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# THE USE OF EMINENT DOMAIN UNDER MISSOURI'S URBAN REDEVELOPMENT CORPORATIONS LAW<sup>1</sup>

## I. INTRODUCTION

Eminent domain is the power to appropriate private property for the public benefit.<sup>2</sup> The inherent power of the government<sup>3</sup> to take property against the will of the owner<sup>4</sup> is subject to constitutional<sup>5</sup> and statutory limitations.<sup>6</sup> Specifically, the United States and Missouri constitutions limit governmental takings to those that serve a public use.<sup>7</sup> Furthermore, the Urban Redevelopment Corporations Law (Chapter 353), a Missouri statute, authorizes takings only for the purpose of redeveloping blighted areas.<sup>8</sup>

Missouri public policy favors redevelopment by private enterprise.<sup>9</sup> A municipality can employ eminent domain to assemble individually owned, underdeveloped properties as sites for private economic devel-

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1. MO. REV. STAT. §§ 353.010-353.180 (1986 & Supp. 1988). The statute was originally enacted in 1943 and is popularly known as Chapter 353.

2. COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS, pp. 523-24 (1868).

3. 1 NICHOLS, NICHOLS ON EMINENT DOMAIN, § 1.14(2) (J. Sackman rev. 3rd ed. 1980).

4. *Id.* at § 1.11.

5. U.S. CONST. amend V; MO. CONST. art I, § 26.

6. Chapter 353 requires that the property be blighted to justify its taking pursuant to a redevelopment plan. *See* MO. REV. STAT. §§ 353.020 (Supp. 1988), 353.030(12) (1986).

7. U.S. CONST. amend. V; MO. CONST. art. I, § 26.

8. MO. REV. STAT. §§ 353.010-353.180 (1986 & Supp. 1988).

9. MO. REV. STAT. § 99.310 (1986). Sections 99.300-99.660 are known as the Land Clearance for Redevelopment Law.

opment.<sup>10</sup> Pursuant to Chapter 353, Missouri cities can empower developers to acquire lands by condemnation,<sup>11</sup> allowing private developers to plan and perform the redevelopment. Redevelopment in Missouri is largely accomplished through this cooperation between government and private enterprise.<sup>12</sup>

Through its power of eminent domain, the city encourages redevelopment by enabling developers to: (1) acquire a project site quickly, (2) purchase the properties in the project area at fair market prices instead of prices inflated by speculation, and (3) assemble large enough parcels to accommodate the redevelopment projects within the city.<sup>13</sup> While quantifying the extent to which Chapter 353 redevelopment corporations have actually taken property by eminent domain, its potential use has facilitated the assembly of numerous properties that could not otherwise have been acquired.<sup>14</sup>

This Note will review the effect of eminent domain on economic redevelopment in Missouri under Chapter 353. Part II discusses the constitutional and statutory limitations on the exercise of eminent domain under Chapter 353. Part III concerns the local government's role and the scope of judicial review of this role. Part IV reviews the relevant case law and specific Chapter 353 projects. Part V examines contemporary controversies which raise difficult questions of blight and public use.

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10. For example, the City of Detroit condemned an entire neighborhood to create space for General Motors to build a new manufacturing plant in the area. General Motors got a desirable plant site at low cost when it would have been nearly impossible for GM to assemble such a site in Detroit on the open market. Additionally, Detroit saved jobs and tax revenues. *See Poletown Neighborhood Council v. City of Detroit*, 410 Mich. 616, 304 N.W.2d 455 (1981).

11. *Annbar Associates v. West Side Redevelopment Corp.*, 397 S.W.2d 635, 639 (Mo. 1965).

12. *Id.*

13. City Development Department, Kansas City, Missouri, STATUS REPORT: 353 PROJECTS IN KANSAS CITY, MISSOURI, 1986-1987, (1987).

14. D. MANDELKER, G. FEDER & M. COLLINS, REVIVING CITIES WITH TAX ABATEMENTS 81 (1980).

St. Louis and Kansas City routinely grant Chapter 353 redevelopment corporations the power of eminent domain, but their 353 agencies do not have detailed records of its actual use. Interview with JoAnne McGinnis, Community Development Planner, Community Development Agency, St. Louis, Missouri (February 13, 1989); Interview with John Langa, Project Manager, Ochsner, Hare & Hare, Planning Consultants, Kansas City, Missouri (February 13, 1989).

## II. CONSTITUTIONAL AND STATUTORY LIMITATIONS

### A. *The Public Use Requirement*

The fifth amendment to the United States Constitution and article I, section 26 of the Missouri constitution both provide that *private property shall not be taken for a public use without just compensation*.<sup>15</sup> Both constitutions require that the condemnation of private property serve a public use and that the condemnee receive just compensation.<sup>16</sup> The just compensation requirement is explicit.<sup>17</sup> The public use requirement is created by negative inference, implying that takings solely for private use are impermissible regardless of compensation.<sup>18</sup> Analyzing the phrase "public use" is problematic because the courts have not articulated a comprehensive and universally accepted definition.<sup>19</sup> Historically the courts narrowly construed the public use requirement. They held that unless the public had the right to actual occupation or use of the property after condemnation, the use was impermissibly private.<sup>20</sup> Hence, a prototypical condemnation for public use is the taking of rights of way for public roads.<sup>21</sup>

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15. U.S. CONST. amend. V provides in pertinent part: "nor shall private property be taken for public use, without just compensation." U.S. CONST. amend. XIV applies this constraint to the states' exercise of eminent domain.

MO. CONST. art. I, § 26, provides that "private property shall not be taken or damaged for public use without just compensation."

16. See generally Nichols, *The Meaning of Public Use in the Law of Eminent Domain*, 20 B.U.L. REV. 615 (1940).

17. Determining just compensation is a thorny issue worthy of extensive analyses and beyond the scope of this Note. Generally, condemnees are entitled to fair market value of their property. However, under current Missouri law, condemnees may suffer losses due to market price depreciation during the period between the declaration that the property is blighted (and thus subject to redevelopment under Chapter 353) and the date of condemnation. See Note, *Condemnation Blight: Compensating the Landowner in Missouri*, 48 MO. L. REV. 220 (1983). See also *State ex rel. Washington University Medical Center Redevelopment Corp. v. Gaertner*, 626 S.W.2d 373, 376 (Mo. 1982); *Moore v. Thiemann-Stinnett Corp.*, 692 S.W.2d 841, 842 (Mo. Ct. App. 1985) (there is no provision under Missouri condemnation law for compensating landowners for the decline in value between the date the property is declared blighted and the date of the de jure taking, but condemnees may have a tort action for damages caused by unreasonable delay between blighting and de jure taking).

18. Nichols, *supra* note 16, at 616.

19. 1 NICHOLS, NICHOLS ON EMINENT DOMAIN, § 7.02 (Supp. 1989).

20. Bennett, *Eminent Domain and Redevelopment: The Return of Engine Charlie*, 31 DE PAUL L. REV. 115, 116, (1981).

21. *Id.* In the late nineteenth century eminent domain was used to facilitate the railroad boom. *Id.* at 119. The courts found the public benefits derived from speedy

Today, however, most courts broadly construe "public use" to encompass economic redevelopment.<sup>22</sup> Since the early 1900's the Supreme Court has rejected the notion that "public use" meant actual continuing use and occupation by the public.<sup>23</sup> In *Berman v. Parker*<sup>24</sup> the Court found that a taking for slum clearance satisfied the public use requirement even though the property eventually would be resold to private enterprise.<sup>25</sup> The Court held that the transfer of property from one private party to another satisfied the public use requirement so long as some public purpose was served.<sup>26</sup>

### B. *The Statutory Scheme Under Chapter 353*

Only "blighted" property is subject to condemnation under Chapter 353.<sup>27</sup> The statute defines a "blighted area" as:

that portion of the city within which the legislative authority of

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transportation of persons and goods justified the exercise of eminent domain. *Id.* at 119-20. By the beginning of the twentieth century most courts approved the use of eminent domain to assemble sites for power and utility companies because these enterprises were essential to increasing the productive power of the community. *Id.* at 121.

22. *See, e.g., Prince George's County v. Collington Crossroads, Inc.*, 275 Md. 171, 339 A.2d 278, 289 (1975) (projects reasonably designed to benefit the general public by enhancing economic growth are public uses, at least where the exercise of the power of condemnation provides an impetus which private enterprise cannot provide). *See also Minneapolis v. Wurtele*, 291 N.W.2d 386 (Minn. 1980) (condemnation of property for city center project served legitimate public purpose despite claim that project's approval was motivated by private interests); *Courtesy Sandwich Shop, Inc. v. Port of New York Authority*, 12 N.Y.2d 379, 240 N.Y.S.2d 1, 190 N.E.2d 402 (1963) (use of property to produce revenue to help finance activities for development of a world trade center was use for a public purpose).

Many courts will not permit condemnation of unblighted property for private economic development. *Bennett, supra* note 20 at 123.25. *See Edens v. City of Columbia*, 228 S.C. 563, 91 S.E.2d 280 (1956) (refused to construe public use so broadly as to encompass economic redevelopment); *City of Owensboro v. McCormick*, 581 S.W.2d 3 (Ky. 1979) (required actual use by the public). *But see Poletown Neighborhood Council*, 410 Mich. 616, 304 N.W.2d 455 (1981) (upheld the condemnation of an entire neighborhood that was not substandard to create space for a General Motors plant).

23. *Mt. Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Co.*, 240 U.S. 30 (1916) (repudiated the use-by-the-public test).

24. 348 U.S. 26 (1954).

25. *Id.* at 28-36.

26. *Id.* at 33-34. *See also Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984) (upheld the use of eminent domain to effect transfers among private parties for the purpose of eliminating a land oligopoly).

27. MO. REV. STAT. § 353.020(8) (Supp.1988) defines "redevelopment" as the "clearance, replanning, reconstruction or rehabilitation of any blighted area. . . ."

such city determines that by reason of age, obsolescence, inadequate or outmoded design or physical deterioration, have become [sic] economic and social liabilities, and that such conditions are conducive to ill health, transmission of disease, crime or inability to pay reasonable taxes.<sup>28</sup>

A 1982 amendment obligates the city to hold a public hearing, providing citizens an opportunity to comment on the proposed grant of powers to a redevelopment corporation.<sup>29</sup> Following the hearing, the legislature determines whether the property considered for redevelopment is in fact a blighted area.<sup>30</sup> The city can only grant powers to a redevelopment corporation pursuant to a development plan after the legislature declares the area blighted.<sup>31</sup>

Redevelopers must form a limited profit urban redevelopment corporation<sup>32</sup> and submit a development plan to the responsible city agency.<sup>33</sup> After a city declares an area blighted and approves a development plan, it may take the property by eminent domain and transfer it to a redevelopment corporation.<sup>34</sup> Alternatively, the city can author-

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28. MO. REV. STAT. § 353.020(2) (Supp. 1988).

29. MO. REV. STAT. § 353.060 (as amended by L.1982, P. 308, § 1).

30. *Id.* The city ordinances that formally codify these determinations are popularly known as "blighting ordinances."

Individual properties within a blighted area do not necessarily have to be independently blighted if condemnation of such properties is necessary for the purposes of a redevelopment project pursuant to the act. *See* Parking Systems, Inc. v. Kansas City Downtown Redev. Corp., 518 S.W.2d 11, 15 (Mo. 1974). *See also* Annotation, *What Constitutes "Blighted Area" Within Urban Renewal and Redevelopment Statutes*, 45 A.L.R.3d 1096, 1110-1114 (1972).

31. MO. REV. STAT. § 353.060 (1986). Chapter 353 defines "development plan" as "a plan, together with any amendments thereto, for the development of all or any part of a blighted area, which is authorized by the legislative authority of any such city." MO. REV. STAT. § 353.020(4) (SUPP. 1988) CHAPTER 353 DEFINES "DEVELOPMENT PLAN" AS "A PLAN, TOGETHER WITH ANY AMENDMENTS THERETO, FOR THE DEVELOPMENT OF ALL OR ANY PART OF A BLIGHTED AREA, WHICH IS AUTHORIZED BY THE LEGISLATIVE AUTHORITY OF ANY SUCH CITY." MO. REV. STAT. § 353.020(4) (Supp. 1988).

32. An "urban redevelopment corporation" is a corporation organized under the provisions of Chapter 353, with certain exceptions for Missouri life insurance companies. MO. REV. STAT. § 353.020(10) (Supp. 1988). Section 353.030(11) limits the net earnings of an urban redevelopment corporation to 8% per annum of the cost of the redevelopment project including the cost of land. MO. REV. STAT. § 353.030(11) (1986).

33. MO. REV. STAT. § 353.020(4) (Supp. 1988). *See supra* notes 29-30 and accompanying text (discusses procedure for a development plan's approval).

34. MO. REV. STAT. § 353.170 (1986).

ize the redevelopment corporation to exercise the power of eminent domain pursuant to the approved development plan.<sup>35</sup>

The statute provides for a tax abatement on property subject to the development plan as a further incentive for redevelopment.<sup>36</sup> However, the city may contract for payments in lieu of taxes.<sup>37</sup> The tax benefits, while central to Chapter 353's redevelopment incentive scheme, are tangential to the eminent domain issues.<sup>38</sup>

### III. THE CITY'S ROLE AND JUDICIAL REVIEW

#### A. *The City's Role*

The Missouri statute empowers cities<sup>39</sup> to implement and administer

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35. *Id.* § 353.130(2) (1986). Cities prefer to authorize the redevelopment corporation to exercise eminent domain so that the redevelopment corporation and not the city is responsible for managing condemnation proceedings. Interview with JoAnne McGinnis, Community Development Planner, Community Development Agency, St. Louis, Missouri (February 13, 1989).

36. MO. REV. STAT. § 353.110 (1986) states:  
the property shall not be subject to general ad valorem taxes for up to ten years except to such extent and in such amount as may be imposed . . . measured solely by the amount of assessed valuation of the land, exclusive of improvements . . . during the calendar year preceding the calendar year during which the corporation acquired title to such real property; for up to 15 more years, the property will be taxed at fifty percent of its real value.

37. *Id.* § 353.110(4). St. Louis' policy is to require the redevelopment corporation during the first ten years of ownership to make payments in lieu of tax equivalent to the ad valorem tax paid on property improvements during the calendar year prior to the calendar year of purchase. This results in the city losing no property taxes as a result of the redevelopment proposal. See *Chapter 353 Development Incentive Program, Developer's Information* (available from the Community Development Agency, City of St. Louis).

38. According to Mark Hill, of the Kansas City Plan Commission, and John Langa, a Kansas City consultant involved in a study of the use of Chapter 353 in Kansas City on behalf of a developer, the tax abatement feature is the more controversial issue in Kansas City. Interview with Mark Hill, Planner, City Development Department, Kansas City, Missouri (February 14, 1989); interview with John Langa, Project Manager, Ochsner, Hare & Hare, Planning Consultants, Kansas City, Missouri (February 13, 1989).

The St. Louis Community Development Agency is presently reevaluating its tax abatements to determine whether this use is excessive. Interview with David Laslow, Community Development Planner, Community Development Agency, St. Louis, Missouri (February 13, 1989). See generally MANDELKER, *supra* note 14.

39. MO. REV. STAT. § 353.020(3) makes Chapter 353 available to constitutional charter cities; cities with a population of four thousand or more, according to the preceding decennial census, which are located in counties with a charter form of government; and cities with a population of two thousand five hundred or more, according to

Chapter 353 development plans.<sup>40</sup> A recent survey showed that at least thirteen Missouri cities have used Chapter 353, with St. Louis, University City (a St. Louis suburb) and Kansas City accounting for about eighty-five percent of the state's Chapter 353 redevelopment projects.<sup>41</sup> The city's role involves identifying the blighted areas in need of redevelopment,<sup>42</sup> reviewing and approving development proposals<sup>43</sup> and granting Chapter 353 rights and powers to redevelopment corporations.

The city may have a general procedural ordinance further regulating Chapter 353 projects.<sup>44</sup> Under such ordinances, development plans generally must include statements regarding:

- (1) descriptions of the proposed project,
- (2) the stages of the development and time limits for the construction of each stage,
- (3) plans for each existing structure and proposed new structures,
- (4) property to be purchased or taken by condemnation,
- (5) proposed financing and
- (6) proposed zoning changes.<sup>45</sup>

The Kansas City procedural ordinance additionally requires that development plans include studies showing that the area is in fact blighted.<sup>46</sup> Such procedural ordinances may also require the redevelopment corporation to assist in the relocation of displaced occupants.<sup>47</sup>

The St. Louis procedural ordinance requires that every ordinance

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the preceding decennial census, which are located in counties without a charter form of government.

40. MO. REV. STAT. §§ 353.010, 353.020(4).

41. Interview with John Langa, Project Manager, Ochsner, Hare & Hare, Planning Consultants, Kansas City, Missouri (February 13, 1989).

42. MO. REV. STAT. § 353.020(2).

43. *Id.* § 353.020(4).

44. The Urban Redevelopment Ordinance, Chapter 36, Revised Ordinances of Kansas City and City of St. Louis Ordinance No. 49583 (as amended), are exemplary.

45. City of St. Louis Ordinance No. 49583, § 5; The Urban Redevelopment Ordinance, Chapter 36, § 36.7, Revised Ordinances of Kansas City.

46. Section 36.5.1, Revised Ordinances of Kansas City.

47. City of St. Louis Ordinance No. 49583, §§ 5(m) and 13(e); and § 36.7.1, Revised Ordinances of Kansas City.

Kansas City's relocation requirements are codified in § 36.7.8. They require notice and payment of relocation benefits to displaced occupants in advance of the date they must vacate. The city must provide residential occupants with \$500 or actual reasonable moving expenses. Handicapped occupants are entitled to an amount, not to exceed \$400. This amount equals the cost of adapting replacement dwellings to the occupant's



approving a development plan shall contain a finding that the plan is in the public interest, a penalty provision for failure of a redevelopment corporation to complete a project in timely fashion, and a provision limiting use of the property to that use described in the development plan.<sup>48</sup> To ensure compliance with development plans the ordinance also requires the city to contract with the redevelopment corporation.<sup>49</sup>

### B. *Judicial Review*

Despite the constitutional and statutory limitations on the use of eminent domain, challenging a city blighting or redevelopment ordinance is difficult because of limited judicial review.<sup>50</sup> The courts may not substitute their judgment for the city's,<sup>51</sup> and may strike a city's deter-

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standards for accessibility and usability. Commercial occupants are entitled to \$1500 or actual reasonable moving expenses.

St. Louis requires private developers who invoke the power of eminent domain to provide relocation assistance with regard to any permanent displacement project which is not subject to the Federal Uniform Relocation and Real Property Acquisition Policies Act. Residential occupants are entitled to \$350 in moving expenses and commercial occupants are entitled to \$500 moving expenses. If the actual reasonable expenses are more, however, the developer and the occupant shall negotiate a mutually acceptable moving allowance. Relocation payments must be made no later than one week after the occupant vacates. *See Direct Displacement: City of St. Louis Relocation Policy (6/19/86)*, available from the Community Development Agency, City of St. Louis (enclosed in "Developer's Information").

48. City of St. Louis Ordinance No. 49583, § 13.

49. City of St. Louis Ordinance No. 49583, § 14. *See also Chapter 353: Development Incentive Program, Developer's Information*, p. 2, available from the Community Development Agency, City of St. Louis (upon enactment into law of an ordinance approving a development plan, the city enters into a contract with the urban redevelopment corporation for a codification of their proposals. This contract includes time limits, descriptions of the proposals and other items such as relocation procedure and delineation of public improvements to be correlated with the development plan).

50. In 1954 the Supreme Court of Missouri held: final determination of the question whether the contemplated use of any property sought to be taken under the Law here in question is public rests upon the courts, but that a legislative finding under said law that a blighted or insanitary area exists and that the legislative agency proposes to take the property therein under the processes of eminent domain for the purpose of clearance and improvement and subsequent sale upon such terms and restrictions as it may deem in the public interest will be accepted by the courts as conclusive evidence that the contemplated use thereof is public, unless it further appears upon allegation and clear proof that the legislative finding was arbitrary or induced by fraud, collusion or bad faith. *See Dalton v. Land Clearance for Redevelopment Authority of Kansas City, Mo.* 364 Mo. 974, 270 S.W.2d 44, 52 (Mo. 1954).

51. *Parking Systems, Inc. v. Kansas City Downtown Redevelopment Corporation*, 518 S.W.2d 11, 16 (Mo. 1974).

mination only if it is arbitrary or induced by fraud, collusion or bad faith.<sup>52</sup> Missouri courts have consistently held that in determining whether an area is blighted, the city acts in its legislative capacity, and therefore judicial review of such legislative determinations should be limited.<sup>53</sup>

The Missouri Supreme Court, in *Dalton v. Land Clearance for Redevelopment Authority of Kansas City*, adhered to limited judicial review when considering a public use question despite a conflicting constitutional provision.<sup>54</sup> Article I, section 28 of the Missouri Constitution demands that "when an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be public shall be judicially determined without regard to any legislative declaration that the use is public."<sup>55</sup> Article I, section 28, is somewhat at odds with article VI, section 26 of the 1945 Missouri Constitution, which expressly sanctioned the legislative enactment of eminent domain laws to facilitate redevelopment of blighted areas.<sup>56</sup> Relying on article VI, section 26, the Missouri Supreme Court held that courts should regard a city's determination that a taking for purposes of redevelopment satisfies the public use requirement, unless it is arbitrary or induced by fraud, collusion or bad faith.<sup>57</sup>

Missouri courts construe "public use" liberally.<sup>58</sup> Thus, even if the courts were inclined to scrutinize city public use determinations, Missouri law requires only that the taking produce a public benefit.<sup>59</sup>

#### IV. CHAPTER 353 REDEVELOPMENT PROJECTS

##### A. *Relevant Case Law*

##### 1. The Constitutionality of Chapter 353 Takings

*Annbar Associates v. West Side Redevelopment Corp.*<sup>60</sup> concerned a

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52. *Id.* at 15 (judicial review is limited to whether the legislative determination was arbitrary or was induced by fraud, collusion or bad faith); see also *Allright Missouri v. Civic Plaza Redevelopment Corp.*, 538 S.W.2d 324 (Mo. 1976).

53. *Id.*

54. See *supra* note 50.

55. MO. CONST. art. I, sec. 28 (emphasis added).

56. MO. CONST. art. VI, § 21.

57. *Dalton*, 270 S.W.2d at 53.

58. *Kansas City v. Liebi*, 298 Mo. 569, 252 S.W. 409 (Mo. 1923).

59. *Id.*

60. 397 S.W.2d 635 (Mo. 1965).

constitutional challenge to Chapter 353 and a development plan transforming Kansas City's Quality Hill area into a convention center and hotel district.<sup>61</sup> The plaintiffs conceded that the area was blighted,<sup>62</sup> but they contended that Chapter 353 and the Kansas City ordinances authorized unconstitutional takings for private use.<sup>63</sup>

Following *Dalton*,<sup>64</sup> the court held that the judiciary must defer to the legislative public use determination unless it is arbitrary or induced by fraud, collusion or bad faith.<sup>65</sup> Given this deferential standard of review, the court summarily upheld the constitutionality of Chapter 353 and the Kansas City ordinances.<sup>66</sup>

## 2. Defining Public Use

*Schweig v. Maryland Plaza Redevelopment Corp.*<sup>67</sup> emphasized that the public use requirement is satisfied solely by the redevelopment of blighted areas, regardless of the benefits accruing from the use of the area after redevelopment.<sup>68</sup> Although the use of the residential and commercial buildings subject to the plan would not have changed after redevelopment, the *Schweig* court found that extensive interior re-

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61. *Id.* at 638. Interestingly, the primary challengers were the owners of two nearby hotels which would compete with the proposed hotels. The third challenger intervened over the others' objections, and was the only challenger to own property within the blighted area. *Id.*

62. *Id.* at 641.

63. *Id.* at 637-38. Two Kansas City ordinances were challenged: the General Redevelopment Procedural Ordinance (Chapter 61, Revised Ordinances of Kansas City), and the particular redevelopment ordinance which blighted the area and authorized the development plan (Substitute Ordinance No. 29352, R.O.K.C.).

64. *Dalton v. Land Clearance for Redevelopment Authority of Kansas City*, 270 S.W.2d 44 (1954). *See supra* notes 54-57 and accompanying text.

65. 397 S.W.2d at 645-46.

66. *Id.* at 648.

67. 676 S.W.2d 249 (Mo. App. 1984). This case is actually the third in a series involving the Maryland Plaza redevelopment project. In *Schweig v. City of St. Louis*, 569 S.W.2d 215 (Mo. App. 1978), the court held that persons owning property near the redevelopment area had standing to challenge the plan because of the adverse affect on the value of their property when a redevelopment project is abandoned before completion. In *Maryland Plaza Redevelopment Corporation v. Greenberg*, 594 S.W.2d 284 (Mo. App. 1979), the court upheld the determination that the Maryland Plaza area was blighted, but struck the ordinance approving the development plan. *See infra* Part IV(A)(4).

68. *Schweig*, 676 S.W.2d at 253. The court stated that "it is not the end use to which these buildings are put that determines whether the taking is for public use, but whether the taking aids the redevelopment of a blighted area." *Id.*

novation of buildings in a blighted area satisfied the public use requirement.<sup>69</sup>

Courts widely uphold redevelopment statutes on the ground that clearance and redevelopment of blighted areas serve a public purpose.<sup>70</sup> This rationale makes the finding of blight essential to satisfy both the constitution and statutory requirements of takings for redevelopment.<sup>71</sup>

### 3. Deference to the City Regarding Blight

In *Allright Missouri, Inc. v. Civic Plaza Redevelopment Corp.*<sup>72</sup> owners and lessees of property within the area to be redeveloped argued that approval of the development plan violated Chapter 353 because the area was not blighted.<sup>73</sup> The challengers prevailed in the lower courts, which found that the city's determination of blight was arbitrary.<sup>74</sup> In reversing the lower courts,<sup>75</sup> the supreme court emphasized that the city had studied the project extensively and had held public hearings.<sup>76</sup> Consequently, the court held that there was enough room for reasonable debate that the city could determine that the area was blighted.<sup>77</sup> This decision illustrates the deference Missouri courts give to city legislative determinations of blight.

### 4. Court Scrutiny of Development Plans

City procedural ordinances set forth specific content requirements for development plans.<sup>78</sup> In *Maryland Plaza Redevelopment Corp. v.*

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69. *Id.* at 253-54. The extensive interior renovation included redecoration and upgrading of electrical, plumbing, heating, air conditioning and ventilating equipment. *Id.*

70. Annotation, *Validity, Construction, and Effect of Statutes Providing for Urban Redevelopment by Private Enterprise*, 44 A.L.R.2d 1414, at 1420 (1955). *See also* Dalton v. Land Clearance for Redevelopment Authority of Kansas, 364 Mo. 974, 270 S.W.2d 44 (1954).

71. The determination of blight is not merely a statutory requirement, since it is essential to finding a public use. Thus, if a determination of blight is arbitrary, or induced by fraud, collusion or bad faith, the ordinance violates the constitution as well as Chapter 353.

72. 538 S.W.2d 320 (Mo. 1976).

73. *Id.* at 321-22.

74. *Id.* at 324.

75. *Id.* at 324.

76. *Id.* at 322-3.

77. *Id.* at 324.

78. *See supra* notes 44-49 and accompanying text of Part II(A).

*Greenberg*<sup>79</sup> the court invalidated a development ordinance<sup>80</sup> for failure of the plan to provide a detailed statement of financing as required by the city's procedural ordinance.<sup>81</sup> While denying that it was substituting its judgment for that of the city's, the court found the plan did not include a sufficiently detailed financial statement.<sup>82</sup> However, the plan did state that "debt financing [would] be on a structure-to-structure basis" and that "the cost of public areas [would] be provided for all structures by the developer."<sup>83</sup> The court held that such statements were too vague to be considered even rudimentary, much less detailed.<sup>84</sup>

*State ex rel. Devanssay v. McGuire*<sup>85</sup> upheld a similar development ordinance. The court explained that a development plan must contain a description of the redeveloper's proposed method to obtain money for the redevelopment. However, the plan need not delineate the precise sources of financing.<sup>86</sup> The description must be sufficiently detailed to afford the city a basis for determining its feasibility.<sup>87</sup> The plan at issue merely listed various specific methods of prospective financing for each of the various aspects of the projects.<sup>88</sup> The court also considered the discussions at the public hearings.<sup>89</sup> The hearings revealed that two banks had orally committed to financing the keystone building. One of the banks had orally committed to additional financing if the first building was successful. Another bank was interested in financing redevelopment in the project area. The hearings also revealed that affiliates of the redevelopment corporation had assets of approximately \$50 million.<sup>90</sup>

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79. 594 S.W.2d 284 (Mo. App. 1979).

80. City of St. Louis Ordinance No. 56933. The ordinance which approves a development plan and confers the taking power upon a redevelopment corporation is sometimes called a development ordinance. See *Maryland Plaza Redevelopment Corp.*, 594 S.W.2d at 285.

81. *Maryland Plaza Redevelopment Corp.*, 594 S.W.2d at 291.

82. *Id.* at 290. The court felt the scope of review was limited to whether approval of the plan was arbitrary. If the statement had been arguably sufficient, the court would have deferred to the city's determination. *Id.*

83. *Id.*

84. *Id.*

85. 622 S.W.2d 323 (Mo. App. 1981).

86. *Id.* at 327.

87. *Id.*

88. *Id.*

89. *Id.* 327-28.

90. *Id.* at 328.

## B. *The Act in Practice*

### 1. St. Louis

In St. Louis, Chapter 353 has been a powerful counterbalance to the property tax and private market forces which tend to discourage redevelopment in the city.<sup>91</sup> Almost all major downtown and neighborhood redevelopment projects have been accomplished under Chapter 353.<sup>92</sup> By 1985, 1.5 billion dollars had been invested in St. Louis via Chapter 353 redevelopment projects.<sup>93</sup> Furthermore, the approval rate of development plans increased dramatically in the 1980s. Between 1960 and 1980 the city approved thirty-one development plans. At least twice that many have been approved since 1981.<sup>94</sup>

One of the earliest and largest Chapter 353 projects involved the redevelopment of the Civic Center area.<sup>95</sup> The redevelopment included the construction of Busch Stadium, parking garages, the Clarion and Marriott Hotels, Pet, Inc. headquarters building, Equitable Building, General American Headquarters, Centerre Bank, Mark Twain Bank, the 1010 Market Building and the Bowling Hall of Fame.<sup>96</sup> As of April 1986 investment in the area totaled over \$364 million.<sup>97</sup>

Another major St. Louis Chapter 353 redevelopment area is St. Louis Centre.<sup>98</sup> Investment in the seven phase plan has totaled over \$238 million.<sup>99</sup> New construction included the Mercantile Tower, St. Louis Centre retail mall, the St. Louis Centre Tower, the Edison Brothers Building and parking garages.<sup>100</sup> Other buildings were rehabilitated including the Railway Exchange Building and Stix, Baer & Fuller (now Dillards).<sup>101</sup>

The Laclede's Landing redevelopment involved the rehabilitation of

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91. MANDELKER, *supra* note 14, at 27.

92. *Id.*

93. *Chapter 353 Status Report*, p. 1, Community Development Agency, City of St. Louis, Missouri (April 1986).

94. *Id.* and Community Development Agency's record of approved plans (revised July 20, 1988).

95. *Chapter 353 Status Report*, p. 56, Community Development Agency, City of St. Louis, Missouri (April 1986).

96. *Id.* at 56-60.

97. *Id.* at 56.

98. *Id.* at 130.

99. *Id.*

100. *Id.* at 130-33.

101. *Id.*

a historically significant warehouse district and its conversion to entertainment, retail and office uses.<sup>102</sup> More recently, \$105 million was invested in the Adams Mark, a first class hotel facility which lies just west of the Arch.<sup>103</sup>

## 2. Kansas City

Kansas City has been as successful as St. Louis in implementing Chapter 353. More than forty-two projects representing over two billion dollars in private investment have been approved in Kansas City.<sup>104</sup> The nationally known Crown Center project best illustrates the success of Kansas City's 353 Program.<sup>105</sup> The project alone has created 2,113,800 square feet of office space, 497,000 square feet of commercial space, 1,462 hotel rooms, 2,063 residential units and 9,753 parking spaces.<sup>106</sup>

The Pershing Square project created 2,500,000 square feet of office space, 587,000 square feet of commercial space, 950 hotel rooms, 1,495 residential units and 6,320 parking spaces.<sup>107</sup> Through Chapter 353, Kansas City also redeveloped many smaller scale projects.<sup>108</sup>

## V. CONTEMPORARY ISSUES

Chapter 353 redevelopment projects have literally changed the faces of St. Louis and Kansas City. The success of the statute depends on the extent to which it encourages the desired entrepreneurial response, rather than merely subsidizing development which would have occurred anyway.<sup>109</sup> While studies show that Chapter 353 developers consider the Chapter 353 redevelopment incentives important, no one

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102. MANDELKER, *supra* note 14, at 28.

103. *Id.* at 27.

104. *Status Report: 353 Projects in Kansas City, Missouri 1986-1987*, inside front cover, City Development Department, Kansas City, Missouri (August 1987).

105. *Id.*

106. *Id.* at 7.

107. *Id.*

108. *Id.* The brevity of the current Kansas City Chapter 353 Status Report creates difficulty in obtaining detailed information on any of the city's projects. However, the City Development Department will soon publish an updated expanded status report. Interview with Mark Hill, Planner, City Development Department, City of Kansas City, Missouri (February 14, 1989).

109. MANDELKER, *supra* note 14, at 21.

has proven their actual effectiveness.<sup>110</sup>

At the time of this writing two controversies were brewing in the St. Louis area regarding the proposed use of eminent domain under Chapter 353. Both of these controversies pose difficult questions of blight and public use.

#### A. *The Galleria in Richmond Heights*

Richmond Heights, a suburban municipality in St. Louis County, hosts a large, modern shopping mall known as the Galleria. It includes one anchor department store; many, mostly upscale, smaller retail stores; a theatre; a food court and a few restaurants. The developers foresee expanding the mall into a quiet neighborhood of well-kept homes that lies just to the south of the mall.

The city declared the area blighted on March 15, 1982.<sup>111</sup> Allegedly, the city expected to approve a development plan proposed by the Thiemann-Stinnett Corporation.<sup>112</sup> The developer planned to expand the mall into the neighborhood through the power of eminent domain under Chapter 353.<sup>113</sup> But the development plan was never approved, no power of eminent domain was ever granted and the blighting designation was later rescinded.<sup>114</sup>

Recently the Richmond Heights City Council enacted a Chapter 353 procedural ordinance.<sup>115</sup> The ordinance merely provides the procedures for declaring an area blighted under Chapter 353 standards.<sup>116</sup> Reports indicate that the ordinance was supported by the developer currently interested in a 337 million dollar expansion of the Galleria.<sup>117</sup> The city, however, steadfastly denies any specific plan to use the ordinance to expand the mall into neighborhood property.<sup>118</sup> Ultimately, the promoters of the expansion of the Galleria reached a private settlement with the home owners in the neighborhood.<sup>119</sup> The

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110. *Id.* at 34-37.

111. *Moore v. Thiemann-Stinnett Corp.*, 692 S.W.2d 841, 842 (Mo. App. 1985).

112. *Id.*

113. *Id.*

114. *Id.* at footnote 1.

115. *St. Louis Post-Dispatch*, Feb. 7, 1989, at 6A, col. 5.

116. *Id.*

117. *Id.*

118. Interview with Carl Schwing, City Administrator, City of Richmond Heights (February 13, 1989).

119. *St. Louis Post-Dispatch*, Mar. 29, 1989, at 1A, col. 1.



homes were being razed as this article went to print.<sup>120</sup> While Chapter 353 powers were not actually exercised, the well-publicized threat of their use probably contributed to the private settlement.<sup>121</sup>

This scenario raises difficult eminent domain issues. Chapter 353 declares an area blighted when it has become an economic and social liability because of its advanced age, obsolescence, inadequate or outmoded design or physical deterioration. The statute is designed to obliterate environments that are not conducive to health and breed disease or crime.<sup>122</sup> The neighborhood targeted for the Galleria expansion consisted of well-kept, middle class homes. The area clearly falls outside of Chapter 353's definition of *blight*, and thus, its taking would be statutorily invalid.

The expansion of the Galleria will likely benefit the City of Richmond Heights by substantially increasing tax revenues. Therefore, while the area does not meet the statutory requirement of blight, its taking might nevertheless satisfy the constitutional public use requirement.<sup>123</sup> As discussed in Part II, Missouri courts construe the public use requirement very liberally. Conceivably, they could find that the economic development of the magnitude proposed here satisfies the public use requirement irrespective of the nonblighted condition of the property to be taken.

Because of the limited judicial scrutiny of city determinations of blight, city politicians tend to take a very liberal view of the statutory blight requirement. In fact, the *Kansas City 353 Program Status Report* boasts to developers that the blight definition is "flexible."<sup>124</sup>

### B. *The Columbia Building*

The Columbia Building was erected in the late nineteenth century. Although it once stood nine stories tall, in 1976 the owner razed seven stories due to deterioration.<sup>125</sup> Today it is a humble two stories, but is

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120. St. Louis Post-Dispatch, Dec. 5, 1989, at 1A, col. 2.

121. See *supra* note 14 and accompanying text.

122. MO. REV. STAT., § 353.020(2) (Supp. 1988).

123. It is possible that the city could go beyond Chapter 353 to effect this development. The city could take the property itself and transfer it to the private interests for development. This would be similar to the situation in *Poletown Neighborhood Council*; see *supra* notes 26, 25, and 10. Chapter 353 would be inapplicable.

124. *Status Report: 353 Projects in Kansas City, Missouri 1986-1987*, inside back cover, City Development Department, Kansas City, Missouri (August 1987).

125. The Riverfront Times, Dec. 7, 1988, at 10.

fully occupied.<sup>126</sup>

The Columbia is located next to a growing St. Louis law firm seeking to expand into the Columbia.<sup>127</sup> After the owner of the Columbia rebuffed its overtures, the law firm went to the city.<sup>128</sup> In June of 1988, the Community Development Agency recommended that the Board of Aldermen approve the law firm's Chapter 353 development plan for the Columbia.<sup>129</sup> The law firm proposes to expand its offices into the Columbia Building, construct three new stories and adjoin it to the firm's present offices.<sup>130</sup> Because the owner would like to keep the Columbia, the law firm needs the power of eminent domain to take it pursuant to the development plan.

This scenario raises issues different from the proposed Galleria expansion. One of the most important events that significantly increased the use of, and controversy surrounding, Chapter 353 was the successful aldermanic effort to blight all of downtown St. Louis for Chapter 353 purposes.<sup>131</sup> On June 29, 1971 the City of St. Louis, by Ordinance No. 55952, declared that all of downtown was blighted and ripe for Chapter 353 redevelopment.<sup>132</sup>

As a result of that declaration, the Columbia lies within an area already determined to be blighted. Thus, when the Community Development Agency reviewed the law firm's development proposal and recommended its approval by the Board, it was not required to consider the question of blight.<sup>133</sup> It only had to determine whether the proposed development of the Columbia was consistent with the city's general plan for downtown redevelopment.<sup>134</sup>

While this approach is consistent with the letter of Chapter 353, it

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126. *Id.*

127. *Id.*

128. *Id.*

129. Interview with JoAnne McGinnis, Community Development Planner, Community Development Agency, City of St. Louis, Missouri (February 13, 1989).

130. The Riverfront Times, *supra* note 125, at 10.

131. MANDELKER, *supra* note 14, at 74.

132. Community Development Agency's record of approved plans, p.2-3 (revised July 20, 1988).

Kansas City also has a similarly broad downtown blighting ordinance. Interview with Mark Hill, Planner, City Development Department, City of Kansas City, Missouri (February 14, 1989).

133. Interview with JoAnne McGinnis, Community Development Planner, Community Development Agency, City of St. Louis, Missouri (February 13, 1989).

134. *Id.*

may not be consistent with its spirit. The Columbia does not have to be blighted if its taking is necessary to effect the redevelopment of a larger area,<sup>135</sup> but that situation is not present in the current controversy. Here the proposed redevelopment involves the Columbia exclusively. It seems somewhat of a farce to justify the taking of the Columbia as necessary to the redevelopment of all of downtown without an independent determination that the Columbia is in fact blighted itself. This is particularly true when one considers the radical improvement in the condition of downtown St. Louis, since the downtown blighting ordinance was enacted seventeen years ago.

On the other hand, the typical downtown development ordinance includes a reaffirmation that the redevelopment project lies within a blighted area. These provisions probably involve no more than a rubber stamping of past declarations of blight. Furthermore, they clearly place another hurdle in the way of one challenging a Chapter 353 taking. If such a provision were shown to be without an analytical basis in the record, the challenger will have proven its arbitrariness.

Development plans such as the one for the Columbia should be based upon independent determinations that the area of proposed development is in fact blighted. Moreover, sometimes it is necessary, and proper, to include unblighted property within a larger blighted area to effect the redevelopment of such larger blighted area. But declaring areas as large as downtown St. Louis or Kansas City blighted in one fell swoop, defeats the purpose of the statutory requirement that the area for redevelopment be blighted.

## VI. CONCLUSION

The exercise of eminent domain is always controversial. The controversy is particularly intense under Chapter 353 because property is simply transferred from one private owner to another. Generally local governments take seriously their responsibility to approve only projects which will produce significant public benefits. Once significant public benefits are identified, however, local governments tend to minimize their statutory responsibility to ensure that only property in blighted areas is taken from its owners. Thus, a judicial check is appropriate.

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135. MO. REV. STAT. § 353.020(1) (Supp. 1988).

Nevertheless, Missouri courts do little more than rubber stamp legislative determinations of blight and public use.

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\* J.D. 1990, Washington University

