction is in accordance with applicable rules, regulations, and specifications. Although HUD may not be authorized to require any changes in the design of the project to correct environmental deficiencies, HUD can withhold mortgage insurance because of such deficiencies, thus delaying further mortgage loan advances and project completion pending compliance.

The court cited *Jones v. Lynn*[67] as requiring the district court to use "imagination and flexibility" in these situations. In carrying out this directive the court first considered whether federal action

63. 42 U.S.C. § 4321 *et seq.* (1970).
64. 372 F. Supp. 934 (D. Mass. 1974).
65. *See* 42 U.S.C. § 4321 *et seq.* (1970).
66. *Id.*
67. 477 F.2d 885 (1st Cir. 1973).

significantly affected the quality of the human environment.[68] The court held that while the environmental situation in the South End was far from ideal, there was no evidence the Project would cause "adverse environmental effects in excess of those created by existing uses in the area affected by it."[69] The court further noted:

> Under its own regulations, HUD is prohibited without first filing an Environmental Impact Statement from insuring the financing of residential construction in areas where the existing environment does not meet certain minimum standards.[70]

Under guidelines established by the Council on Environmental Quality and the Environmental Protection Agency, when an environmental review indicates no significant impact a negative declaration shall be prepared prior to taking action.[71] The court further held these requirements were met when HUD prepared a Special Environmental Clearance.[72] Thus, plaintiff's applications for preliminary and permanent injunctions were denied.

The court followed and strengthened the precedent of *Jones v. Lynn*[73] stating that although HUD had become irrevocably committed to insure certain mortgage advances, it still had discretion to withhold insurance for each advance if environmental factors that might jeopardize the safety and health of the eventual tenants of the rehabilitated structure came to HUD's attention. Consequently, the requirements of the Act applied to a development project even after the commitment stage and before each advance. Clearly this holding extended NEPA to a greater number of activities and increased its influence over real estate developments in which HUD was involved.

In *Jones v. Redevelopment Land Agency,*[74] the United States Court of Appeals for the District of Columbia considered two important and novel questions regarding the application of the NEPA. First, the court considered whether the NEPA required the District of Columbia Redevelopment Agency (RLA) to include an environ-

68. 372 F. Supp. 934, 937 (D. Mass. 1974).

69. *Id.* at 937, *quoting* Hanly v. Kleindienst, 471 F.2d 823, 830 (2d Cir. 1972).

70. 372 F. Supp. at 937.

71. 40 C.F.R. § 6.25(A) (1973).

72. A Special Environmental Clearance is required by HUD guidelines as described in HUD Circular 1390.1.

73. 477 F.2d 885 (1st Cir. 1973).

74. 499 F.2d 502 (D.C. Cir. 1974).

mental impact statement in each proposed action year program for the Neighborhood Development Program at the outset of the agency review and approval process. The environmental impact statement was to "accompany the proposal through the existing agency review process."[75]

After consultation with area residents and other interested parties, the RLA formulates the action year program, the steps to be taken during the year in conformity with the overall program for community development previously certified by HUD. The Agency then submits its proposed action year program to a planning commission for adoption or modification. If the planning commission adopts the program, either as submitted or as modified, it is presented to the District of Columbia City Council, which holds public hearings on it and decides whether to empower the RLA to apply to HUD for federal funding. If the Council approves the program, the planning commission certifies it to the RLA for implementation, the District applies to HUD for funding, and the RLA proceeds to execute the provisions of the program.

Most of the cases that have considered the timing of impact statements have dealt with the process of decisionmaking within a single agency. The principles these cases have formulated are also applicable to decisionmaking accomplished by several agencies acting seriatim. The original submission by the RLA is a distinctive and comprehensive stage of the process, that is, it is itself a proposal for federal action requiring an environmental impact statement. The RLA argued that to require it to submit an environmental impact statement to the planning commission together with its action year plan would be inefficient, since the planning commission could well modify the plan and thus render the RLA's impact statement an anachronism. Environmental impact statements were not meant to be merely post hoc environmental rationalizations of decisions already fully and finally made. Rather, their purpose was to insure meaningful consideration of environmental factors at all stages of agency decisionmaking and to inform both the public and agencies involved at subsequent stages of decisionmaking of the environmental cost of the proposal. Accordingly, it is precisely because the planning commission has the power to modify the RLA's action year proposals that impact statements accompanying the proposals are necessary. The planning commission may be vitally

75. 42 U.S.C. § 43 *et seq.* (1970).

affected by the information contained in and the conclusions drawn in the RLA's impact statements, when considering approval or modifications of the proposals. Equally important, the public will be afforded an opportunity, prior to the planning commission's decision, to inform the commission of views contrary to those submitted by the RLA. This will insure that the commission's decision and its own environmental statement will be premised on complete information about the project and that environmental factors will be taken into account before the action year plans take on the irreversible momentum of planning commission approval. Therefore, to meet the requirements of the NEPA, both the RLA and the planning commission must include impact statements in their proposed action year programs, and HUD must prepare and issue final statements when the programs are finally approved.

Because the Housing and Community Development Act of 1974 has eliminated the Neighborhood Development Program,[76] this case has limited precedential value. The principle announced here may be applied in other cases, however, where municipal agencies formally assist the local government body in the preparation of applications for Community Development Block Grants.[77]

The court of appeals also considered whether the failure of the agency to file a timely environmental impact statement warranted an injunction. The lower court had found that there was an absence of imminent, irreparable harm flowing from the failure to comply with NEPA.

The appellate court found that the district court had defined too narrowly the kind of harm which, under NEPA, may be sufficient to warrant a preliminary injunction. NEPA was intended to insure that federal action was taken only after responsible decisionmakers fully considered the environmental consequences and decided that public benefits outweighed environmental costs. Accordingly, the problem with which courts must be concerned in NEPA cases is not harm to the environment, per se, but rather the harm resulting from the agency's failure to file environmental impact statements so environmental factors can be considered as required by NEPA.

But, because final environmental impact statements had been filed, the district court refused to enjoin further action concluding that there was substantial compliance with NEPA. The court of appeals affirmed, finding no abuse of discretion.

76. 42 U.S.C. § 1469 *et seq.* (1970).
77. 42 U.S.C.A. § 5301 *et seq.* (Supp. 1975).

VIII. CONTROLLING GROWTH

Related to the concept of redeveloping and preserving inner-city neighborhoods are issues related to controlling urban growth, particularly the outward expansion of an urban area. In many of our oldest metropolitan areas, the inner cities stand as abandoned shells while new developments expand ever rapidly outward from the central city, creating real questions concerning the efficient use of resources. If outward expansion can be restricted and developed under a more rational plan, there may be greater opportunity for redevelopment of central cities.

In *Construction Industry Association of Sonoma County v. City of Petaluma,*[78] the United States District Court for the Northern District of California reviewed a small city's plan for limiting growth and held it unconstitutional. The Construction Industry Association brought the action against the City, challenging the constitutionality of the City's plan to limit growth by creating an "urban extension line" and a 500-unit annual limitation on new housing permits. The court held the plan was a violation of the right to travel, not supported by any compelling governmental interest that could not be served by alternatives.

Initially, at least, techniques to control growth in urban areas are running into judicial resistance. Perhaps, more aggravated instances of urban sprawl and broader arguments directed to more efficient use of valuable and depleting resources are necessary before approaches, such as those used in *Petaluma,* will find their place as acceptable land use tools.

IX. CONCLUSION

This past year was not a particularly significant one for urban renewal case law development. Most importantly, the federal categorical urban renewal program created in 1949 was replaced by the Community Development Block Grant Program, Title I of the Housing and Community Development Act of 1974.[79]

Several leading cases reinforced the judicial scope of review test with respect to local urban renewal determinations enunciated in *Berman v. Parker:* a local agency's actions will be overturned only if it has acted arbitrarily, capriciously, or in bad faith.[80]

78. 375 F. Supp. 574 (N.D. Cal. 1974).
79. 42 U.S.C.A. § 5301 *et seq.* (Supp. 1975).
80. Berman v. Parker, 348 U.S. 26 (1974).

The issue of early taking continued to be lively. Litigants are pressing the issue beyond the principle of using an early valuation date in establishing just compensation under a condemnation proceeding. An effort has emerged to influence the courts to "compel" a taking based upon the rationale of inverse condemnation, when property values and profits in a designated urban renewal area are adversely affected by the project prior to the start of condemnation.

Lastly, it would appear that attempts to control urban growth by limiting housing unit production and, thereby controlling population expansion, will initially experience judicial resistance on constitutional, as well as philosophical grounds. The battle lines in this area, however, have just begun to be drawn.