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THE POLITICS OF PLANNING FOR URBAN REDEVELOPMENT: STRATEGIES IN THE MANIPULATION OF PUBLIC LAW

SHELDON J. PLAGER* and JOEL F. HANDLER**

In this article Professors Plager and Handler examine the influence of legal process upon decision making in municipal redevelopment. Their thesis is that public acceptance of a redevelopment venture depends primarily on the command of political and planning skills and occurs despite rather than because of legal procedures designed to accommodate principles of democracy. Partly through the method of a case study of recent data collected from one municipality, partly by comparative analysis with other studies, they conclude that the reality of decision making in the region they explore is the predominance of informal power over formal, democratic, legal decision-making devices.

INTRODUCTION

In May 1961 at the city council meeting of Center City, the mayor announced that a multimillion dollar, nine-square-block urban redevelopment project would be built, creating a new retail shopping complex in the heart of the downtown section, one block from the main business street. Center Circle—our name for the project—will profoundly affect the people of that community. To undertake the project, for a community the size of Center City, involved a political decision of the first magnitude. It involved a major reallocation of a scarce commodity—land in the heart of the central business district; a multimillion dollar investment by the private promoters; a previously undreamed of commitment of local public resources including capital improvements in the form of parking facilities, road improvements, and utility relocations; and a program of related public controls in the form of protective zoning. It involved a major economic shift away from the existing Main Street merchants to the promoters and developers of the project and their tenants. Streets had to be vacated, traffic patterns changed, people and businesses moved. Center Circle will affect where people will shop, how they will get to and from work, where they will live, and what type of growth and development they will have in their community.

The purpose of this study is to examine how projects such as Center Circle come about. Our concern is with the relationships and interactions of politics, planning, and the legal processes that are involved in urban redevelopment efforts. Since the pattern in

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any one community has limited value, we will after detailing the Center City experience compare it with similar efforts described in four recently published studies: Harold Kaplan's study of slum clearance in Newark, New Jersey;¹ Robert A. Dahl's examination of the New Haven Redevelopment Agency;² Rossi and Dentler's account of the Hyde Park-Kenwood project;³ and Meyerson and Banfield's study of public housing in Chicago.⁴ These projects have in common the fact that they were significant political decisions—decisions which are required to be made in accordance with legally prescribed procedures.

The legal process attempts to structure the decision-making process so that decisions will be consistent with public goals. The people of the community decide, through their official representatives, the basic pattern of development of the community—the comprehensive plan, the zoning ordinance, the subdivision regulations, and the building codes. If change is to be made, it is submitted first to those who specialize in this aspect of public decision making: the plan commission and the planners. This unit of government hears, considers, and then recommends to the elected representatives of the people, the city council. The council, after due notice and hearing, decides what is best for the community. Other units of government which may be affected (such as agencies concerned with parking, streets and traffic, utilities, and schools) are also consulted. If these units of government are autonomous, and if their services are needed, then their consent must also be obtained.

The legally prescribed procedures for public decision making reflect a democratic value: those to be affected by the decision are to be given a meaningful opportunity to be heard—the merchants, the site residents, the taxpayers, and the other interested people and groups. This does not necessarily mean that those affected will control the shape of the redevelopment program. In decisions of this type, some will gain and some will lose. But the process does contemplate that the legally authorized decision maker (the city council) will at least consider the competing interests. This is of benefit to the decision maker, since those who are directly affected presumably know the most about their particular problems. The required use of the local planning bodies and their decision-making procedures also reflects this democratic value. And the planning bodies, in theory at least, perform the additional function of providing the council with disinterested expert help.

Public participation and the assertion and consideration of affected interests—as required by law and democratic ideals—place

¹ KAPLAN, *URBAN RENEWAL POLITICS* (1963).

² DAHL, *WHO GOVERNS?* (1961).

³ ROSSI & DENTLER, *THE POLITICS OF URBAN RENEWAL* (1961).

⁴ MEYERSON & BANFIELD, *POLITICS, PLANNING, AND THE PUBLIC INTEREST* (paperback ed. 1964).

the promoters in something of a dilemma. The legally prescribed methods of public decision making give the various affected interests not only the opportunity to be heard, but also the opportunity to defeat the project; they can persuade the local legislature to deny the necessary support. The procedures cannot be ignored by the promoters. At some point the project has to be brought to the surface and be submitted to the formal process of governmental decision making.

The outcome of the struggle at the public level and the integrity of the decision-making process itself will depend on how well the competing interests use the relevant resources available to them. There are two resources of particular importance. The first we call political skills. The proponents of the project have to gain the explicit consent of the governmental decision makers—the council and the plan commission. Their goal is to gain official planning and legislative support without running the risks of deliberative debate. The strategy is to enter the public arena when the potential opposition is still uninformed and unorganized and then proceed through the decision-making steps before the opposition can make itself felt. Success requires secrecy during the formative stages of the plan and co-operation from those public officials who are both powerful and sympathetic. When the plan is made public, the public machinery must move promptly and swiftly, before the opposition can acquire its own political skills.

But political skills are not enough for significant land-use planning issues. Another resource has to be used. We call this planning skills. Proposals for redevelopment projects (as well as counter-proposals) appear largely in technical form: statistical tables, charts, graphs, reports, maps, and drawings. The technical paraphernalia serve several vital tactical functions. They give an air of scientific neutrality to the proposal by masking the very important value decisions. What is the "best use" of urban land? How much and what kinds of benefits can the community realize from the project? Are these benefits worth the cost? Land-use planning decisions of this scope involve judgments about values and probabilities. The decisions are political in the broadest sense. They are not susceptible of final determination by technical experts or by scientific, "objective" "facts."⁵ The technical data then tend "to conceal what is really at issue and to direct the discussion along the lines that are either irrelevant or less than fully relevant."⁶ They also help neutralize the opposition. The technical justification for the proposal is prepared and supported by experts in land use, traffic, municipal financing, and marketing. If the proposal is to be evaluated and countered successfully, then the opposition (including uncommitted governmental officials) must also use experts.

⁵ BANFIELD, *POLITICAL INFLUENCE* 283 (1965 ed.).

⁶ *Ibid.*

Simply saying "No" or "I don't like it" is not enough. Opponents in the public arena need planning skills as well as political skills, even though basically political issues are to be decided.

Our thesis is that the success (in terms of community acceptance) of the redevelopment proposal depends primarily on whether the proponents or the opponents command the political and planning skills. The locus of the actual decision-making power (the ability to prevail in the redevelopment effort) will be determined by which of the various groups have both these skills. Neither skill without the other is sufficient. And the degree of monopoly of these skills will determine both the substantive results of the redevelopment decisions and the genuineness of the use of the legally required public decision-making apparatus. In other words, despite the goals and purposes of the legally established decision-making procedures, the integrity of that process and the rationality of planning in the public interest depend on the realities of the power relationships of the actors in the process. This is true even though the promoters are required to use the public law process and the public decision makers have veto power over the projects.

In the first part of this article we will detail the Center City experience. We will examine closely the range of substantive political questions which faced the community, the full extent of public contributions and support required for the project, and, as a foundation for our thesis, how the public decisions were made. In the second part we will test the thesis by examining the results of the previously cited studies by others of the redevelopment projects in Newark, New Haven, and the two in Chicago.

I. CENTER CITY

Center City is located in the central part of a midwestern state. From 1830 to 1870 the city showed consistent economic development. It was during this period that its three-block Main Street was established to serve the needs of the surrounding growing agricultural community. In the course of the next ninety years the population of the city expanded from 3,800 to 28,500. The area in general grew strong commercially and in population. The state university, located in Center City, increased from a few hundred students to a student population of over 25,000 and a staff population of 10,000. In 1960 the population of Central County, of which Center City is the county seat, was 132,000.

However, during this period of growth the adjacent city of Leesberg got the railroad depot, the industrial and commercial development, and the lion's share of the population. The major part of the economic development of the 1940's and 1950's passed Center City by. It was estimated that only between ten and twenty per cent of the retail business in the area was done on Center City's Main Street, with most of the Center City shoppers adjusted to the

idea of traveling the extra twenty or thirty blocks to the downtown area in Leesberg. As a result, despite Center City's rise in population, there was an actual one-third decline in the number of business establishments in the town.

Whatever the reason for the economic stagnation and apathetic atmosphere of Center City, several political, civic, and business leaders felt that unless something was done, Center City was going to suffer an economic death. The first attempt to do something about the situation followed the traditional pattern—the problems would be solved if a suitable manufacturing plant would locate in the city. Aside from the injection of needed tax revenues into the municipal coffers and the stimulus to retail business from the plant employees, it was hoped by some that a large plant would furnish vigorous business leaders who would help prod the community into taking further action to stimulate the economic growth of the city. In part, the plan worked. A coalition of city officials and businessmen was able to persuade a large manufacturing plant to locate in Center City. But the long-range hopes of the farsighted few were not realized. The imported leaders connected with the plant were interested in public relations, not in rocking the boat. The over-all failure of this plan forced the activists in the community to seek other solutions.

The next plan of action was to persuade a large department store to come to Center City, which, it was thought, would bring Main Street back to life. In 1959 the mayor appointed a twenty-four-man economic council to explore this avenue. At the time a national retail chain had a small store in Center City. The primary purpose of the new economic council was to persuade the chain to expand its Center City store. The activists formed a small subcommittee. Preliminary negotiations seemed promising, but when the two strongest members of the subcommittee—X, a lawyer, and Y, a merchant—went to the head office in New York City, they arrived only to be advised that the chain had just decided to build a modern store in Leesberg. Center City's offer of a "good community" was not good enough.

A. Center Circle—The Early Stages

The defeat suffered at the hands of the national chain only served to stimulate X and Y into redoubling their efforts. They were still of the view that a single large department store would best meet Center City's needs. Another major retail chain was contacted. This chain was not interested in the conventional shopping center located on the periphery of the city where it would be vulnerable to future competition. It was definitely interested in forming a complex of stores, of which it would be the hub, in the central business district of the city; but additional economic information would be needed before the chain could decide about Center City.

Economic studies cost money and it was at this point that the activists separated from those in the community who paid only lip service to the problems of Center City. X and Y, as part of the subcommittee, were still theoretically representing the city government. But the city council was not prepared to lend financial support to study the feasibility of a private venture, particularly if the venture might alienate conservative segments in the community. The two activists turned to the local chamber of commerce, which up to this time had mainly devoted its efforts to placating the local businessmen with dollar days and street sales. A few of the leaders of the chamber, on its behalf, agreed to share equally with the chain the 10,000 dollar cost of an economic study.

A consumer analysis firm in New York City was hired and the results of the study were satisfactory to the chain. During the summer of 1960 the chain made its decision to locate in Center City and the site was selected. Further plans were laid during that fall and winter. In the spring of 1961 the planning of the Center Circle development was sufficiently ready for official announcement to the people of Center City.

B. Implementing Center Circle: The Timetable of the Public Decisions

The City Council meeting of May 15, 1961, opened with the usual routine matters—reports of the standing committees, approval of contractors' bonds, and the unanimous approval of an ordinance dealing with the location of fire hydrants. Then the city attorney presented and read a resolution entitled "Resolution in Reference to Vacation of Portions of Several Streets and Alleys in Downtown Center City and in Regard to Additional Off-Street Parking for Center City and Related Matters."

The Center Circle development was now officially before the city council. In the "whereas" clauses of the resolution, it was stated that "a plan exists to provide [an] additional business district within a certain area of the downtown central business district and for further renewal and redevelopment of the downtown central business district area with certain boundaries as provided by such plan." The resolution went on to read that "an engineering, economic and development plan is in existence" and that "pursuant to such plans . . . additional municipal off-street parking facilities appear to be needed, . . . additional revenue bonds will become necessary," and "certain amendments may be necessary to the Zoning Ordinance . . . to implement such a plan." It was therefore resolved that the council on behalf of the city "declare that this resolution and the provisions and proposed accomplishments are towards the best interests of the City" and the council "further declares the intention to accomplish the aims and construction for the plans [*sic*] for such redevelopment of the downtown central business district." The resolution authorized the city's parking

commission to engage engineers and attorneys to prepare an issuance of revenue bonds to provide money for the construction of parking facilities and authorized the city plan commission "to amend the Zoning Ordinances . . . to facilitate the implementation of the above plan and redevelopment."

The city attorney explained that the issuance of revenue bonds would entail no obligation on the local taxpayers. An official from the chamber of commerce gave what was called in the newspapers a "short account" of the history of the project and stated that it was the result of eighteen months of study and planning by a group of Center City businessmen, civic leaders, and elected public officials. With that, it was moved and seconded that the resolution be "enthusiastically adopted." The motion carried unanimously.

The city council was now publicly on record in support of the project; it had publicly committed itself to do its part to aid the "plan." Activity then shifted to the plan commission. During the week after the council action, the plan commission held two informal (*i.e.*, executive) meetings in the mayor's office to discuss the zoning changes that were requested by the promoters. The promoters wanted a block-wide belt of noncommercial zoning around the shopping center complex, on the east, south, and west.

On May 25 notice of public hearings on a proposed new classification—RM-Multiple-Family Residential—was published. On June 9 the plan commission held the public hearing, which was well attended. One of the commissioners explained the history and plans of the shopping center, the studies that had been made, and the expected benefits to the community. He also emphasized the fact that the city council had already committed itself to the project. Representatives of the promoters' planners and consultants also spoke. The meeting was then adjourned to June 14. On that day the new classification, with a few changes, was unanimously adopted. The commission directed the city attorney (who was also the secretary of the plan commission) to draft an ordinance applying the new classification to the designated area.

On June 19 the action shifted back to the city council. The plan commission presented its recommendation that the new amendment to the zoning ordinance and the ordinance applying the classification be adopted. There was no discussion and both measures passed unanimously.

This action, thirty-five days after the project was announced, completed the city's obligation with regard to zoning changes. The council then began to implement its obligation to provide off-street parking, as stated in the May 15 "resolution of intent." As will be explained later, the promoters had most of the land in the project site under option to purchase. The promoters wanted the city to buy from them a substantial part of this land to be used for mu-

nicipal parking lots for the project. At this meeting the council, by motion, authorized the parking commission and the city attorney, as a committee, to approve the terms of the options for the parking-lot land, and "requested" the promoters to exercise the approved options and convey the land to the city at the promoters' cost. In October 1962 an engineering firm was hired to prepare a feasibility study for the parking revenue bonds. In February 1963 the city vacated the streets and alleys traversing the project site. On June 10, 1963, the plan commission approved the feasibility study for the revenue bonds; and four days later the council authorized the mayor to enter into formal contracts with the promoters for the purchase of the parking-lot land, and the same day approved the ordinance for the issuance of 3,200,000 dollars worth of revenue bonds. On June 28, 1963, the city purchased the land from the promoters at a cost of 1,642,000 dollars. The Center Circle development was opened for business in the late summer of 1964.

This is the public record of Center Circle. The timetable of official decisions does not reveal too much of what the "plan" was about. But it does show quite clearly that the Center City government was perfectly satisfied in its own collective mind that its initial decision endorsing the "plan" was correct. After the "resolution of intent" on May 15, 1961, the implementing public decisions moved smoothly and quickly. The city fathers never wavered from their initial judgment that the "plan" was good for the people of Center City.

What was this "plan" that commanded such unanimous respect and agreement?

C. Center Circle—"Planning in the Public Interest"

Center Circle, like other urban redevelopment projects, involved many familiar downtown planning issues: the allocation of land uses within the project site; the impact on developing land uses in the areas adjacent to the project; traffic circulation which includes patterns of movement through and around the central business district as well as into and out of the district; and the perennial problem of downtown parking.

The city had available most of the traditional tools for dealing with these questions. A municipal plan commission had been in existence since 1945. The commission membership consisted of the mayor, the president of the board of local improvements, the commissioner of public works, the chairman of the zoning board of appeals, and six citizens chosen by the mayor with the approval of the city council. No paid technical staff was provided, although subsequently one of the city attorney's jobs was to serve as secretary to the commission.

About 1948 a community plan committee was formed for the purpose of promoting the preparation of a comprehensive plan for the

Leesberg-Center City area. The program was financed through public subscription and from appropriations by ten local taxing bodies as well as the state university. A city planning firm was employed, and in June 1950 its study, entitled *Comprehensive Development Plan for Leesberg-Center City*, was released. The study contained detailed recommendations concerning the future development of the Center City business district, and proposals for traffic circulation patterns in and around the district.

In November 1950 the Center City City Council adopted a comprehensive zoning ordinance and map for the city. This ordinance and map, as revised from time to time, has been in effect since that date. Ten years later, in August 1960, a nationally known planning firm completed for the State Division of Highways a study entitled *A Major Street and Highway Plan for the Leesberg-Center City Urban Area*. This study included a long-range plan for the traffic circulation system in the Center City central business district.

The city, then, had some experience with professional planning and had available to it independent professional studies concerning the over-all growth and development of the community. One of the striking aspects of the planning for Center Circle is that despite the fact that the proposed project would drastically affect the future growth and development of the entire downtown area, and would commit a substantial segment of the community's resources to a particular pattern of uses, the city not only chose not to conduct any new independent planning studies, but also apparently ignored those independent studies available to it. The basic economic, engineering, and planning studies for the project were done by two large consulting firms hired by the promoters of the project. A summary of their findings in support of the project was released in a report entitled *Downtown Center City—Project Summary*, dated May 1961. The report gave no indication that these independent professional studies were utilized during its preparation.

Further, there is no evidence that the plan commission as a group was aware of the proposal, officially or otherwise, until the "informal" meeting of the commission in the mayor's office on May 22, 1961, one week after the city council had publicly gone on record in favor of "the plan"; "the plan" could be none other than the promoters' *Project Summary*. Nor is there evidence that the plan commission took into consideration any of the earlier independent studies during the period that it considered and recommended approval of the Center Circle project. If they had, they would have seen that "the plan" outlined in the *Project Summary*, when compared with the detailed recommendations of the earlier studies, revealed areas of direct conflict.

1. TRAFFIC

The principal traffic problem was one of convenient circulation

east and west through downtown Center City. The downtown area was composed essentially of three parts. The principal business district centered around a two-block stretch of stores on Main Street, running east and west. Main Street, a few blocks west of the two-block stretch, angled into First Avenue, another east-west street which then narrowed and curved west. To the north of the two-block stretch for about five blocks was an area of mixed commercial and light industrial uses. The area was generally poorly developed and somewhat run down. It was bounded on the north by Audrey Avenue, running east and west. South of the Main Street shopping area for two or three blocks was an area of mixed commercial and public uses—courthouse, post office, city hall, hotel, church, funeral parlor—and further southward was a residential section, with multiple family uses shading into single family. Running east and west through this area, and two blocks south of Main Street, was Indiana Street, the major east-west street through central Center City, providing direct access to the western part of the city, to the university, and to the city of Leesberg.

The 1950 *Comprehensive Development Plan* proposed a loop system for traffic circulation in the downtown area. First Avenue, where it intersected with Main Street, would be extended northeasterly in a semicircular fashion to form the northern segment of the loop; Indiana Street, designated as a major arterial street, would be widened and would form the southern segment. In addition to providing convenient movement around the business district, the study pointed out that the loop concept "will allow the north part of the Center City business district to be regenerated. . . . It is recommended that the north loop of the traffic system (First Avenue extended) be acquired first and the parking lots in this area developed first."

Nothing came of the proposal to extend First Avenue. Indiana Street continued to serve as the major east-west artery through the business area and by 1960 had become the second most heavily traveled east-west street in the city. In 1959 the traffic volume on Indiana Street at the point where it approached the western edge of the downtown area was approximately 10,000 vehicles per day.

The importance of improving the carrying capacity of Indiana Street in the downtown area was pointed out in the state's 1960 *Major Street and Highway Plan*.

The early development of Indiana Street . . . is highly desirable to reduce traffic circulation in the central business district. Particular emphasis shall be placed upon developing Indiana Street . . . as [a] preferential street . . . as soon as possible. This will . . . encourage the utilization of [this street] . . . by through traffic with the concurrent reduction of this traffic from nearby streets.

The state had already approved a contract, entered into in 1960, between the university and the city to widen Indiana Street where

it traversed the university. Improvement of Indiana Street from the university area eastward along the southern edge of the business district was given top construction priority in the state report.

What was the impact of the Center Circle project on the planning for traffic circulation? The major structure of the project as planned (and as subsequently built) *sat astride* the Indiana Street right-of-way for almost the entire three blocks of its downtown length. The plan called for dead-ending Indiana Street at the point where it entered the western part of the project, vacating the next three blocks eastward (with the exception of a half block to be used as an entrance drive), and then dead-ending the other end of Indiana Street at the east end of the project. In other words, instead of Indiana Street being improved (as called for in the state report) to better serve the burgeoning east-west traffic, it was now to become a dead-end feeder street for the project.⁷

The project planners recognized, however, that something would have to be done about traffic movement in the vicinity of the project. They proposed that the city undertake as one of its obligations "improvements to access and street widening essential to the success of the development." These improvements turned out to consist of widening and four-laning the three-block strips on the east, south, and west sides of the project, at an estimated cost of 265,000 dollars. No proposal was made for solving the east-west throughway problem.

The impact of the project on traffic circulation has already been felt on Main Street. In the 1950 *Comprehensive Plan* it was pointed out that the practice of diagonal parking on Main Street was not conducive to a free flow of traffic. Only one lane of traffic was left open each way, and every time a car backed out of a parking place, the traffic on that side of the street would have to stop. The *Plan* recommended parallel parking. For fourteen years the city did not act on the recommendation, in part because some city officials felt that the public would object, and in part apparently because of resistance from the downtown merchants; the change to parallel parking would mean the loss of twenty-four on-street places. In 1964, with Indiana Street dead-ended and with widening underway on the Center Circle project's perimeter streets, the traffic situation finally deteriorated to the point where the city acted to implement the recommendation.

At first, the reaction to the improved traffic movement on Main Street was favorable; even the downtown merchants seemed

⁷ It is of interest to note that the plan commission several years later did get around to recommending adoption of the state's 1960 *Major Street and Highway Plan*. During the course of the plan commission discussions it was dryly pointed out that the *Plan* would have to be amended since Indiana Street as well as other streets had already been vacated in the Center Circle tract. As amended, the *Plan* was adopted by the city council.

pleased. Less than a year later, however, there was a business decline on Main Street (estimated by some to be as high as thirty per cent) and the merchants began having second thoughts. Worried about their future and in particular their relationship to the project, they started agitating for the old angle parking on Main Street. This in turn produced in the local newspapers' "letters" columns a flurry of protests by those who had come to enjoy the improved traffic movement on Main Street. Parking was not their problem; there was ample parking in the lots at Center Circle or at the stores in Leesberg. With Indiana Street blocked by the project, what the public wanted was an east-west traffic carrier. So far angle parking has not been restored to Main Street.

2. ZONING

The nine-square-block project site itself (one block south of Main Street) did not present any particular problem with regard to zoning. Most of the area included in the site was zoned B-2, Central Business. The other type of business district provided for by the Center City zoning ordinance was B-1, Neighborhood Business. The B-1 classification expressly provided for shops and stores for the conduct of retail business. B-2 permitted "any use permitted in B-1 district" plus additional heavier business uses: hospitals, laundry plants, railroad stations, and heavier residential uses (such as multiple family dwellings and motels).⁸

Although the existing zoning was satisfactory for the project site itself, the zoning for the blocks adjacent to the site presented a serious problem for the promoters. The adjacent blocks (with one minor exception) were also zoned B-2. This meant that future competitors could occupy land on the perimeter of the site and capitalize on both the influx of retail shoppers and the municipally supplied off-street parking. It will be recalled that the principal reason why the chain wanted to locate in the central business district rather than build a conventional shopping center on the outskirts of the city was to avoid direct competition. The potential seriousness of this threat was alluded to in the promoters' plan; one of the actions required from the city was "the revision of the City's zoning ordinance in order to protect the commercial core of Center City."

Any doubt as to what the promoters had in mind was dispelled at the plan commission meetings held in May and June 1961. The proposed new zoning classification—multiple family residential—and its application to the area adjacent to the site would exclude business from the areas on the east, south, and west of the project site and authorize multiple family residences instead.

⁸ In addition the ordinance provided two industrial districts, I-1, light industrial; and I-2, heavy industrial. There was no shopping center classification.

The history of this concept in zoning is enlightening. Following the plan commission meeting on May 22, 1961, members of the commission met informally in the office of the mayor to discuss the promoters' proposal for rezoning the perimeter areas. The commissioners agreed to meet again the following night for further discussion. On May 25 a notice was published in the local newspaper announcing a public hearing to be held on the afternoon of June 9 to consider the adoption of a new zoning classification and its application to the perimeter properties. The commission chairman opened the public hearing on June 9 by asking X, the lawyer, who was a member of the plan commission, to explain the history of Center Circle and describe the plans for the development. In the course of his talk X stressed the necessity of keeping the proposed business extension "closed in tight" by a buffer of land that could not be put to retail use.⁹ He pointed out that, in light of the proposed cost of the development to the promoters, "\$5 million, \$6 million, \$7 million, it is reasonable for these to expect some reasonable protection to ensure the success of their operation." He closed by reminding the commission and the audience that the city council had already publicly declared itself committed to the plan. X then introduced a representative of the promoters' economic consultants, who reported on the economic survey, and congratulated the city and the promoters for their efforts. Next X introduced a representative of the promoters' planning consultant, who also congratulated the city and the promoters. Both X and the chairman of the plan commission joined in explaining the expectation of additional sales tax and real estate tax revenues that would accrue to the city as a result of the proposed development. After some discussion regarding the details of the proposed zoning classification, and the specific properties to be included in the zone, the chairman announced that the commission would take the matter under advisement, and forward its recommendations to the city council. The meeting then adjourned. Following the meeting the commission met privately with the promoters' consultants for several hours.

The plan commission met again on June 14. They now had before them specific ordinances incorporating the new classification. The zone was to be called "RM-Multiple Family Residential—High Density." Permitted uses were to be single and multiple family residences, and public and semipublic uses, such as churches and playgrounds. The ordinance also provided for "Conditional Uses When Authorized by the Plan Commission and City Council." Included in the conditional uses were filling stations, undertaking establishments, and commercial parking. Restaurants and shops could be authorized only if they were part of "a supporting facility" and only if all entrances were from within the building and there was no exterior advertising (except "a four square foot name plate").

⁹ Quotations are taken from the newspaper account of the hearing.

A second ordinance was presented, applying the RM classification to the properties in the blocks surrounding the Center Circle project on the east, south, and west. The ordinance then singled out some of the listed properties and stated that these tracts were "restricted to conditional uses," citing the relevant provision of the proposed ordinance creating the RM classification.

Why did the RM classification contain the "conditional uses" provision with its curiously specific categories? What was its purpose and why should the promoters agree to any exceptions in the classification? The answer seems readily apparent. The specifically authorized conditional uses exactly described the commercial establishments which were already situated in the area designated for the project site. If the promoters were to take over these sites, some provision would have to be made for the relocation of these businesses. The more desirable locations, of course, would be adjacent to the shopping center. And, in fact, in the ordinance applying RM, the specific relocation sites had already been selected.¹⁰

After some discussion and minor amendments, the plan commission unanimously voted to recommend the ordinances to the city council. On June 19, 1961, the commission's proposed ordinances were adopted by the city council without discussion. It was not long, however, before the difficulty in maintaining the protective zoning became apparent. Eventually the RM zoning became a major headache for the plan commission, causing the resignation under protest of one of the commissioners and open battling on the floor of the city council.

The inroads into the zoning began innocently enough in October 1961 with a request to rezone a lot on the outer fringes of the perimeter area from RM to B-2 to permit a barber shop. Neither the plan commission nor the city council saw any particular reason for not granting the request. The property was located several blocks away from the actual project site, and presumably the promoters did not object to the change.

Early in January 1962, another request for rezoning was made. This involved a large tract on the east side of the project and immediately across the street from Center Circle. The proposal was to use the tract for a new-car agency. In this case the promoters of Center Circle specifically supported the change; X participated in the preparation of the proposal and in obtaining the swift approval of both the plan commission and the city council.¹¹

¹⁰ At a later date the plan commission was requested to consider dropping the conditional use provision. One of the conditional uses was eliminated because the commercial establishment had already relocated. Two other conditional uses were not eliminated because those particular businesses had not yet reached decisions about relocating.

¹¹ At the plan commission meeting at which the request was considered, X stated for the record that he would abstain from voting.

Late in 1962 two cases involving the RM classification arose; both created some controversy. The first involved a business to be relocated out of the project area. The business had found a new site a block south of the project site, in an area still zoned R-2, multiple family residential. The promoters decided that the easiest thing to do would be to extend the RM classification; an additional "conditional use" would have to be added to the ordinance. Without any notice, and without holding a public hearing, the plan commission considered and approved the proposed changes and forwarded a recommendation for the changes to the city council. At the council meeting on November 19 the proposal came under fire. A member of the audience questioned the plan commission's acting in secrecy. The city attorney responded that the commission had the authority to act in "executive session." It was pointed out that there was no provision in the RM zoning classification requiring notice or hearings for consideration of a "conditional use." A councilman inquired as to the identity of the business seeking the zoning change. X, the lawyer, serving as acting chairman of the plan commission, refused to reveal the information on the floor of the council meeting, but reminded the council that delaying action on the zoning changes would cause delay to the Center Circle development. After some heated debate, the council eventually approved the recommendations of the plan commission, thus allowing the business to move to its new site. The council did add a direction to the plan commission either to drop the conditional use provision from the RM zone or else spell out a fifteen-day notice requirement. The notice requirement was subsequently added to the ordinance.

At about the same time another request was before the plan commission. This one involved a change from RM to B-2 for a corner tract a block west of the Center Circle development. The proponents, two local attorneys, desired to build a law office. The request came before the plan commission on November 12. The commission, for reasons that are not entirely clear, voted *against* the change. At the council meeting of November 19 the city attorney presented a prepared ordinance to the council providing for the granting of the requested change, and containing a statement to the effect that the plan commission had *approved* the request. When the inaccuracy of this statement was called to the attention of the council, the city attorney assured the council that there had been a typographical error; the word "not" had been inadvertently omitted. The council, after permitting an amendment to insert the missing "not," voted to adopt the ordinance *granting* the requested change.

The next day one of the members of the plan commission (a leading banker) wrote the mayor, tendering his resignation. The letter referred to the incident of the previous evening, and expressed serious doubt that the inaccuracy was in fact a typographical

error. The banker went on to point out that there had been other instances involving enforcement of regulations and "spot zoning" requests that served to shake his faith in the city's desire for adequate planning and zoning enforcement. He closed with the statement that in the future he would work for effective and impartial zoning and planning from outside the plan commission.

The resignation did little to retard the piecemeal treatment of the RM zone. One or more changes in the zone were considered by the plan commission or city council in meetings on May 27, 1963; June 3, 1963; July 22, 1963; August 5, 1963; October 29, 1963; November 11, 1963; January 13, 1964; and February 10, 1964. In each instance the plan commission recommended approval of the requested change into or out of the RM zone, and with few exceptions the city council granted the recommended request.

By February 1964, however, the plan commission began to evidence a weariness of the whole operation. At the meeting of February 24 the plan commission considered a proposal to extend the RM zone to take in additional blocks all around the perimeter—in effect, to deepen the zone. After a lengthy hearing, attended by some fifty interested persons, the commission voted to refer the whole matter to the zoning committee (appointed by the mayor) for further study. At the same meeting they turned down a request to rezone a tract within the RM zone to B-1 or B-2. At the next meeting, on April 30, 1964, the commission agreed to rezone an RM tract, but only after lengthy discussion and two dissenting votes. The old pattern had not yet been broken, however; further changes were considered and approved in two meetings in May.

The problem the plan commission and the city council, not to mention the property owners involved, had with the RM zoning stemmed directly from the purpose for which it was conceived. It was designed to protect the economic position of the merchants who would occupy the Center Circle stores by preventing competing businesses from establishing themselves in the adjacent blocks. Thus it was not to exclude businesses that were not directly competitive, and which might serve as feeders to attract additional customers to the area. Nor was it to prevent businesses already established within the project site from being relocated in the periphery—an enticing opportunity that apparently aided the promoters in acquiring needed properties.

Even under the best of circumstances, and in the implementation of a well-conceived and carefully documented plan for the over-all growth and development of a community, individual zoning decisions are difficult exercises in the art of judicious line drawing. Under the circumstances involved in the RM zoning, it seems quite probable that those members of the plan commission and city council without a direct economic or political interest in the Center Circle development found decision making awkward, if not downright uncomfortable.

A second factor may have contributed to the frequency with which the RM zoning was amended and reamended. Early in 1962 the plan commission and city council denied a request by certain property owners for a change from multiple family residential (R-2) to business zoning on a tract on Indiana Street near the university. The property owners took their request to the courts, and in October 1962 the circuit court ruled against the city. It held that the zoning classification, under the circumstances and in the light of the surrounding uses was, in the usual judicial verbiage with which the courts disguise their city planning activity, "arbitrary, confiscatory, and without reasonable relation to the public health, safety, morals and general welfare." The case was eventually heard in the state supreme court; the trial court's decision was affirmed.

The possible parallel between this case and the RM situation did not escape the attention of either the petitioning property owners or the city officials. In several instances the property owners had suggested resort to the courts in the event of an unfavorable vote. As a result, some of the city officials were, at the least, somewhat gun-shy.

3. PARKING

The significance of the program of exclusionary zoning cannot be fully appreciated until viewed in the context of the parking problem for Center Circle, and the solution proposed by the promoters and adopted by the city.

In the promoters' *Project Summary* one of the obligations listed for the city was "the provision of off-street metered parking facilities." It was explained that adequate parking facilities are of vital importance to any major retail development, but that "the high land cost of this downtown property will not allow the development to provide free parking." It was argued that pay parking facilities can be accomplished best by municipal rather than private action for three reasons: (1) the parking benefits all downtown stores, not just the project area; (2) the power of eminent domain may be required to acquire adequate parking area; and (3) the parking facilities can be financed on more favorable terms by a municipality than by private individuals.

The need for expanded off-street parking facilities in the downtown area had long been recognized. The 1950 *Comprehensive Development Plan* had urged the establishment of parking lots in the north part of the downtown area as a priority item, and in addition had recommended locating seven off-street parking lots in the nine-block area which later constituted the Center Circle development. These latter lots were to provide a total of 670 spaces; four of the lots were to be municipally owned, three were "to be developed by private enterprise."

The promoters, in their *Project Summary*, proposed that the city

provide approximately one thousand parking spaces for the Center Circle project. These spaces would be within the nine-block area proper. It was estimated that the land the city would have to buy would cost about three dollars and twenty-five cents per square foot (the promoters' cost), or about 999,000 dollars total. This would be financed by a new bond issue for parking facilities, making it necessary to refinance a previous off-street parking facility bond issue, at a cost of 207,000 dollars. This, plus other costs such as malls and walks, meters, and site preparation, ran the *total bond issue needed* to 1,591,000 dollars.

The total cost of financing the bond issue was not calculated in the *Project Summary*. Nor was there a detailed explanation of how the bond issue would be paid off. The report stated that the estimated annual parking revenue from the lots in the project area would be 165,800 dollars, and from other off-street lots, 10,000 dollars. The average annual bond expenses were estimated to be 87,000 dollars. When on-street parking income and administration expenses were included, the conclusion was that there would be a net annual income to the city in the amount of 58,100 dollars. The bases for the income figures were not shown, nor was the estimated percentage of utilization. The report concluded that "it appears that the parking bonds can be supported by the expected parking revenue; however these preliminary estimates should be checked by municipal bond experts."

Apparently on the strength of the *Project Summary's* figures, the city council, on May 15, 1961, as part of the resolution regarding the Center Circle plan, authorized the off-street parking commission of the city to undertake a revenue bond issue for additional off-street parking in and near the downtown central business district, and to obtain necessary engineering and legal services. And, as noted earlier, on June 19, 1961, the council passed a motion, offered by the chairman of the off-street parking commission, authorizing the parking commission and city attorney, as a committee,

to approve the terms of options, including price, for the acquisition of real estate that may in the future become a part of the parking system of the City . . . in connection with the extensions of the central business district, and that [the Center Circle promoters] . . . be requested to exercise those approved options and convey to the city . . . upon payment of their costs from proceeds made available through a sale of parking revenue bonds.

The legal effect of this motion is open to question. The general ordinances of the city provided that:

No member of the city council, or other officer of the city, shall expend or contract for the expenditure of any money belonging to the city, or incur any liability on the part of the city for the improvement of any street, sidewalk, alley, building or other property belonging to or under the con-

trol of the city, unless authorized to do so by ordinance or resolution of the city council.

This type of provision, that the city bind itself only by formal ordinance or resolution, is a not unusual safeguard against hasty action by the governing body of a municipality. The motion of June 19 was not in the form of either an ordinance or a formal resolution.

In any event, the council showed no inclination to reconsider its position. In September 1962 a report entitled *Center City Central Business Area Extension—Parking Facilities Analysis* was prepared "for presentation to the City of Center City and the Center City Parking Commission." The report was authored by the promoters' economic consultants. It pointed out that one of the major assumptions on which the analysis was based was that the "new parking facilities to be developed in conjunction with Center Circle will be . . . operated for the maximum convenience of Center Circle shoppers." On the basis of an assumed 1,100 metered spaces to be provided for Center Circle, the study concluded that the total bond issue needed, for the new facility and for refinancing the old parking bonds, was 2,164,000 dollars. This figure was 573,000 dollars higher than the *Project Summary* estimate of a year earlier.

A month later the city council hired a local firm of consulting engineers to do a feasibility report on the bond issue and the parking situation. A favorable report would be a prerequisite to selling the proposed bonds. In the spring of 1963 the engineers issued their *Feasibility Report on Public Parking for Center City*. Once again the estimated cost to the city for its share of the Center Circle project had risen. The engineers calculated the cost of the parking facility—land, construction, engineering—to be 2,197,690 dollars, exclusive of refinancing costs. Refunding of the old bonds, interest payments during the construction period, and various administrative expenses added another 576,944 dollars. This total raised the city's ante more than 1,000,000 dollars over the figure given in the *Project Summary*.

Despite the increase in costs, the report concluded that the project was financially sound. The bonds could be retired in thirty years from parking revenues alone. The estimated debt coverage was 1.78; not only would the project be self-sustaining, but it would provide a source of income to the city.

The engineers had as the basis for their conclusions a series of projections about the future economic development of Center City. Some of these projections were set out in the *Feasibility Report* in the usual welter of graphs, charts, and numerical columns. If one were patient enough, he might deduce from this material that the report projected an average day peak utilization of the proposed Center Circle lots at 81 per cent in 1965 and 90 per cent in 1969. At the time the report was prepared (1963), the actual peak

utilization of the existing parking system was 43 to 54 per cent. Presumably the projected parking utilization figures were based upon the projected annual sales figure for Center Circle. For the year 1965 this figure was given as 12.5 million dollars, which works out to be about 60 per cent of the estimated total of *all other downtown sales* as projected in the report. In other words, the 1965 projection gave the Center Circle shops alone over half as much in sales as all the other stores in downtown Center City combined. Curiously enough, the drafters of the report did not seem to think that there would be any adverse impact whatever on the downtown merchants even if Center Circle was able to take that large a share of the market; the graph of the projected "typical downtown sales" for 1965 showed a line with a steady upward trend unaltered by the advent of Center Circle. Nevertheless, on the basis of the *Feasibility Report* the city council had, by May 28, 1963, obtained a purchaser for the bonds, and on June 14 the bond ordinance was formally approved and the bonds were issued.

The issue was for 3,200,000 dollars, which included funds for three other lots besides those in the Center Circle complex. (One of the three was a lot immediately adjacent to Center Circle, and was designed to handle overflow from the project lots.) Interest on the bonds would eventually add up to 2,434,683 dollars, so that the total capital cost of the parking lot project would come to 5,634,683 dollars. The author of the early *Project Summary* was obviously correct when he suggested his 1.5 million dollar figure was a preliminary estimate and should be checked.

By the end of the month the city had paid the promoters 1,642,272 dollars out of the bond proceeds and had become owner of a major portion of the nine-square-block area.¹² Thus the effect of the transaction was that Center City bought the bulk of the property in the nine-block area at prices negotiated between the promoters and the private owners, at a net cost to the city which exceeded by more than one-half million dollars the figure of 999,000 dollars originally proposed in the promoters' *Project Summary*.

The 3.2 million dollars in bonds issued by the city were in the form of revenue bonds, and as such were obligations against the revenue of the parking system only, and not general obligations of the city. The state law then in effect governing the issuance of bonds for financing municipal off-street parking facilities provided that "such bonds shall be payable solely and only from the revenues to be derived from the operation of any or all of [the] . . . parking facilities . . .," with an exception for revenues received from advertising signs placed on meters.¹³

¹² The city had already sold to the promoters for \$180,000 the city property that was in the project area and formerly used for parking and was now needed by the promoters for their building.

¹³ The statute was subsequently amended to authorize payment of parking facility bonds from "general tax funds, special assessments, special

But the Center City bond ordinance contained an additional exception. After the usual paragraphs spelling out the funding and amortization schedules, the ordinance stated:

In addition to the foregoing the bonds shall be redeemable at par and accrued interest and without premium, in whole or in part, but only on May 1, 1966, from moneys in the Bond Reserve Account received on account of any contract between the City and any company, firm, association or person entered into for the purpose of inducing the City to acquire and construct any portion of the facilities acquired or constructed from the proceeds of these bonds.

This rather cryptic provision took on added meaning when the first of the required annual administrative reports for the expanded system was released in the spring of 1965.¹⁴ This report covered six full months and part of a seventh of operation of the Center Circle parking facility, which had opened in the fall of 1964. The average monthly revenue anticipated in the 1963 *Feasibility Report* from the Center Circle operation, for the year 1965, was 19,630 dollars; the actual monthly revenue for the first seven months of operations averaged under 6,000 dollars. On the basis of the estimates in the 1963 *Feasibility Report*, the actual revenues produced between 24 and 29 per cent of the anticipated 1965 revenues. The administrative report indicated that unless drastic improvement was obtained, the parking system might not even be able to meet the interest payments (which amounted to 136,000 dollars in 1965), much less retire the bonds.

Substantial consternation was evident among the city fathers following issuance of the report. There was even some talk of a direct subsidy from general revenue funds, although the possible political repercussions of such a step kept discussion to a minimum.

One recommendation that was shortly implemented was the elimination of the system of paying parking charges to an attendant at the entrance to the lots; instead the lots were completely metered, and meter enforcement was materially stepped up. As of this writing, it remains to be seen whether these and similar steps will be enough to save the bonds from default, and whether the "contract for inducement" provision will be called into play.

D. *The Public Cost of Private Improvement*

Center Circle was lauded by its promoters and supporters as an outstanding—indeed unique—example of private redevelopment; a

taxation, revenue bonds, parking fees, special charges, rents or by any combination of such methods."

¹⁴ The bond ordinance contained a requirement, imposed by the bond houses which purchased the issue, that an annual study would be made of the operation of the system. This was in addition to the annual audit of the parking commission's books.

demonstration of what could be done by private initiative without the crutch of public power and public funds. We have already looked at some aspects of the role that government in fact played in the development of Center Circle. In view of the widespread belief that this was indeed private enterprise at its best and on its own, it is necessary to examine more closely the exact extent of the city's financial commitment to Center Circle.

Center City has a general fund budget involving something over a half-million dollars in annual expenditures. This is the budget that provides for the police and fire departments, the operation of the city buildings and utilities, and the numerous other activities of the government of a small city. The largest source of income to the general fund is the general property tax, followed closely by the retailers' occupation tax (sales tax), and the utility tax. Each year an annual report is published, entitled *Center City—Audit Report*, in which the year's financial operations under the general fund are summarized. This report, however, reveals only part of the city's fiscal picture.

The millions of dollars committed in support of the Center Circle project through the off-street parking operation, previously described, were channeled through a separately maintained series of accounts known as the motor vehicle parking system fund. In addition to this fund and the general fund, there are five other separate "funds" through which the city operates its finances: a special assessment fund; a storm drainage construction fund; a motor fuel tax fund; a municipal building construction fund; and a firemen's and policemen's pension fund. Each of these funds is separately maintained, separately audited, and separately reported on. Each, with the exception of the pension fund, was utilized by the promoters, with the assistance of the city administration, in the financing of Center Circle.

1. THE SPECIAL ASSESSMENT AND MOTOR FUEL TAX FUNDS

These funds were the vehicle through which the street improvements circling the Center Circle project were accomplished. The special assessment fund was originally established to facilitate the financing of local street improvements. The typical procedure involves a determination by the city to undertake a specific project, usually with the consent of the adjacent property owners; the selling of ten-year bonds by the special assessment fund in sufficient amounts to pay for the project construction; and then the retiring of the bonds from monies received in part by assessing the properties adjacent to the improvement and in part from the motor fuel tax fund.

The motor fuel tax fund is the recipient of money paid to Center City, in accordance with state law, as the city's share of the state's motor fuel tax. This amounts to about 170,000 dollars a year.

The money is used by the Center City administration to defray part of the costs of local improvements under the special assessment fund, and to pay the city's share of other road improvements, such as those shared with the county or other governmental units.

In the case of Center Circle, it was noted earlier that the promoters' *Project Summary* called for "improvements to access and street widening essential to the success of the development." The estimated cost of these improvements was given as 265,000 dollars. The actual work involved the widening and four-laning of the streets on each side of the nine-block site. The job was undertaken in two parts, each part of which was financed through the special assessment fund. The construction cost for the first part, roughly half the improvements required, was about 316,000 dollars, of which 13,000 dollars was to be paid by assessment against the adjacent property owners, and the balance of 303,000 dollars by allocations from the motor fuel tax fund. The second part of the improvement is estimated at slightly less, 297,000 dollars, substantially all of which will be provided for by fuel tax monies.

When the cost of retiring the bonds, including principal and interest, is added, the motor fuel tax fund will pay about 745,000 dollars over the next ten years for the Center Circle "access and street widening essential to the success of the development."¹⁵ This represents a commitment of over 40 per cent of the city's street improvement money for the next ten years. If other major street improvements are to be undertaken, or if the many minor improvements are to be continued, the money will presumably have to come from general fund revenues, or from substantially increased assessments of affected property owners.

The general fund has already felt the impact of the drain on the street improvement money. In 1957 the city attorney and the city engineer became regular salaried employees of the city. Thereafter the special assessment fund reimbursed the general fund for the legal and engineering services provided by these employees in connection with street improvement projects. In 1962 this amounted to about 41,000 dollars, which was paid into the city's general revenues from money in the special assessment fund and the motor fuel tax fund. The audit report of the general fund for 1963 noted that neither of these funds had made a transfer to the general fund for 1963, and estimated the amount owed the general fund at 40,000 dollars. The following year's report carried a similar notation. There is no reason to believe that the financial prospects of the motor fuel tax fund, and hence the special assessment fund, will materially improve during the next ten years, and no reason to expect that the transfers will be resumed until they do. By that time the general fund, and the taxpayers who support it, will have

¹⁵ The *Project Summary's* estimate was once again on the low side, this time by some 280%.

in effect underwritten the operations of the two street improvement funds to the extent of about 400,000 dollars.¹⁶

2. THE STORM DRAINAGE CONSTRUCTION FUND AND THE MUNICIPAL BUILDING CONSTRUCTION FUND

The amount committed to Center Circle through these funds was relatively small, about 12,000 dollars, but the method is instructive. The storm drainage construction fund was established in 1959 as a result of the sale of 2,275,000 dollars in bonds, the proceeds from which were earmarked for specific drainage works and improvements in various parts of the city. These improvements turned out to cost less than the amount obtained from the bond sale. In 1963 the city council authorized the transfer of the uncommitted balance in the fund to the municipal building construction fund, a separate account established to build up a reserve for the eventual erection of a new city hall.

At the same time, and before the transfer was made, the promoters found that about 31,000 dollars in drainage works would be required at the Center Circle site to handle the increased runoff. This work was subsequently paid for from the funds remaining in the storm drainage fund on a cost-sharing agreement between the promoters and the city. The fund was subsequently reimbursed for 19,000 dollars, leaving a net reduction in the amount available for transfer of about 12,000 dollars.¹⁷

3. THE GENERAL FUND

In years past, the motor vehicle parking system fund had transferred its annual surplus to the general fund. In 1963, for example, there was a transfer of 31,000 dollars into the general fund. The following year no transfer was made. The auditors noted this fact in their report and stated that, in view of the new bond issue, "the MVPS Fund has to build up a reserve to meet with the legal requirements of the new bond issue. Until there is an adequate reserve the MVPS Fund will not be able to transfer parking meter money to the General Fund."

Furthermore, during the construction of the Center Circle parking lots, some 18,700 dollars in general funds, allocated for general street lighting, were used to provide lights for the Center Circle lots. In both of these cases the parking system, and through it

¹⁶ This assumes street improvements are continued at the same level as in the past. If the status of the funds necessitates a cutback in operations, then presumably the amount of required legal and engineering services will be reduced. Such a cutback might in the long run be more injurious to the citizens of Center City than the additional assessments required to continue improvement of the streets.

¹⁷ Another \$5,400 of the fund's balance was expended on two other minor projects unrelated to Center Circle.

Center Circle, was the beneficiary of funds otherwise allocated to the city's general activities. In view of the financial straits of the parking system, it is at best speculative as to when, if ever, the accounts will be righted.¹⁸

In addition to direct costs to the city for the Center Circle project, such as those described above, there were undoubtedly numerous indirect costs, although in many cases it would be impossible to isolate exact figures. One example will suffice. As a result of Center Circle, the county's tax roll lost some 352,240 dollars in taxable property. This was the land, originally privately owned, that became the parking facility for Center Circle. As it was now owned by a governmental body, it was no longer available for taxation.¹⁹

In summary, governmental support to the Center Circle project consisted of 3.2 million dollars for parking; 745,000 dollars for street construction; a possible 400,000 dollar loss to the general city revenues resulting from the unreimbursed hidden administrative services to the street improvement funds; 12,000 dollars for drainage works at the site; 18,700 dollars for lighting; and an as yet undetermined loss, possibly as high as 31,000 dollars or more a year, by the general city revenues of surplus income earned by the parking system prior to the new bond issue. Thus the citizens and taxpayers of Center City participated in the Center Circle project to the tune of upwards of 4.5 million dollars; the promoters' *Project Summary*, upon which the decision by the city fathers to participate had been based, stated the city's financial contribution would be 1,591,000 dollars for parking facilities and 265,000 dollars for street construction, a total of about 1.86 million dollars. As the total capital cost to the promoters of the project (including buildings and land) was, according to their estimate, about 4.9 million dollars, it can readily be seen that Center City was virtually an equal, if unknowing, partner.

E. *The Politics of Planning in the Public Interest*

It took the city fathers of Center City fourteen years to eliminate angle parking on Main Street despite the fact that independent studies had long condemned this blockage of traffic. It officially took the city government only one council meeting to approve the Center Circle project. As far as the city and the promoters were concerned, the project became a reality on the night of May 15, 1961, when it was first announced. The city was not legally bound to

¹⁸ There was some manipulating of accounts within the general fund itself, as well as between funds. For example, about \$4,000 was transferred from one account in the general fund to another to enable the latter account to meet unanticipated costs incurred in connection with electrical improvements required at the Center Circle site.

¹⁹ This loss is to some extent compensated for by the increase in assessed value of the property remaining in private hands in the Center Circle site.

fulfill its promises to the developers, but the "resolution of intent" made clear that the council would consider itself morally bound and the unanimous vote demonstrated that those political leaders who favored the project had the political strength to carry out their intentions.

Subsequent events removed any doubts about the commitment of the city. During the next thirty-five days the plan commission and the council did as requested. By June 19 the critical zoning legislation had been passed, and the council had passed a motion committing itself to buy the land for the parking from the developers at their cost, and had set in motion the machinery to issue the parking bonds. Any potential opposition was quickly put in the unenviable position of having to get the council to take affirmative action to rescind its prior commitments.

Given the scope of this project and the city's long history of apathy, the council's action was, to say the least, amazing. One would have assumed, at the very minimum, a prolonged public controversy and several years of struggle. How, then, were the promoters able to gain such speedy public approval? What skills were needed to accomplish a feat of this magnitude?

In the summer of 1960 the department store chain had the favorable economic study. Prior to that time X and his group had privately sounded out a few of the city officials, including the mayor, about the project and had received a favorable response, particularly with regard to the city furnishing the parking. Apparently the chain regarded the assurances of public support as sufficiently credible; in the fall of 1960 a Delaware corporation was formed by the chain for the purpose of getting options on the land in the project site. X's law office was the corporate office and his secretaries served as the corporate officers. The elected officials officially knew nothing of these developments. No one except a small group knew where the development was to be located or its size. The landowners in the project area were not told about the project, but they were advised that the land was going to be used to help Center City. On the average, the price to be paid for the land was three dollars and twenty-five cents per square foot, which, in view of the character of the land, was very generous. Several of the landowners who were interviewed said that they were interested in helping Center City. The promoters, then, were in the happy position of being able to appeal to civic pride and at the same time to reward virtue handsomely.

The strategy worked. At the time of the formal announcement in May 1961, X was quoted as saying that all of the land on which buildings were to be erected was under option, with the exception of three service stations whose owners had agreed to co-operate. The land needed for parking presumably could be taken through the city's power of eminent domain if necessary, although the ap-

pellate court of one state has since held that condemnation by a city in a strikingly similar situation amounted to a conspiracy to wrongfully appropriate private property, entitling the property owner to injunctive relief.²⁰ As it turned out, condemnation proceedings were not necessary; all seventy-two parcels in the project site were acquired through negotiation, although the threat of condemnation apparently was used against a few recalcitrant owners.

There was one incident, however, which gave the promoters a few bad moments. Several of the parcels needed to complete the project site were owned by the city and were being operated as public parking lots. The city of course agreed to sell the lots to the promoters, but state law required that a sale of such publicly owned properties had to be advertised and submitted to public bidding. A local businessman, who had been trying without success to get the city to vacate an alley next to his place of business in another part of town, announced that he was going to bid on one of the lots. There was a flurry of negotiations, the alley was vacated, and the businessman withdrew from the bidding.

Once the land was under contract, the promoters were ready to obtain the necessary public support. In order to lessen the risk of any slip-ups, the promoters' planners and economic consultants prepared a detailed "battle plan," called the *Project Summary*. Under a section appropriately entitled, "Realization of the Plan," the *Summary* stated:

Now . . . the scale of operations must change into one which includes leadership from the City's elected representatives and its businessmen. Only through the wholehearted support of these factions will the project be able to realize its full potential In order to do this, it is necessary that the maximum potentials are fully comprehended, the aims endorsed, and their implementation given active assistance. . . . The City Council must now be prepared to lead jointly with the City's businessmen to guide the community in its acceptance of such a plan and its realization.

The initial support was to be an "endorsement of the concrete benefits to the City which will result from the plan." These benefits included shifting the commercial activity back to Center City, the "direct and indirect benefits to existing merchants," expanded employment, the rise in property values, and a heavy emphasis on a great increase in retail sales and tax revenues for the city. But in return for all of these benefits, the city was to supply the parking and improve the access streets. The report presented its economic studies and concluded that not only would the city be able to pay for these improvements but that the increased taxes would provide an annual net gain to the city of more than 200,000 dollars.

²⁰ Reel v. City of Freeport, 61 Ill. 2d 448, 209 N.E.2d 675 (1965).

On May 7, 1961, an informal presentation of the plan was made to certain interested individuals. This presentation included the promoters' printed "battle plan." Shortly before the public announcement of the plan, the council members were "apprised" of the project in a series of unofficial meetings; the unanimous vote on the night of May 15 speaks for itself. The project had not been officially before the city government, there were no independent studies, and the council members relied completely on the representations of the promoters and their group. Nevertheless, step one of the "battle plan" was accomplished that night—"the aims" were "endorsed" by the government.

At this point two of the potential obstacles facing the promoters were overcome: the individual landowners in the project site were under contract, and the political leaders were publicly committed to support the project. But much more would have to be done than merely getting the city's endorsement. As the "battle plan" pointed out, there had to be the "wholehearted support" of all "factions" in the city if the project was to be realized. This was accomplished through an extensive public relations blitz which began on the night of the announcement, continued unabated during the critical plan commission meetings in June, and reached its climax at the formal opening over three years later.²¹

The resolution of May 15, introduced by the city attorney, referred rather vaguely to "a plan." What was presented, however, were glowing and detailed descriptions, pictures, tables, and charts. The following day the two local newspapers carried numerous stories and displayed several large reproductions of artist's models of how the project was to look at completion. The chairman of the board of directors of the chain hailed the council's action as "one of the nation's truly great examples of local leadership recognizing the downtown urban problem and coming to grips with it."²² In return X described the vice-president of the chain as "a very civic minded individual" who "is strongly of the belief that the business district is the core of a city. He believes that this has to do with the pride and spirit of a city. He feels that business districts should not be allowed to deteriorate to become eyesores driving people out to outlying shopping centers." The newspapers

²¹ The formal opening was attended by some 4,000 to 5,000 persons, according to newspaper estimates. In attendance for the festivities were both the president and the board chairman of the national retail chain, and the Governor of the state. The two Senators sent personal regrets. There were the usual massed marching bands, speeches, and dignitary high jinks. Local police were put on special twelve-hour shifts for the four-day celebration. It was later announced that the chain had \$28,000 in sales the first day.

²² In a moment of candor at the formal opening some three years later, the board chairman stated that the chain had attempted to interest other cities in the Center Circle type of project, but "we have never before been able to get a city to do the job."

themselves picked up this great swell of civic pride. One of the full-page headlines proclaimed, "Save Center City's Business Was Basic Idea Behind Redevelopment Plan." The article confidently predicted that the "citizens of Center City can expect nothing but roses from the new downtown development project" Council members outdid each other in extolling the project.

Most significant was the way the promoters handled the Main Street merchants. The project to be constructed (initially called "Stage One") lies one block south of the Main Street merchants. The economic study predicted that the area could comfortably support 100,000 square feet of retail shopping space, but Stage One called for 234,000 square feet. Aside from the fact that Stage One itself might be overly ambitious, it raised acutely the question of the impact on the Main Street merchants. It would appear that these merchants, their business already depressed, could not help but lose further to competing stores within the site. In the past this group constituted a powerful political force for the status quo.²³

How did the promoters handle this potential source of opposition? At the time of the announcement it was repeatedly and stoutly maintained by the mayor and others that the increased flow of traffic and customers would increase the sales of these merchants. Of more importance was the repeated prediction that the final plans of the project would not only include the Main Street merchants but even extend one block north of Main Street. Half-page photographs of the artist's model showed the full extent of the plan with Main Street included in the shopping complex. Main Street itself was to be closed to traffic and absorbed into the shopping mall. The photographs showed several modern high-rise office and apartment buildings dotting the entire complex, and included models of a theater and civic center. It was confidently predicted that within ten years the Main Street merchants would be physically included in this great and wonderful project. In the meantime they would profit from the general rise in traffic and business.

The same intensive publicity continued at the plan commission meetings. The relationship between the project and the existing business district was stressed, with emphasis on the predicted high-rise apartment buildings. The economic consultant appeared and characterized Stage One as only a "pilot project for the downtown business district." Even the proposed RM zoning classification was explained in terms of helping the Main Street merchants. "Low-grade businesses" had to be prevented from springing up on the periphery of the project. In order for the project to expand

²³ *E.g.*, angle parking on Main Street was still in effect. For an insightful discussion of the role of the Main Street merchant in local politics, see WILLIAMS & ADRIAN, *FOUR CITIES—A STUDY IN COMPARATIVE POLICY MAKING* ch. 6 (1963).

northward and encompass Main Street, it would be necessary to "hold and increase the value of existing businesses." In other words, the Main Street merchants would surely suffer if business was allowed to expand to the east, south, and west of the project.

No specific date was set for the extension of the project north to Main Street. But the immediate purpose of the promoters was accomplished. The potential opposition from the Main Street merchants never materialized. In fact, those merchants who were interviewed seem to be optimistic as to their future. Unduly so? The RM zone has been increasingly riddled with selective zoning changes which will allow commercial development adjacent to the project site, contrary to the promises of the promoters. Talk of the extension of the project seems to have stopped not too long after 1961. In late 1963 the council passed an ordinance authorizing the construction of all-weather canopies over the sidewalks on both sides of Main Street to facilitate pedestrian traffic. This was a far cry from the earlier artist's rendition of the plans for Main Street, which gave the illusion of a mall, including the planting of trees and shrubs, lighting, and infrared heating. The only mention of the original plan was the rather neutral statement that the "decision to remodel [Main Street] was given impetus by the construction of the Center Circle shopping area." Two years later neither mall nor canopy had appeared. The only physical evidence of change on Main Street was the remodeling of a hardware store, including the extensive improvement of its rear entrance which faced away from Main Street and in the direction of Center Circle. About the same time the mayor appointed a citizens committee of downtown merchants and businessmen to study the downtown problem.

In any event, those who had a direct economic conflict with the project had been taken care of during the few short weeks after the announcement. There were other potential sources of opposition. Some might be worried about the increased traffic and congestion created by the project. Some would oppose the closing off of arterial streets. Some might be worried about development problems in areas adjacent to the site. Some might doubt the ability of the city to pay off the revenue bonds, and some might be opposed to the city providing a parking subsidy to a private development. Finally, some might be opposed to any change in Center City at all. Whether or not this opposition was real or imaginary will never be learned. The tactics of the promoters and their allies were sufficiently thought through and sufficiently well-executed that potential dissidents were never able to organize effectively. The people of Center City never really knew anything concrete prior to the announcement. When the project was announced, the publicity and the swift-moving governmental machinery of this heretofore lethargic town served to neutralize any potential opposition. Within just a little over a month's time, the basic public

decisions had been made. During that period if any citizen wanted to question the project, let alone oppose it, he was faced with the unanimity of all the elected public officials, the two newspapers, and the business and civic leaders.

Quite obviously the formation and execution of the Center Circle project required an unusual breed of promoters. Who were these men? What were their interests? And what were their connections with the local government?²⁴

Y, the merchant, who along with X formed the nucleus of the early "activist" group, died during the winter just preceding the ground breaking for the project. He had run a prosperous hardware store on Main Street but unlike his fellow business associates, he did not share their complacent attitude. He viewed Center City's situation realistically and quite early he became perhaps the single most significant moving force in the community to improve its economic development. It is reported that for three straight years he did little else than work for the Center Circle project.

The position of X is more complex. He is a descendant of one of the founding families of Center City and undoubtedly has a deep civic commitment to the city. He owned, along with another, the large hotel which was located in the project site. Not only was the hotel to remain, but it became the focal point of the project. The shopping center building was physically attached to two sides of the hotel. The main entrance to the hotel dining room and lobby now opened out onto a sidewalk cafe, which itself was an integral part of the shopping mall. The hotel in effect became an integrated unit in the Center Circle project, enjoying the economic benefits of such a relationship. In the summer of 1965, less than a year after Center Circle opened for business, X announced that he had sold his interest in the hotel, which he had had for over twenty years, to the retail chain. The price was not disclosed.

The two corporations which were used to effectuate the project operated out of X's law office. His secretaries were the officers of one corporation and he was the president of the other. One of these, the Delaware corporation previously mentioned, was used for the purpose of purchasing from the individual owners the properties needed for the project. This corporation subsequently sold a portion of the properties—the land on which the project buildings are now located—to the other corporation. The remaining properties were sold by the Delaware corporation to the city for the park-

²⁴ While a reputational study would most likely have identified X, and probably Y, as top leaders in Center City, the material presented here is for the purpose of illuminating their role in the Center Circle project, rather than to position them in the community's leadership structure. For the shortcomings in the decision-making or event-analysis approach as a means of providing data on leadership, see BELL, HILL & WRIGHT, *PUBLIC LEADERSHIP* 28-30 (1961).

ing lots. The corporation which owns the project buildings is a wholly owned subsidiary of the retail chain, and was the purchaser of X's interest in the hotel. Presumably X's law firm will continue to handle the local legal business of the project.

The civic and economic interests of X were buttressed by his political position. He appears to be one of the most, if not the single most, powerful political figures in the community. He is a leader of the power bloc which supports the mayor and a majority of the city council, although ostensibly he is a declared member of the political party which opposes these officials.²⁵ He is also an active member of the plan commission, the body that recommended approval of the Center Circle plan, the vacation of the city streets, and the zoning changes, and which did not conduct independent studies or seek independent advice.

His activities as a plan commissioner deserve some elaboration. On the night of the announcement of the project, it was X and not the elected officials who supplied most of the background for the newspapers, the praise for the promoters and the representatives of the chain, and the glowing predictions for the future of the city. At the first public plan commission meeting, on June 9, 1961, it was X, as a commissioner, who presented the plan in all of its glowing details and emphasized the commitment of the council (the week before) to the plan. In support of the RM zoning change, X candidly pointed out the protective characteristics of the proposed change. The chain, he said, "can't borrow money if the businesses are allowed to expand all around, without planning, and not be confined to a definite area." He was the one who argued that in light of the proposed cost to the developers, "\$5 million, \$6 million, \$7 million, it is reasonable for these to expect some reasonable protection to ensure the success of their operation."

The official records of the plan commission clearly reveal X's power. On several occasions he represented clients who wanted to establish businesses within the RM zone. On one occasion, at X's personal request to the secretary of the plan commission (who was also the city attorney and a law partner of the chairman of the plan commission), the published notice went out immediately, the plan commission rescheduled its regular meeting to coincide with the council's meeting, and with a minimum of delay the council passed the necessary ordinance. On another occasion a client who wanted a similar change encountered some minor opposition in the city council. X appeared in support of the request, and in the ensuing discussion the plan commission was accused of pressure tactics and secrecy. On the occasion of a request for another zoning change—the one which the plan commission voted down, the city council granted anyway, and over which one of the plan commis-

²⁵ Both he and one of his law partners have run for political office on the opposition party ticket, although not for offices in local government.

sioners resigned implying fraud—it is significant to note that X did not vote when the plan commission decided not to approve the request.

One final episode deserves mention. The zoning ordinances of Center City require hotels to supply a certain amount of off-street parking for their guests. X sold his hotel's parking lots to the chain for part of the building site. Would the hotel now have to purchase land to comply with the ordinance? At X's suggestion, the hotel parking ordinance was amended to provide that "This requirement shall be satisfied if such required amount of parking is so located within a parking area available for use by the public either for or without the payment of a parking fee and regardless of by whom the same is owned and operated." Thus, the municipally owned parking lots would serve not only the shopping center's customers but also guests of X's hotel.²⁶

What were the roles of the government officials? The mayor was an early confidant of X and his group. The mayor also was the chairman of the parking commission which acted as the ultimate coercive power necessary to complete the project site. The land of two recalcitrant owners was designated for parking and they reported that they sold under threat of condemnation. On one of these sites was a funeral home which competed with a funeral home owned by the mayor. How many council members were early and active supporters of the project is not known. By the time it was announced, all agreed to go along. And despite occasional protests that any time a council member asked a question he was accused of delaying the project, they continued to go along.

The supporters of Center Circle hail the project as a great example of private capital working for the good of the community. They claim with assurance that business in Center City will increase, that there will be more jobs and more tax revenues. Given the prior condition of the land uses in the project site and the persistent economic stagnation in the community, the project, it is argued, certainly is an improvement.

There would undoubtedly be general agreement that the Center Circle complex made a significant contribution to shopping ease. The interior is handsomely appointed, and the stores are well-integrated around a central mall providing free movement from store to store without having to go outside the heated and air-conditioned structure. The project (despite its external resemblance to a penitentiary caused by its high, solid brick walls) has been awarded a citation for "excellence in environmental architecture" by a national association of architects.

Others point out, however, that these gains may be substantially offset in the long run by other, less dramatic, effects of the

²⁶ By special arrangement with the parking commission, the hotel provides free parking for its overnight guests.

project. The promoters and their hired planners claimed that they were planning for the community as a whole. They did not present anything like a master plan, but they did present a plan for the redevelopment of the entire central business district and discussed its relation to the community as a whole. What they accomplished, however, was a plan for only one section of the central business district. Furthermore, the planning for their one section—the nine-square-block site and the protective RM zone—was strictly planning for the development and protection of their commercial shopping center. The main section of the central business district, Main Street, and the section that heretofore was of most concern to those interested in improving the community as a whole, was included in the planning of the promoters if and when their shopping center expanded northward. In short, the planning for Center Circle was planning in the public interest only to the extent that the public interest is indirectly served by the bettering of private economic conditions. At no stage in the history of the Center Circle project was systematic disinterested professional thought given to the relationship of the project to the over-all development of the community. As noted earlier, there is no evidence that the decision makers, public or private, paid any attention to the existing independent studies of the area's needs.

The planning for Center Circle left unresolved four principal problems: Main Street, traffic, land uses in the areas adjacent to the project site (including those beyond the RM zone), and the financial condition of the parking lot operation. The promoters and the public officials have spoken optimistically about the resolution of these problems, but the evidence to back their claims seems, so far, not convincing. And it would seem that a failure to resolve these problems might cost Center City in the long run more than it will gain from the project, and could even jeopardize the success of the project itself. Whether or not this will happen depends on the ability of the community to prevent a further decline of Main Street business, to come up with a successful program to handle the impending crush of traffic, and to prevent the deterioration of land uses surrounding the site.

The problems raised and left unresolved by Center Circle are of considerable importance to the people of Center City. They are the ones who will have to pay for planning errors—the inconvenience of traffic congestion, the costs of spreading blight, the vacancies on Main Street, and the overcommitted indebtedness. It is for this reason that the legal procedures for public decision making concerning the allocation and use of urban land are provided. These procedures provide, on paper, full opportunity for the assertion and consideration of the public interest in private programs.

In substance, none of this happened in Center City. X and his small group of insiders, together with highly skilled outsiders—the chain and the hired planners, presented the community with a

take-it-or-leave-it package. The organs of government, instead of serving the function of performing an independent public scrutiny, merely implemented the private decisions and granted the public support needed for the project. Under implicit and explicit threats of obstructionism, not only were there no proposals for independent studies during the critical days of decision, but the record reveals that no serious questions were ever raised by any of the responsible elected public officials. Public meetings were held, as prescribed by law, but for the most part they were used by the promoters for public relations services; with minor exceptions, no questions were raised by the citizens or the Main Street merchants. Even the two local newspapers have had only praise for the project.

The promoters and their group had effectively monopolized the planning and political skills. The other affected groups in the community, including the city council and the plan commission, had neither skill, and the public decision-making apparatus was easily manipulated to give the promoters the required public support. It would be easy to explain this "take over" of the Center City government and the subversion of the democratic process in terms of the reputed political and social characteristics of this particular city: a one-party oligarchic government, an apathetic citizenry, and so forth. And perhaps this is the most plausible explanation of the history of the project. However, a comparison of the Center City experience with the experiences of other urban redevelopments may shed light on a more generalized issue of the politics of planning in a democratic context.

II. THE STRATEGIES OF PUBLIC URBAN REDEVELOPMENT

The differences between the public urban redevelopment projects of a large metropolitan center and the urban redevelopment project of Center City are indeed great. The public projects involve considerably more money, more people, and more interest groups. The political and governmental environment is extraordinarily complex. The redevelopment decision makers have to include another actor in the process—the federal government—in addition to the promoters and the local governmental units.²⁷

²⁷ The presence of a federal agency can introduce outside constraints into the local decision-making process that otherwise might not be felt. For example, Polsby cites the elaborate Housing and Home Finance Agency regulations as one of the outside constraints which operated on the mayor and his colleagues in the New Haven Redevelopment Agency. These regulations forced the local community to concern itself with questions such as the extent of deterioration in the area to be redeveloped, how the city plans to finance its share of the project, whether the area to be redeveloped is suitable for the proposed reuse according to accepted planning practices, and whether the proposed reuse conforms to the city's master plan and to good planning. See POLSBY, *COMMUNITY POWER AND POLITICAL THEORY* 74 (1963).

However, despite these very great differences, an examination of four public urban redevelopment projects will illustrate the function and importance of monopolizing political and planning skills and the impact of this monopoly on democratic decision making. The four examples are not simply repetitive. Each one shows a different locus of decision-making power. Three of the projects parallel the Center City experience in the sense that the initiators or proponents of the project succeeded in carrying out their projects substantially intact; in the fourth they did not.

A. Newark, New Jersey

Harold Kaplan, in a recently published study of the Newark Housing Authority, said the "keys" to the agency's success were elaborate preliminary negotiations with the redevelopers and the federal officials and "the low visibility of this preparatory stage."²⁸ When the negotiations are completed the "local officials must accept the [detailed project] package as is or risk jeopardizing the entire proposal."²⁹

The first step of the Newark Housing Authority was to find a private redeveloper and come to an agreement as to the site and the redeveloper's particular needs. According to Kaplan, no local agency or participant had dealings with the redevelopers but the NHA. Negotiations were then carried out between the NHA, the redeveloper, and the federal officials of the Urban Renewal Administration and the Federal Housing Administration. This was the critical phase of the project, but the payoff was that the legally required local governmental approval is extremely likely if agreement can be reached with the federal officials. If the local government attempts to change the project, the results of the negotiation will be upset and the federal funds will be delayed or stopped.

The next step that the NHA took before any announcement of the project was to obtain the support of the mayor and several of the municipal agencies. The two mayors who were in office during the ten-year period of the study never presented major problems to the NHA. For a variety of reasons, they were in agreement with the goals and tactics of the NHA. The support of local agencies was needed since area-wide programs often required street improvements, school construction, and sewer and utility relocations. The important local agencies were usually willing to go along since their share of the municipal budget would be increased and the federal funds served to help their own programs. The main problem of the NHA, however, was to avoid intervention by city hall while at the same time obtaining the support of the local agencies. The NHA did this by dealing with the staffs of the agencies rather than the top men and by not disclosing the detailed project plans;

²⁸ KAPLAN, *URBAN RENEWAL POLITICS* 28-29 (1963).

²⁹ *Ibid.*

co-operative pledges were obtained on the basis of the general outlines of the project.

It was only after these basic commitments and agreements were reached that the project was announced to the public (by a big spread in the Sunday newspapers) and presented to the local governmental units that had to give approval—the city council and the central planning board. The proposals were submitted on the eve of the federal deadline, and at this point the pressure on the local government was overwhelming. The central planning board was required by law to conduct a blight investigation of the renewal area and hold a hearing. Unless it declared the entire area blighted, the project could not proceed. Legally, then, this agency has significant powers. Despite some feeble attempts to exercise these powers, the planning board was forced to convert its blight hearings into simply an opportunity for the opposition to “sound off”; the blight investigation became a ritual.

The efforts of the city council—the supreme legislative unit of the local government whose approval is needed for all projects—were equally feeble. By the time a project was presented to them, it was “frozen” and the councilmen were faced with a take-it-or-leave-it decision. “As members of the Council and . . . [the Central Planning Board] have said, effective local review of clearance proposals can occur only at the very outset of a proposal.”³⁰ By the time a proposal was presented to these two units of government, “the time, energy, and money already expended precluded serious local review.”³¹

The success³² of the NHA was attributable to its highly skilled professional staff. The staff was the effective decision maker. It had the monopoly of political and planning skills and accordingly it, and not any other group in Newark—governmental or otherwise—made the major urban redevelopment decisions. The board of housing authority commissioners, which is the governing body of the NHA, was reduced by the skill of the NHA to praising the executive director and approving the projects. Kaplan reports that since 1948 there had never been a single instance when the board modified or rejected a staff proposal. The political skill of the professional staff enabled it to enlist commitments but resist disclosure of the detailed plans until outright and complete approval by the two most important governmental units became a foregone conclusion. Both the city council and the city planning officials lacked a professional staff, had no tradition of over-all planning, and were unable to resist the pressures for the immedi-

³⁰ *Id.* at 33-34.

³¹ *Ibid.*

³² “Success” as used in Kaplan’s study and throughout this article is in the limited sense that the initiators of the renewal project accomplish their objectives.

ate influx of federal funds. Citizen and semipublic groups were in much the same position. From time to time the NHA had to make minor adjustments for local groups (including the city government), but never on major substantive issues. Active public support for the major decisions of the NHA was unnecessary.

In urban renewal the major inputs come from outside the local system, that is, from the federal government and the private redevelopers. The active cooperation of only a few public officials is absolutely essential to the success of a clearance project. All that NHA requires of other local groups is their nonintervention. Widespread participation in slum clearance politics, far from being necessary, often proves disastrous.³³

In Newark, as distinguished from Center City, the projects were public projects performing specific public functions. Thus the decision-making agency, from an over-all point of view, had to tailor the program to public sentiment. But this restraint, if it really existed at all, was only of the most vague or general type. The representative organs of government, as well as citizens groups, were regarded not as consultants or participants—instruments by which the public interest could be asserted meaningfully—but as one of a series of hurdles (and by no means the most formidable) in the path of the project. The far-reaching decisions affecting the community at large were made bureaucratically or managerially by the agency. The bureaucrats were the planning professionals and the political professionals. When they chose to present a project to the public, neither the local government nor interested citizen groups either had the political or planning expertise to question the action. As provided by law, the city council had to approve each project, but by the time the project was submitted to the representatives of the people, the basic decisions had been made. Governmental approval was ritualistic only. On occasion, when public hearings were held, the main purpose was to let irate groups “sound off.”³⁴

In Center City, the urban redevelopment was privately financed for private purposes. Nevertheless, there were significant similarities in the decision-making process. As pointed out, the project significantly affected the community and tangible governmental support was needed. Yet neither the local government nor the citizens were able to effectively question the project. Even the

³³ *Id.* at 174.

³⁴ Similar distortion of the public procedures was practiced with regard to the selection of the redevelopers. Instead of receiving public bids for sites already selected to be cleared, the NHA would first negotiate with a redeveloper. After the project was approved, the NHA would advertise for bids and sell the site to the only bidder. The federal officials could not officially approve this practice of selecting redevelopers before site selection, but they went along. *Id.* at 24, 26.

group most seriously threatened, the Main Street merchants, acquiesced or were neutralized. The reason for the ease of acceptance in Center City took a different form than that in Newark but in substance it was the same. The promoters in Center City were the only group in the community that had both the professional planning skill and the political skill. In Newark, it was the renewal agency. In both cities those with the expertise decided not only the technical aspects of the projects but the substantive policy issues as well. In both cities "the time, energy, and money already expended precluded serious local review." In Newark, the decision maker was a public agency operating independently of the democratic process. In Center City, it was a private group of promoters. The common denominator was a monopoly of the planning and political skills. In both cities, the groups which lacked these skills, including the local governments, also lacked the ability to remake the decisions.

B. *New Haven, Connecticut*

The urban redevelopment program of New Haven was also highly successful—the initiators of the redevelopment programs were able to accomplish their objectives.³⁵ The decision makers in New Haven, however, were not an independent public agency; they were the mayor and his professional staff. This was the group that monopolized the political and planning skills.

In Center City the proponents of the redevelopment project achieved legitimacy (and the required legislation) through the local legislature; they were able to obtain the unanimous endorsement of the council and they used this endorsement to stifle incontinent criticism. The mayor of New Haven had a different problem. His large majority in the board of aldermen assured him of the formal legal approval and legislation, but in the partisan politics of New Haven it would not give him the aura of community approval needed to accomplish long-term revolutionary changes. He, in effect, created another community body that would serve this legitimizing function—the Citizens Action Commission. The commission itself numbered twenty-five and included bankers (one of whom was also the president of the local chamber of commerce), the president of Yale and the dean of its law school, the leader of the Democratic Party, prominent labor leaders, leading manufacturers and other business leaders, religious leaders, and persons prominent in reform activities. In the mayor's words: "We've got the biggest muscles, the biggest set of muscles in New Haven on the top C.A.C."³⁶ The CAC also had six special committees which in turn had nearly thirty subcommittees. The total membership was over 400. These committees and subcommittees were special-

³⁵ Decision making in the New Haven program is analyzed in DAHL, WHO GOVERNS? ch. 10 (1961), and POLSBY, *op. cit. supra* note 27, ch. 4.

³⁶ DAHL, WHO GOVERNS? 130 (1961).

ized (e.g., industrial and harbor development; central business district; housing; health, welfare, and recreation; human relations) and included active and prominent businessmen, architects, lawyers, social workers, clergymen, teachers, educational administrators, and housewives.

The CAC and its committees were ostensibly to provide citizen participation in urban redevelopment decisions. The proposals were to be considered and passed upon by the CAC, thus giving the projects the needed legitimacy and acceptability. In discussing how this arrangement actually worked, two important aspects of the CAC must be kept in mind. First, the people in the CAC (particularly at the top) could not be classified as pliant tools of the mayor and his group; they were very prominent people, many of whom would normally oppose the Democratic Party and its mayor. Second, the subcommittees, at least on paper, gave the CAC its planning expertise with which it could check independently the proposals of the mayor and his staff. At least on paper, then, the mayor and his staff did not have a monopoly of the political and planning skills.

But the working relations between the mayor and the CAC were, in essence, no different from the relations between the Center City promoters and the city council, and the NHA and the legislative body of the city of Newark. Polsby reports:

The major substantive decisions on urban redevelopment were made by [the mayor and his staff] Most of these decisions were made in secret. As one official said, the redevelopment program, like a submarine, "surfaced" only when it was legally or politically necessary to receive approval from the Board of Aldermen, the Redevelopment Agency, or the CAC. Our research group was unable to find a single case where this approval was not forthcoming.³⁷

"Except for a few trivial instances, the 'muscles' never directly initiated, vetoed, or altered any proposal brought before them by the Mayor and his Development Administrator."³⁸ The CAC members themselves admitted that they never initiated any proposals; and in fact, they could not even successfully criticize any proposals. The specialized committees and subcommittees of the CAC rarely met, and it is doubtful that they possessed the really concrete expertise needed to question specific proposals. In short, the mayor's special community body only served the very important function of assuring acceptability of the mayor's program. It was, no doubt, a brilliant stroke on the part of the mayor and it "virtually decapitated the opposition."³⁹

³⁷ POLSBY, *op. cit. supra* note 27, at 73.

³⁸ DAHL, WHO GOVERNS? 131 (1961).

³⁹ *Id.* at 133.

The "democracy" of decision making in urban redevelopment in New Haven is dramatically illustrated by the following episode:

The second phase of urban redevelopment, the Church Street Project, . . . involved razing a substantial portion of the city center, in which numerous retail stores were located. A group of small merchants who were directly affected objected strenuously to being removed from their places of business. Some of them were unable to sustain the loss of good will and improvements and were forced out of business. This group never attacked the redevelopment program per se, however; they only objected to its untoward effects on themselves. The city administration attempted to handle these objections by devising palliatives. It underwrote a 10 per cent reduction on rentals offered by the redeveloper to all displaced businesses taken into the new project; it set up a business relocation office which turned out to be largely ineffectual, but which was designed to assist displaced merchants in finding suitable space; and, finally, the city aided financially in the construction of temporary housing for displaced businesses on cleared land in the downtown area.

The small merchants' objections to the redevelopment program were aired primarily at public hearings. The city administration always took these public occasions seriously and generally succeeded in offsetting the testimony of dissidents by producing a tidal wave of support for the program in the form of public statements by leaders from all conceivable segments of the community: business, banking, real estate, labor, religious and human welfare civic groups, PTA's, ethnic minorities, and so on.⁴⁰

In New Haven the mayor and his staff monopolized the political and planning skills. Potentially conflicting influences were carefully kept out of the critical formative stages of the planning. When legislation (*i.e.*, local approval of the projects) and legitimacy were needed, the public participation was ritualistic only. By the time dissidents were allowed to be heard, it was too late. The basic decisions were managerial or bureaucratic.

Since the mayor is an elected official, it might be argued that the New Haven process is significantly more democratic than either Newark's or Center City's. The validity of this argument, however, rests on one's conception of democratic decision making. It is true that none of these programs—Center City, Newark, or New Haven—would have come into being unless they commanded the broad, over-all community agreement which is expressed at periodic elections when the existing political leadership asks to be retained in office. In Center City and Newark the decision makers had the co-operation of the mayors; indeed, they were among the key public officials needed for the success of the programs. The decision

⁴⁰ POLSBY, *op. cit. supra* note 27, at 92-93.

makers adopt and push programs designed to fit the broad, vague wishes of the people, and the programs do find agreement with the electorate.⁴¹ But is this what democracy in decision making means? If so, then why the requirement that the local legislature approve the individual project sites? Why the requirement that there be public hearings? The community can express its view at the next general election. It seems that at the very least democracy in the decision-making process means that the local legislatures deliberate and decide, after meaningful opportunity to be heard is granted to the citizenry—the interested and affected persons and groups.⁴² Public approval, through the action of the local legislature and not the polls, is for specific projects and for the specific allocation and use of urban land; it is not for the over-all programs of a city administration. This difference in the meaning of democracy in decision making can make a real difference in the impact on the interests of minorities. Fifty-one per cent of the electorate may approve the programs in general, but would not the majority also have approved the programs even if there was a change in the boundary of one of the projects to protect a small group of merchants? It is this type of democracy—the opportunity of minority interests to be heard—that the legally required decision-making procedures are designed to secure. And it was this type of democracy that was subverted in Center City, in Newark, and by the elected mayor of New Haven. It is no answer to say that it doesn't matter if the bureaucratic or managerial decision subverted the local legislature because the public subsequently approved of the decision at the polls.

C. Chicago, Illinois I

Rossi and Dentler, in studying the Hyde Park-Kenwood urban redevelopment project, were concerned with one central question: "What did citizens contribute to an urban renewal planning operation in Hyde Park-Kenwood?"⁴³ One of the principal findings was that

when citizens wished, for whatever reason, to take the opportunities presented, they were able to make significant

⁴¹ In Center City the incumbents were returned to office in an actively contested election. The Center Circle project itself was not made a major issue by the opposition. In part this was because of the generally favorable public reaction to the project, and in part because of the acknowledged role played by X, who was a well-known member of the opposition party. In Newark the newly elected mayor campaigned on a platform of more and better urban redevelopment, but he did not specifically criticize the NHA. Mayor Lee of New Haven achieved notable political victories as a result of his urban redevelopment program.

⁴² This, of course, is a basic tenet of the democratic dogma. For an examination of this concept as it relates to the realities of big city life, see Greer, *Individual Participation in a Mass Society*, in *APPROACHES TO THE STUDY OF POLITICS* 329 (Young ed. 1958).

⁴³ ROSSI & DENTLER, *THE POLITICS OF URBAN RENEWAL* 2 (1961).

gains as measured by their own interests. This conclusion, based on solid evidence, is a strong negation of the fancies of those who believe that renewal planning is always a matter of informal handclasps between hidden hands among "those who are in power."⁴⁴

It would appear, then, that the decision-making process for this renewal project differed markedly from the ones which we have previously examined. Do the facts support this conclusion? Was this democratic decision making in that citizens and interested groups were given a meaningful opportunity to be heard? If so, how were the political and planning skills distributed?

The history of this project is very complex, as one would expect a major civic undertaking in Chicago to be. Even though the Hyde Park-Kenwood project was public urban renewal, the initiators and planners were a private group—the South East Chicago Commission—which was led and staffed primarily by persons from the University of Chicago. The history of that commission has a familiar ring. The governing board was composed of seventy-five very prominent people from the site area, but the executive director and his staff had the real decision-making power. The authors of the study report: "Most of the Commission Board members, when interviewed, echoed the view of this businessman who had served since 1956: 'Most of our actions are rubber stamps. It's mostly because Julian Levi is such an aggressive, hard-working director. We haven't voted him down on anything all year.'"⁴⁵ Like the CAC, the board lent prestige, legitimacy, and financial backing. The staff had the energy, the initiative, and the know-how.

The "grass roots" citizens' organization was called the Hyde Park-Kenwood Conference. In many respects, this organization differed from other community organizations. Its membership was very widespread and penetrating. Through its affiliated block organizations, it was estimated that at least one person in every fifth household belonged. In addition, it had a paid, full-time professional staff. Finally, its planning committee commanded a great wealth of expertise; its members included nationally known figures in planning, geography, real estate, and public administration. The committee had long been concerned with comprehensive renewal planning for the area.

Rossi and Dentler describe in detail instances in which the conference was able to share in decision making; it was able to modify plans to take account of the interests of its constituents. It is interesting to note, however, that despite the conference's long interest in planning, its great expertise, and its connections "downtown," it could not cope with the problems of day-to-day planning. It reviewed the technical features of the plans, it evaluated the propo-

⁴⁴ *Id.* at 152.

⁴⁵ *Id.* at 75.

sals, and it served as a conduit of communication between the proponents and the citizenry. It was aided in its tasks by the complete accessibility of the South East Chicago Commission's planner.

The important achievement of the Conference did not result from its direct influence on the Final Plan. . . . [But] by keeping alive the issues of interracialism, housing for low- and middle-income groups, and proper relocation procedures for displaced residents, the Conference modified the planning process by introducing considerations of human needs and wishes. The plan might otherwise have been totally oriented toward institutional and commercial uses.⁴⁶

The conference, then, had direct access to the early formative stages of the plans, and it had available to it planning skills with which to evaluate the proposals. Although it was not able to assume anything like joint responsibility for decisions, it was able to make known its views effectively and to accomplish change.

Contrast the accomplishments of the conference with the activities of the Cardinal's Committee on Conservation and Urban Renewal, organized by Cardinal Stritch. This was potentially a very powerful organization (Roman Catholics are the largest single religious denomination in Chicago) and it came out in opposition to the Final Plan for Hyde Park-Kenwood.⁴⁷ There were many reasons why this committee was unsuccessful in changing the Final Plan, but one of the more important reasons was that this group was unable to participate in the decision-making process until the final stages.

[T]he metropolitan groups [i.e., interest groups in the city but outside of the Hyde Park-Kenwood area] had to wait until the Final Plan was reviewed by the City Council before being afforded an opportunity to make public pronouncements. By that stage too much had been invested in the specific proposals by the planners and the local community for much serious consideration to be given to metropolitan criticisms.

. . . [At this point in the process,] when criticisms were voiced, attention switched from the particulars cited to the imputation of underlying motives and to the ready assumption that anyone who was not "all for" approval was against conservation.⁴⁸

Gaining approval by the city government of Chicago seemed to present far more difficulties than faced the proponents of the pro-

⁴⁶ *Id.* at 155.

⁴⁷ The potential power of this organization is illustrated by the fact that final approval by the city council was delayed five months until the political leaders could be sure of how much weight the Cardinal's Committee actually had.

⁴⁸ *Id.* at 235-36, 239.

jects in Center City, Newark, and New Haven. In addition to the Cardinal's Committee, there were other private groups in opposition. Some were opposed to particular parts of the Hyde Park-Kenwood plan, and others feared that that project would use up too much of the available municipal and federal funds. Furthermore, although Mayor Daley supported the project, he wanted a consensus reached among the fifty-man aldermanic body, rather than urban renewal by a bare majority.

Approval by the city council was long delayed while the mayor and the protagonists jockeyed for position. The council's housing and planning committee conducted extensive hearings and everyone who wanted to speak was given an opportunity to do so. The authors of the study say that they "must conclude that the decision to approve urban renewal in Hyde Park was reached in the best tradition of democratic politics."⁴⁹

Does this study, then, qualify our hypothesis? Did the legislative body share in the decision-making process? It would seem that on the basis of Rossi and Dentler's own evidence, the council did not. The lack of provision for middle- and low-income housing in the project was the basis for the most serious criticisms of it and was one of the most important things that the majority of the council's powerful committee on housing and planning wanted. During the hearings several members of the committee were quick to resent the idea that the Final Plan could not be changed at this stage of the process. Here, then, was potential political power and a clear perception of a desired change in the project plan that had support among other groups (including the cardinal's committee) in the larger community. The result: "guarantees for public and middle income housing were not secured as part of the ordinance, nor were the specifics of site locations for such housing settled within the committee. Instead the issue was resolved as a matter of trust between the Council and the administrative units of the city government."⁵⁰

The reason for this result was that it was in fact too late to change the Final Plan. When the mayor came out in support of the Plan, he said: "The difficulty is, that the city council has no power to amend, but can only reject or approve this. Rejection by the council would be not only a blow to the city, but a setback for urban renewal on a nationwide basis."⁵¹ This was not true as far as the council's legal powers were concerned. It could have recommended many changes as conditions of legislative approval. But the planner for the project, as well as the mayor, pointed out that the introduction of public housing provisions would require a complete repetition of the decision-making process, including renegotiations

⁴⁹ *Id.* at 241.

⁵⁰ *Id.* at 274.

⁵¹ *Id.* at 266.

with Washington. In short, despite the potential political power of the council and its committee, it was faced with only two alternatives: blanket endorsement (with subsequent negotiations) or rejection; and the latter, at this stage of the game, was "too drastic a step to be seriously considered."⁵²

What emerges, then, from this episode in urban renewal is a decision-making pattern very similar to the ones previously examined. The citizens who lived in the site area participated to some extent in the decision-making process. But this participation did not make the process for Hyde Park-Kenwood democratic in the sense in which we have used the term. The citizens who participated were the project site residents; they did not represent and in fact opposed various other affected persons and groups in the rest of the community. Thus only one segment of the public interest had a meaningful opportunity to be heard. It is important to note, too, that this participation was at the formative stages of the planning. This, indeed, is the crucial stage, but it is not the participation called for by the legally prescribed procedures for democratic decision making. In fact what happened was that the residents of the project site, as a special interest group, joined forces with the proponents, and together they presented the Final Plan.⁵³

At this point, democratic decision making was stymied, as was the case in the other projects. With the mayor supporting the Final Plan in its major aspects, the council and other interest groups throughout the city were stuck with a take-it-or-leave-it package. These groups, including the council, had been kept out of the formative negotiations; when they were allowed to be heard, it was too late. The well-conducted, orderly hearings of the legislative body and its committee were more form than substance. The political and planning skills of the initiators of the project and their citizen allies (who also had these skills) were able to prevent the other groups from bringing their skills to bear.

D. Chicago, Illinois II

In contrast to the previous case studies, Meyerson and Banfield's report of the decision-making process regarding public housing in Chicago presents a picture of failure, in the sense that the initiators

⁵² *Id.* at 236.

⁵³ Even here the significance of the decision-making role of the citizen group is open to question. Writing elsewhere, Rossi comments,

The achievements of the Conference must be judged considerable but only in some directions. . . . The lesson of the Conference and Hyde Park-Kenwood for the student of community organization was that citizen participation is a co-optation device which progressively committed the citizens to the plan while their right to dissent was being undercut.

Rossi, *Theory, Research, and Practice in Community Organization*, in *DEMOCRACY IN URBAN AMERICA* 382, 391 (Williams & Press eds. 1961).

and proponents of the program did not obtain their objective.⁵⁴ While the final decision by the local government was euphemistically termed a "compromise," it was in reality a defeat of the proposal.

The events took place between 1949 and 1952. The struggle was over the selection of sites for public housing. The initiator of the public housing program was the Chicago Housing Authority. The opponents were the leaders of the fifty-man Chicago City Council. The selection of sites necessarily reflected decisions about density of population, problems of relocation, availability of low-cost housing, and, most crucially, the racial composition of neighborhoods. At the risk of over-simplification, the CHA was, among other things, determined not to have public housing increase the ghettoization of Negroes in Chicago. One of the principal aims of the agency, therefore, was to build a substantial part of the public housing on vacant land. The leaders of the council, on the other hand, while they were generally willing to support public housing in principle, were not willing to do so if it meant upsetting the racial composition of the neighborhoods. They were opposed to the use of vacant land because they feared that this would bring Negroes into their wards.

The story of the struggle between the CHA and the council is long and intricate. Its outcome depended on a variety of factors, many of which perhaps serve to make this case study an inappropriate analogy. For example, this particular struggle was a part of the over-all struggle for control of the Democratic machine that was being waged between the leaders of the council (called the "Big Boys") and Jacob Arvey, who had succeeded former Mayor Kelly as chairman of the party's County Central Committee. This background is important in two respects. The CHA had been Kelly's pet and the council leaders in part viewed their struggle with the CHA as a struggle with the old Kelly dominance. In addition, Mayor Kennelly, who was in office during the CHA-council fight, was Arvey's candidate. Kennelly specifically eschewed the role of leader of the Democratic machine and the council (which serves to distinguish this situation from those of Newark, New Haven, and Hyde Park-Kenwood, all of which had strong mayors supporting the programs). Our inquiry here, however, concerns the strategy and tactics of decision making in urban redevelopment. Even though the public housing controversy in Chicago contained great differences, it does shed light, by way of contrast, on the importance and use of the planning and political skills.

The CHA was formally directed by five unpaid commissioners appointed by the mayor, but subject to approval by the state housing board and removable by that board only. The statutes gave the au-

⁵⁴ MEYERSON & BANFIELD, *POLITICS, PLANNING, AND THE PUBLIC INTEREST* (paperback ed. 1964).

thority very wide powers including how much public housing would be built, where it would be built, and whether there should be rehabilitation instead of new housing. These powers, however, were not without limits. The Federal government had to approve the projects. The city also had controls. The statutes required, among other things, that the CHA loan application to the federal government had to be approved by the city and there had to be co-operative agreements on taxes, services, building codes, and streets.

The most important limitation on the powers of the CHA was the fact that the city council had to approve the locations planned for each project. The council was given this power by state statute in 1948. The statute applied only to the CHA and no other Illinois housing authority. It was enacted by the state legislature at the urging of the city council. The timing of this law is significant. Under Mayor Kelly's strong leadership, CHA proposals were never in trouble with the council. The statute was passed soon after Kelly retired, and "it was an unmistakable sign that the Council meant to put an end to the Authority's independence."⁵⁵ On the other hand, project sites could not be selected by the council; it had only a veto power. The law required that the CHA propose the sites. The protagonists, then, had a veto power on each other's decisions. If there was to be any public housing in Chicago, there had to be compromise or capitulation.

The CHA, as the initiator of the projects and with its planning skills, had two basic strategic choices: it could bring in the leaders of the opposition (the "Big Boys") during the formative stages of the planning and attempt to negotiate site selections; or, it could adopt the strategy which we have seen so far—secret planning, the public presentation of a take-it-or-leave-it alternative, and attempt to mobilize irresistible political pressure. The second alternative would involve an attempt to monopolize both the political and planning skills.

The CHA consciously and deliberately chose the second alternative. The executive director of the CHA persuaded the commissioners that the aldermen would harm the program if they were brought into the planning stages. The CHA was unable to gain the support of the mayor, but nevertheless presented the completed plan to the council and then attempted to bring pressure on the council to act quickly. The CHA stressed the time factor and used pressure groups and newspaper publicity. The strategy failed. The council was very hostile to the take-it-or-leave-it tactic and was unimpressed by the arguments calling for speedy action. They were also unimpressed by the political strength of the CHA and its allies. It was quite clear that the authority failed to monopolize the political skills necessary to get the program through.

⁵⁵ *Id.* at 87.

On the other hand, there was pressure for public housing, and the council had to come up with alternative site recommendations. The story of this development is particularly instructive. The first attempt of the council was a naked display of political power. A specially appointed council subcommittee, together with newspapermen and others, took a bus trip through Chicago to pre-selected sites. The selection process was unabashedly political. Practically all of the aldermen on the subcommittee were hostile to public housing. They were out to embarrass the aldermen who supported the CHA and to select sites which would obviously be rejected by the CHA. The sites recommended were ridiculous to all. It then became clear to the leaders of the council that if they were to win this fight, their sites had to be selected by agencies with technical competence. Planning skills were needed in addition to political skills. The leaders of the Council then selected sites seriously. But this time they had the use and support of the city plan commission. And they retained the services of a technical expert—Ralph H. Burke. Burke performed the vital function of preparing an elaborate professional justification of the leaders' plan, as well as countering the CHA's technical objections to it. In addition, he represented the council when the dispute moved to Washington. The end result of this was that the CHA accepted the council's recommendations.

The CHA did not succeed in monopolizing either the planning skills or the political skills. The council had more than its share of political skills, but this was not enough. The council could not rely on the use of political power alone, as the bus trip fiasco demonstrated. If it was going to win its battle with the CHA, it had to acquire planning skills. It was able to do this by gaining the support of the plan commission and the services of Burke. At this point the council's plan, even though it was a series of political choices, had the symbols of expertise. The tide then began to turn away from the CHA, and the political decisions became hidden in the boring public debate of the technicians.⁵⁶

CONCLUSION

We have examined the decision-making process in five urban redevelopment efforts. The proponents were independent government agencies in two of the cases: Newark and the Chicago public housing case. In New Haven the proponents were the mayor and his staff. In Hyde Park-Kenwood they were first a private group and then an alliance with the site residents. In Center City they were a private group.

All five efforts required the participation of the local legislative

⁵⁶ For additional case studies of the decision-making process in metropolitan government, Chicago-style, see BANFIELD, *POLITICAL INFLUENCE* (1961).

unit of government in the decision-making process. This participation is required by law and is designed to inject democratic values and some measure of disinterested planning expertise into the decision. In four of these efforts (all except public housing in Chicago), the participation of the local legislature, as well as other groups in the community, was ritualistic and formal rather than genuine. By the time the projects were made "public," serious debate and decision making had been foreclosed. In these four efforts, the proponents of the projects were able to monopolize the available political and planning skills. The imbalance of power enabled the proponents to manipulate the publicly required procedures. The law was followed—it had to be if tangible public support was to be forthcoming—but the purposes and goals of the law were subverted. This was true regardless of whether the promoters were private groups, independent government agencies, or elected executive officials. The locus of actual power rested on those able to command the two skills, and regardless of who actually wielded the power the decisions were managerial or bureaucratic, not democratic.⁵⁷

The public housing controversy in Chicago reflects a different pattern. The proponents there were not able to acquire a monopoly of skills and they were defeated by the local legislature. In this controversy the local legislature prevailed, but it could do so only after it acquired planning skills to accompany its political skills. But was decision making there more democratic? Given the control of the Chicago City Council by the "Big Boys," one could argue that this was another form of managerial decision making, another example of "in-group" dictation. Meyerson and Banfield, however, argue that the council leaders were in fact more responsive to what they (the leaders) considered to be a wider set of community interests. They grant that the leaders of the council were primarily interested in doing what would be best for the Democratic Party machine, but they argue that the politicians were not necessarily wrong in their belief that what was best for the party was also best for the city as a whole:

[T]here was an important element of truth in the politicians' belief that what was good for the party was in the public interest. The party was a mechanism through which a vast number of more or less conflicting interests

⁵⁷ In their study Meyerson and Banfield compare the Chicago experience with that of New York City. They describe a decision-making process quite similar to the pattern we have seen in each of the successful programs studied: managerial or bureaucratic decision making by those who had a monopoly in the combination of political and planning skills (Robert Moses in New York); and low-visibility decision making until the take-it-or-leave-it package was complete. "Ordinarily in New York it is possible to protest the location of a public housing project only *after* the decision has been virtually made." MEYERSON & BANFIELD, *op. cit. supra* note 54, at 296.

arrived at terms on which they could work together, and over the long run the party could not survive and prosper if it deeply offended any large sector of its public. The Democratic machine, for example, could not survive if it outraged the Negroes or the whites in the conservation areas. The survival and prosperity of the machine depended upon its ability to find settlements which both sides would agree represented the public interest or something approaching it.⁵⁸

We need not decide whether the public housing decision-making process was more democratic or not. The point is that on the basis of these five experiences, it seems reasonably clear that the realization of any of the democratic values incorporated in the procedural requirements of public law were fortuitous. The extent to which these values are reflected in the decision-making process will depend on the lineup of economic and political forces outside of the legal system. This seems particularly true of the goal of disinterested planning. In all of the situations discussed, including the public housing of Chicago, the planning experts were sought and used as tactical support for the political decisions. The governmental planning units were distressingly ineffective in performing the role envisaged by the law.⁵⁹ Planning was essential to achieve the redevelopment goals, but it was strictly partisan.⁶⁰

The failure to achieve democratic values in the decision-making

⁵⁸ *Id.* at 299-300. In the same vein, see BANFIELD, *POLITICAL INFLUENCE* 327 (1961):

And yet, despite the presumptions of common sense, it may be that under certain circumstances the competition of forces which do not aim at a common interest produces outcomes which are more "workable," "satisfactory," or "efficient" than any that could be contrived by a central decision-maker consciously searching for solutions in the common interest.

For an extended discussion of the point, see SCHUBERT, *THE PUBLIC INTEREST* (1960).

⁵⁹ On the function of a planning commission (or planning agency) in providing an opportunity for the citizen to be heard, and the suggestion that, in addition to formal hearings at an advanced stage, mandatory consultation and the occasion for discussion of competing planning proposals at an earlier stage might be required, see HAAR, *LAW AND LAND* 75-78 (1964).

⁶⁰ The government planning unit played an important role only in the Chicago public housing controversy. Meyerson and Banfield point out the partisan nature of this use of expertise:

The Plan Commission's responsiveness to City Hall was not surprising. Its budget was precarious and therefore it felt it necessary to do routine tasks and favors for particular aldermen. . . . Without an analysis by its staff, the Plan Commission reclassified an area from "blighted" to "conservation," a change which meant that the area could no longer be considered for slum clearance. Hitherto, the existence of blight had been a technical matter to be determined objectively by analyzing the number of structurally sound and unsound buildings, the number without running water, and so on. Now the technical criteria were replaced by political ones.

MEYERSON & BANFIELD, *op. cit. supra* note 54, at 201.

process is particularly dramatic in view of the nature of the legally required procedures. These procedures, it must be re-emphasized, give the local legislature great powers. The procedures must be followed; otherwise it is impossible to acquire the necessary public support. Yet in four of the situations the procedures, with the potential risks to the promoters, turned out to be just another relatively minor hurdle. In the Chicago public housing controversy the use of the procedures came about because of a local political struggle. In all of the situations the realistic use or lack of use of the legally established procedures depended on events outside of the legal system.