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INTRODUCTION

Since the early 1940s, publicly sponsored urban renewal programs have beeen a vital part of the effort to improve the quality of life in urban areas. As local governments realized that public housing programs alone could not arrest urban deterioration, they lobbied their state legislatures for enabling legislation that would permit a broader assault on urban problems. The earliest state urban renewal statutes operated by providing tax incentives to urban redevelopment projects and by permitting local governments to take land for redevelopment under the eminent domain power. As a prerequisite to project approval, the statutes required local governments to determine that the proposed redevelopment area was blighted.

The general goal of the early urban redevelopment statutes was to improve the quality of life in urban areas. The means for accomplishing this goal were less clear. While some viewed urban renewal as a tool for eliminating slums and blighted areas and for developing quality housing for the urban poor, others considered slums and blighted areas to be symptomatic of broader economic problems that urban areas faced. Thus, in contrast to a blight driven model of urban redevel-

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opment, an economic development model of urban redevelopment contemplated the creation of jobs and the promotion of the local tax base as the long term solution for urban decay.

Missouri enacted its first urban renewal statute in 1943.[1] The legislature repealed and reenacted the statute, known as the Urban Redevelopment Corporations Act, in 1945.[2] The statute is now commonly referred to by its place in the Missouri Revised Statutes—Chapter 353. Chapter 353 has always been controversial and the earliest 353 projects generated litigation.[3] Recently, criticism of the statute has reached a peak. The criticisms may be grouped roughly into three categories: criticisms relating to the administration of the program and the alleged failure of local governments to ensure developer compliance with redevelopment plans; criticisms relating to the failure of the program to protect adequately the rights of residents in and neighbors of the redevelopment project area; and, finally, criticisms relating to the local government's blight determination and the use of Chapter 353 to undertake economic development projects in areas that do not evidence the traditional indicia of blight. Implicit in this last category of criticism is a belief that the public benefits of economic development projects that do not immediately remedy blight are speculative at best.

The purpose of this Article is to consider carefully whether Chapter 353 was meant to be blight driven; that is, whether the Missouri legislature enacted Chapter 353 to remedy obvious cases of blight, or whether the legislature was equally concerned about promoting economic development within urban areas generally. Part I of the Article describes Chapter 353 and project approval under the statute. Part II examines the criticisms of the statute and several of the studies that have evaluated the effectiveness of Chapter 353. Next, Part III develops a legislative history for Chapter 353 in an effort to discern the objectives of the statute. Part IV of the Article evaluates the use of Chapter 353 in light of the public use doctrine, and Part V evaluates the use of the statute in light of legal challenges to blight determinations. Finally, Part VI of the Article develops conclusions about the proper role of blight determinations in urban renewal programs.

1. 1943 Mo. Laws 751-69.

2. 1945 Mo. Laws 1249-51.

3. *See, e.g.*, Annbar Associates v. West Side Redevelopment Corp., 397 S.W.2d 635 (Mo. 1965), *appeal dismissed*, 385 U.S. 5 (1966) (upholding a Chapter 353 blight determination and redevelopment project).

PART I. AN OVERVIEW OF CHAPTER 353

A. *Introduction*

In 1945, Missouri enacted the current version of the Urban Redevelopment Corporations Act, "Chapter 353."[4] Under this statute, redevelopment is accomplished through the combined efforts of the public and private sectors. Under typical redevelopment statutes in other states, the government acquires land for redevelopment through purchase or eminent domain, clears the land, provides the necessary infrastructure and sells or leases it to private developers. Public funds are used to acquire, clear and assemble the land and to provide the infrastructure for the development site. A portion of these costs is recovered when the land is leased or sold to the private sector. The portion that is not recovered represents the "writedown" or public subsidy that is deemed necessary to trigger the involvement of the private sector in the redevelopment project. Chapter 353 is similar to redevelopment statutes in other states except that it permits the local government to delegate its eminent domain power to a *private* redevelopment corporation. In addition, Chapter 353 authorizes substantial real property tax exemptions and abatements to encourage redevelopment.

This part of the Article reviews the structure of Chapter 353 and outlines the procedures for initiating and implementing a redevelopment project. When appropriate, it examines Missouri case law construing various provisions of Chapter 353.

B. *Coverage of Chapter 353*

In 1988, the Missouri legislature amended Chapter 353 and extended its coverage. Prior to the amendment, Chapter 353 applied to all cities that in the preceding federal decennial census had a population of four thousand or more and to all constitutional charter cities.[5] The statute now permits constitutional charter cities and cities with a population of

4. MO. REV. STAT. § 353.010 - .180 (1986 & Supp. 1988). The Missouri constitutional provision authorizing local urban redevelopment programs expressly authorized constitutional charter counties and cities to enact ordinances providing for urban renewal, and also authorized the legislature to enact statutes providing for urban renewal. Mo. Const. art. VI, § 21. Thus, it would appear that constitutional charter counties and cities derive their authority to undertake urban renewal directly from the state constitution, while other local governments must derive their authority from a state statute Chapter 353.

5. MO. REV. STAT. § 353.010 (1986).

4,000 or more located in counties with a charter form of government to engage in urban redevelopment through private corporations.[6] In addition, Chapter 353 also empowers municipalities that in the preceding federal decennial census had a population of 2,500 located in counties without a charter form of government redevelop their cities.[7]

C. *The Redevelopment Corporation*

A redevelopment corporation must be organized under the provisions of Chapter 353 to be eligible for urban redevelopment tax benefits and use of the government's eminent domain power.[8] Life insurance companies also may undertake urban redevelopment projects.[9] Section 353.030 requires certain contents in the articles of agreement or association of a redevelopment corporation in addition to those generally required of Missouri for-profit corporations.[10] The articles must contain the following information: (1) the name of the corporation, which must include the words "redevelopment corporation;"[11] (2) the pur-

6. *Id.* § 353.010 (Supp. 1988).

7. *Id.*

8. *Id.* §§ 353.020(10), .110 (1986). Section 353.020(10) defines an urban redevelopment corporation as "a corporation under the provision of this chapter" and section 353.110 provides that:

> [o]nce the requirements of this section have been complied with, the real property of urban redevelopment corporations acquired pursuant to this chapter shall not be subject to assessment or payment of general ad valorem taxes imposed by the cities affected by this law, or by the state or any political subdivision thereof, for a period not in excess of ten years . . . . .

9. *Id.* §§ 353.020(10), 353.040. Section 353.020(10) provides in the definition of urban redevelopment corporation that:

> any life insurance company organized under the laws of, or admitted to do business in, the state of Missouri may from time to time . . . undertake . . . a redevelopment project under this chapter, and shall, in its operations with respect to any such redevelopment project, but not otherwise, be deemed to be an urban redevelopment corporation . . . .

In addition, § 353.040 provides that:

> [a]ny life insurance company operating as an urban redevelopment corporation under this chapter shall be limited in its net earnings derived exclusively from the ownership or operation of any redevelopment project . . . to an amount not to exceed eight percent per annum of the cost to such company of the redevelopment project . . . .

10. *Id.* § 353.010-.720.

11. MO. REV. STAT. 353.030(1). The section provides: "The name of the proposed corporation . . . must have the words 'redevelopment corporation' as a part thereof." *Id.* Only redevelopment corporations under Chapter 353 may use the word "redevelopment" in their names. *Id.* § 353.050.

poses for which the corporation is formed, namely to acquire, construct, maintain and operate redevelopment project(s) in accordance with the provisions of the statute;[12] (3) a declaration that the corporation is organized to serve a public purpose and that real estate acquired by it and buildings erected by it are intended to promote the public health, safety and welfare, and that the stockholders agree that the net earnings of the corporation will not exceed eight percent of the cost of the redevelopment project to the corporation per year;[13] and (4) a declaration that the corporation is organized for the clearance, replanning, reconstruction and rehabilitation of blighted areas and the construction of appropriate industrial, commercial, residential or public structures.[14]

In addition, the duration of the corporation may not exceed ninety-nine years; it must have at least three but no more than thirteen directors; the articles must contain the names and addresses of the subscribers; and any holders of debenture certificates must have voting rights.[15]

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12. *Id.* § 353.030(2). The section provides: "The purposes for which it is formed which shall be as follows: To acquire, construct, maintain and operate a redevelopment project or redevelopment projects in accordance with the provisions of this law." *Id.*

13. *Id.* § 353.030(11). The section provides:

> The articles of agreement or association . . . shall contain . . . [a] declaration that the corporation has been organized to serve a public purpose; that all real estate acquired by it and all structures erected by it are to be acquired for the purpose of promoting the public health, safety and welfare, and that the stockholders of the corporation shall when they subscribe to and receive the stock thereof, agree that the net earnings of the corporation shall be limited to an amount not to exceed eight percent per annum of the cost to such corporation of the redevelopment project . . . .

Id.

14. *Id.* § 353.030 (12). The section provides:

> The articles of agreement or association . . . shall contain . . . [a] declaration that such corporations are organized for the purpose of the clearance, replanning, reconstruction or rehabilitation of blighted areas, and the construction of such industrial, commercial, residential or public structures as may be appropriate, including provisions for recreational and other facilities incidental or appurtenant thereto.

Id.

15. *Id.* § 353.030. The section provides:

> The articles of agreement or association . . . shall contain . . .
>
> (6) Its duration, which shall not exceed ninety-nine years.
>
> (7) The number of directors which shall not be less than three, nor more than thirteen. . . .
>
> (9) The names and post-office addresses of the subscribers to the articles of association or agreement.
>
> (10) A provision that in the event that income debenture certificates are issued by the corporation, the owners thereof shall have the same right to vote as they

Furthermore, the statute requires notice to holders of debentures of any proposed action on which they have voting rights.[16] The statute also prohibits the use of the word "redevelopment" in a corporate name by a domestic corporation unless the corporation is organized under Chapter 353.[17] Similarly, the statute prohibits foreign corporations that have the word "redevelopment" as part of their names from doing business in Missouri.[18] The articles of agreement or association must be filed with the office of the Secretary of State.[19]

Although the net earnings of a redevelopment corporation may not exceed eight percent per year of the cost of the redevelopment project, this excess is calculated after the payment of maintenance costs, taxes, assessments, insurance and similar charges.[20] Also, any surplus earnings over eight percent may be held in reserve for future maintenance, used to offset any deficiency which may have occurred in prior years, placed in a sinking fund or used for the enlargement of the project.[21]

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would have if possessed of certificates of stock of the amount and par value of the income debenture certificate held by them.

Id.

16. *Id.* § 353.080. The section provides: "In the event that any action with respect to which the holders of income debentures shall have the right to vote is proposed to be taken, notice of any meeting at which such action is proposed to be taken shall be given to such holders . . . ." *Id.*

17. MO. REV. STAT. § 353.050. The section provides: "No corporation now organized under the laws of this state shall change its name to a name, and no such corporation hereafter organized shall have a name, containing the word 'redevelopment' as a part thereof except as provided in this chapter." *Id.*

18. *Id.* § 353.050. The section provides: "No foreign corporation now authorized to do business in this state shall change its name to a name, and no such corporation shall hereafter be authorized to do business in the state with a name, containing the word 'redevelopment' as a part thereof." *Id.*

19. *Id.* § 353.030. The section provides: "The articles of agreement or association shall be prepared, subscribed and acknowledged, and filed in the office of the secretary of state pursuant to the general corporations laws of the state . . . ." *Id.*

20. *Id.* § 353.030 (11). The section provides: "Such net earnings shall be computed after deducting from gross earnings the following: (a) All costs and expenses of maintenance and operation; (b) Amounts paid for taxes, assessments, insurance premiums and other similar charges . . . ." *Id.*

21. *Id.* § 353.030(11)(c). The section provides:

> The development plan may contain provisions satisfactory to the legislative authority authorizing such plan that any surplus earnings in excess of the rate of the net earnings provided in this chapter may be held by the corporation as a reserve for maintenance of such rate of return in the future and may be used by the corporation to offset any deficiency in such rate of return which may have occurred in prior years; or may be used to accelerate the amortization payments; or for the enlargement of the project; or for reduction in rentals therein . . . .

Any excess of these surplus earnings remaining at the termination of the tax relief period must be turned over to the city.[22] Insurance companies that operate as redevelopment corporations also are subject to this limited earnings rule.[23] The statute further prohibits payment of interest on debentures or dividends on stock unless all amortized debts are current and unless all current public charges are paid or a reserve is established for the payment of those charges.[24]

D. *Requirements for Project Approval*

A redevelopment corporation may propose and initiate a Chapter 353 development plan for the development of all or any part of a blighted area.[25] A redevelopment corporation cannot operate unless the legislative authority[26] of the city having jurisdiction over the affected property authorizes the plan.[27] After approving the plan,[28] the

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Id.

See also § 353.090 which provides that: "An urban redevelopment corporation shall establish and maintain depreciation, obsolescence, and other reserves, also surplus and other accounts, including, among others, a reserve for the payment of taxes according to recognized standard accounting practices."

22. *Id.* § 353.030(11)(c). The section provides: "[A]ny excess of such surplus earnings remaining at the termination of the tax relief granted pursuant to section 353.110 shall be turned over by the corporation to the city."

23. *Id.* § 353.040. *See supra* note 9 and accompanying text.

24. MO. REV. STAT. § 353.100 provides:

> No urban redevelopment corporation shall pay any dividend interest on its income debentures or dividends on its stock during any year unless there shall exist at the time of such payment no default under any amortization requirements with respect to its indebtedness, nor unless all accrued interest, taxes and other public charges shall have been duly paid or reserves set up for the payment thereof, and adequate reserves provided for depreciation, obsolescence and other proper reserves.

Id.

25. *Id.* § 353.020(4) (Supp. 1988). The section provides: " 'Development plan' shall mean 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 . . . ." *Id.* Section 353.020(8) provides: " 'Redevelopment' shall mean the clearance, replanning, reconstruction or rehabilitation of any blighted area, and the provision of such industrial, commercial, residential or public structures and spaces as may be appropriate, including recreational and other facilities incidental or appurtenant thereto . . . ." *Id.* § 353.020(8). Section 353.020(9) provides: " 'Redevelopment project' shall mean a specific work or improvement to effectuate all or any part of a development plan . . . ." *Id.* § 353.020(9).

26. *Id.* § 353.020(4). *See supra* note 25 and accompanying text.

27. *Id.* § 353.060 provides:

> An urban redevelopment corporation shall operate under this chapter on one or more redevelopment projects pursuant to an authorized development plan, and

legislative authority, by city ordinance, may grant to the redevelopment corporation any rights, powers, duties, immunities and obligations not inconsistent with the statute.[29] This grant of power to the redevelopment corporation may occur only after a public hearing at which all of the property owners affected by the project are entitled to be present and to comment.[30]

Following the public hearing, the legislative authority must find that the redevelopment area is blighted as a precondition to commencement of a project.[31] A blighted area is an area that the legislative authority determines "that by reason of age, obsolescence, inadequate or outmoded design or physical deterioration, have [sic] become economic and social liabilities, and that such conditions are conducive to ill health, transmission of disease, crime or inability to pay reasonable taxes."[32] The legislative authority may approve a development plan for an area which includes buildings or real property[33] that are not in themselves blighted but necessarily are included for the overall improvement of the area.[34]

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with respect to each such project shall have such rights, powers, duties, immunities and obligations, not inconsistent with the provisions of this law, as may be conferred upon it by city ordinance duly enacted by the legislative authority of a city affected by this chapter which is authorizing or has authorized such plan.

Id.

28. The statute defines legislative authority as city council or board of aldermen. *Id.* § 353.020(5) (Supp. 1988).

29. *Id.* § 353.060 (1986). *See supra* note 26 and accompanying text.

30. *Id.* § 353.060. The section provides:

[N]o such right or powers . . . shall be granted by any governing authority to any urban redevelopment corporation . . . unless the governing authority shall hold a public hearing for the stimulation of comment by those to be affected by any such grant and shall determine thereafter that the area covered by the plan is blighted . . . .

Id.

31. *Id.*

32. *Id.* § 353.020(2)(Supp. 1988).

33. *Id.* § 353.020(7). The section provides:

"Real property" shall include lands, buildings, improvements, land under water, waterfront property, and any and all easements, franchises and hereditaments, corporeal or incorporeal, and every estate, interest, privilege, easement, franchise and right therein, or appurtenant thereto, legal or equitable, including restrictions of records, created by plat, covenant, or otherwise, rights-of-way, and terms for years . . . .

Id.

34. *Id.* § 353.020(1). The section provides:

Any such area may include buildings or improvements not in themselves blighted,

The legislative authority has wide discretion when making a finding of blight because that determination is an exercise of legislative power. Consequently, courts will overturn the determination only if it is arbitrary and capricious.[35] In *Allright Missouri, Inc. v. Civic Redevelopment Corp.*, the Missouri Supreme Court ruled that the courts cannot interfere with the legislative authority's discretionary exercise of judgment in determining the existence of blight.[36] The court reasoned that

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and any real property, whether improved or unimproved, the inclusion of which is deemed necessary for the effective clearance, replanning, reconstruction or rehabilitation of the area of which such buildings, improvements or real property form a part . . .

Id.

In Maryland Plaza Redevelopment Corp. v. Greenberg, 594 S.W.2d 284 (Mo. Ct. App. 1979), the Missouri Court of Appeals upheld a declaration of blight even though the area contained structures that did not fall within the definition of blight. *Maryland Plaza* involved the redevelopment of the Maryland Plaza area in St. Louis and a challenge to the Board of Aldermen's determination of blight. After approval of the redevelopment plan, the redevelopment corporation filed condemnation proceedings against respondents, owners of three tracts within the area. *Id.* at 285-86. Respondents argued that the area was not blighted because it contained properties which in themselves were not blighted. *Id.* at 288. The court rejected this argument and held that an area may be blighted even though it contains structures which would not fall within the definitional ambit of blight. *Id.* It reached this decision by relying on Section 353.020(1). *Id.* The court also relied on the City Plan Commission's study that disclosed that 60% of the structures in the area needed significant repairs and that the assessed valuation of the property had decreased over 15% in a ten-year period. *Id. See also* State *on Inf.* Dalton v. Land Clearance for Redevelopment Authority, 270 S.W.2d 44 (Mo. 1954) (en banc).

Parking Systems, Inc. v. Kansas City Downtown Redevelopment Corp., 518 S.W.2d 11, 15 (Mo. 1974). In *Parking Systems*, the redevelopment corporation obtained approval of a plan for the redevelopment of an area in Kansas City. *Id.* at 13-14. The plaintiffs brought suit challenging the constitutionality of Chapter 353 and the city's determination of blight. *Id.* at 14. Plaintiffs challenged the determination of blight on the grounds that: open land constituted 49% of the property; surface parking lots currently occupied 47% of the property; no further clearance or redevelopment was needed of the 49% open land; only 28% of buildings which occupied only 14% of the entire area were deteriorated or substandard to the degree requiring clearance; and the structural deficiencies were insufficient to qualify the project as blighted. *Id.* at 14. The court upheld the blight determination. It relied on other state court decisions holding that an area may be declared blighted even though it contains vacant land. *Id.* at 15. The court stated that a challenge to the determination of blight only can be made on the grounds that the city council acted arbitrarily and capriciously. *Id.*

35. *Parking Systems Inc.*, 518 S.W.2d at 15.

36. 538 S.W.2d 320, 324 (Mo.)(en banc), *cert. denied*, 429 U.S. 941 (1976). In *Allright Missouri*, plaintiffs brought suit challenging the City Council's adoption of an ordinance declaring an area blighted after the City Plan Commission's recommendation that the plan be disapproved. *Id.* at 322. Prior to its approval, the City Council referred the plan to the City's Committee on Plans and Zoning for its recommendation. *Id.* After conducting an investigation and hearings, the committee recommended that

"[u]nless it should appear that the conclusion of the City's legislative body in the respect in issue . . . is clearly arbitrary, . . . we cannot substitute our opinion for that of the City's."[37] The burden of proving that the determination is arbitrary rests on the party challenging the determination.[38] The legislative body also may declare an area blighted despite a contrary recommendation by the city planning commission[39] because the authority and responsibility for making the determination is vested exclusively with the legislative body.[40]

In addition to making a finding of blight, the legislative authority must determine that the redevelopment project is for a public purpose. This finding is consistent with Chapter 353's requirement that the redevelopment corporation serve a public purpose and that it acquire land and erect buildings to promote public health, safety and welfare.[41] In addition, this public purpose finding serves as a basis for the exercise of the eminent domain power.[42]

Missouri courts also have deferred to the legislative authority's finding of public purpose. In *Annbar Associates v. West Side Redevelopment Corp.*,[43] the Missouri Supreme Court held that the legislative

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the plan be approved and the area determined blighted. *Id.* at 323. Upon this recommendation, the City Council approved the plan and adopted an ordinance declaring the area blighted. *Id.* Allright challenged the determination of blight on the grounds that there was no factual basis for it and that the City Plan Commission's disapproval was conclusive evidence that the area was not blighted, therefore making the finding of blight arbitrary and capricious. *Id.* The court rejected Allright's argument that the Commission's disapproval of the project was conclusive evidence that the area was not blighted because the authority for making that determination is vested exclusively with the city's legislative body and not the commission. *Id.* at 324.

37. *Id.* (quoting Parking Sys., Inc. v. Kansas City Downtown Redevelopment Corp., 518 S.W.2d 11, 16 (Mo. 1974)).

38. *Id.*

39. Maryland Plaza Redevelopment Corp. v. Greenberg, 594 S.W.2d 284, 288 (Mo. Ct. App. 1979).

40. *Allright Missouri*, 538 S.W.2d at 324 (citing Parking Sys., Inc. v. Kansas City Downtown Redevelopment Corp., 518 S.W.2d 11, 17-18 (Mo. 1974)).

41. MO. REV. STAT. § 353.030(11) (1986). *See supra* note 13 and accompanying text.

42. *Id.* § 353.130(2). The section provides: "An urban redevelopment corporation shall have the right to acquire by the exercise of the power of eminent domain any real property in fee simple . . . only when so empowered by the legislative authority of the cities affected by this chapter." *Id.*

43. 397 S.W.2d 635 (Mo. 1965) (en banc), *appeal dismissed*, 385 U.S. 5 (1966). *Annbar* involved a challenge to the constitutionality of Chapter 353 and other Kansas City ordinances regulating redevelopment projects. *Id.* at 637-38. Plaintiff also sought injunctive relief to prevent defendant West Side Redevelopment Corp. from proceeding

authority's determination that certain property was blighted and its determination that a subsequent sale was in the public interest is acceptable as conclusive evidence that a proper public use existed and that the redevelopment project did not violate the fourteenth amendment of the United States Constitution.[44] Furthermore, the court held that a subsequent conveyance of the redevelopment property to private interests did not convert a public use into a private use[45] and that it would overturn the legislative authority's finding of public purpose only when that finding is arbitrary or induced by fraud, collusion or bad faith.[46] The Missouri Court of Appeals held in *Schweig v. Maryland Plaza Redevelopment Corp.* that a public use remains even when the redevelopment corporation contemplates no significant change in the use of the property it acquires but merely changes ownership from one private entity to another.[47] The court stated that the buildings' end use is irrelevant to determine whether the taking is for public use, and instead focused on whether the taking aids redevelopment of the blighted area.[48]

When reviewing a proposed development plan, the legislative authority also must decide whether the redevelopment corporation's financial plan for the project is adequate. If the determination of the legislative body is fairly debatable, a court will not hold the ordinance to be arbitrary and void.[49]

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with its redevelopment project. *Id.* at 638. West Side proposed to redevelop an area located between Pennsylvania Avenue and Washington Street on the east and west and Seventh Street and Tenth Street on the north and south. *Id.* It also included a small area at the intersection of Ninth and Washington Streets. *Id.* The entire redevelopment area was known as Quality Hill. *Id.*

44. *Id.* at 646 (quoting State *on Inf.* Dalton v. Land Clearance for Redevelopment Authority, 270 S.W.2d 44, 49-52 (Mo. 1954) (en banc)).

45. *Id.* The court reasoned that the statute's primary purpose is redevelopment and that the benefits to private individuals are only secondary. *Id.* (quoting State *on Inf.* Dalton v. Land Clearance for Redevelopment Authority, 270 S.W.2d 44, 53 (Mo. 1954) (en banc)).

46. *Id.*

47. 676 S.W.2d 249, 253 (Mo. Ct. App. 1984). *Schweig* involved a second challenge to the redevelopment project previously litigated in *Maryland Plaza*. *Id.* at 251. *See supra* note 34 and accompanying text for a description of the development plan at issue. In the instant case, plaintiffs challenged the acquisition of their property on the grounds that the acquisition was not necessary to accomplish the rehabilitation. *Id.* at 252. Maryland Plaza intended to acquire the well-maintained property and continue to use it for rental property without renovation or a change in tenants. *Id.*

48. *Id.* at 253.

49. Allright Missouri, Inc. v. Civic Redevelopment Corp., 538 S.W.2d 320, 325

Under Chapter 353, a redevelopment corporation may borrow funds for the development project and secure the repayment of the funds by a mortgage.[50] The mortgage must contain reasonable amortization provisions and can only be a lien on real property that forms the whole or a part of a development area.[51] In addition, certificates, bonds and notes secured by a first mortgage on the real property in the development area may be issued.[52] A redevelopment corporation also may obtain project funding from various sources, including grants or loans from the federal government or any federal agency or department.[53] A determination of whether the parties are financially responsible is vested with the legislative authority.[54]

The courts also defer to the legislative determination that the financing statement is sufficiently detailed absent clear proof that the plan was arbitrary or the result of fraud, collusion or bad faith.[55] Although the plan need not contain statements of committed financing or financiers, the Missouri Court of Appeals has held that the plan must contain a detailed description of the redeveloper's proposals to obtain the money to redevelop the project. Such proposals must be more than a

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(Mo.) (en banc), *cert. denied*, 429 U.S. 941 (1976); Annbar Associates v. West Side Redevelopment Corp., 397 S.W.2d 635, 655 (Mo. 1965) (en banc), *appeal dismissed*, 385 U.S. 5 (1966); Schweig v. Maryland Plaza Redevelopment Corp., 676 S.W.2d 249, 256 (Mo. Ct. App. 1984); and State *ex rel.* Devanssay v. McGuire, 622 S.W.2d 323, 327 (Mo. Ct. App. 1981).

50. MO. REV. STAT. § 353.150 (1) (1986). The section provides: "Any urban redevelopment corporation may borrow funds and secure the repayment thereof by mortgage which shall contain reasonable amortization provisions and shall be a lien upon no other real property except that forming the whole or a part of a single development area." *Id.* This provision only limits the redevelopment corporation when it uses the real property within the development plan as security. It does not preclude the redeveloper from pledging other property of the redevelopment corporation as the security on the debt of the redevelopment corporation.

51. *Id.*

52. *Id.* § 353.150(2). The section provides:

> Certificates, bonds and notes or part interest therein, or any part of an issue thereof, which are secured by a first mortgage on the real property in a development area, or any part thereof, shall be securities in which all the following persons, partnerships, or corporations and public bodies or public officers may legally invest funds within their control . . .

Id.

53. *Id.* § 353.160.

54. Annbar Associates v. West Side Redevelopment Corp., 397 S.W.2d 635, 655 (Mo. 1965) (en banc), *appeal dismissed*, 385 U.S. 5 (1966).

55. *Id.*

"wish list."[56] The redeveloper must submit a sufficiently detailed plan to provide a basis for the legislative body to determine its feasibility. When the legislative authority considers the feasibility of the plan, it also may consider parol evidence that subsequently may be relied upon by a reviewing court to determine whether the action of the legislative authority was fairly debatable.[57]

E. *Benefits of Urban Redevelopment Corporations*

1. Eminent Domain Power

A redevelopment corporation may acquire property for redevelopment by gift, grant, lease, purchase or through the power of eminent domain.[58] Upon approval of the development plan, the legislative authority may delegate its eminent domain power to the redevelopment corporation.[59] This power allows the corporation to acquire real property in fee simple or any estate necessary to accomplish the redevelopment purpose.[60] The corporation may exercise eminent domain under any applicable Missouri statutory provision.[61] Land already devoted

56. State *ex rel.* Devanssay v. McGuire, 622 S.W.2d 323, 327 (Mo. Ct. App. 1981). The suit challenged the suit for condemnation initiated by Waterman Redevelopment Corp. *Id.* at 324. St. Louis approved Waterman's development plan to redevelop a block of property located on Waterman Avenue and containing Devanssay's property. *Id.* Devanssay challenged the ordinance granting eminent domain power to Waterman on the grounds that it was arbitrary and void because it did not contain a detailed statement of proposed financing. *Id.* The plan submitted by Waterman listed various methods of prospective financing for various aspects of the project. In addition, it stated that Waterman and its affiliated companies had $400,000 in equity in the development area with the costs of acquisition of the additional properties only being $40,000. *Id.* at 327. In Maryland Plaza Redevelopment Corp. v. Greenberg, however, the Missouri Court of Appeals for the Eastern District held the Board of Alderman's approval of a development plan arbitrary on the grounds that the plan did not contain a detailed financing plan. 594 S.W.2d 284, 290 (Mo. Ct. App. 1979). The financing statement at issue was a letter containing only statements such as "debt financing will be on a structure by structure basis" or "the cost of public areas will be assigned proportionately to each structure." *Id.*

57. *Devanssay*, 622 S.W.2d at 327.

58. MO. REV. STAT. § 353.130 (1986).

59. *Id.* § 353.130(2); *see supra* note 43 and accompanying text.

60. MO. REV. STAT. § 353.130(2)(1986).

61. *Id.* § 353.130(3). The section provides: "An urban redevelopment corporation may exercise the power of eminent domain in the manner provided for corporations in chapter 523, R.S.Mo.; or it may exercise the power of eminent domain in the manner provided by any other applicable statutory provision for the exercise of the power of eminent domain." *Id.*

to a public purpose may be acquired through condemnation; however, property belonging to any city, county or the state, or any political subdivision may not be acquired without its consent.[62]

In *Thomas W. Garland, Inc. v. City of St. Louis*,[63] the United States District Court for the Eastern District of Missouri held that the city's grant of the eminent domain power to the redevelopment corporation makes the corporation, not the city, the condemnor. The court reasoned that because the corporation was pursuing its own for-profit plans within the broader societal goal to eliminate blight, it was not an agent of the city; the city's delegation of the eminent domain power did not establish the city as the principal condemnor.[64]

The Missouri Supreme Court earlier upheld the constitutionality of the delegation of the eminent domain power to private corporations in *Annbar Associates v. West Side Redevelopment Corp.*[65] The court refused to "second guess the legislative branch of government as to what bodies may be invested with the power of eminent domain"[66] and also declined to distinguish between the power granted redevelopment corporations and that granted to railroads and others to carry on a business necessary to serve the public.[67]

2. Tax Exemption and Abatement

An approved redevelopment project is entitled to tax exemption from and abatement for real property taxes.[68] Under the tax exemptions in Chapter 353, real property acquired is taxed exclusive of improvements for a period *not to exceed* 10 years. The assessment level remains at the level applicable to the property during the calendar year preceding its acquisition by the redevelopment corporation "so long as

62. *Id.* § 353.130 (3): "Property already devoted to a public use may be acquired in like manner, provided that no real property belonging to any city, county, or the state, or any political subdivision thereof may be acquired without its consent." *Id.*

63. 492 F. Supp. 402, 405 (E.D. Mo. 1980). *Garland* involved a challenge to an ordinance adopted by St. Louis granting Mercantile Center Redevelopment Corporation eminent domain power for its approved development plan for a six block area. *Id.* at 403. Plaintiff argued that the actions taken by Mercantile acted as an agent for the city as a consequence of the city's grant of eminent domain to Mercantile and that the city should be held liable for these actions. *Id.* at 404.

64. *Id.* at 405; *see also* Young v. Harris, 599 F.2d 870 (8th Cir. 1979).

65. 397 S.W.2d 635 (Mo. 1965)(en banc), *appeal dismissed*, 385 U.S. 5 (1966).

66. *Id.* at 647.

67. *Id.*

68. MO. REV. STAT. § 353.110 (1986).

the real property is owned by an urban redevelopment corporation and used in accordance with" an authorized development plan.[69] If the property acquired by the urban redevelopment corporation was tax exempt prior to its acquisition, the assessed valuation of the property will conform to the assessed valuation of adjacent property, exclusive of improvements, for the calendar year preceding the acquisition.[70] After the tax-exempt period, Chapter 353 provides a tax abatement which bases the property tax upon not more than half of the assessed valuation of the property and any improvements for a period of *not more* than fifteen years.[71] Thus, although a redevelopment corporation is

69. *Id.* § 353.110.1. The section provides:

> [T]he real property of urban redevelopment corporations acquired pursuant to this chapter shall not be subject to assessment or payment of general ad valorem taxes . . . for a period not in excess of ten years after the date upon which such corporations become owners of such real property, except to such extent and in such amount as may be imposed upon such real property during such period measured solely by the amount of the assessed valuation of land, exclusive of improvements . . . for taxes due and payable thereon during the calendar year preceding the calendar year during which the corporation acquired title to such real property. The amounts of such tax assessments shall not be increased during such period so long as the real property is owned by an urban redevelopment corporation and used in accordance with a development plan authorized by the legislative authority of such cities.

Id.

70. *Id.* § 353.110.2. The section provides:

> In the event, however, that any such real property was tax exempt immediately prior to ownership by an urban redevelopment corporation, [the assessor] shall . . . promptly assess such land, exclusive of improvements, at such valuation as shall conform to but not exceed the assessed valuation made during the preceding calendar year of other land, exclusive of improvements, adjacent thereto or in the same general neighborhood . . .

Id.

71. *Id.* § 353.110.2. The section provides:

> For the next ensuing period not in excess of fifteen years, ad valorem taxes upon such real property shall be measured by the assessed valuation thereof as determined by such assessor or assessors upon the basis of not to exceed fifty percent of the true value of such real property, including any improvement thereon, nor shall such valuations be increased above fifty percent of the true value of such real property from year to year during such next ensuing period so long as the real property is owned by an urban redevelopment corporation and used in accordance with an authorized development plan.

Id.

The Missouri Constitution explicitly limits the ability of the state and its political subdivisions to determine assessed property valuations. Article X, section 4(a) divides property into three classifications, applying class 1 to real property. MO. CONST. art. X, § 4(a). The constitution further divides class 1 property into three subclasses for assessment purposes. *Id.* § 4(b). Pursuant to this constitutional provision, the assessed valua-

entitled to tax exemption and abatement under Chapter 353, the corporation is not entitled to any specific period of exemption or abatement. As long as the property is owned by the original redevelopment corporation and used in accordance with the development plan, tax assessments may not exceed half of its assessed valuation during the tax abatement period.[72]

A redevelopment corporation may sell or transfer the redevelopment property and the legislative authority *may* grant these tax benefits to a new owner, but only if the new owner agrees to comply with the provisions of the development plan.[73] If, however, the property is used for a different purpose, or if the legislature refuses to grant tax benefits to the purchaser or transferee, full taxes will be assessed. Consequently, the property may be operated free from any Chapter 353 provisions.[74]

As a precondition to granting tax benefits, the legislative authority must provide each political subdivision that may be affected by the tax benefits with a written statement of the impact of the exemption on *ad valorem* taxes and give notice of a public hearing on the development plan.[75] The written statement and notice must comply with local ordi-

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tion for all real property may not exceed 33 1/3% of its true value. *Id.* The percentage valuation also is limited by statute. The statute only permits assessment at 19% of the true value for residential property and assessment at the rate of 32% for commercial property. MO. REV. STAT. § 137.115.5(1) & (3) (1986). The provisions of section 353.110.2 that provide for assessment based on only 50% of the property's true value combined with the constitutional and statutory limitations on the percentage at which valuation may be assessed effectively result in a maximum assessed valuation for commercial property of 16%.

72. *Id.* § 353.110.2 (1986).

73. MO. REV. STAT. § 353.150.4 (1986). The section provides:

> Any urban redevelopment corporation may sell or otherwise dispose of any or all of the real property acquired by it for purposes of a redevelopment project. In the event of the sale or other disposition of real property . . . and the purchaser of such real property of such redevelopment corporation shall continue to use, operate and maintain such real property in accordance with the provisions of any development plan, the legislative authority of any city affected by the provisions of this chapter, may grant the partial tax relief provided in section 353.110 . . .

Id.

74. *Id.*

75. *Id.* § 353.110.3(1). The section provides:

> No tax abatement or exemption authorized by this section shall become effective unless and until the governing body of the city: (1) Furnishes each political subdivision whose boundaries for ad valorem taxation purposes include any portion of the real property to be affected by such tax abatement or exemption with a written statement of the impact on ad valorem such tax abatement or exemption will have on such political subdivisions and written notice of the hearing . . .

nance, and shall include an estimate of the amount of *ad valorem* tax revenues of each taxing entity based on the estimated assessed valuation of the property before and after redevelopment.[76] All affected political subdivisions shall have a right to be heard on the granting of tax abatement and exemption.[77]

As a second precondition to the granting of tax benefits, the legislative authority must enact an ordinance containing a sunset provision that requires the expiration of development rights, including the powers of eminent domain and any tax benefits, if the redevelopment corporation fails to acquire ownership of the property in the development plan area within the period specified by the local government.[78]

To alleviate the effect that the tax benefits may have on the affected political subdivisions, the city and redevelopment corporations that receive tax benefits may contract to have the corporation make "payments in lieu of taxes" (PILOTS).[79] PILOTS are allocated among all taxing authorities affected by the tax abatement on the same basis as

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Id.

76. *Id.* § 353.110.3(1). The section provides:

> The written statement and notice required by this subdivision shall be furnished as provided by local ordinance before the hearing and shall include, but need not be limited to, an estimate of the amount of ad valorem revenues of each political subdivision which will be affected by the proposed tax abatement or exemption, based on the estimated assessed valuation of the real property involved as such property would exist before and after it is redeveloped.

Id.

77. *Id.* § 353.110.3(2). The section provides: "[A]ll political subdivisions described in subdivision (1) of this subsection shall have the right to be heard on such grant of tax abatement or exemption." *Id.* It does not appear, however, that the taxing entities can challenge the decision to grant tax benefits of the level of tax benefits.

78. *Id.* § 353.110.3. The section provides:

> No tax abatement or exemption authorized by this section shall become effective unless and until the governing body of the city . . .
>
> (3) Enacts an ordinance which provides for expiration of development rights, including the rights of eminent domain and tax abatement, in the event of failure of the urban redevelopment corporation to acquire ownership of property within the area of the development plan. Such ordinance shall provide for a duration of time within which such property must be acquired, and may allow for acquisition of property under the plan in phases.

Id.

79. MO. REV. STAT. § 353.110.3(4)(1986). The section provides: "[P]ayments in lieu of taxes may be imposed by contract between a city and an urban redevelopment corporation which receives tax abatement or exemption on property pursuant to this section." *Id.*

their proportionate shares of *ad valorem* tax revenues.[80]

Once the redevelopment corporation acquires real property and receives the statutory tax benefits, it will not be subject to the assessment and payment of taxes based on full valuation of the real property until after a period not to exceed twenty-five years or until it elects to pay full taxes.[81] At the earlier of the two periods, the corporation may use the real property free from any of the conditions and restrictions of Chapter 353 and the development plan.[82]

F. *Rights of Third Parties*

After the government approves a development plan, property owners in the development plan area have no statutory or constitutional right to participate in the redevelopment project.[83] However, a city may condition development plan approval on the redevelopment corporation's agreement to allow property owners to participate. After the redevelopment corporation acquires property in the development plan

80. *Id.* § 353.110.3(4). The section provides:

> The collector shall allocate all revenues received from such payments in lieu of taxes among all taxing authorities whose property tax revenues are affected by the exemption or abatement on the same pro rata basis and in the same manner as the ad valorem property tax revenues received by each tax authority from such property in the year such payments are due.

Id. If property owned by an urban redevelopment corporation is located within an enterprise zone as defined under MO. REV. STAT. § 135.200, that property is taxed pursuant to the provisions of Chapter 353. *Id.* § 135.215.

81. *Id.* § 353.110.2. The section provides:

> After a period totaling not more than twenty-five years, such real property shall be subject to assessment and payment of all ad valorem taxes, based on the full true value of the real property; provided that after the completion of the redevelopment project, as authorized by law or ordinance whenever any urban redevelopment corporation shall elect to pay full taxes, or at the expiration of the period, such real property shall be owned and operated free from any of the conditions, restrictions or provisions of this chapter, and of any ordinance, rule or regulation adopted pursuant thereto, any other law limiting the right of domestic and foreign insurance companies to own and operate real estate to the contrary notwithstanding.

Id.

82. *Id.* The redevelopment property, however, may be subject to restrictions in the form of real covenants that were imposed on the redevelopment corporation at the time that the government approved the development plan.

83. Annbar Assocs. v. West Side Redevelopment Corp. 397 S.W.2d 635, 648 (Mo. 1965) (en banc), *appeal dismissed*, 385 U.S. 5 (1966). *But cf.* GA. CODE. ANN. § 36-61-9(c)(1987) (prohibits municipality or county from exercising eminent domain power without first notifying landowner of planned use and providing landowner with opportunity to participate); Nations v. Downtown Dev. Auth. of Atlanta, 338 S.E.2d 240 (Ga. 1985); McCord v. Housing Auth. of Atlanta, 272 S.E.2d 247 (Ga. 1980).

area, it may allow the previous owners, tenants, or others who wish to occupy the property to pay an occupancy fee, but the occupancy is not considered month to month, nor is the corporation required to give notice of the termination of the occupancy.[84] The corporation may terminate the occupancy at the end of the period covered by the most recent "rental" payment.[85]

Section 353.130 provides that a redevelopment corporation may exercise the power of eminent domain pursuant to Chapter 523,[86] which includes provisions for relocation expenses.[87] Under these provisions, a redevelopment project undertaken by a public agency must provide relocation assistance to displaced persons when assistance would be required if federal funds were involved.[88] The statute defines "public agency" as the state of Missouri or any political subdivision or branch, bureau or department of the state and "any quasi-public corporation created or existing by law" which is authorized to acquire real property and which acquires the property in whole or in part with federal funds.[89] The relationship between these statutes is unclear. The statutes raise the possibility that a private redevelopment corporation could be considered a quasi-public corporation within the meaning of Section 523.200(2).[90] If a court adopted this construction of the statute, an urban redevelopment corporation would be required to pay re-

84. MO. REV. STAT. § 353.140 (1986) provides:

[T]he urban redevelopment corporation may agree with the previous owners of such property, or any tenants continuing to occupy or use it, or any other persons who may occupy or use or seek to occupy or use such property, that such former owner, tenant or other persons may occupy or use such property upon the payment of a fixed sum of money for a definite term or upon the payment periodically of an agreed sum of money. Such occupation or use shall not be construed as a tenancy from month to month, nor require the giving of notice by the urban redevelopment corporation for the termination of such occupation or use or the right to such occupation or use, but immediately upon the expiration of the term for which payment has been made the urban redevelopment corporation shall be entitled to possession of the real property . . . .

85. *Id.*

86. *Id.* § 353.130(3). *See supra* note 61 and accompanying text.

87. *Id.* § 523.205.

88. *Id.*

89. *Id.* § 523.200(2).

90. *Id.* The statute is also ambiguous in that section 353.130(3) could be interpreted to mean either that section 523.200 must be followed if eminent domain under section 523 is used or that if eminent domain is used, the urban redevelopment corporation may follow section 523.205 and the other provisions of section 523.

location expenses under state law even though federal funds were not involved.

In *Young v. Harris*,[91] however, the Eighth Circuit considered the relationship between a city and an urban redevelopment corporation to determine whether federal relocation assistance requirements applied to a redevelopment corporation. The court held that the corporation was not an agent of the city as a result of the grant of the power of eminent domain but, instead, a private entity to which the federal statute did not apply.[92] Under this interpretation, a Missouri redevelopment corporation organized under Chapter 353 is not required to provide relocation assistance under either federal or state laws.

G. *City Initiated Redevelopment*

Cities also may acquire property by purchase or eminent domain in an area designated on its master plan as a redevelopment area.[93] A city is defined by the statute as a constitutional charter city — a city which has a population of 4,000 inhabitants or more according to the last federal census and is located within a charter county or a city which has a population of 2,500 or more and is not located within a charter county.[94] A city may clear this designated area and install, construct

91. 599 F.2d 870 (8th Cir. 1979). The plaintiffs in *Young* brought a class action on behalf of present and former low income residents of the redevelopment area known as the Pershing-Waterman area. *Id.* at 872. The redevelopment plan financing for the area consisted of entirely private capital with the exception of mortgage insurance from the Department of Housing and Urban Development. *Id.* at 874. St. Louis, however, used Community Development Block Grant funds to provide municipal services to the area. *Id.* at 875. Plaintiffs argued that the redevelopment corporation and the city participated in a joint undertaking and therefore the redevelopment corporation received federal financial assistance through the city's receipt of the community block grant funds. *Id.* at 877. Plaintiffs further argued that the receipt of this federal assistance brought the redevelopment corporation within the ambit of the federal statute requiring payment of relocation expenses to displaced persons. *Id.*

92. *Id.* at 877-78.

93. MO. REV. STAT. § 353.170(1) (1986): "Any city subject to this chapter shall have power: (1) To acquire by the exercise of the power of eminent domain, or otherwise, an area designated on a master plan under the authority of the legislative authority of the city as a redevelopment area . . ."

94. *Id.* § 353.020(3) (Supp. 1988). The section provides:

> "City" or "such cities" shall mean constitutional charter cities; cities with a population of four thousand or more according to the last preceding federal decennial census and located in counties with a charter form of government; and cities with a population of two thousand five hundred or more according to the last preceding federal decennial census and located in counties without a charter form of government.

and reconstruct streets, utilities and other improvements necessary to prepare the area for development.[95] It also may sell or lease this property to private corporations for redevelopment.[96] These provisions allow the city to encourage redevelopment by initiating action itself.

H. *Conclusion*

Chapter 353 is a deceptively simple statute. Its essential purpose is to promote urban redevelopment by private corporations. Urban redevelopment is promoted by delegating the power of eminent domain to private corporations and by providing substantial tax benefits when real property is acquired and used in accordance with an approved development plan. The precondition to commencement of a Chapter 353 redevelopment project is a finding that the land in the proposed project area is blighted. In the next part of the Article, the major criticisms of Chapter 353 are examined.

PART II. CRITICISMS OF CHAPTER 353

A. *General Criticisms of Urban Redevelopment*

Urban redevelopment programs have never been free of controversy. Despite the general desire to improve the quality of life in urban areas, the focus of redevelopment programs has been less clear. One rationale for urban redevelopment has been simply to improve urban areas in a physical sense, making them more attractive places in which to live and to visit.[97] A second rationale for urban redevelopment has been to eliminate slums and blighted areas that generally are characterized by a high level of substandard housing.[98] This rationale includes the assumption that redevelopment would produce quality housing for the

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Id.

95. *Id.* § 353.170(2) (1986). The section provides:

> Any city subject to this chapter shall have power . . . (2) To clear any such real property and install, construct, and reconstruct streets, utilities and any and all other city improvements necessary for the preparation of such area for use in accordance with the provisions of this chapter.

Id.

96. *Id.* § 353.170. The section provides: "Any city subject to this chapter shall have power . . . (3) To sell or lease such real property for use in accordance with the provisions of this chapter." *Id.*

97. *See* Marcuse, *Housing Policy and City Planning: The Puzzling Split in the United States, 1893-1931*, in SHAPING AN URBAN WORLD (G. Cherry ed. 1980); Williamson, *Community Development Block Grants*, 14 URB. LAW 283, 284-85 (1982).

98. N.J. Stat. Ann. § 40:55-21.1(a)(West 1967); Brown, *Urban Redevelopment*, 29

urban poor to replace substandard housing.[99] This model of urban redevelopment is the blight driven model. Finally, legislators have viewed urban redevelopment more broadly as a means to promote economic development.[100] The underlying thesis of this emphasis is that the longterm vitality of urban areas depends on a solid economic base. This model of urban redevelopment may be referred to as the economic development model.

Urban redevelopment has taken place under two different statutory regimes. The first regime, exemplified by Chapter 353, authorizes substantial tax benefits to encourage redevelopment and permits the government or the private redevelopment corporation to use the eminent domain power to acquire land in the project area.[101] Under this regime, the government does not provide direct subsidies to the redevelopment project; rather, it provides a hidden subsidy in the form of tax benefits. The second statutory regime came into place as a result of the availability of federal funds for slum clearance and urban renewal.[102] Under this regime, a government agency acquires land for redevelopment, clears the land, provides adequate infrastructure, assembles the land, and then sells or leases all or part of the land to private redevelopers.[103] The cost of the land is written down to make redevelopment economically possible. Thus, the government provides a direct financial subsidy by underwriting the cost of initiating the redevelopment project.

B. *The Blight Driven Model of Chapter 353*

Like urban redevelopment generally, Chapter 353 always has been controversial, at least in the sense of generating litigation.[104] Similar to

B.U.L. REV. 318 (1949); Hill, *Recent Slum Clearance and Urban Redevelopment Laws*, 9 WASH. & LEE L. REV. 173, 175 (1952).

99. Comment, *Urban Redevelopment*, 54 YALE L.J. 116, 118-20 (1944).

100. Comment, *Urban Redevelopment*, 9 U. PITT. L. REV. 74, 77-78 (1947); C. Woodbury & F. Cliffe, *Industrial Location and Urban Redevelopment*, in THE FUTURE OF CITIES AND URBAN REDEVELOPMENT 652 (C. Woodbury ed. 1953); Brown, *supra* note 98, at 319.

101. 1945 Mo. Laws 1242, 1247, 1249.

102. Housing Act of 1949, 63 Stat. 413 (codified as amended at 42 U.S.C. § 1441 (1952)).

103. Johnstone, *The Federal Urban Renewal Program*, 25 U. CHI. L. REV. 301, 317-21 (1958).

104. Young v. Harris, 599 F.2d 870 (8th Cir. 1979); Thomas W. Garland, Inc. v. City of St. Louis, 492 F. Supp. 402 (E.D. Mo. 1980); Allright Missouri, Inc. v. Civic

its counterparts in other states, property owners affected by the statute's operation quickly challenged the constitutionality of the statute.[105] Relying on an earlier case involving the Land Clearance for Redevelopment Authority law,[106] the Missouri Supreme Court upheld Chapter 353 against a variety of constitutional challenges.[107]

The recent criticisms of Chapter 353 have bypassed federal and state constitutional law issues. Rather, the present criticisms may be grouped into three basic categories: (1) whether local Chapter 353 programs are adequately managed, which includes ensuring developer compliance with development plans;[108] (2) whether residents in and neighbors of the redevelopment project area are adequately protected from the impact of project execution;[109] and (3) whether the statute is being used properly to eliminate blight.[110] Without denegating the first two issue areas, it may be said that they involve fine tuning the 353 program, while the third area involves a consideration of the very purposes of the statute.

The successful applicant for a Chapter 353 project obtains substantial benefits from the local government. Not only does the applicant receive tax benefits that may be worth millions of dollars, the applicant may be entitled to use the government's eminent domain power to assemble the development site. However, the project likely will displace residents in the project area and may have deleterious effects on neigh-

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Plaza Redevelopment Corp., 538 S.W.2d 320 (Mo. 1976)(en banc), *cert. denied*, 429 U.S. 941 (1976); Parking Systems, Inc. v. Kansas City Downtown Redevelopment Corp., 518 S.W.2d 11 (Mo. 1974); Annbar Assocs. v. West Side Redevelopment Corp., 397 S.W.2d 635 (Mo. 1965)(en banc), *appeal dismissed*, 385 U.S. 5 (1966); Schweig v. Maryland Plaza Redevelopment Corp., 676 S.W.2d 249 (Mo. Ct. App. 1984); State *ex rel.* Devanssay v. McGuire, 622 S.W.2d 323 (Mo. Ct. App. 1981); Maryland Plaza Redevelopment Corp. v. Greenberg, 594 S.W.2d 284 (Mo. Ct. App. 1979); Schweig v. City of St. Louis, 569 S.W.2d 215 (Mo. Ct. App. 1978).

105. Annbar Assocs. v. West Side Redevelopment Corp., 397 S.W.2d 635 (Mo. 1965)(en banc), *appeal dismissed*, 385 U.S. 5 (1966).

106. State *on Inf.* Dalton v. Land Clearance for Redevelopment Auth. of Kansas City, 270 S.W.2d 44 (Mo. 1954)(en banc).

107. *Annbar Assocs.*, 397 S.W.2d at 647-50.

108. Casterline, *Tax Abatement Encourages Development*, PRACTICING PLANNER 19, 46 (June 1977); Smith, *Developers, Jackson County Wrangle Over Tax Break Cuts*, Kansas City Times, May 28, 1988, at B-8, col. 1; Kotula, *Few Agree on Proper Tack to Take in 353 Revisions*, Kansas City Times, July 29, 1986, at D-31, col. 1.

109. Ochsner - Hare & Hare, Kansas City 353 Study 139-40 (March 1989)(unpublished study).

110. Kotula, *Officials Argue Over Redevelopment Law*, Kansas City Times, Dec. 20, 1985, at C-1, col. 1.

bors of the project area. As a result of these concerns, many Chapter 353 critics believe that a redevelopment corporation's prime directive should be the elimination of blight. This emphasis is meant to ensure that the redevelopment corporation provides benefits to the public that offset the benefits it receives.[111]

Chapter 353 does require as a condition of project approval that the government specifically find that the area proposed for redevelopment is blighted.[112] In the past several years, the Kansas City City Council has come under severe criticism for approving Chapter 353 projects in areas that allegedly lack the traditional characteristics of blight,[113] exemplifying the economic development model. Several of these projects have been in a mixed-use area of the city known as the Country Club Plaza. With respect to two projects that the Kansas City City Council approved for the Plaza area, a group of citizens brought a legal challenge to the government's project approvals.[114] Although the complaint filed in the action raised a variety of issues, the central allegation was that the city failed to present adequate evidence to support the council's blight determinations. One of the two projects became so politically volatile that the city ultimately approved the project only after it was submitted for a public referendum.[115]

Blight elimination is at the crux of two other lawsuits that have been filed in Kansas City. In the first lawsuit, a group of developers have challenged the revocation of benefits by Jackson County, Missouri. The developers allegedly were not eliminating blight in compliance with the approved development plans for their projects and consequently were no longer entitled to tax benefits as a matter of law.[116] The City of Kansas City intervened, alleging that it, and not the county, is the proper body to determine whether a redevelopment corporation is no longer entitled to tax benefits.

In the second lawsuit, Kansas City sued a redevelopment corpora-

111. MO. REV. STAT. § 353.030(11) (1986).

112. *Id.* § 353.020(1) & (2) (Supp. 1988).

113. *Of Blight and Right: Concept of Missouri's 353 Law Shifts*, Kansas City Star, Dec. 29, 1985; Kotula, *Officials Argue Over Redevelopment Law*, Kansas City Times, Dec. 20, 1985, at C-1, col. 1; Kotula, *Few Agree on Proper Tack to Take in 353 Revisions*, Kansas City Times, July 29, 1986, at D-31, col. 1.

114. Achtenberg v. City of Kansas City, Mo., No. CV85-25593 Civ. M (Feb. 26, 1986).

115. Karash, *March Start Scheduled for Sailors Project*, Kansas City Times, Nov. 14, 1987, at B-2, col. 1.

116. Kansas City Terminal Dev. Co. v. Kelley, Civil Case No. CV88-12091.

tion and its transferee for their alleged failure to remedy blight pursuant to the approved development plan and contract.[117] This lawsuit involves the Union Station, a Kansas City landmark. Union Station and its preservation have become rallying points for those interested in the city's revitalization as well as those who criticize the city's utilization of Chapter 353.[118]

The controversy surrounding the use of Chapter 353 has generated changes in Kansas City's redevelopment ordinance and in Chapter 353 itself. The statutory changes sought to improve protection of property owners in project areas and to protect the various taxing authorities that are affected when the local government grants tax benefits to the redevelopment corporation.[119] Although the state law was not amended with respect to the blight determination, changes in Kansas City's redevelopment ordinance attempted to force redevelopers to provide facts that support the blight determination and authorized the government to conduct an independent blight determination.[120]

An editorial concerning the possible use of Chapter 353 in Liberty, Missouri, best describes the dilemma that 353 presents.[121] The writer explained that "[b]y such law (Chapter 353), almost anything anywhere could be determined blight. But that is what gives the law its power, and simultaneously its potential for abuse."[122] The advocates of the blight driven model of Chapter 353 might not have as much reason to be concerned about the use of Chapter 353 if they believed that economic development were a sufficient rationale for approving a 353 project. However, these critics doubt whether Chapter 353 benefits are needed with respect to some projects that the government approves and whether other government projects are cost effective.[123]

C. *Criticisms of the Economic Development Model*

The economic development model of Chapter 353 rests on the prem-

117. City of Kansas City v. Trizec Corp. Ltd., Civil Case No. CV88-24596.

118. Smith, *Developers, Jackson County Wrangle Over Tax Break Cuts*, Kansas City Times, May 28, 1988, at B-8, col. 1; Kotula, *Officials Argue Over Redevelopment Law*, Kansas City Times, Dec. 20, 1985, at C-1, col 1.

119. 1988 Mo. Laws 490-92 (codified at MO. REV. STAT. § 353.110.3 (1986)).

120. KANSAS CITY, MO. § 36.5.1 (1986).

121. *Council Gets 353 Preview*, New Antioch Publication, Dec. 11, 1985, at 1.

122. *Id.*

123. Everly, *Tax Compromise on 353 Has Some Developers Cautious*, Kansas City Star, Feb. 5, 1989, at 13F.

ise that the long range improvement of urban areas is dependent on improving the economic base of the community.[124] Theoretically, promoting economic development in the form of commercial and office development has several benefits. First, it creates jobs that may benefit the urban poor. Project construction creates jobs and there is a continuing need for persons to provide services in and for the projects. Second, by promoting white-collar jobs, the economic development project may encourage middle and upper-income persons to reside in the central urban area.[125] These persons will have a financial stake in the quality of life in the urban area and will support programs, taxes and bonded indebtedness to improve the area in which they live. Finally, it is argued that the development project will, in the long run, produce tax revenues that could not have been realized without Chapter 353.[126]

Critics of this model dispute the alleged benefits of economic development. Specifically, they doubt that the benefits available under Chapter 353 are necessary to encourage development in areas that are not, in fact, blighted.[127] In addition, critics question whether economic development projects can provide enough economic benefits to the community to offset twenty-five years of tax benefits.[128] Thus, the most caustic criticism of Chapter 353 suggests that project approvals that are not tied directly to the elimination of obvious cases of blight do little more than benefit the redevelopment corporations and, indirectly, their parent and sibling companies.[129]

This Article does not seek to resolve the policy dispute surrounding the use of Chapter 353. Several studies done in Kansas City and St. Louis appear to support the manner in which those two cities have

124. Slayton, *State & Local Incentives & Techniques for Urban Renewal*, 25 LAW & CONTEMP. PROBS., 793, 795-96 (1960).

125. D. MANDELKER, G. FEDER & M. COLLINS, REVIVING CITIES WITH TAX ABATEMENT 12 (1980) (hereinafter D. MANDELKER).

126. Casterline, *supra* note 108, at 23, 24; Roeseler, *Current Planning & Zoning Enabling Legislation for Cities & Counties in the State of Missouri*, 21 UMKC L. REV. 221 (1956).

127. Everly, *supra* note 123, at 13F.

128. Slayton, *supra* note 124, at 796.

129. Casterline, *supra* note 108, at 24-25. MO. REV. STAT. 353.030 (11)(1986) limits the net earnings of the redevelopment corporation to 8% per annum. This 8% earnings limitation is higher than the limitation in other state redevelopment statute and was instituted in the hopes that the increased earnings along with the tax benefits and eminent domain power would encourage use of Chapter 353. Slayton, *supra* note 124, at 793-94.

used Chapter 353.[130] Rather, this Article examines in the next part whether it was the intent of the Missouri legislature to make Chapter 353 a blight driven statute or whether economic development projects are consistent with the original purposes of the statute.

PART III. LEGISLATIVE HISTORY OF CHAPTER 353

A. *Introduction*

This part of the Article examines the legislative history of Chapter 353 to determine whether its current use under the economic development model conforms to the statute's original purposes or constitutes a misuse of it. "Misuse" suggests that the statute is being utilized in an improper way or in a manner that the legislature did not intend.[131] To reach a conclusion on this issue, one must examine the objectives of the law. If the Missouri Legislature originally intended Chapter 353 to clear physically deteriorated areas and upgrade the quality of life for the urban poor, then the law has been misused in recent years. However, if the original goal of the law was to improve urban economic conditions, as well as social conditions, then local legislatures have used Chapter 353 properly in an effort to accomplish this purpose.[132] The objectives of the legislation can be determined best by tracing its history against a background of the evolution of urban redevelopment in this country.

B. *History of Urban Redevelopment*

1. Federal Programs

Legislatures have enacted urban redevelopment statutes in response to the physical decline of the central city and an increased awareness of blighted areas and slums which resulted from the industrialization and the urbanization of this country in the twentieth century.[133] Although slums always existed in cities due to rapid and unplanned growth, an

130. Ochsner - Hare & Hare, Kansas City 353 Study (March 1989) (unpublished study); City Development Department, "353" URBAN REDEVELOPMENT CORPORATION LAW IN KANSAS CITY, MISSOURI (Mar. 1985); D. MANDELKER, *supra* note 125.

131. *The Random House Dictionary of the English Language* 717, 918 (J. Stein ed. 1986).

132. D. MANDELKER, *supra* note 125, at 11.

133. Comment, *Urban Redevelopment and the Fiscal Crisis of the Central City*, 21 ST. LOUIS U. L. J. 820 (1978); C. WOODBURY & F. CLIFFE, *Industrial Location and Urban Redevelopment* in THE FUTURE OF CITIES AND URBAN REDEVELOPMENT 624-25 (C. Woodbury ed. 1953).

organized movement to resolve the problem did not begin until the 1940s.[134] Before this, cities addressed the spread of blight with passive tools such as zoning, subdivision regulation, housing, building and sanitary codes, and demolition of unsafe and insanitary structures.[135] These methods were largely unsuccessful in stemming the growth of blight.[136] While these methods did eliminate some substandard building in scattered localities, the laws did not further the goal of preventing blight.[137] Consequently, legislators perceived that a more comprehensive program was needed.[138] That perception gave rise to the concept of urban redevelopment in the early 1940s.

Urban redevelopment has been described as "a plan for the redevelopment, for all types of uses, of areas suffering from blight or decay, through a program of cooperation between government and private enterprise."[139] Its roots evolved from the National Industry Recovery Act of 1933,[140] which marked the beginning of the federal public housing program operated by the Public Works Administration. The purposes of this program were to eliminate slums and blight, provide low income housing, increase employment, and fuel economic recovery from the Great Depression. The federal government built and operated public housing with aid from local governments, and, by 1937, the government had either contracted for or completed more than 21,000 dwelling units.[141]

With the enactment of the United States Housing Act of 1937, the federal housing strategy changed from building and operating public housing to providing funds to local governments for these purposes.[142] The 1937 Act created the United States Housing Authority and provided loans and grants-in-aid for low-cost housing to local public housing authorities in return for slum clearance.[143] Several early court

134. Brown, Urban Redevelopment, 29 B.U.L. REV. 318, 372 (1949).

135. *Id.* at 319.

136. *Id.* at 319-20.

137. *Id.*

138. *Id.* at 320.

139. *Id.* at 321.

140. B. MCKELVEY, THE EMERGENCE OF METROPOLITAN AMERICAN, *1915-1966* 120 (1968).

141. *Id.* at 124.

142. 50 Stat. 888 (1937) (codified as amended at 42 U.S.C.A. § 1401 (Supp. 1957)).

143. Comment, *Conservation — A New Area for Urban Redevelopment*, 21 U. CHI. L. REV. 489, 492 (1954).

decisions which struck down the federal government's use of eminent domain for the purpose of slum clearance and public housing partially prompted the decentralization of this redevelopment activity.[144]

With World War II, the focus of the nation shifted to the war effort and away from housing.[145] Nevertheless, a critical housing shortage in many cities continued to exist.[146] The shortage persevered because redevelopment statutes were largely unsuccessful in luring private investment into the blighted areas of the city.[147] Proposals to resolve this failure included providing more federal funding for low income public housing for those displaced by urban redevelopment activities and larger scale, more centralized solutions.[148] The federal government responded to these problems by enacting the Housing Act of 1949,[149] which proposed to clear slums and provide a suitable living environment for every family. The 1949 Act primarily relied on private enterprise, but also authorized public agencies to acquire land through eminent domain, clear it, and resell it to private developers, with the federal government absorbing the difference between the cost to the agency and the resale price.[150] It further required local government approval of the redevelopment plan and that the plan conform with the general plan for the locality.[151] The Act also required a relocation plan for displaced individuals.[152]

The 1954 amendment to the 1949 Act again signaled a shift in policies and philosophies. Prior to the 1954 amendment, the federal government provided financial assistance to local governments only when urban renewal projects involved demolishing blighted structures and constructing new housing.[153] Thus, the 1949 Act emphasized the

144. United States v. Certain Lands in Louisville, 78 F.2d 684 (6th Cir. 1935); United States v. Certain Lands in Detroit, 12 F. Supp. 345 (E.D. Mich. 1935).

145. B. MCKELVEY, *supra* note 140, at 120.

146. *Id.* at 124.

147. Brown, *supra* note 134, at 354. By 1949 twenty-four states had enacted urban redevelopment statutes. *Id.* at 328.

148. *Id.* at 368.

149. 63 Stat. 413 (codified as amended at 42 U.S.C. § 1441 (1949)).

150. D. MANDELKER, *supra* note 125, at 2. *See also* D. HAGMAN & J. JUERGENSMEYER, URBAN PLANNING AND LAND DEVELOPMENT CONTROL LAW 526-30 (2d ed. 1986).

151. 42 U.S.C. § 1455(a)(1949).

152. *Id.* § 1455(c).

153. D. LISTOKIN, THE DYNAMICS OF HOUSING REHABILITATION: MACRO AND MICRO ANALYSIS (1973).

physical structure of the community rather than a concern for its inhabitants.[154] By 1954, the federal government no longer considered clearance of the land the only answer to urban deterioration; instead, the amendment expanded activities under the 1949 Act to include conservation and rehabilitation.[155] Although the government shifted its emphasis on how to accomplish urban redevelopment, the primary purpose of the 1949 Act remained: to eliminate slums and provide better housing.[156] The 1949 Act required local governments to have a building, planning and land use control program to qualify for federal aid.[157] The Act encouraged residential development.[158] This program actually affected only negligible rehabilitation in the decade following the program's expansion, and by the 1960s, critics characterized it as actually making low-income housing more difficult to obtain and as having racial overtones.[159]

Although federal programs of the 1940s and 1950s focused on slum clearance and housing, the 1960s witnessed a policy shift away from wholesale clearance to conservation of existing buildings and neighborhoods.[160] The emphasis moved to gradual, small-scale and incremental reversal of the growth of blight to conserve existing areas[161] and to redevelop commercial rather than residential areas.[162] Courts held that the condemnation and clearance of vacant lands for redevelopment constituted a public purpose and, therefore, that urban redevelopment statutes were constitutional.[163] Congress enacted several laws in the 1960s to attempt to rectify the deficiencies of earlier programs.[164]

154. Williamson, *Community Development Block Grants*, 14 URB. LAW 283-84 (1982).

155. D. LISTOKIN, *supra* note 153, at 8.

156. Johnstone, *The Federal Urban Renewal Program*, 25 U. CHI. L. REV. 301, 311-12.

157. 42 U.S.C. § 1451(c)(1949).

158. A maximum of 35% of the grants could be for non-residential projects. *Id.* § 1460(c).

159. D. LISTOKIN, *supra* note 153, at 8.

160. Johnstone, *supra* note 156, at 311-312. Many state legislatures amended their statutes to include a neighborhood conservation element. *Id.* at 312 n.50.

161. NEIGHBORHOOD CONSERVATION: A HANDBOOK OF METHODS AND TECHNIQUES 44 (R. McNutty & S. Kliment ed. 1976).

162. Comment, *supra* note 133, at 834-35 n.68.

163. People *ex rel.* Gutknecht v. City of Chicago, 414 Ill. 600, 111 N.E.2d 626 (Ill. 1953); Parking Systems, Inc. v. Kansas City Downtown Redevelopment Corp., 518 S.W.2d 11 (Mo. 1974).

164. D. LISTOKIN, *supra* note 153, at 8.

These acts established grant-in-aid programs for community development and required consideration of the social and economic needs of the community as well as physical structures and housing needs.[165]

The federal government attempted to consolidate its urban renewal efforts in the Housing and Community Development Act of 1974,[166] which established the Community Development Block Grant ("CDBG") program that granted an annual award to participating cities. The CDBG program gave local governments authority to administer grants as well as a great deal of discretion regarding the use of the funds.[167] The program again emphasized incremental, small-scale renewal activities and preservation of existing resources and neighborhoods.[168] The legislation was designed specifically to attract middle- and upper-income people back to the municipal tax rolls.[169] Critics charged, however, that CDBG grants were misued because the funds were diverted to wealthier suburbs and used for improvements such as tennis courts and swimming pools.[170] Local communities distributed the limited funds in response to local political pressure which prevented lower income neighborhoods from receiving a sufficient amount of federal assistance.[171]

In 1977, Congress amended the Housing and Community Development Act of 1974 and adopted as part of these amendments the Urban Development Action Grant ("UDAG") program.[172] This was yet another effort to attain the goal of providing every American with decent shelter. The 1977 amendments targeted the perceived inadequacies of the 1974 Act, with the UDAG program being specifically designed to complement the CDBG program.[173] The UDAG program authorized the Department of Housing and Urban Development to grant funds to distressed cities and urban counties to "alleviate physical and economic deterioration through reclamation of neighborhoods having excessive housing abandonment or deterioration, and through community revi-

165. Williamson, *supra* note 154, at 285.

166. 42 U.S.C. § 5301-17 (Supp. IV 1974).

167. *Id.* § 5305(a)(1)-(13).

168. NEIGHBORHOOD CONSERVATION, *supra* note 161, at 44.

169. Comment, *supra* note 133, at 823 n.9.

170. Greene, *Urban Development Action Grants: Federal Carrots for Private Economic Revitalization of Depressed Urban Areas*, 3 URB. L. & POL'Y 235, 236 (1980).

171. *Id.*

172. *Id.*

173. *Id.* at 236-37.

talization in areas with population outmigration or a stagnating or declining tax base."[174] Congress intended for these grants to stimulate commercial, industrial and residential development with the goals of improving the community's economic base and creating jobs.[175] Another goal was to attract high levels of private investment that, absent the federal grants, would not occur.[176]

During the 1980's trend toward decentralization of programs and decreased federal funding to cities, the most popular program for urban redevelopment has been tax increment financing (TIF). The TIF scheme divides the *ad valorem* taxes levied on a redevelopment area into two parts: (1) the tax levied on the base value of the property prior to redevelopment, which is allocated to the appropriate taxing jurisdictions; and (2) the tax levied on the increment in valuation caused by redevelopment, which goes to the redevelopment authority. The redevelopment authority then uses the money to retire the bonds sold to finance the purchase and clearance of the project area.[177] Another current program is the creation of enterprise zones under which businesses located in designated economically deteriorated areas are given incentives to provide jobs and job training to low-income residents within the zone.[178]

Federal approaches to revitalizing the American city have undergone several shifts in emphasis. The original policy emphasized providing adequate housing for urban residents. The current trend has shifted toward increased decentralization, increased local decisionmaking and increased emphasis on economic development. The intensified battle for the ever-decreasing federal dollar[179] has resulted in the increased use of redevelopment statutes to achieve economic redevelopment.

2. State Redevelopment Programs

At the state level, different perceptions of the source of the problem of urban blight have resulted in different proposed solutions.[180] Indi-

174. *Id.* at 237 (citing 42 U.S.C. § 5318(a) (Supp. I 1977)).

175. *Id.*

176. *Id.*

177. D. MANDELKER, *supra* note 125, at 3.

178. D. HAGMAN & J. JUERGENSMEYER, *supra* note 150, at 552.

179. NEIGHBORHOOD CONSERVATION, *supra* note 161, at 48.

180. Bauer, *Redevelopment: A Misfit in the Fifties* in THE FUTURE OF CITIES AND URBAN REDEVELOPMENT 9 (C. Woodbury ed. 1953).

viduals concerned about the urban poor deplored the physical decline of cities and pointed to "decay and blight" as causes of disease, juvenile delinquency and crime.[181] They called for the eradication of "life inimical [and] life-destructive environments."[182] They viewed the existence of unsafe and insanitary housing as the basic cause of most slum conditions.[183] Planners and representatives of private interests believed these conditions could be solved by eliminating slums and rebuilding those areas with adequate housing.[184] This group viewed redevelopment and rehousing as integral and interdependent parts of the same program.[185] The major obstacles to achieving these goals were land assembly and excessive costs of site acquisition and clearance.[186] The solution necessarily involved massive federal funding.[187]

Other analysts viewed the problem in economic terms, as a fiscal crisis caused by the migration of the middle and upper income population group and of commercial enterprises to the outlying areas of the metropolitan area to take advantage of cheaper land prices.[188] A reaction to the municipal debt crises common in the 1930s partially formed the basis for this viewpoint.[189] These analysts believed that the erosion of the city's tax base caused by this outward migration resulted in a decline in the city's ability to provide public services and facilities.[190] The migration also resulted in the costly extension of those services and facilities to the outlying areas.[191] Substandard areas also usually cost more to serve than they produced in tax revenue.[192] Thus, by focusing on problems caused by the migration, some analysts explicitly distinguished urban redevelopment efforts from slum clearance and low-income housing programs.[193]

181. Brown, *supra* note 134, at 318.

182. Comment, *Urban Redevelopment*, 54 YALE L.J. 116, 117 (1944) (quoting MUMFORD, CULTURE OF CITIES 422 (1988)).

183. Hill, *Recent Slum Clearance and Urban Redevelopment Laws*, 9 WASH. & LEE L. REV. 173, 175 (1952).

184. Comment, *supra* note 182, at 118-19.

185. *Id.* at 139.

186. Brown, *supra* note 134, at 320; Johnstone, *supra* note 156, at 310 (1958).

187. Brown, *supra* note 134, at 368.

188. Comment, *Urban Redevelopment*, 9 U. PITT. L. REV. 74, 77-78 (1947).

189. C. WOODBURY & F. CLIFFE, *supra* note 133, at 652.

190. *See generally* Johnstone, *supra* note 156.

191. Brown, *supra* note 134, at 319.

192. *Id.* at 318.

193. One author found support for differentiating between slum clearance legisla-

Recognizing that the private sector could accomplish slum clearance and housing programs if local government was provided with powers and appropriate incentives, and in response to federal legislation,[194] New York became the first state to adopt urban redevelopment legislation.[195] Because this statute was the first of its kind, it provided the model for other states.[196] Prior to enacting any legislation, New York amended its constitution in 1938 by adding article XVIII which authorized the legislature "to provide for low income housing *or* clearance, replanning, reconstruction and rehabilitation of substandard and insanitary areas, *or* for both such purposes."[197] Section 2 of article XVIII also authorized the legislature to delegate its eminent domain powers to a corporation if the corporation's rents, profits, dividends and distribution of property were regulated and if it was engaged in providing housing facilities.[198]

In 1941, the New York legislature enacted the Urban Redevelopment Corporations Act[199] pursuant to article XVIII of its constitution.[200] Its purpose was the "clearance, replanning, rehabilitation and reconstruction" of areas where "substandard, outworn or outmoded industrial, commercial or residential buildings prevail."[201] The statute did not include among its purposes the provision of low income housing. An agency formed pursuant to the provisions of the statute would supervise the redevelopment corporation.[202] The statute authorized the delegation of the eminent domain power by a local government to

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tion involving a housing element, and "genuine" redevelopment legislation in Zurn v. City of Chicago, 389 Ill. 114, 59 N.E.2d 18, 23 (1945), where the court distinguished earlier slum clearance and housing statutes, and those enacted purely for redevelopment purposes. Comment, *supra* note 143, at 492. In Missouri, for example, MO. REV. STAT. § 99.010-.231 (1986) which established a local housing authority was enacted in 1939 for the purpose of slum clearance, while 353 was enacted in 1943 for the purpose of urban redevelopment. *See also* Marcuse, *Housing Policy and City Planning: The Puzzling Split in the United States, 1893-1931*, in SHAPING AN URBAN WORLD 23 (G. Cherry ed. 1980).

194. Hill, *supra* note 183, at 175.

195. Riesenfeld & Eastlund, *Public Aid to Housing and Land Development*, 34 MINN. L. REV. 610, 626 (1950).

196. *Id.* at 627.

197. N.Y. CONST. art. XVIII, § 1 (emphasis added).

198. *Id.* § 2.

199. N.Y. Unconsol. Law § 1156.1-.24 (McKinney 1941).

200. Riesenfeld & Eastlund, *supra* note 195, at 626.

201. N.Y. Unconsol. Law § 1156.2 (McKinney 1941).

202. *Id.* § 1156.11.

the private corporation[203] only after the corporation had acquired fifty-one percent of the property in the redevelopment area.[204] Although not specifically provided for in the statute, the New York Constitution forbade the delegation of the eminent domain power to a private corporation unless the it earnings were regulated and it was engaged in providing housing.[205] Despite the statute's express purpose to eliminate substandard areas, corporations could only utilize the statute's major benefit, eminent domain power, if they provided housing. The statute required the redevelopment corporation to provide replacement dwelling accomodations to families residing in the proposed development area either in the development area or elsewhere at substantially the same rents.[206]

Because of the limitations in the 1941 Act and its failure to attract capital for redevelopment, the New York legislature enacted the Redevelopment Companies Law in 1942.[207] The 1942 Act liberalized and effectively superseded its predecessor.[208] The legislature specifically designed the 1942 Act to produce housing. The purposes of the statute were for the "clearance, replanning and reconstruction, rehabilitation and modernization" of substandard and insanitary housing conditions and for "the provision of adequate, safe, sanitary and properly-planned housing accomodations."[209] The legislature recognized that these substandard conditions destroyed the economic value of large areas, thereby threatening sources of public revenues.[210] The statute also allowed business, commercial, cultural or recreational uses of the property in the redevelopment project when those uses were incidental to the development's primary purpose of providing housing.[211] In addition, insurance companies could organize as redevelopment corporations.[212] The statute did not provide for the delegation of eminent domain power to the private corporation but instead required that the municipality acquire the property in the redevelopment area and con-

203. *Id.* § 1156.16.
204. *Id.* §§ 1156.3 & .17.
205. N.Y. CONST. art. XVIII, § 2.
206. N.Y. Unconsol. Law § 1156.4(3)(g)(McKinney 1941).
207. N.Y. Unconsol. Law §§ 1157-1157.25 (McKinney 1942).
208. Comment, *supra* note 182, at 119 n.15.
209. N.Y. Unconsol. Law § 1157.1 (McKinney 1942).
210. *Id.*
211. *Id.* §§ 1157.2(7) & .13.
212. *Id.* § 1157.24.

vey it to the redevelopment company after payment to the municipality of the costs and expenses incurred.[213] The statute also limited earnings of the corporation's stockholders to six percent per year.[214]

The primary benefits to the redevelopment corporation were land assembly by the municipality on the corporation's behalf and tax abatement for a period not to exceed twenty years.[215] The New York Court of Appeals upheld the 1942 Act against a constitutional challenge that property condemnation under the statute was not for a public use and that the statute was not confined to slum clearance and reconstruction for slum dwellers.[216] The court held that the New York Constitution itself provided that the provision of low rent housing or the clearance and rehabilitation of substandard areas were public purposes.[217] The court further held that the use of "or" in the constitutional provision authorizing the legislature to enact legislation indicated that the legislature was not required to confine that legislation to slum clearance.[218] It stated that the legislature could pass laws to accomplish either or both purposes established in the constitutional amendment.[219]

Illinois also enacted an urban redevelopment statute in 1941, entitled the Neighborhood Redevelopment Corporation Law.[220] The purposes of the statute were the elimination of "degenerative conditions, and the rehabilitation of slum and blight areas."[221] It defined "slum and blight areas" as the "urban districts in which the major portion of the housing is detrimental to the health, safety, morality or welfare of the occupants."[222] The legislature viewed these areas as ones that had become

213. *Id.* § 1157.19.

214. *Id.* § 1157.7.

215. *Id.* § 1157.25.

216. Murray v. La Guardia, 291 N.Y. 320, 52 N.E.2d 884 (1943), *cert. denied*, 321 U.S. 771 (1944). *Murray* involved the construction of 8,800 apartments to house 24,000 people. *Id.* at 325, 52 N.E.2d at 885. The project called for the acquistion and clearance of eighteen city blocks. *Id.* Stuyvesant Town Corporation was to construct the project and Metropolitan Life Insurance Company funded the redevelopment project. *Id.*

217. *Id.* at 329, 52 N.E.2d at 887.

218. *Id.* at 331, 52 N.E.2d at 889.

219. *Id.* The court further stated that property was limited to development only for housing purposes when the eminent domain power was delegated to the redevelopment corporation. *Id.* at 888.

220. 67-1/2 ILL. REV. STAT. 251-294 (Smith-Hurd 1959 & Supp. 1988).

221. *Id.* § 252(5) (Smith-Hurd 1959).

222. *Id.* § 253-11.

unproductive and that failed to contribute their proper share of taxes while concurrently consuming a disproportionate share of the public revenue.[223] Like the 1941 New York statute, the Illinois law empowered the redevelopment corporation to exercise eminent domain power,[224] but only after the corporation had proved that it had acquired at least sixty percent or more of the land in the development area.[225] The redevelopment corporation also was subject to supervision by an appointed redevelopment commission.[226] In addition, the Illinois statute provided that no portion greater than ten percent of the development project area could be used for purposes other than residential without prior approval of the commission.[227] Although the statute virtually limited development to residential purposes, it did not limit the residential use to low income housing.[228] The statute afforded no tax exemption or abatement to the redevelopment corporation, but it also did not restrict the corporation's earnings.[229]

Michigan also enacted an urban redevelopment statute in 1941, generally modeled after the 1941 New York law.[230] By 1944, ten states had enacted urban redevelopment statutes, and bills had been introduced in Congress offering federal assistance on the condition of federal supervision.[231] Missouri was among the first of those states to adopt a redevelopment statute.[232]

C. *Missouri's Redevelopment Statute*

1. History of Chapter 353

In 1943 Missouri enacted the Urban Redevelopment Corporations Act to encourage private participation in the redevelopment of St. Louis.[233] Prior to enacting the statute, the Missouri legislature had

223. *Id.* § 252(5).

224. *Id.* § 259(8).

225. *Id.* § 292(1)(c). Another option provides that owners of 60% or more of the land area can agree to be bound by the development plan.

226. *Id.* § 256.

227. *Id.* § 267(3)(h).

228. Zurn v. City of Chicago, 389 Ill. 114, 123, 59 N.E.2d 18, 23 (1945).

229. 67-1/2 ILL. REV. STAT. § 265 (Smith-Hurd 1959); Riesenfeld & Eastlund, *supra* note 195, at 627 n.135.

230. Comment, *supra* note 182, at 119 n.15.

231. *Id.* at 119.

232. *Id.* at 119 n.15.

233. 1943 Mo. Laws 751-69.

passed a Housing Authorities Law,[234] which was designed to provide "decent, safe and sanitary urban or rural dwellings, apartments or other living accomodations for persons of very low and low income." Furthermore, the legislature designed the housing statute to allow local governments to receive federal funding for these projects pursuant to the United States Housing Act of 1937.[235]

When the Missouri legislature enacted the Urban Redevelopment Corporations Act, it closely modeled the statute in organization, form and content after the 1941 New York redevelopment law.[236] The statute did not provide for tax abatement but did authorize the creation of private redevelopment corporations with the usual corporate powers. In addition, those corporations were entitled to use eminent domain power to facilitate land assembly.[237] Because of the statute's applicability to cities with a population of more than 700,000, it affected only the city of St. Louis.[238] The statute also required the redevelopment corporation to provide assurance in its development plan that whenever dwelling units were destroyed as part of the redevelopment process, similar accomodations at substantially similar rents would be available to the occupants of the development area either in the development area or in another suitable location.[239] It provided for close monitoring of the activities of the redevelopment corporation by an appointed supervising agency.[240] Although the city could adopt general standards for the approval of redevelopment plans, the statute emphasized that the standards must allow the corporations maximum flexibility in their actions.[241]

Prior to the enactment of Chapter 353 in 1945, Missouri amended its constitution to buttress the new redevelopment law. These amendments authorized tax abatement for urban redevelopment projects[242] and established that the use of eminent domain for redevelopment was

234. 1939 Mo. Laws §§ 488-502 (codified as amended at MO. REV. STAT. §§ 99.010-.231 (1986)).

235. MO. REV. STAT. § 99.210 (1986).

236. 1943 Mo. Laws 751-69; 1911 N.Y. Laws § 892. For example, the purpose sections of both statutes are identical.

237. 1943 Mo. Laws 759-60, 765-66.

238. *Id.* at 753-55 (applied only to cities of more than 700,000 population).

239. *Id.* at 757.

240. *Id.* at 756-58, 776.

241. *Id.* at 757.

242. MO. CONST. art. X, § 7.

a public purpose.[243] The legislature modeled the eminent domain amendment after a similar New York constitutional amendment adopted in 1938.[244]

In 1945, the Missouri legislature totally redrafted the statute. The redrafted statute combined the provisions of the two New York statutes and included a tax abatement provision[245] along with the ability of the local government to delegate the power of eminent domain to the redevelopment corporation.[246] The amended statute contained neither a housing component nor did it require supervision of the corporation by an appointed agency. The law provided for taxation on the land and no taxation of improvements in the project area for the first ten years after the acquisition of real property by the redevelopment corporation, and for a fifty percent tax abatement on the land and on the improvements for the following fifteen years.[247] Valuations on the acquired real property were frozen at the level existing in the year prior to acquisition.[248] It included special provisions to encourage investment by life insurance companies,[249] and was extended to include Kansas City.[250] Additionally, limitations were placed on corporate earnings.[251] Neither the 1945 statute nor the Missouri constitutional provisions authorizing the legislation limited its use to providing housing, whether of a low income nature or otherwise.

Subsequent amendments to Chapter 353 were minor in nature, with the exception of the continual expansion of the applicability of the statute to smaller cities. The current version of Chapter 353 applies to charter cities, any city located in a charter county with a population of

243. MO. CONST. art. VI, § 21. Edward M. Stayton of Independence, Missouri, allegedly introduced this amendment, which was for the purpose of giving cities the definite authority to take affirmative action to solve the problem of blight. Records of the constitutional convention of 1943-44 quote Stayton as saying that unlimited authority to condemn was required for the reconstruction of cities.

244. N.Y. CONST. art XVIII, § 1. Maryland has a similar provision which applies only to the City of Baltimore. MD. CONST. art. XI-B, § 1. *See also* N.J. CONST. art. VIII, § 3, para. 1.

245. 1945 Mo. Laws 1247-48.

246. *Id.* at 1249.

247. *Id.* at 1247-48.

248. *Id.*

249. Some experts suggest that a major impetus for the 1945 rewrite of the law was the failure of St. Louis to get life insurance companies on the East Coast interested in redevelopment activities in St. Louis. D. MANDELKER, *supra* note 125, at 17 n.7.

250. 1945 Mo. Laws 1243.

251. *Id.* at 1246.

4,000 or more and any city not located within a charter county with a population of 2,500 or more.[252]

2. Purposes of Chapter 353

Many commentators, during the period when legislatures enacted urban redevelopment statutes, perceived the problem of urban deterioration in terms of a critical housing shortage.[253] They equated blight with slum housing, and saw the solution as clearance and redevelopment of blighted areas accomplished by the construction of low income housing. Early federal legislation was adopted with this goal in mind. In addition, these same commentators believed that displacement of the low income people residing within the redevelopment district without a housing element made redevelopment unrealistic.[254] The re-entry of the World War II veterans into the housing market after a period of inactive residential construction during the war compounded the problem.[255]

Although the concern for providing housing prevailed when redevelopment statutes were first enacted, early court interpretations validated their use for purposes other than slum clearance and the provision of low income housing.[256] While urbanologists and others deplored slum housing, politicians tried to cope with municipal debts and recognized the general lack of support for public housing.[257] Public housing was not a politically popular program.[258] Additionally, a lack of profits

252. MO. REV. STAT. §§ 353.010, 353.020(3) (Supp. 1988).

253. *See, e.g.*, Johnstone, *supra* note 156, at 308-09; Brown, *supra* note 134, at 369; Comment, *supra* note 182, at 139.

254. Brown, *supra* note 134, at 369.

255. Johnstone, *supra* note 156, at 314.

256. *See, e.g.*, Zurn v. City of Chicago, 389 Ill. 114, 123, 59 N.E.2d 18, 23 (1945); Murray v. La Guardia, 291 N.Y. 320, 331, 52 N.E. 2d 884, 889 (1943), *cert. denied*, 321 U.S. 771 (1944).

257. Brown, *supra* note 134, at 354.

258. An example of an adverse political reaction to public housing occurred when *Fortune* magazine in 1942 promoted studies on postwar problems with the object of stimulating private investment in Syracuse, one of two demonstration cities. Several proposals from the Syracuse council studying the problems caused fears of huge public housing programs and prompted Mayor Thomas E. Kennedy to state unequivocally, "As long as I am mayor, there will be no [more] public housing projects in Syracuse." B. MCKELVEY, *supra* note 140, at 124-25. *See also* United States v. Yonkers Bd. of Educ., 624 F. Supp. 1276, 1371-72 (S.D.N.Y. 1985) (subsidized housing located in one area of city due to tremendous community opposition to locate subsidized housing elsewhere).

made it difficult to attract private enterprise to the development of public housing.[259] Because of these considerations, local legislatures may have had difficulty supporting a program devoted exclusively to public housing.

Similarities exist among the earliest statutes providing for urban redevelopment. The Missouri statute provided for the redevelopment of areas that had become "economic and social liabilities, and [that had conditions] conducive to ill health, transmission of disease, crime or inability to pay reasonable taxes."[260] The Illinois statute also described the conditions leading to slum and blight areas in terms of economic deterioration and as areas conducive to "ill health, transmission of disease, infant mortality, juvenile delinquency, crime and poverty."[261] The New York statute used similar language in its statement of public purposes and described these areas as economic and social liabilities.[262] All three statutes stated that age, obsolescense, inadequate or outmoded design or physical deterioration caused these blighted conditions.[263] New York provided tax abatement to the redevelopment corporation,[264] whereas the Illinois and the 1943 Missouri statutes did not. When Missouri amended its law in 1945, it added a tax abatement provision.[265] The Illinois statute, the 1941 New York statute and the 1945 Missouri statute all allowed the delegation of the eminent domain power to the private corporation, while corporations organized under the New York and Illinois statutes were subject to supervision by public agencies. As amended in 1945, the Missouri statute did not contain similar restrictions on a redevelopment corporation. The 1942 New York statute did not provide for the delegation of the eminent domain power. In addition, both the New York and Missouri statutes specifically provided for residential, industrial and commercial development in the redevelopment project.[266]

The primary distinction among the statutes is their textual commitments to providing housing as a purpose of the statute. The Illinois

259. Johnstone, *supra* note 156, at 307; Brown, *supra* note 134, at 354.

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

261. 67-1/2 ILL. REV. STAT. § 252 (Smith-Hurd 1959).

262. N.Y. Unconsol. Law § 1156.2 (McKinney 1941).

263. 67-1/2 ILL. REV. STAT. § 253-11 (Smith-Hurd 1959); MO. REV. STAT. § 353.020(2) (Supp. 1988); N.Y. Unconsol. Law § 1156.2 (McKinney 1941).

264. N.Y. Unconsol. Law § 1156.12 (McKinney 1941).

265. 1945 Mo. Laws 1247.

266. 1945 Mo. Laws 1244; N.Y. Unconsol. Law § 1156.3 (McKinney 1941).

legislature definitely intended for development under the statute to be for housing, as evidenced by the provision that limited development for other purposes to only ten percent of the project area without approval of the redevelopment commission.[267] The statute did not require that this housing be only low income housing and did not contain any rent restrictions.[268] The commitment to housing under the New York statute is more subtle. Although New York did not limit its first statute to providing housing, only corporations engaged in providing housing could avail themselves of the main benefits of the statute because of constitutional limitations. Furthermore, New York enacted new legislation within one year and it limited the new statute to the development of housing as its primary purpose, although not low-income housing. At the time of the New York and Illinois enactments, the federal government had designed its program to provide federal aid for the construction of low income housing.[269] Neither of these statutes were designed exclusively to take advantage of this program.[270] Although these statutes enacted in the early 1940s sought to eliminate slums and replace slum areas with new housing, this new housing was not limited to low income housing.[271]

The Missouri statute differs from the New York and Illinois statutes in that neither the statute nor its constitutional counterpart specifically limits the urban redevelopment corporation to providing housing; however, the similarity between its description of blight and its causes with the New York and Illinois statutes indicates that the intention of the legislature at the time of adoption was to attack housing problems. The 1943 and 1945 Missouri legislation both contained this language. Although the 1945 legislation deleted the only specific housing component in the statute—the provision requiring replacement housing—that fact, in and of itself, does not support an argument that the Missouri statute differed from its counterparts in other states. The Missouri legislature modeled the 1943 statute after the 1941 New York statute and the 1945 Missouri statute was a combination of provisions from both New York statutes, which were directed at housing.

The Missouri legislature originally adopted Chapter 353 in response to the fiscal problems of St. Louis, which were caused, in part, by the

267. 67-1/2 ILL. REV. STAT. § 267(3)(h) (Smith-Hurd 1959).

268. Reisenfeld & Eastlund, *supra* note 195, at 627-28 n.135.

269. *Id.* at 621.

270. *Id.* at 626-27.

271. Johnstone, *supra* note 156, at 307.

migration of middle-class families to the suburbs and a decrease in new office construction in the city.[272] However, the purpose behind the 1945 legislation was actually to solve the city's housing problem[273] caused by the influx of people to the city in hopes of finding employment.[274]

Missouri previously enacted a public housing authorities act[275] to allow corporations to take advantage of funds available under the Federal Housing Act of 1937. This, however, does not indicate that the Missouri legislature did not consider the resolution of the housing shortage as one of its primary purposes. The federal government recognized inadequacies in the 1937 Act and enacted the 1949 Housing Act to resolve these problems. Chapter 353 may be Missouri's attempt to attract development back to the city after the public housing authorities statute failed to accomplish that objective. Although the language of Chapter 353 provides for commercial and industrial development in addition to residential development, the statute falls within the mainstream of other urban redevelopment statutes enacted during this period which focused on the elimination of blight and slum conditions and the provision of adequate housing.

Although the statute's main purpose may have been the development of housing, the statute did refer to outmoded and obsolete conditions that make the area an economic liability.[276] This language and the language providing for industrial and commercial development indicate that the Missouri legislature authorized other kinds of development. Regardless of the stated objective of redevelopment legislation for slum clearance and for low-income housing, Chapter 353 has been used extensively to attract industrial and commercial investment, and occasionally to lure middle class taxpayers back to the city.[277] Chapter 353 has been used less frequently to eradicate substandard housing and to construct quality, low income housing in its place.

The original purposes of Chapter 353 and its current use may appear to be inconsistent. Although the legislature was principally concerned with the elimination of blighted urban areas and the construction of quality housing for both low income and middle- to upper-income

272. D. MANDELKER, *supra* note 125, at 12.
273. *Id.*
274. *Id.* at 17 n.4.
275. MO. REV. STAT. §§ 99.010-.231 (1986).
276. *Id.* § 353.020(2).
277. Comment, *supra* note 133, at 823.

groups, Kansas City recently has used the statute to promote commercial and office development. The underlying logic is that economic development will improve urban economic and social problems and provide a more long-term solution to urban deterioration than the mere construction of housing. The change in emphasis in 353 projects is really an evolution in thinking about urban redevelopment and not a radical departure from the original purposes of Chapter 353.

D. *Conclusion*

The Missouri legislature enacted the Urban Redevelopment Corporation Law with "the obvious objective [of] involv[ing] private enterprise in the monumental task of eliminating urban blighted areas and the inevitable social ills flowing therefrom."[278] Providing low income housing and promoting economic development are tools for that purpose rather than separate purposes in themselves. Individuals who oppose a project may fail to consider that economic development is an alternative method of eliminating blight. However, economic development for that purpose alone in the absence of the elimination of blight should not fall within the statute. Although certain scholars and policymakers of the 1940s found the elimination of blight impossible without the concomitant provision of low income housing,[279] the Missouri law did not restrict the statute to providing housing.

The current concern is that Chapter 353 may simply be a tool by which private development, with the aid of tax exemptions and abatements and the eminent domain power, benefits only itself without improving social and economic conditions in urban areas. The underlying theory behind Chapter 353 is that the provision of public benefits to private development is appropriate only when private development produces larger social benefits. Chapter 353 sought to ensure this *quid pro quo* by permitting redevelopment only in areas that the government determined to be blighted. In addition, legislators likely believed that a statutory requirement of slum clearance and the elimination of blight was necessary to satisfy the public use restrictions that the United States and Missouri Constitutions place on the exercise of the eminent

278. Council Plaza Redevelopment Corp. v. Duffey, 439 S.W.2d 526, 528 (Mo. 1969)(en banc); *see also* Thomas W. Garland, Inc. v. City of St. Louis, 492 F. Supp. 402, 405 (E.D. Mo. 1980)(corporations formed pursuant to Chapter 353 were formed for purpose of redeveloping blighted areas).

279. *See supra* note 254.

domain power. The next part of the Article examines the public use doctrine in detail.

PART IV. PUBLIC PURPOSE OF URBAN REDEVELOPMENT

A. *Introduction*

The fifth amendment of the Constitution provides that private property cannot "be taken for public use, without just compensation."[280] State constitutions also contain similar prohibitions against the taking of property and also often provide that property cannot be "damaged" without just compensation.[281] These constitutional provisions limit the federal and state government power to take property under eminent domain power.[282] The provisions impose two restrictions on state and federal governments: 1) they can take property only for a public use; and 2) when they do so, they must pay just compensation to the owner of the property.[283]

The concept of "public use" for purposes of the fifth amendment has evolved and expanded since the ratification of the amendment. Courts originally interpreted the public use limitation in the fifth amendment narrowly, and allowed the government to take property only for its own use.[284] To encourage economic development, courts expanded the definition of public use in the early 1800's to allow private parties, such as railroads and public utilities, to exercise the eminent domain power.[285] As a reaction to perceived abuses of the eminent domain power by private parties, courts restricted the meaning of public use in the post Civil War period and again began protecting private property.[286] During the periods in which courts viewed public use restrictively, they still upheld condemnation of property for such uses as dormitories for university students, although the general public did not have access to these facilities. Courts held that an educational institu-

280. U.S. CONST. amend. V. The restrictions on the exercise of the power of eminent domain in the fifth amendment also apply to the states because of incorporation through the due process clause of the fourteenth amendment.

281. *See* MO. CONST. art. I § 26.

282. Linhoff, *Development of the Concept of Eminent Domain*, 42 COLUM. L. REV. 546, 599 (1942).

283. *Id.* at 599.

284. Note, *Public Use, Private Use and Judicial Review in Eminent Domain*, 58 N.Y.U. L. REV. 409, 413 (1983).

285. *Id.* at 413.

286. *Id.*

tion was "one in which all the inhabitants of the state [had] a common interest."[287]

From this beginning, two theories of public use developed.[288] One theory required "use by the public" while the other theory required only "public advantage, convenience or benefit."[289] A court's definition of "public use" often depended on surrounding circumstances and often varied with changing conceptions of the scope and function of government.[290]

When state and local legislatures began enacting urban renewal and redevelopment statutes, courts expanded the definition of public use and courts construed the phrase to allow for the benefit to "only accrue to the people of a particular district and . . . not [to] the public at large."[291] Relying on definitions of blight that were not confined to slum clearance,[292] courts justified the expanded definition of public use by theorizing that the elimination and rehabilitation of slums and blighted areas provided an indirect benefit to the public.[293] After these broad holdings, a municipality could condemn land and use it for industrial and economic development.[294]

When originally enacted, state legislatures designed urban renewal statutes to eliminate slums and provide housing.[295] States later enacted more expansive statutes that allowed commercial and industrial development in addition to residential development.[296] State legislatures expanded these statutes further to include the development of vacant land.[297] Originally courts upheld as a valid public use the acquisition

287. Russell v. Trustees of Purdue University, 201 Ind. 367, 382, 168 N.E. 529, 534 (1929).

288. Comment, *Conservation — A New Area for Urban Redevelopment*, 21 U. CHI. L. REV. 489, 495 (1954).

289. *Id.* at 495.

290. *Id.* at 496.

291. *Id.*

292. Note, *supra* note 286, at 417.

293. Comment, *supra* note 290, at 496.

294. Note, *supra* note 286, at 417-18.

295. Comment, *supra* note 290, at 492. The author distinguished between urban renewal and urban redevelopment statutes and reasoned that urban renewal statutes provided for the elimination of slums and their replacement with low income housing whereas urban redevelopment statutes "d[id] not necessarily involve low-cost housing." *Id.* at 492-93 n.23.

296. *Id.* at 493.

297. *Id.*

of vacant land in outlying areas to build residential units for individuals displaced in the project area.[298] Courts later upheld the condemnation of vacant land to provide housing without the simultaneous condemnation of a slum area.[299] Courts then found that vacant land which had "lain idle" could be condemned in order to facilitate land assembly and encourage development of the area.[300]

This part of the Article examines federal and state court decisions on whether the condemnation of land, the subsequent transfer of that land to private developers, and the delegation of eminent domain power to those private developers constitutes a public purpose or use within the meaning of both the Constitution and the respective state constitutions. Although the condemnation process may fall within the meaning of public use under the fifth and fourteenth amendments of the Constitution, states may construe their own constitutions more narrowly[301] and refuse to uphold an urban redevelopment statute.

B. *Supreme Court Construction of Public Purpose*

In 1954, the Supreme Court in *Berman v. Parker* upheld the District of Columbia Redevelopment Act of 1945 against a challenge that the condemnation of land under the Act did not constitute a public use within the meaning of the fifth amendment of the Constitution.[302] The plaintiffs owned a department store located in the project area and argued that their property could not be taken under the statute because it was commercial and not residential. In addition, they argued that the taking did not constitute a public use because a private, and not a public, agency would manage the project.[303] The Court first defined the limits of the police power and found that the definition of its limits "for each case must turn on its own facts."[304] It then addressed the role of the judiciary in this process and stated:

> The definition [of public interest] is essentially the product of legislative determinations addressed to the purposes of government, purposes neither abstractly nor historically capable of complete

298. *Id.* at 493 n.26.

299. *Id.* (citing Cremer v. Peoria Hous. Auth. 399 Ill. 579, 78 N.E.2d 276 (1948)).

300. *Id.*

301. Southern Burlington County NAACP v. Township of Mt. Laurel, 336 A.2d 713, 725 (N.J. 1974), *cert. denied*, 423 U.S. 808 (1975).

302. 348 U.S. 26 (1954).

303. *Id.* at 31.

304. *Id.* at 32.

> definition. Subject to specific constitutional limitations, when the legislature has spoken, the public interest has been declared in terms *well-nigh conclusive.* In such cases the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation . . . . This principle admits of no exception merely because the power of eminent domain is involved. The role of the judiciary in determining whether that power is being exercised for a public purpose is an extremely narrow one.[305]

After holding that the judiciary must defer to the legislature, the Court then examined the purposes of the Act. It found that "[t]he misery of housing may despoil a community as an open sewer may ruin a river" and that the concept of public welfare was "broad and inclusive."[306] In addition, the court found that the values included within the public welfare are "spiritual as well as physical, aesthetic as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled."[307] The Court held that once the legislature found that the goal of having a beautiful and sanitary city constituted a public purpose, the fifth amendment did not prohibit its taking property to achieve those purposes.[308] It stated that:

> Once the object is within the authority of [the legislature], the right to realize it through the exercise of eminent domain is clear. For the power of eminent domain is merely the means to the end . . . . Once the object is within the authority of [the legislature], the means by which it will be attained is also for [the legislature] to determine. Here one of the means chosen is the use of private enterprise for the redevelopment of the area.[309]

In addition, the Court refused to find that public rather than private ownership of the project was the only means to achieve these purposes.[310]

In *Hawaii Housing Authority v. Midkiff*,[311] the Supreme Court again addressed the question of public use and the relationship between the police power and the eminent domain power as applied to a state statute, although not in connection with an urban redevelopment statute. *Midkiff* concerned a Hawaii statute that provided for the condemna-

305. *Id.* (citations omitted, emphasis added).
306. *Id.* at 33.
307. *Id.*
308. *Id.*
309. *Id.*
310. *Id.* at 34.
311. 467 U.S. 229 (1984).

tion of a landlord's reversionary interest in a residential tract and for the sale of that interest to the lessees of the tract.[312] Qualified tenants could accomplish this condemnation by applying to the Hawaii Housing Authority for a public hearing and determination of whether the condemnation would "effectuate the public purposes" of the statute.[313] The legislators' purpose was to terminate the oligopoly that the legislature believed was "responsible for skewing the State's residential fee simple market, inflating land prices, and injuring the public tranquility and welfare."[314] Although the statute authorized the issuance of bonds and appropriation of funds to acquire the leasehold estate, the tenants who requested the condemnation provided the money to satisfy the condemnation award.[315]

In upholding the Hawaii legislation, the Court relied extensively on *Berman v. Parker*. It repeated that the " 'public use' requirement [was] coterminous with the scope of a sovereign's police powers"[316] and that the role of the courts in reviewing a legislative determination of public use was "an extremely narrow one."[317] The Court held that legislation withstood a constitutional challenge "where the exercise of the eminent domain power rationally related to a conceivable public purpose." Further, the Court found that the Hawaii regulation's purpose of reducing "the perceived social and economic evils of a land oligopoly traceable to their monarch" was a "classic exercise of a State's police powers."[318]

In addition, the Court in *Midkiff* considered whether the transfer of the property to private individuals made the use private instead of public. The Court found that the transfer of the property to private individuals did not alone make the use private.[319] The Court also held that it was not necessary to have direct public enjoyment or participation in the use of the property.[320] Because the statute advanced the purposes of eliminating an oligopoly market in residential land, it constituted a legitimate taking, even though it did not involve the actual

312. *Id.* at 233.
313. *Id.*
314. *Id.* at 232.
315. *Id.* at 234.
316. *Id.* at 240.
317. *Id.* (quoting Berman v. Parker, 348 U.S. 26, 32-33 (1954)).
318. *Id.* at 241-42, 243.
319. *Id.* at 244.
320. *Id.*

possession of the property by the state.[321] Indeed, under the statute, title was transferred directly from one private person to another. The Court stated that "it is only the taking's purpose, and not its mechanics, that must pass scrutiny under the Public Use Clause."[322]

Finally, the Court rejected the argument that it should give a state legislature's determination of public use the same deference accorded acts of Congress. The Court reasoned that judicial deference was an acknowledgment of the legislature's expertise and ability to assess the propriety of using the eminent domain power to achieve the public purposes that they sought to advance.[323] It then found that state legislatures were as capable of making those determinations as Congress.[324] The Court held that when either the federal or a state legislature makes that determination, courts must defer to the finding "that the taking will serve a public use."[325]

C. *Public Use Under State Urban Redevelopment Statutes*

Early in the history of urban redevelopment, courts upheld state urban redevelopment statutes against constitutional attacks and determined that those statutes were not confined solely to providing low rent housing for the urban poor. Two early classic cases upholding urban redevelopment statutes against constitutional attacks are *Murray v. La Guardia*[326] and *Zurn v. City of Chicago*.[327] These two decisions formed the basis on which other courts relied to uphold their respective state urban redevelopment statutes.

In *Murray v. La Guardia*,[328] the New York Court of Appeals upheld New York's Urban Redevelopment statute by relying on the state constitutional provision authorizing the statute.[329] The court held that the New York Constitution did not limit urban redevelopment to low rent housing because it explicitly provided that the clearance and rehabilitation of substandard areas constituted a public purpose.[330] The court

321. *Id.*
322. *Id.*
323. *Id.*
324. *Id.*
325. *Id.*
326. 291 N.Y. 320, 52 N.E.2d 884 (1943), *cert. denied*, 321 U.S. 771 (1944).
327. 389 Ill. 114, 59 N.E.2d 18 (1945).
328. 291 N.Y. 320, 52 N.E.2d 884 (1943), *cert. denied*, 321 U.S. 771 (1944).
329. *Id.* at 326, 52 N.E.2d at 888.
330. *Id.*

reasoned that the legislation effectuated an appropriate purpose of protecting the "financial stability of municipalities which suffer indirectly from conditions existing in those blighted districts."[331] Secondly, the court based its decision on the statutory provision that placed restrictions on the private corporation as a condition to its receipt of the statutory benefits available.[332] The court found that the benefit to the private corporation did not render the statute unconstitutional when the "public good [was] enhanced" by the elimination of slum and blighted areas.[333] In this case, the court upheld the statute based on the achievement of the secondary purpose of protecting the community from the "indirect" effects of blight.

In subsequent decisions, the New York Court of Appeals expanded its definition of public purpose to include the development of vacant land and development for economic purposes.[334] The court found that an area need not be a slum for its redevelopment to constitute a public use and that condemnation of property to construct industrial buildings constituted a public use.[335] In another decision, the New York Court of Appeals affirmed this holding and refused to restrict the concept of public use to slum clearance. It held that "economic underdevelopment and stagnation [were] also threats to the public cognizable as a public purpose."[336] The court also found the acquiring corporations self-serving motives irrelevant and that those motives did not defeat the public purpose of eliminating substandard areas.[337] Once the legislative body found the land to be substandard, the government's taking accompanied a public purpose, and the use of a private corporation as a vehicle for the elimination of the areas did not change the "permissible nature of the taking."[338]

The Supreme Court of Illinois distinguished the decision in *Murray v. La Guardia* when it ruled on the constitutionality of Illinois' Neighborhood Redevelopment Corporation Law. In *Zurn v. City of Chi-*

331. *Id.* at 227, 52 N.E.2d at 889.

332. *Id.* at 326, 52 N.E.2d at 888.

333. *Id.* at 327, 52 N.E.2d at 889.

334. Yonkers Community Dev. Agency v. Morris, 37 N.Y. 478, 335 N.E.2d 327, 373 N.Y.S.2d 112 (1975); Cannata v. City of New York, 11 N.Y. 210, 182 N.E.2d 395, 227 N.Y.S.2d 903 (1962).

335. *Cannata*, 11 N.Y. at 214, 182 N.E.2d at 397, 327 N.Y.S.2d at 905.

336. *Yonkers*, 37 N.Y. at 483, 335 N.E.2d at 330, 373 N.Y.S.2d at 114.

337. *Id.* at 484, 335 N.E.2d at 331, 373 N.Y.S.2d at 115.

338. *Id.*

cago,[339] the court held that the condemnation by a private corporation of substandard and blighted property constituted a valid public use. The court distinguished *Murray v. La Guardia* because the New York Constitution provided for the delegation of the eminent domain power to a private corporation only when it engaged in providing housing facilities and was regulated as to rents, profits, dividends and disposition of the property. The Illinois statute did not impose such requirements on the redevelopment corporation.[340] Although the Illinois statute did not restrict the nature of the development, it did subject the redevelopment corporation to public supervision and regulation.[341]

In addition, the Illinois Supreme Court distinguished the redevelopment statute from housing authority statutes. Unlike most housing authority acts, the Illinois statute neither declared as one of its purposes the regulation or control of rents nor conditioned the delegation of the eminent domain power on the regulation and control of rents.[342] The court relied on the stated purposes in the Illinois statute that the "basis for the public use [was] slum clearance and the rehabilitation of slum and blight areas" and the legislative declaration that those areas were injurious to the public health, safety, welfare and morals.[343] The court deferred to the legislative determination of public use and found that once the legislature made that declaration, the courts could not overturn that finding.[344] It held that "the taking of property for the purpose of elimination, redevelopment and rebuilding of slum and blight areas, [met] all the requirements of a public use and public purposes within the principles of the law of eminent domain."[345] In addition, the court held that the use of the property after the condemnation was irrelevant and that public use did not require continued use because the elimination of slums and blight satisfied the public purpose requirement.[346]

The *Murray v. La Guardia* and the *Zurn v. City of Chicago* decisions preceded the Supreme Court's decision in *Berman v. Parker*. Prior to the *Berman* decision, courts, in determining the constitutionality of ur-

339. 389 Ill. 114, 59 N.E.2d 18 (1945).
340. *Id.* at 125, 59 N.E.2d at 23.
341. *Id.* at 118, 59 N.E.2d at 20.
342. *Id.*
343. *Id.* at 116-17, 59 N.E.2d at 20.
344. *Id.* at 128, 59 N.E.2d at 25.
345. *Id.*
346. *Id.* at 129, 59 N.E.2d at 25.

ban redevelopment statutes, considered whether the state had adopted a constitutional amendment that provided for the elimination of blighted and substandard areas.[347] But after the *Berman* decision, courts relied on it, as well as other state court decisions, to uphold urban redevelopment statutes.[348] The South Carolina Supreme Court specifically rejected the reasoning in *Berman*, however, because the Supreme Court had not considered public use in South Carolina's "accepted constitutional sense."[349] The South Carolina Supreme Court also refused to defer to the legislative determination of public use in its redevelopment statute and held that it was a judicial rather than a legislative determination.[350]

The courts in *Murray v. La Guardia* and *Zurn v. City of Chicago* adopted broad definitions of public use and allowed that use to include an indirect benefit to the public.[351] In *Foeller v. Housing Authority of Portland*,[352] the Oregon Supreme Court refused to construe public use within the meaning of the Oregon Constitution to include public benefit.[353] The court stated that public use

> means a more intimate relationship between the public and an item of property which has been acquired under the power of eminent domain than is denoted by such terms as "public benefit" and "public utility." "Public use" demands that the public's use and occupation of the property must be direct.[354]

The court further stated that a public body, not a private person, must use and possess the property to satisfy the public use requirement in

347. *See* Adams v. Housing Auth. of Daytona Beach, 60 So. 2d 663 (Fla. 1952)(en banc); Housing Auth. of Atlanta v. Johnson, 209 Ga. 891, 74 S.E.2d 891 (1953). *See also* Wilson v. City of Long Branch, 27 N.J. 360, 142 A.2d 837 (1958)(relying on the Supreme Court's decision in *Berman* and the state's specific constitutional provision to uphold urban redevelopment statute).

348. Miller v. City of Tacoma, 61 Wash.2d 374, 385-90, 378 P.2d 464, 471-73 (1963). California, Georgia, Maryland, Missouri, New Jersey and New York specifically adopted constitutional provisions providing for urban redevelopment programs. *Id.* at 383, 378 P.2d at 470. *See also* Wilson v. City of Long Branch, 27 N.J. 360, 142 A.2d 837 (1958).

349. Edens v. City of Columbia, 228 S.C. 563, 576, 91 S.E.2d 280, 285 (1956).

350. *Id.*

351. Zurn v. City of Chicago, 389 Ill. 114, 128-29, 59 N.E.2d 18, 25 (1945); Murray v. La Guardia, 291 N.Y. 320, 331, 52 N.E.2d 884, 887-88 (1943), *cert. denied*, 321 U.S. 771 (1944).

352. 198 Or. 205, 256 P.2d 752 (1953).

353. *Id.* at 231, 256 P.2d at 765.

354. *Id.* at 233, 256 P.2d at 766.

the state's constitution.[355]

After the *Foeller* court defined public use narrowly, it then analyzed precedents that involved urban redevelopment statutes and its own statute. Under the Oregon statute, the housing authority condemned the property and then conveyed it to a private party. The court found that the resale of the property was not the primary purpose of the statute but instead served only an ancillary and incidental purpose to the primary purpose of eradicating the causes of blight.[356] The statute's public purpose was "the clearance, replanning, and preparation for rebuilding of these areas, and the prevention or the reduction of blight and its causes."[357] Although the *Foeller* court was not bound by this determination of legislative purpose, it afforded that determination great deference.[358] In analyzing whether a housing authority's condemnation satisfied the public purpose requirement, the court first held that the length of time the property remained in the hands of the housing authority did not determine whether the property was used for a public or private purpose. Rather, the court focused on the use the authority placed on the property.[359] Second, the court reviewed all the precedents on redevelopment statutes and concluded that those precedents showed that "the purposes of redevelopment laws [were] (1) to rid areas of conditions which propagate such evils as vice and disease, and (2) to render impossible a return of the unwholesome condition."[360] It then distinguished those state decisions that had held that the elimination of blight was not a public purpose based on the provisions of their local statutes and ordinances.[361] The *Foeller* court reasoned that when an area

355. *Id.*

356. *Id.* at 239, 256 P.2d at 768.

357. *Id.*

358. *Id.* at 240, 256 P.2d at 769.

359. *Id.* at 241-42, 256 P.2d at 769.

360. *Id.* at 251-52, 256 P.2d at 774.

361. *Id.* The Florida and Georgia Supreme Courts had struck down their respective state urban redevelopment statutes in Adams v. Housing Authority of Daytona Beach, 60 So. 2d 663 (Fla. 1952)(en banc) and Housing Authority of Atlanta v. Johnson, 209 Ga. 560, 74 S.E.2d 891 (1953). Subsequently Georgia adopted a constitutional amendment that provided for the elimination of blight. In Grubstein v. Urban Renewal Agency of Tampa, 115 So. 2d 745 (Fla. 1959), the Florida Supreme Court upheld a statute that provided for slum clearance as a public use but specifically confined its decision to slum clearance and stated that it was not applicable to blighted areas as defined in the Urban Renewal Law. In Nations v. Downtown Development Authority of Atlanta, 255 Ga. 324, 338 S.E.2d 240 (1985), the Georgia Supreme Court held that

> [loses] its old character as residential property and [struggles] against obsolete planning to adapt itself to industrial purposes, sinks into a substandard condition which subjects the city's health, morals and safety to uncommon hazards, the acquisition of the area by the public for the purpose of eradicating its evils and thwarting recrudescence summons the property to public use.[362]

It then found that the housing authority's occupation of the property during the demolition of the structures and the construction of the improvements sufficiently fulfilled Oregon's public purpose requirement, because the elimination of blight actually occurs at this time.[363] Furthermore, the court found that the imposition of restrictions on the property upon its resale to a private party to ensure that the blight conditions would not recur also achieved the statutory purposes.[364]

Courts also have interpreted public use for purposes of urban redevelopment to include the condemnation not only of vacant land but also of the air space.[365] In *Jersey City Chapter of Property Owner's Protective Association v. City Council of Jersey City*, the New Jersey Supreme Court upheld condemnation of air space and found the declaration of public purpose in the statute broad, inclusive and not limited to "perceptually offensive slums."[366]

The Michigan Supreme Court also took an expansive view of public use in *Poletown Neighborhood Council v. City of Detroit*.[367] It upheld the state's Economic Development Corporations Act which sought to provide "for the general health, safety, and welfare through alleviating unemployment, providing economic assistance to industry, assisting the rehabilitation of blighted areas, and fostering urban development."[368] The statute authorized the city to acquire the property through eminent domain and then to transfer the property to private ownership. Detroit condemned property to convey it to General Motors Corporation and declared that its purpose was to "alleviate and

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the state constitution authorized the use of eminent domain to acquire property and sell it to private parties.

362. Foeller v. Housing Auth. of Portland, 198 Or. 205, 263, 256 P.2d 752, 775 (1953).

363. *Id.* at 253, 256 P.2d at 775.

364. *Id.* at 254, 256 P.2d at 775.

365. 55 N.J. 86, 259 A.2d 698 (1969).

366. *Id.* at 96, 259 A.2d at 704.

367. 410 Mich. 616, 304 N.W.2d 455 (1981).

368. *Id.* at 630, 304 N.W.2d at 458.

prevent conditions of unemployment and fiscal distress."[369] The court found that determining a public purpose was a legislative function. It relied on the holding in *Berman v. Parker* that "when a legislature speaks, the public interest has been declared in terms 'well-nigh conclusive.' "[370] It then upheld Detroit's use of the eminent domain power for the public purpose of alleviating unemployment and found any benefit to General Motors "merely incidental."[371]

The above cases demonstrate that courts now consider public use to be a broad concept that encompasses even "indirect benefits" to the public. Furthermore, most courts limit their review of the legislative determination and consider it "well nigh conclusive."[372]

Courts uphold urban redevelopment statutes even when there is no direct benefit to the public because the public receives an indirect benefit from the elimination of slum and blighted areas.[373] Courts reach this conclusion without evaluating the extent of the indirect benefits, even when the private corporation receives a great benefit. For example, in *Murray v. La Guardia*, the private corporation acquired the property from the city and redeveloped the blighted area. Consequently, the corporation obtained tax benefits but the corporation had no limit on its profits.[374] The court recognized that the corporation received these benefits, but it refused to find the statute unconstitutional and instead held that the public good was "enhanced."[375] After the Supreme Court's decision in *Hawaii Housing Authority v. Midkiff*, a legislature only needs to present a "conceivable public purpose" for the legislation to survive a constitutional attack on these grounds.[376] The Michigan Supreme Court's decision in *Poletown Neighborhood Council v. City of Detroit* demonstrates the extreme expansion of the concept of public use. Public use in the context of urban redevelopment not only includes the elimination of slum and blighted areas but also includes purely economic legislation designed to improve the fiscal well-being of

369. *Id.* at 632, 304 N.W.2d at 458.

370. *Id.* at 633, 304 N.W.2d at 459 (quoting Berman v. Parker, 348 U.S. 26, 36 (1954)).

371. *Id.* at 634, 304 N.W.2d at 459.

372. Berman v. Parker, 348 U.S. 26, 32 (1954).

373. *See, e.g.*, Murray v. La Guardia, 291 N.Y. 320, 52 N.E.2d 884 (1943), *cert. denied*, 321 U.S. 771 (1944).

374. *Id.* at 330, 52 N.E.2d at 888.

375. *Id.*

376. 467 U.S. 229, 241-42, 243 (1984).

the city.[377]

D. *The Public Use Doctrine in Missouri*

The Missouri Constitution contains three provisions addressing the exercise of the eminent domain power. Article I, section 26 provides that "private property shall not be taken or damaged for public use without just compensation."[378] Article I, section 28 provides that private property shall not be taken for private use except for use as drains and ditches and rights-of-way.[379] In 1945, the state adopted a third constitutional provision, article VI, section 21, which authorizes local governments to take or to permit a taking by eminent domain for the purposes of reclamation and redevelopment of blighted, substandard and insanitary areas.[380]

The Missouri Supreme Court first construed a statute enacted pursuant to article VI, section 21 and analyzed that constitutional provision in relation to the other constitutional provisions on eminent domain in *State on inf. Dalton v. Land Clearance for Redevelopment Authority of Kansas City, Missouri*,[381] which involved Missouri's Land Clearance for Redevelopment Authority Law.[382] In *Dalton*, the plaintiff argued that the city's transfer of property to private interests after acquiring it through its eminent domain power constituted a taking for private use and, therefore, violated the prohibition in article I, section 28 that private property cannot be taken for private use except in specific situations.[383] In addition to the expressed exceptions that allow a taking for private use, article I, section 28 further provides that the judiciary should decide whether the contemplated use is a public use without following any legislative declaration that the use is public.[384] The plaintiff argued that article VI, section 21 was not an additional exception to the prohibition in article I, section 28 against taking private property for private use.[385] The Court held that the failure of article

377. Poletown Neighborhood Council v. City of Detroit, 410 Mich. 616, 630, 304 N.W.2d 455, 458 (1981).

378. MO. CONST. art. I, § 26.

379. MO. CONST. art. I, § 28.

380. MO. CONST. art. VI, § 21.

381. 270 S.W.2d 44 (Mo. 1954)(en banc).

382. MO. REV. STAT. §§ 99.300-.660 (1986).

383. 270 S.W.2d at 51.

384. MO. CONST. art. I, § 28.

385. *Dalton*, 270 S.W.2d at 51.

VI, section 21 to address uses for the property after clearance of the blight conditions "convey[ed] . . . the definite assumption that the primary object and public purpose of the law [was] the clearance and correction of any duly declared blighted and insanitary condition, and that thereafter the area may be sold with or without restrictions."[386]

The *Dalton* court next considered whether article VI, section 21 was an exception to the provision of article I, section 28 that the question of what constituted a public use was solely for the judiciary regardless of any legislative finding. The court stated that article VI, section 21 "unqualifiedly authorize[d] the legislature and cities and counties operating under constitutional charter to enact legislation providing for the taking of blighted and insanitary areas by eminent domain."[387] The court reconciled these apparently conflicting constitutional provisions by holding that:

> 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 . . . 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 was induced by fraud, collusion or bad faith.[388]

This decision constitutionally validated the use of the eminent domain power to clear and replan slum and blighted areas. Despite the absence of a specific constitutional provision stating that the elimination of certain areas, in and of itself, is a public use or purpose, the *Dalton* court gave local legislatures the power to make that determination.

In *Dalton*, the court construed the Land Clearance for Redevelopment Authority Law, and not the Urban Redevelopment Corporations Law. The court extensively discussed the meaning of public use and purpose under Missouri law. It described the concept of public use as broad and expansive and "synonymous with 'public advantage'—'pub-

386. *Id.*

387. *Id.*

388. *Id.* at 52.

lic benefit.' "[389] Furthermore, it found public use to be an evolving concept that should "be applied and construed as made necessary to the public welfare by changing conditions."[390]

Examining the statute at issue, the court held that despite the city's subsequent transfer of the property to private ownership, the taking could still constitute a public use.[391] It applied the same reasoning as courts in other jurisdictions that upheld urban renewal statutes: that the elimination of blight occurs during the redevelopment stage and prior to the transfer of the property to private ownership and that the city may transfer the property with restrictions to further the goals of eliminating blight.[392] As in other jurisdictions, the Missouri Supreme Court held that any benefit to private parties was only ancillary or incidental to the primary purpose of the statute.[393] The court stated that "[n]othing in the Constitution or statutes requires that public ownership be continued for a longer time than is necessary to the accomplishment of the public purposes which give rise to the taking."[394]

The Missouri Supreme Court again considered the relationship between article VI, section 21 and article I, section 28 of the Missouri Constitution in *Annbar Associates v. West Side Redevelopment Corp.*, as those provisions applied to the Urban Redevelopment Corporations Law.[395] The court quoted extensively from *Dalton* and held that the elimination of blight under the urban redevelopment statute was a public use under the federal and state constitutions.[396] It recognized that article I, section 28 required the courts to determine "whether the contemplated use of any property sought to be taken . . . [was] public";[397] however, it found that a legislative determination that an area was insanitary and blighted and that the eminent domain power should be used to clear and improve the area would be conclusive evidence that

389. *Id.* at 50.

390. *Id.*

391. *Id.* at 51.

392. *Id.*

393. *Id.* at 51, 53.

394. *Id.* at 51.

395. 397 S.W.2d 635 (Mo. 1965)(en banc), *appeal dismissed*, 385 U.S. 5 (1966).

396. *Id.* at 643-47; *see also* Land Clearance for Redevelopment Auth. of St. Louis v. City of St. Louis, 270 S.W.2d 58, 64 (Mo. 1954); Schweig v. Maryland Plaza Redevelopment Corp., 676 S.W.2d 249, 252 (Mo. Ct. App. 1984).

397. *Annbar*, 397 S.W.2d at 646 (quoting State *on Inf.* of Dalton v. Land Clearance for Redevelopment Auth. of Kansas City, Mo., 270 S.W.2d 44, 52 (Mo. 1954)(en banc)).

the use is public absent an arbitrary and capricious finding, collusion, fraud or bad faith.[398] The court further adopted the holding from *Dalton* that "the purpose in acquiring the land is to rid it of its blighted and insanitary condition and . . . [that the] primary purpose of a redevelopment project is a public purpose [with] *any benefits to private individuals [being] merely incidental to the public purpose.*"[399]

In addition to the Land Clearance for Redevelopment Authority Law[400] and Chapter 353, Missouri's Planned Industrial Expansion Act also provides for the condemnation of blighted, insanitary or underdeveloped industrial areas for the purposes of redevelopment.[401] The Missouri Supreme Court upheld the validity of this legislation in *State ex rel. Atkinson v. Planned Industrial Expansion Authority.*[402] More recently, in *Tierney v. Planned Industrial Expansion Authority,*[403] the Missouri Supreme Court indicated the great extent to which it will go to uphold a government's blight determination and a statute's public purpose. The Planned Industrial Expansion Authority of Kansas City originally had not included the plaintiffs' property in the designated blighted area but subsequently added the property to a proposed industrial development.[404] The plaintiffs alleged their property was not blighted and the taking of property thought to be economically underutilized did not constitute a public use. They argued that there was a higher and better use for all property and "that the concept of economic underutilization [was] so broad as to confer upon the legislative authority . . . the unlimited discretion to take one person's property for the benefit of another"[405] in violation of article I, section 28 of the Missouri Constitution. The court, however, rejected this argument and stated that the concept of urban redevelopment included more than slum clearance. It found economic underutilization to be a valid concept upon which to base redevelopment and held that industrial development constituted a public purpose.[406] Furthermore, the court found that the city council had sufficient evidence to support its finding that

398. *Id.* (quoting *Dalton*, 270 S.W.2d at 52).
399. *Id.* (quoting *Dalton*, 270 S.W.2d at 53)(emphasis in original).
400. MO. REV. STAT. §§ 99.300 -.660 (1951).
401. MO. REV. STAT. §§ 100.300 -.620 (1986).
402. 517 S.W.2d 36 (Mo. 1975)(en banc).
403. 742 S.W.2d 146 (Mo. 1987)(en banc).
404. *Id.* at 149.
405. *Id.* at 151.
406. *Id.*

"redevelopment of [the] area could promote a higher level of economic activity, increased employment and greater services to the public."[407] Thus, the court concluded that the plaintiffs had not met their burden of showing that the blight determination was arbitrary or an "unreasonable abuse of legislative authority."[408] With the *Tierney* decision, the Missouri Supreme Court extended the concept of public use to include the economic well-being of the city, to the same extent as did the Michigan Supreme Court in *Poletown*.

E. *Exercise of Eminent Domain Power*

Another major legal issue litigated in connection with urban redevelopment statutes is the delegation of the eminent domain power to a private redevelopment corporation. This section discusses the delegation of the eminent domain power to private corporations in general and its application under Missouri law in connection with urban redevelopment projects.

1. Overview of Delegation of the Eminent Domain Power

Since early in American history, certain private corporations or individuals needed to exercise the eminent domain power. The delegation of this power, however, was circumscribed carefully and generally limited to public service companies and railroads.[409] Corporations could exercise the eminent domain power only in those instances where it was "organized under the authority of the state to serve the public at reasonable rates and without discrimination, and [to] provide a necessity or a convenience that [could] be provided only if the power of eminent domain is available."[410] When the power is delegated to a private party, that party may exercise the power only on its own behalf and not on behalf of others.[411] The delegation of the power has been upheld even when the private party that condemns the property does so for its own benefit, not to provide a public service, but only when the legislature has declared that the condemnation constitutes a public purpose and there exists a constitutional provision to that effect.[412]

407. *Id.*

408. *Id.*

409. D. HAGMAN & J. JUERGENSMEYER, *supra* note 150, at § 20.8.

410. *Id.*

411. 1A J. SACKMAN, NICHOLS ON EMINENT DOMAIN § 3.21[2] at 3-55 (rev. 3d ed. 1986) [hereinafter NICHOLS].

412. Flora Logging Co. v. Boeing, 43 F.2d 145 (D. Or. 1930) (condemnation by

States also have delegated the eminent domain power to non-profit organizations such as hospitals and universities.[413] The traditional areas in which states have allowed the exercise of eminent domain by private enterprises[414] are for irrigation,[415] drainage,[416] reclamation of wetlands,[417] mills and milldams,[418] clearing of doubtful title,[419] mines,[420] lumbering[421] and private roads.[422]

2. Delegation of the Eminent Domain Power Under Missouri Law

Article VI, section 21 of the Missouri Constitution expressly authorizes constitutional charter cities and counties to enact ordinances for clearance of blighted and insanitary areas.[423] The statute authorizes local governments to enact ordinances "for taking *or permitting* the taking, by eminent domain of property" for the purposes spelled out in the provision.[424] This constitutional provision purportedly constitutes the authority under which the Missouri legislature enacted Chapter 353 permitting the delegation of the eminent domain power to private redevelopment corporations.[425]

The Missouri Supreme Court addressed the delegation of the eminent domain power in *Board of Regents for Northeast Missouri State Teachers College v. Palmer*,[426] where property owners challenged the delegation of the power to the Northeast Missouri State Teachers College to build a dormitory.[427] The General Assembly had delegated the

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logging company for private logging railroad upheld when recognized that means of transportation of raw products is in interest of public welfare).

413. D. HAGMAN & J. JUERGENSMEYER, *supra* note 150, at § 20.8.

414. 2A NICHOLS, *supra* note 411, 7.62, 7.63.

415. *Id.* § 7.64.

416. *Id.* § 7.65 - 7.67.

417. D. HAGMAN & J. JUERGENSMEYER, *supra* note 150, at § 20.8.

418. *Id.*

419. *Id.*

420. 2A NICHOLS, *supra* note 411, § 7.71.

421. *Id.* § 7.72.

422. *Id.* § 7.73.

423. MO. CONST. art. VI, § 21.

424. *Id.* (emphasis added). Article VI, § 19 empowers cities with a population of more than 5,000 inhabitants to adopt a charter form of government and article VI, § 18 gives this same power to counties with a population of more than 85,000.

425. MO. REV. STAT. §§ 353.120, .130, .170 (1986).

426. 204 S.W.2d 291 (Mo. 1947).

427. *Id.* at 294.

eminent domain power to state educational institutions for similar projects.[428] The Missouri Supreme Court upheld the delegation against an argument that only the state, a county or a city could exercise eminent domain under article I, section 27 of the Missouri Constitution.[429] The court held that both the exercise of the eminent domain power and the power to delegate its exercise were legislative functions and that the cited constitutional provision only addressed restrictions on the condemnation of excess property and not the entity that may exercise eminent domain.[430] In addition, the court upheld the right of the legislative branch to delegate that power to a government agency, such as an educational institution.[431]

In *Annbar Associates v. West Side Redevelopment Corp.*, the Missouri Supreme Court upheld Chapter 353 against an argument that the law was unconstitutional because it permitted the eminent domain power to be delegated to private corporations for redevelopment purposes.[432] The court began with the assumption that the authority exists to confer the power on a private corporation if it exists to confer the power on a public agency. The court first looked to article VI, section 21 of the Missouri Constitution which provides "for the taking *or permitting the taking*, by eminent domain," to eliminate blighted and insanitary areas. The *Annbar* court found that although section 21 empowered legislative bodies to provide for the use of the eminent domain power to acquire property to eliminate blight and insanitary conditions, it did not designate or make a "distinction between entities, . . . [that] legislative bodies may invest with that power."[433] The court found that the constitution did not prohibit investing a private corporation with the eminent domain power and refused to question the legislature's determination on what entities should have that power.[434] Furthermore, it found no distinction "between the power granted redevelopment corporations and that granted railroads and others to carry on a business necessary to serve the public."[435]

428. *Id.*

429. *Id.* at 293.

430. *Id.* at 294.

431. *Id.*

432. 397 S.W.2d 635, 647 (Mo. 1965) (en banc), *appeal dismissed*, 385 U.S. 5 (1966).

433. *Id.*

434. *Id.*

435. *Id.*

To reach the conclusion that the legislature could invest private entities with the eminent domain power, the court relied on *Berman v. Parker*. In *Berman*, the Court held that the eminent domain power was the means to accomplish the goal of eliminating blight and that public ownership of redevelopment property was not the sole means of accomplishing this end.[436] The Missouri court did not acknowledge the distinction between Missouri's urban redevelopment statute and the statute at issue in *Berman*, which provided that the public authority first acquire ownership of the property and then transfer it to the private corporation. Instead, the Missouri court held that it could not say "that public bodies are the only entities that may be invested with the power of eminent domain—the authority to designate those entities with whom it may invest that power *is solely that of the legislative branch*."[437] The court also relied on the holdings of other jurisdictions where courts upheld statutes that provided for the delegation of the eminent domain power against constitutional attacks.[438] These statutes, however, can be distinguished from the Missouri statute because the cases involved supervised housing or redevelopment authorities unlike Missouri's private redevelopment corporations.

F. *Conclusion*

The Missouri Supreme Court and other state supreme courts consistently uphold urban renewal and urban redevelopment statutes by finding that the elimination of blight and substandard areas satisfies the public use requirement of the takings clauses of both the federal and respective state constitutions. Furthermore, these courts hold that any benefit to those private corporations that obtain title in the condemned property is only incidental or ancillary to the purpose of eliminating blight. They also find that restrictions either in deeds that convey the property from the public authority or in contracts between the city and the redevelopment corporation further the declared statutory purposes. Courts hold that these restrictions on the use of the property prevent the recurrence of blight conditions. Even in those states that require a close nexus between the use to which the property is put after the condemnation and the public use, courts uphold urban redevelopment statutes by reasoning that the public purpose is achieved when the

436. *Id.* (quoting *Berman*, 348 U.S. 26, 33 (1954).

437. *Id.* (emphasis added).

438. *Id.* at 647-48.

blight is eliminated and that the public occupation of the land required by the state constitutions occurs during the clearance period.

Courts accord great deference to the legislative determination of public use and purpose even when the question under that state's law is a judicial rather than a legislative one. By interpreting public use broadly and by deferring to the legislature, the courts have enabled private parties to utilize urban redevelopment statutes to accomplish purely economic development projects instead of limiting the statutes to the elimination of blight. Still, the courts recognize that a blight determination is a threshold requirement under most urban redevelopment statutes. Thus, the extent to which courts interfere with legislative decision-making regarding urban redevelopment statutes depends upon the courts' views of the concept of blight and of their role in supervising the legislative branch.

PART V. BLIGHT: THE THRESHOLD REQUIREMENT

A. *Overview of Blight*

The impetus for an urban redevelopment program is a legislative determination that an area is blighted. Chapter 353 defines blighted areas as areas that "by reason of age, obsolescence, inadequate or outmoded design or physical deterioration, have become economic and social liabilities, and that such conditions are conducive to ill health, transmission of disease, crime or inability to pay reasonable taxes."[439] An "area," for purposes of the statute, is defined as one that is found "to be blighted."[440] In addition, the definition of "area" provides for the inclusion of buildings and improvements and any real property whether or not improved, if the inclusion of that property is found by the legislature to be necessary to effectuate the redevelopment program.[441] The statute defines blight with a cause and effect relationship. Certain conditions in the blighted area, i.e. "age, obsolescence, inadequate *or* outmoded design *or* physical deterioration," have caused the area to become an "economic *and* social liability" to the municipality.[442]

When legislatures enacted the original urban redevelopment statutes, they viewed blight primarily as areas with deteriorating structures.[443]

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

440. *Id.* § 353.020(1).

441. *Id.*

442. *Id.* (emphasis added).

443. Brown, *Urban Redevelopment*, 29 B.U.L. REV. 318 (1949).

The housing shortage that necessitated living in these areas led to overcrowding, crime and disease.[444] At this time, legislatures viewed blight as an undesirable object and concentrated the statutes on the age of structures and structural deficiencies as well as environmental conditions such as overcrowding, crime and disease. Legislators drafted blight provisions in cause and effect language. In addition, legislatures considered blight as a condition that would spread throughout the community if not arrested.[445]

Gradually, this perception of blight changed to the view that blight was a process through which neighborhoods became "deteriorated or functionally obsolete."[446] Neighborhoods constructed at the turn of the century no longer adequately provided for the needs of modern life because of their outmoded planning and street conditions which could not handle automobile traffic.[447] These factors led to a migration of inner city residents to suburban areas specifically designed for this new lifestyle.[448] This exodus led to the further deterioration of many urban areas and, by the 1960s, to an urban population "increasingly dominated by non-upwardly mobile households."[449] As a result, "undesirable environmental conditions, such as high rates of crime, vandalism, drug addiction, family breakdown, and ill health" intensified.[450] Urban redevelopment statutes appear to recognize that blight is not only a static condition defined in terms of substandard structures, but it also is a process of economic and social deterioration. Implicitly, the statutes then authorized programs that attack the symptoms of the process of deterioration as well as the process itself.

Each state statute defines blight in a different manner, with some providing detailed definitions of the conditions that will be considered blight. For example, the Missouri statute defines blighted areas in broad terms of "age, obsolescence, inadequate design or physical deterioration."[451] In comparison, the New Jersey statute contains five separate definitions of blight, including conditions such as remoteness

444. *Id.*

445. Foeller v. Housing Auth., 198 Or. 205, 256 P.2d (1953).

446. Downs, *Key Relationships Between Urban Development and Neighborhood Change*, J. AM. PLAN. A. 462, 463 (1979).

447. *Id.* at 463.

448. *Id.*

449. *Id.* at 465-66.

450. *Id.* at 466.

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

from developed areas, discontinuance of use of manufacturing and industrial buildings, total lack of utilization of an area because of conditions of title and diverse ownership and areas blighted because of deleterious land use or obsolete layout.[452] Legislatures originally designed urban redevelopment statutes to promote housing development. Now the emphasis has shifted from providing decent housing for the urban poor to increasing economic development within urban areas. Even with this shift in emphasis, a blight determination is a prerequisite to using urban redevelopment statutes to promote economic development. This part of the Article examines the factors used in determining blight and judicial construction of those statutory provisions. It also examines the scope of review that the Missouri courts apply to a municipality's finding that an area is blighted.

B. *Blight in the Courts*

Not every statutory condition of blight has to be met before a court will uphold a municipality's blight determination.[453] Even though statutes generally require that only one factor indicative of blight be present, in most blight determinations several statutory factors are cited to support the blight determination. Courts rely on many similar factors in reviewing blight determinations. The specific state statutory definition of blight plays a role in a court's decision, and the court also reviews and relies on decisions from other jurisdictions. Because of the similarities in statutory definitions and a court's construction and application of those definitions, decisions from other jurisdictions may affect the construction of Chapter 353 by the Missouri courts. Each factor discussed below is one commonly relied on by courts in their review of a legislative determination of blight.

1. Diverse Ownership

In *Stahl v. Board of Finance of Paterson*, the New Jersey Superior Court upheld a determination of blight based on diverse ownership of

452. Wilson v. City of Long Branch, 27 N.J. 360, 369, 142 A.2d 837, 842, *cert. denied*, 358 U.S. 873 (1958) (citing N.J. Stat. Ann. § 40:55-21); *see also* Levin v. Township Comm., 57 N.J. 508, 513-14 n.1, 274 A.2d 1, 5 n.1, *appeal dismissed*, 404 U.S. 803 (1971) (citing other similar state statutory provisions).

453. Levin v. Township Committee of Bridgewater, 57 N.J. 506, 274 A.2d 1, *appeal dismissed*, 404 U.S. 803 (1971); Oliver v. City of Clairton, 98 A.2d 47, 51 (1953).

property.[454] At that time the New Jersey statutory definition of blight included lack of utilization because of diverse ownership that resulted "in a stagnant and unproductive condition of land potentially useful" among the conditions that indicated an area was blighted. The area in question included 157 parcels of property with 144 owners making it difficult to assemble tracts large enough for industrial expansion. The renewal area also was a residential island completely surrounded by industry.[455] The court upheld this blight determination on the grounds that the New Jersey statute specifically included diverse ownership as indicative of blighted conditions.[456] Detailed findings concerning conditions in the redevelopment area by the planning board executive staff and a field survey facilitated the court's ability to uphold the blight determination because these findings constituted "substantial evidence" of blight conditions.[457] The New Jersey Supreme Court reached the same conclusion in *Levin v. Township Committee of Bridgewater*[458] and in addition, it reasoned that a blight determination based on this factor allowed the city to assemble property without spending years resolving title disputes.[459] A California Court of Appeals also upheld a blight determination based on diversity of ownership as one of several factors in the blight declaration.[460]

2. Tax Delinquency

In *Levin v. Township Committee of Bridgewater*, the New Jersey Supreme Court stated that "nonpayment of taxes and tax foreclosures are themselves common incidents of a blighted area."[461] The redevelopment area encompassed 450 parcels, 268 of which were owned by the township.[462] In *Levin*, the municipality decided to acquire the largely undeveloped property to build a large shopping mall which it

454. 62 N.J. Super. 562, 580, 163 A.2d 396, 406 (1960), *aff'd*, 69 N.J. Super. 242, 562, 580, 174 A.2d 238 (1961).

455. *Id.*

456. *Id.* at 579-80, 163 A.2d at 405-06.

457. *Id.* at 579, 582, 163 A.2d at 405-07.

458. 57 N.J. 506, 274 A.2d 1, *appeal dismissed*, 404 U.S. 803 (1971).

459. *Id.* at 538, 274 A.2d 19.

460. Redevelopment Agency of San Francisco v. Hayes, 122 Cal App.2d 777, 783, 266 P.2d 105, 110, 119, *cert. denied*, 348 U.S. 897 (1954) (more than 500 parcels in development area in separate ownership).

461. 57 N.J. 506, 534, 274 A.2d 1, 16, *appeal dismissed*, 404 U.S. 803 (1971).

462. *Id.* at 519, 274 A.2d at 7.

had determined to be the best use for the property.[463] Of the lots owned by the municipality, tax foreclosures had resulted in flawed title because of defective proceedings. In five instances, nobody acquired title whereas other parcels had uninsurable title.[464] The court relied on the title flaws to uphold the blight determination particularly because reforeclosure would not remedy the title defects.[465] The court noted that the New Jersey statute included as an indication of blight the lack of use of the area that "resulted in tax delinquencies and [the municipality's] widespread acquisition of land of good or doubtful title."[466] In an earlier decision, the New Jersey Supreme Court also found the tax delinquency status of six out of ten parcels in the development area indicative of blight for the purposes of its redevelopment statute.[467]

3. Plot Irregularity

The California Supreme Court upheld a municipality's blight determination in *In re Bunker Hill Urban Renewal Project 1B*.[468] Included among the city commission's findings of blight was the inadequacy of many parcels for development because of their shape, size or topographical character.[469] The California statutory definition of blight at issue specifically included lots of "inadequate size for proper usefulness and development."[470] In an earlier decision, a California Court of Appeals upheld a blight determination by the San Francisco City Council, based on a lack of development caused by the irregular form and shape of plots drawn without regard to the physical contours of the property.[471]

4. Fire and Safety Conditions

Municipalities commonly rely on fire and safety conditions in the

463. *Id.* at 517, 274 A.2d at 6-7.

464. *Id.* at 534, 274 A.2d at 16.

465. *Id.*

466. *Id.* at 538, 274 A.2d at 18.

467. Wilson v. City of Long Branch, 27 N.J. 360, 393, 142 A.2d 837, 856, *cert. denied*, 358 U.S. 873 (1958).

468. 61 Cal.2d 21, 538, 39 Cal. Rptr. 74, *cert denied*, 379 U.S. 899 (1964).

469. *Id.* at 35 n.2, 389 P.2d at 547 n.2, 37 Cal. Rptr. at 82 n.2.

470. *Id.* at 34 n.2, 389 P.2d at 546 n.2, 37 Cal. Rptr. at 82 n.2 (quoting CAL. GOV'T CODE § 33042 (West 1959)).

471. Redevelopment Agency of San Francisco v. Hayes, 122 Cal. App.2d 777, 783-84, 266 P.2d 105, 110, *cert.denied,* 348 U.S. 897 (1954).

redevelopment area to make blight determinations. In *Foeller v. Housing Authority of Portland*, the Oregon Supreme Court upheld the Portland Housing Authority's blight determination in a constitutional challenge to the statute,[472] including a finding that residential structures in the redevelopment area constituted a fire hazard.[473] The primarily wooden structures were located in close proximity to industrial and commercial establishments, subjecting the residences to unusual hazards. City records indicated that the city received 100% more fire calls in that area than the city's average.[474]

The California Supreme Court in *In re Bunker Hill Urban Renewal Project 1B*,[475] also upheld the agency's blight determination which included potential fire hazards as a blight indication. The determination that a fire hazard existed differed from the determination in *Foeller*. The *Bunker Hill* court found that the irregular topography of the redevelopment area contributed to the potential fire hazards.[476] It held that the "steep slopes and grades, sharp palisades and unusable lands" hampered accessibility and required cable railroad and deep street cuts for access.[477] These conditions resulted in inadequate streets and traffic bottlenecks that made access for fire control difficult. Other courts also have upheld blight determinations that had as one of their factors potential fire hazards.[478]

5. Substandard Housing

One of the most common elements used in blight determinations is evidence of substandard or deteriorated housing or structures. Statutory provisions usually define blighted areas as having buildings or structures in a dilapidated or deteriorating condition. Statutes often include the age of structures as a presumptive indication of blight.[479]

472. Foeller v. Housing Auth., 198 Or. 205, 218, 256 P.2d 752 (1953).

473. *Id.* at 218, 256 P.2d at 759.

474. *Id.*

475. 61 Cal.2d 21, 389 P.2d 538, 37 Cal. Rptr. 74, *cert. denied*, 379 U.S. 899 (1964).

476. *Id.* at 35 n.2, 389 P.2d at 547 n.2, 37 Cal. Rptr. at 83 n.2.

477. *Id.*

478. *See, e.g.*, Redevelopment Agency of San Francisco v. Hayes, 122 Cal. App.2d 777, 782, 266 P.2d 105, 110 (evidence of blight included general use of coal oil heaters, storage of inflammable materials and inadequate fire escapes), *cert. denied*, 348 U.S. 897 (1954); Davis v. City of Lubbock, 160 Tex. 38, 43, 326 S.W.2d 699, 702 (1959) (substantially higher costs for fire calls in area).

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

In *Wilson v. City of Long Branch*,[480] the New Jersey Supreme Court upheld a blight determination partially based on the existence of substandard structures. The statutory definition of blight at issue permitted a blight determination when "buildings used as dwellings or the dwelling accommodations . . . are substandard, unsafe, insanitary, dilapidated, or obsolescent, or possess any of such characteristics . . . ."[481] In reaching its finding, the legislative body considered evidence that 41 of the 71 dwellings in the proposed redevelopment area were substandard because of serious disrepair of either the "outside walls, roof, foundation, inside walls, floors or ceilings . . . or [because they] lacked such major facilities as running hot water, a private bath or a private interior flush toilet . . . ."[482]

Missouri courts also have upheld blight determinations under its blight definition in Chapter 353 based on the adequacy of the structures within the area. In *Allright Missouri, Inc. v. Civic Plaza Redevelopment Corp.*,[483] the Missouri Supreme Court upheld a finding by the Kansas City City Council that an area containing surface parking lots and 14 commercial structures was blighted.[484] The City Council based its blight determination on evidence that most of the structures were over 40 years old with three structures being 70 years old.[485] Although two of the structures had ratings of excellent, the remaining buildings were rated as very poor, poor, fair, and good.[486] In an earlier decision, the Missouri Supreme Court upheld a blight determination relying on

480. 27 N.J. 360, 142 A.2d 837, *cert. denied*, 358 U.S. 873 (1958).

481. *Id.* at 392, 142 A.2d at 842.

482. *Id.* at 393, 142 A.2d at 855; *see also in re* Bunker Hill Urban Renewal Project 1B, 61 Cal.2d 21, 34, n.2, 389 P.2d 538, 547 n.2 (95% of structures constructed before 1919 and 63.4% of residential structures classified as substandard or slum and 20% as poor), *cert denied*, 379 U.S. 899 (1964); Redevelopment Agency of San Francisco v. Hayes, 122 Cal. App.2d 777, 782, 266 P.2d 105, 110 (2000 structures in area blighted), *cert denied*, 348 U.S. 897 (1954); Stahl v. Board of Finance, 69 N.J. Super. 562, 576, 163 A.2d 396, 405 (1960)(board found area blighted based on personal inspection and age of structures not inspected), *aff'd*, 69 N.J. Super. 243, 174 A.2d 238 (1961); Foeller v. Housing Auth. of Portland, 198 Or. 205, 218-19, 234, 256 P.2d 752, 759, 766 (1953)(structures in area did not conform to minimum housing and building code requirements); Davis v. City of Lubbock, 160 Tex. 38, 42, 326 S.W. 2d 699, 702 (1959)(all but seven of 256 structures in area were substandard with 80% beyond reasonable rehabilitation).

483. 538 S.W.2d 320 (Mo. 1976)(en banc).

484. *Id.* at 322.

485. *Id.* at 323.

486. *Id.*

evidence that 28 of the buildings in an area were deteriorated or substandard even though the area comprised only fourteen percent of the project area.[487] In a third case, the Court held that a City Planning Commission study which found sixty percent of the structures in a project in need of significant repair sufficient to support a finding of blight.[488]

Courts generally defer to a legislative determination of blight and uphold the findings; however, the Virginia Supreme Court overturned a finding of blight under the state's then-existing statute that defined blighted areas "as areas . . . with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement of design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental . . . ."[489] The court reasoned that the entire area was not blighted, and therefore, found that the determination of blight was arbitrary.[490] Property owners in the area recently had improved 37 of the 67 dwellings; all the residences had running water and flush toilets, and all but one had electricity.[491] According to the court, the whole area, and not isolated structures, had to be blighted to satisfy the statute.

6. Street Design and Traffic Congestion

Local authorities have cited inadequate street design and traffic congestion to support their blight determinations. In *Redevelopment Agency of San Francisco v. Hayes*,[492] wasteful street design unadapted to the topography was one factor upon which the legislative body relied to support its blight finding. The findings concerning street design included evidence that 66 acres of mapped streets in the project area were unpaved and undeveloped, only 1.4 acres of streets were paved,[493] and mapped streets of usable grade were connected to streets of

487. Parking Sys., Inc. v. Kansas City Downtown Redevelopment Corp., 518 S.W.2d 11 (Mo. 1974).

488. Maryland Plaza Redevelopment Corp. v. Greenberg, 594 S.W.2d 284, 288 (Mo. Ct. App. 1979).

489. Bristol Redevelopment & Hous. Auth. v. Denton, 198 Va. 171, 175, 93 S.E.2d 288, 292-93 (1956)(quoting VA. CODE ANN. §§ 36-49 (1950).

490. *Id.* at 180, 93 S.E.2d at 295.

491. *Id.* at 179, 93 S.E.2d at 294.

492. 122 Cal. App.2d 777, 266 P.2d 105, 110, *cert. denied*, 348 U.S. 897 (1954).

493. *Id.* at 783, 266 P.2d at 110.

unusable grade.[494] The California Supreme Court in *In re Bunker Hill Urban Renewal Project 1B*[495] upheld a blight determination partially based on the inadequacy of streets because of their width and steep grades. The legislative body also found these conditions relevant to its findings concerning potential fire and safety hazards in the project area. The New Jersey Supreme Court also upheld a blight determination that included a finding by the planning board that the project area contained only one improved street.[496]

7. Economic Considerations

Many statutory definitions of blight allow for the determination to depend upon findings of economic deterioration in the area. Cases construing these provisions usually involve considerations of whether the urban renewal statute allows a blight determination solely on the basis that the land's current use is not its highest and best use. The statutory provisions upon which legislative bodies rely to determine economic blight vary in the manner in which they describe blight. Some describe blight in terms of conditions while others describe it in terms of cause and effect. For example, Chapter 353 describes a blighted area as one which results in an economic liability because of the physical conditions of the structures in the area.[497] The New Jersey statute requires no cause and effect findings. It is the mere existence of certain conditions that constitutes blight.[498] One provision of the New Jersey statute does provide for a finding that the blight occurred as a consequence of existing conditions.[499] Both New Jersey provisions require that the legislative body make findings on the specific conditions listed in the statute when it makes its blight determination.[500] The California statute allows for blight determinations based upon economic reasons, defining blight both in terms of conditions that exist in the area and in terms of consequences of certain conditions. The provisions describing

494. *Id.*

495. 37 Cal. Rptr. 74, 83 n.2, 389 P.2d 538, 547 n.2, 61 Cal.2d 21, 35 n.2, *cert denied*, 379 U.S. 899 (1964).

496. Levin v. Township Comm., 57 N.J. 506, 526, 274 A.2d 1, 12, *appeal dismissed*, 404 U.S. 803 (1971).

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

498. N.J. STAT. ANN. § 40:55-21.6(b) (West 1976).

499. *Id.* § 40:55-21.6(e).

500. Stahl v. Board of Finance of Paterson, 62 N.J. Super. 562, 577, 163 A.2d 396, 404 (1960), *aff'd*, 69 N.J. Super. 243, 174 A.2d 238 (1961).

economic liability as a cause and effect relationship do not require specific findings of causal conditions; they only require findings that the resulting economic condition occurred.[501]

In *Stahl v. Board of Finance of Paterson*,[502] a New Jersey court upheld a blight determination, partially basing its decision on the then-existing statutory provision for a blight finding where occupants abandoned or discontinued use of buildings previously used for manufacturing or industrial purposes. Although the plaintiffs in that action did not contest the specific finding by the Housing Authority that all the industrial buildings in the area were entirely deteriorated or dilapidated, the court held that the report by the planning board constituted substantial evidence in support of its determination.[503]

The California Urban Redevelopment statute provides that an area may be blighted when "economic dislocation, deterioration, or disuse, resulting from faulty planning exists."[504] The statute also characterizes a blighted area as one which exhibits a "prevalence of depreciated values, impaired investments and social and economic maladjustments reducing the capacity to pay taxes," and as one in which "a growing or total lack of proper utilization of areas results in a stagnant and unproductive condition" of potentially useful land.[505] The California Court of Appeals upheld a blight determination based on these two latter statutory definitions of blight in *Redevelopment Agency of San Francisco v. Hayes*.[506] The court found a "compelling economic need" where a shortage of land required the use of unproductive land for "dwelling and public places."[507] The court relied on evidence that eighty-five percent of the land in the project area was vacant land and had fallen into economic disuse because private enterprise refused to develop the area without government assistance. Evidence suggested that the inadequacy of streets and subdivisions in the area caused economic dislocation.[508] Although the court stated that no single blight

501. *See In re* Bunker Hill Urban Renewal Project 1B, 61 Cal.2d 21, 35 n.2, 389 P.2d 538, 546 n.2, 37 Cal. Rptr. 74, 82 n.2, (Cal.), *cert. denied*, 379 U.S. 899 (1964).

502. 62 N.J. Super. 562, 163 A.2d 396 (1960), *aff'd*, 69 N.J. Super. 243, 174 A.2d 238 (1961).

503. *Id.* at 578, 174 A.2d at 405.

504. *In re* Bunker Hill Urban Renewal Project 1B, 61 Cal. 21, 35 n.2, 389 P.2d 538, 546 n.2, 37 Cal. Rptr. 74, 82 n.2, *cert. denied*, 379 U.S. 899 (1964).

505. 122 Cal. App.2d 777, 796, 266 P.2d 105, 118, *cert. denied*, 348 U.S. 897 (1954).

506. *Id.* at 798, 266 P.2d at 119.

507. *Id.* at 799, 266 P.2d at 119.

508. *Id.* at 797, 266 P.2d at 118-19.

element would constitute a sufficient basis for the use of the eminent domain power, it found that a combination of circumstances "demonstrate[d] the compelling community *economic* need required"[509] for the exercise of the eminent domain power. In addition, the court rejected the argument that because public agencies held sixty-five percent of the property, the reason for the property's disuse was a lack of opportunity for private development .[510]

In *Sweetwater Valley Civic Association v. National City*,[511] the California Supreme Court overturned a blight determination under its state law by analyzing the statutory requirement that the property be an economic or social liability.[512] The court looked at blight determination under the statute as a two step process: first, the area must be an economic or social liability to the community that requires redevelopment and, second, one of the characteristics of blight listed in the statute must exist.[513] The legislative body declared the 130-acre area, which included a 115-acre golf course, blighted, and approved the redevelopment plan to construct a 70-building shopping center on the site.[514] In its opinion, the court noted that golf had increased in popularity, that "no evidence [existed] that recent changes [had] reduced either membership or revenues," and that the owners of the proposed redevelopment project intended to build another golf course nearby.[515] The court held that the property was neither an economic nor social liability and that drainage or soil problems on the golf course potentially burdened the property, but did not put an end to its economic use.[516] It stated that to sustain a blight determination it is "not sufficient to merely show that the area is not being put to its optimum use."[517] Instead, blight determinations must be made on the basis of the property's existing use and not its potential alternative use.[518]

509. *Id.* at 797, 266 P.2d at 118.

510. *Id.* at 798, 266 P.2d at 119. *See also* Oliver v. City of Clairton, 374 Pa. 333, 342, 98 A.2d 47, 52 (1953)(municipalities have wide scope under urban redevelopment statutes to rebuild areas that no longer meet economic and social needs of modern life).

511. 18 Cal.3d 270, 555 P.2d 1099, 133 Cal. Rptr. 859 (Cal. 1976)(en banc).

512. *Id.* at 278, 555 P.2d at 1104, 133 Cal. Rptr. at 864.

513. *Id.* at 277, 555 P.2d at 1103, 133 Cal. Rptr. at 863.

514. *Id.* at 273, 555 P.2d at 1100, 133 Cal. Rptr. at 860.

515. *Id.* at 273, 555 P.2d at 1101, 133 Cal. Rptr. at 861.

516. *Id.* at 278, 555 P.2d at 1104, 133 Cal. Rptr. at 864.

517. *Id.* at 277, 555 P.2d at 1103, 133 Cal. Rptr. at 863.

518. *Id.* at 278, 555 P.2d at 1104, 133 Cal. Rptr. at 864.

In reaching this conclusion, the court relied on the statements in *Redevelopment Agency of San Francisco v. Hayes* that " 'one man's land cannot be seized by the Government and sold to another man merely in order that the purchaser may build upon it a better house or a house which better meets the Government's idea of what is appropriate or well-designed.' " The use of the eminent domain power under the redevelopment statute should be confined to instances in which " 'the blight is such that it constitutes a real hinderance to the development of the city and cannot be eliminated or improved without public assistance.' "[519] This demonstrates an extreme case in which courts will intervene and overturn a blight determination. Although courts often willingly uphold these determinations when the proposed project envisions a higher use, they might not do so when the purpose behind the declaration is to put an economically viable area to a higher and better use.

8. Crime Rate and Disease

A factor contained in most statutory definitions of blight is the crime rate and prevalence of disease. The rate of juvenile delinquency is often cited in blight studies. In *Foeller v. Housing Authority of Portland*,[520] the court upheld a blight study that noted that the rate of juvenile delinquency per 1,000 minors was seven and one-half times greater in the project area than in the city as a whole. The blight study also noted that the crime rate in the development area exceeded by eight times the crime rate in the city as a whole.[521] The Oregon statute at issue included as one of its indications of blight an area "with buildings or improvements which, by reason of dilapidation, overcrowding, lack of ventilation, light and sanitary facilities, deleterious land use, or any combination of these or other factors, are detrimental to the safety, health, morals or welfare of the community."[522] The court relied on this definition to uphold the blight determination partially based on the area's crime rate. It found that under this statutory provision the existence of these factors were the underlying conditions that caused the area to become blighted.[523] The court also stated that the effects of blight "do not confine themselves to the area [but] spread into the en-

519. *Id.* at 273, 555 P.2d at 1103, 133 Cal. Rptr. at 863.
520. 198 Or. 205, 256 P.2d 752 (1953).
521. *Id.* at 220, 256 P.2d at 760.
522. *Id.* at 224, 256 P.2d at 762.
523. *Id.* at 234, 256 P.2d at 766.

tire community."[524]

9. Overcrowding

In *Redevelopment Agency of San Francisco v. Hayes*,[525] a California District Court of Appeals examined blight determinations made for two project areas. The city council had found that one of the areas had extreme overcrowding, three and one-half times higher than the overall city.[526] The city council found that forty percent of the dwelling structures within the area housed twice as many families than originally planned.[527] The court held that the council's decision that the area was a "slum area" was reasonable.[528] In *In re Bunker Hill Urban Renewal Project 1B*,[529] the California Supreme Court also upheld a blight determination partially based on overcrowding. The blight findings described the overcrowding in terms of the number of structures on the land instead of the number of inhabitants in the dwellings.[530] The legislative body based its findings on the fact that the structures were built prior to planning and zoning requirements and resulted in inadequate yard areas, light, air and privacy.[531] The study also stated that the overcrowded condition hampered the prevention of fire.[532] In may instances, the original builders had constructed many structures on the lot lines and the eaves of one building overhung the eaves of another.[533]

10. Residential Property Surrounded by Commercial and Industrial Uses (Incompatibility of Uses)

A lack of planning at the time of initial construction of structures and a change in the use of areas may cause many residential areas to become surrounded by commercial and industrial areas. Local author-

524. *Id.*; *see also* Davis v. City of Lubbock, 160 Tex. 38, 326 S.W.2d 699 (1959)(disproportionately high percentage of arrests for intoxication, treatment rate for venereal disease and costs of police and fire service).

525. 122 Cal. App.2d 777, 266 P.2d 105, *cert. denied*, 348 U.S. 897 (1954).

526. *Id.* at 782, 266 P.2d at 110.

527. *Id.*

528. *Id.* at 790, 266 P.2d at 114.

529. 61 Cal.2d 21, 35, 389 P.2d 538, 37 Cal. Rptr. 74, *cert. denied*, 379 U.S. 899 (1964).

530. *Id.* at 35 n.2, 389 P.2d 547 n.2, 37 Cal. Rptr. 83 n.2.

531. *Id.* at 37 n.2, 389 P.2d 547 n.2, 37 Cal. Rptr. 547 n.2.

532. *Id.*

533. *Id.*

ities cite pockets of residential areas in commercial and industrial areas as additional evidence that an area is blighted. In *Stahl v. Board of Finance of Paterson*,[534] the report of the planning board described the project area as a "residential island completely surrounded by industry."[535] The blighted area itself contained forty-two percent land used for residential purposes, nineteen percent for industrial and one percent for commercial.[536] Although the blighted area was predominately residential, it was within a large industrial area.[537] The report found that these conditions benefited neither industry nor residences.[538] The court found that the blight findings fell within the New Jersey statute at issue which defined blight *inter alia* as "deleterious land use or obsolete layout."[539]

In *Oliver v. City of Clairton*,[540] the Pennsylvania Supreme Court upheld a blight determination which included among its findings that industry, commercial uses and residences were closely mixed and intermingled.[541] The city originally zoned the blighted area for manufacturing, but the lots in their present condition were not wide enough to accommodate a minimum manufacturing plant. The planning commission determined that the area's conditions were "to the great detriment of all" and was "socially and economically undesirable" within the then-existing statutory definition of blight.[542]

Property conversion to a use different than the one for which it originally was intended also indicates blight conditions. As commercial areas of cities moved, owners often abandoned their buildings or converted them to a different use, such as converting a department store to a warehouse.[543] Today, many cities encourage the reuse of structures in an attempt to revitalize older or deteriorating urban areas. Where structures are sound, individuals convert them from industrial

534. 62 N.J. Super. 562, 163 A.2d 396 (1960), *aff'd*, 69 N.J. Super. 243, 174 A.2d 238 (1961).

535. *Id.* at 580, 163 A.2d at 406.

536. *Id.*

537. *Id.* at 569, 163 A.2d at 399.

538. *Id.* at 580, 163 A.2d at 406.

539. *Id.*

540. 374 Pa. 33, 98 A.2d 47 (1953).

541. *Id.* at 340, 98 A.2d at 51.

542. *Id.*

543. R. BURCHELL & D. LISTOKIN, THE ADAPTIVE REUSE HANDBOOK 14-15 (1981).

uses to residential lofts or "commercial shop aggregates."[544] Private property owners accomplish these conversions, and municipalities assist the conversions by encouraging the activity and allowing conversions to uses outside the applicable zoning or subdivision regulations for the area.[545] Problems with conversions arise when private parties act outside of municipal supervision. When improperly converted, the converted structures may support a blight determination. In *In re Bunker Hill Urban Renewal Project 1B*, the legislative body cited an incompatible mixture of residential, commercial and industrial uses, as well as structures originally intended for one use converted for other purposes among its findings in support of the blight determination.[546]

Conversion occurs not only when specific structures are converted to different uses, but also when the entire area changes from its original use to a different use. The Oregon Supreme Court described such an area in terms of the neighborhood's losing "its old character as residential property and . . . struggling against obsolete planning to adapt itself to industrial purposes."[547] The court held that because of this change, the proposed development area had sunk "into a substandard condition."[548] The blight study described the area as surrounded on three sides by industry and one that had "non-residential establishments . . . scattered promiscuously throughout the area."[549] Dwellings intermingled with commercial and industrial establishments occupied eighty-six percent of the blighted area.[550] The court stated that the area had undergone a conversion from residential use to commercial use and that the original platting of the area hampered this conversion.[551] It also found that this conversion created grave fire hazards because of the nature of the industries and their location alongside residences.[552]

544. *Id.* at 81.

545. *Id.*

546. 61 Cal.2d 21, 34 n.2, 389 P.2d 538, 547 n.2, 37 Cal. Rptr. 74, 83 n.2, *cert. denied*, 379 U.S. 899 (1964).

547. Foeller v. Housing Auth. of Portland, 198 Or. 205, 253, 256 P.2d 752, 775 (1953).

548. *Id.*

549. *Id.* at 217, 256 P.2d at 758.

550. *Id.*

551. *Id.* at 262, 256 P.2d at 779.

552. *Id.*

11. Conclusion

Although courts consider many different factors in determining whether to uphold a municipal authority's blight determination, they generally look at the statutory definition of blight to analyze whether the blight determination falls within that definition. Courts willingly construe statutory definitions broadly in order for findings to fall within their ambit.[553] Courts commonly cite the existence of substandard housing and dilapidated structures within the proposed redevelopment area, often focusing on the age of the structures. Legislative bodies also frequently rely upon the large number of tax delinquencies within the area. These factors easily fall within even narrow statutory definitions of blight. When the blight determination includes among its findings such factors as plot irregularity, traffic conditions and inadequate street design, it usually does so pursuant to specific statutory provisions that include them as conditions of blight. One court stated that while one factor may not be "sufficient to justify the taking by eminent domain," the combination of factors and the need for governmental intervention to develop the area justify the condemnation of the area.[554]

Courts rarely overturn a blight determination. Those cases where the courts have reversed that finding are ones in which either no evidence supported the blight finding or the evidence presented contradicted that finding. For example, in *Bristol Redevelopment & Hous. Auth. v. Denton*, the court overturned the blight determination because the legislative body did not look at the area as a whole.[555] It acknowledged that some structures needed repair but nevertheless found that the existence of some substandard structures did not support the blight determination.[556] In that case, the court held that the determination was against "the overwhelming weight of the evidence."[557]

553. *See* Oliver v. City of Clairton, 374 Pa. 333, 342, 98 A.2d 47, 52 (1953)(stating that urban redevelopment laws are distinguishable from housing authority laws and were "intended to give wide scope to municipalities in redesigning and rebuilding such areas . . .").

554. Redevelopment Agency of San Francisco v. Hayes, 122 Cal. App.2d 777, 798, 266 P.2d 105, 119, *cert. denied*, 348 U.S. 897 (1954).

555. 198 Va. 171, 179, 93 S.E.2d 288, 294 (1956).

556. *Id.*

557. *Id.* at 180, 93 S.E.2d at 295. The California Supreme Court reached a similar conclusion in *Sweetwater Valley Civic Association v. National City*, 18 Cal.3d 270, 277, 555 P.2d 1099, 133 Cal. Rptr. 859 (1976)(en banc). The court refused to uphold the determination that a profitable golf course was a blighted area, resting its holding on the

C. *Land That May Be Included Within the Blighted Area*

1. Vacant Land

Blight presents two issues in connection with vacant land. Vacant land, itself may be blighted, or vacant land that is not blighted may be included in the project area to facilitate redevelopment of the area as a whole. Many problems with blighted land occurred as a result of premature and poorly planned subdivisions of land, particularly in the 1920s.[558] This idle land led to tax delinquencies and resulted in concern over the social and economic impacts caused by the existence of vacant land.[559] In recognition of this problem, the Housing Act of 1949 and some state statutes specifically authorized the redevelopment of "open and predominantly open land."[560] The fact that legislative bodies make blight determinations on an area-wide basis also may result in the inclusion of unblighted vacant land in the blighted area. Statutes generally define blight in terms of a "blighted area."[561] Courts have relied on these statutory definitions to hold that vacant land may be properly included within a blighted area. For example, the New Jersey statute includes in its definition of blighted area any unimproved vacant land that "has remained so for a period of ten years."[562] In *Levin v. Township Committee of Bridgeport*, the New Jersey Supreme Court held that its existing state statutory provision could include rural

principle that blight determinations are not for the purpose of putting property to its optimum use. *Id.* at 277, 555 P.2d at 1103, 133 Cal. Rptr. 863.

558. Jones, *Local Government Organization in Metropolitan Areas: Its Relation to Urban Redevelopment*, in THE FUTURE OF CITIES AND URBAN REDEVELOPMENT 514 (C. Woodbury ed. 1953).

559. *Id.* at 515-16.

560. *Id.* at 514.

561. *See* Parking Sys., v. Kansas City Downtown Redevelopment Corp., 518 S.W.2d 11, 15 (Mo. 1974); State *on inf.* Dalton v. Land Clearance for Redevelopment Auth. of Kansas City, Mo., 270 S.W.2d 44, 48 (Mo. 1954) (en banc); Maryland Plaza Redevelopment Corp. v. Greenberg, 594 S.W.2d 284, 288 (Mo. Ct. App. 1979); Wilson v. City of Long Branch, 21, N.J. 360, 369, 142 A.2d 837, 842, *cert. denied*, 358 U.S. 873 (1958); Jersey City Chapter of Property Owner's Protective Ass'n v. City Council of Jersey City, 55 N.J. 86, 89, 259 A.2d 698, 700 (1969); Redevelopment Agency of San Francisco v. Hayes, 122 Cal. App.2d 777, 790, 266 P.2d 105, 114, *cert. denied*, 348 U.S. 897 (1954); Oliver v. City of Clairton, 374, Pa. 333, 342, 98 A.2d 47, 52 (1953); Miller v. City of Tacoma, 61 Wash. 374, 392, 378 P.2d 464, 475 (1963); *see also* MO. REV. STAT. § 353.020(2) (Supp. 1988).

562. Wilson v. City of Long Branch, 27 N.J. 360, 369, 393, 142 A.2d 837, 842, 855 (28.4 acres of unimproved property included within blighted area), *cert. denied*, 358 U.S. 873 (1958).

and suburban areas within a blighted area.[563] The court stated that an area need not be a slum to be the subject of redevelopment and authorized a plan to turn a "predominantly vacant, poorly developed area into a site for commercial structures."[564] It upheld the governing body's determination that the highest and best use of the property would be for a shopping center or mall and declared the suburban area blighted.[565]

Courts also have found that blight determinations extend to air rights. In *The Jersey City Chapter of Property Owner's Protective Ass'n v. City Council of Jersey City*,[566] the court first found that air space constituted an estate in land and, consequently, that it fell within the statute.[567] It reasoned that the legislature's use of the general term "land" did not evince "the shortsighted purpose of excluding the space above railroad tracks and the like as a proper subject of a blight or renewal determination."[568]

Missouri courts also have found the blighting of vacant land to be within the purposes of its urban redevelopment statute. Rather than holding that vacant land may be blighted, the Missouri courts have upheld the inclusion of vacant land in a redevelopment project as necessary to the success of a project. Nothing in Chapter 353, however, prohibits the blighting of vacant land based on the need to redevelop (or develop in the first instance) the unproductive property.

In *State on Inf. Dalton v. Land Clearance for Redevelopment Auth. of Kansas City, Missouri*,[569] the Missouri Supreme Court held that the city may include vacant land within areas found to be blighted. The court stated that the purpose of the urban redevelopment statute was to clear and develop blighted and insanitary *areas* and that it may be necessary "in certain instances to acquire . . . vacant land which, but for being within the area, would not be blighted or insanitary" in order to ensure effective redevelopment.[570] Furthermore, the court stated that denying the acquisition of vacant land could defeat the purposes of the

563. 57 N.J. 506, 514, 274 A.2d 1, 5, *appeal dismissed*, 404 U.S. 803 (1971).

564. *Id.*

565. *Id.* at 517, 538, 274 A.2d at 7, 18.

566. 55 N.J. 86, 259 A.2d 698 (1969).

567. *Id.* at 98-99, 259 A.2d at 705.

568. *Id.*

569. 270 S.W.2d 44, (Mo. 1954)(en banc).

570. *Id.* at 53.

legislation in some instances.[571]

In *Parking Systems, Inc. v. Kansas City Downtown Redevelopment Corp.*, the Missouri Supreme Court also held that neither the total area nor any particular portion of a proposed redevelopment area needs to constitute a slum for it to be blighted under the urban redevelopment statute.[572] It found that the power to declare an area blighted included examining vacant land not in itself blighted that was located within the redevelopment area.[573] The court decision upheld the blighting of open land that comprised forty-nine percent of the redevelopment area.[574]

Although the court in *Parking Systems* did not rely on the Missouri statutory provision, those provisions specifically allow for the inclusion of "any real property, whether improved or unimproved . . . which is deemed necessary for the effective clearance, replanning, reconstruction or rehabilitation of the area of which such buildings, improvements or real property form a part."[575] The plaintiffs argued that the condemnation of the forty-nine percent vacant land was "in excess of that necessary for the public benefit of 'clearance of blight.' "[576] The court held that all the land, including the vacant land, was part of the redevelopment plan, and that it was "as essential to acquire the land now vacant as it [was] to acquire the land upon which there [was] a structure."[577]

2. Unblighted Structures Within Blighted Area

The courts uphold blight determinations that include sound structures within the project area with the rationale that blight is to be attacked on an area-wide basis.[578] For example, in *In re Bunker Hill*

571. *Id.*

572. 518 S.W.2d 11, 15 (Mo. 1974).

573. *Id.* at 15.

574. *Id.* at 15-16.

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

576. Parking Sys., Inc. v. Kansas City Downtown Redevelopment Corp., 518 S.W.2d 11, 21 (Mo. 1974).

577. *Id.*

578. *See In re* Bunker Hill Urban Renewal Project 1B , 61 Cal.2d 21, 389 P.2d 538, 37 Cal. Rptr. 74, *cert. denied*, 379 U.S. 899 (1964); Housing & Redevelopment Auth. of Minneapolis v. Minneapolis Metropolitan Co., 259 Minn. 1, 104 N.W.2d 864 (1960); Levin v. Township Comm. of Bridgewater, 57 N.J. 506, 274 A.2d 1, *appeal dismissed*, 404 U.S. 803 (1971); Lyons v. City of Camden, 48 N.J. 534, 226 A.2d 625 (1967); Stahl v. Board of Finance of Paterson, 62 N.J. Super. 562, 163 A.2d 396 (1960), *aff'd*, 69 N.J.

Urban Renewal Project 1B, the California Supreme Court upheld the blighting of an area that included apartment houses that were not substandard but which created a barrier separating the redevelopment area.[579] The court included the property because the ordinance at issue allowed the redevelopment of unblighted property that was "necessary for the effective redevelopment of the area."[580] In reaching its decision, the court analogized zoning ordinances.[581] It stated that the line of demarcation must be drawn at some point and refused to substitute its judgment for the legislative body.[582]

The New Jersey Supreme Court also held that the inclusion of unblighted areas within the project area was proper because planning boards have "the broad statutory authorization to attack the problem of blight on an area rather than a structure-by-structure basis."[583] The court would not let the presence of isolated useful parcels alter a legislature's blight declaration or exclude such parcels from the blighted area.[584] Courts apply this rationale to sound office buildings within the plan area on the basis that the building would not blend aesthetically with the development and that its rehabilitation would be costly and destroy the structure's historical value.[585]

Super. 242, 174 A.2d 238 (1961); Sorbino v. City of New Brunswick, 43 N.J. Super. 554, 129 A.2d 473 (N.J. Super. Ct. Law Div. 1957); Foeller v. Housing Auth. of Portland, 198 Or. 205, 256 P.2d 752 (1953); Davis v. City of Lubbock, 160 Tex. 38, 326 S.W.2d 699 (1959); Bristol Redevelopment & Hous. Auth. v. Denton, 198 Va. 171, 93 S.E.2d 288 (1956); Miller v. City of Tacoma, 61 Wash.2d 374, 378 P.2d 464 (1963).

579. 61 Cal.2d 21, 46-47, 389 P.2d 538, 554, 556, 37 Cal. Rptr. 74, 90, *cert. denied*, 379 U.S. 899 (1964).

580. *Id.* at 49, 389 P.2d at 556, 37 Cal. Rptr. at 90.

581. *Id.*

582. *Id.*

583. Lyons v. Camden, 48 N.J. 524, 535-36, 226 A.2d 625, 631 (1967).

584. Levin v. Township Comm. of Bridgewater, 57 N.J. 506, 274 A.2d 1, 19 (citing Lyons v. Camden, 226 N.J. 524, 226 A.2d 625 (N.J. 1967)), *appeal dismissed*, 404 U.S. 803 (1971). *See also* Stahl v. Board of Finance of Paterson, 62 N.J. Super. 562, 163 A.2d 396, 407 (1960)("The fact that the area found to be blighted may include a number of sound structures or buildings, or even that it includes structures which are not substandard, does not vitiate the governmental action."), *aff'd*, 69 N.J. Super. 242, 174 A.2d 238 (1961); Sorbino v. New Brunswick, 43 N.J. Super. 554, 129 A.2d 473, 483 (1957)(statute deals with *areas* and not individual properties).

585. Housing & Redevelopment Authority of Minneapolis v. Minneapolis Metropolitan Co., 259 Minn. 1, 5, 16, 104 N.W. 2d 864, 868, 875 (1960)(upholding blighting of twelve story office structure built in 1890); *see also* Bristol Redevelopment & Hous. Auth. v. Denton, 198 Va. 171, 93 S.E. 2d 288, 294 (1956)(overturned blight determination on grounds that area as a whole not blighted).

Missouri courts also have held that sound structures and parking lots within the redevelopment area may be properly included in the blight determination. In *State on Inf. Dalton v. Land Clearance for Redevelopment Authority*,[586] the Missouri Supreme Court held that the condemnation of sound structures under Chapter 99 was proper since the purpose of the statute was to attack *areas* of blight. In *Parking Systems, Inc. v. Kansas City Downtown Redevelopment Corp.*, the Missouri Supreme Court upheld a Chapter 353 blight determination regarding an area in which forty-seven percent of the property consisted of surface parking lots.[587] It found that Chapter 353 attacked blight on an area wide basis and, therefore, the surface parking areas did not defeat the blight determination.[588] In *Allright Missouri, Inc. v. Civic Plaza Redevelopment Corp.*, the Missouri Supreme Court again upheld a blight determination against an attack that the blight determination was arbitrary and capricious because the area was not blighted.[589] The plaintiff argued that the area was not blighted because roughly forty-five percent of the area was used for surface parking lots.[590] In this instance, the court deferred to the legislative determination of blight for the purposes of the statute.[591]

In *Schweig v. City of St. Louis*,[592] the Missouri Court of Appeals reiterated the Missouri Supreme Court's holding that a city may include vacant land within the redevelopment area. It also considered whether unblighted structures could be included in the blighted area. The plaintiffs were adjoining property owners who challenged the blight determination on the grounds that the blighted area included seven unblighted structures.[593] After holding that the adjoining property owners had standing to challenge the city's blight declaration,[594] the court then adopted the Missouri Supreme Court's holding in *Parking Systems, Inc.* that a determination is proper even when the blighted

586. 270 S.W.2d 44, 53 (Mo. 1954) (en banc).

587. Parking Sys., v. Kansas City Downtown Redevelopment Corp., 518 S.W.2d 11, 14, 16 (Mo. 1974).

588. *Id.* at 15, 16.

589. 538 S.W.2d 320, 321 (Mo. 1976)(en banc), *cert. denied*, 429 U.S. 941 (1976).

590. *Id.* at 322.

591. *Id.* at 324.

592. 569 S.W.2d 215, 227 (Mo. Ct. App. 1978).

593. *Id.* at 219, 220.

594. *Id.* at 223.

area includes sound structures.[595] In addition, the court specifically relied on the statutory provision that allows for the inclusion of unblighted structures within the redevelopment area where it is necessary to redevelop the area.[596] In *Maryland Plaza Redevelopment Corp. v. Greenberg*, the Missouri Court of Appeals again upheld a blight determination against an argument that the area itself contained property that was not blighted.[597] As in *Schweig*, the court relied on both the statutory provision that specifically allows for the inclusion of this property,[598] and on the earlier cases holding that a declaration of blight is proper even though the blighted area contains structures "which would not fall within the definitional ambit of blight."[599]

D. *Standard of Review Applied to Blight Determinations*

Missouri courts will overturn a blight determination only when they find that the determination was arbitrary and capricious, induced by fraud, collusion or bad faith, or that the city exceeded its powers.[600] This standard of review is based on the characterization of a blight determination as a legislative act.[601] This characterization gives the ordinance adopting the determination presumptive validity; however, this presumption is rebuttable and a court may overturn the determination if it finds that the city acted in a clearly arbitrary manner.[602] The Missouri Supreme Court discussed the standard of review in *Annbar Associates v. West Side Redevelopment Corp.*,[603] where the plaintiff challenged the Missouri urban redevelopment statute and respective city ordinance on grounds that they violated the United States and

595. *Id.* at 227.

596. *Id.*

597. 594 S.W.2d 284, 288 (Mo. Ct. App. 1979).

598. *Id.* at 288.

599. *Id.*

600. Allright Missouri, Inc. v. Civic Plaza Redevelopment Corp., 538 S.W.2d 320, 324 (Mo.) (en banc), *cert. denied*, 429 U.S. 941 (1976); Parking Sys., Inc. v. Kansas City Downtown Redevelopment Corp., 518 S.W.2d 11, 15 (Mo. 1974); State *on Inf.* Dalton v. Land Clearance for Redevelopment Auth. of Kansas City, 270 S.W.2d 44, 52 (Mo. 1954) (en banc); Maryland Plaza Redevelopment Corp. v. Greenberg, 594 S.W.2d 284, 287 (Mo. Ct. App. 1979); Schweig v. City of St. Louis, 569 S.W.2d 215, 223 (Mo. Ct. App. 1978).

601. Parking Sys., Inc. v. Kansas City Downtown Redevelopment Corp., 518 S.W.2d 11, 15 (Mo. 1974).

602. *Id.* at 16.

603. 397 S.W.2d 635 (Mo. 1965) (en banc), *appeal dismissed*, 385 U.S. 5 (1966).

Missouri Constitutions. They argued that the restrictions imposed upon the redevelopment corporation did not ensure that the public purpose of the statute would be fulfilled.[604] The court held that the restrictions on the redevelopment corporation's earnings provided for in the ordinance were sufficient to assure that the redevelopment would meet the public purpose requirement of the federal and state constitutional provisions.[605] In reaching its decision, the court characterized the city council's means of "restriction and assurance of accomplishment of the public purpose" as legislative. It then stated that this legislative determination "whether wise or unwise, cannot be affected by the courts unless it appears upon allegation and clear proof that [it] was arbitrary or was induced by fraud, collusion or bad faith."[606]

In *Parking Systems, Inc. v. Kansas City Downtown Redevelopment Corp.*, the court relied on the language in *Annbar* and applied the presentation of validity to a blight determination.[607] It then held the legislative body's decision reasonable against plaintiffs' arguments that structural deficiencies alone could not support a blight determination and that the blighted area included vacant land and land used for parking lots.[608] It also held that although only a certain percentage of the structures were deteriorated, it did not constitute grounds for overturning the blight determination "without evidence compelling a finding of unreasonableness."[609] In addition, the court held that it would give deference to the legislative determination that the area was blighted and would not "interfere with a discretionary exercise of judgment by the [legislative authority] unless it [was] clearly erroneous and unreasonable."[610]

Whether the blight determination is arbitrary turns on the facts of each case and requires that the court review the findings of the legislative authority to determine whether those findings provide some basis for the determination.[611] The burden of proving that the legislative

604. *Id.* at 649-50.

605. *Id.* at 650.

606. *Id.*

607. 518 S.W.2d 11, 15 (Mo. 1974).

608. *Id.* at 16-17.

609. *Id.*

610. *Id.* at 19.

611. Allright Missouri, Inc. v. Civic Plaza Redevelopment Corp., 538 S.W.2d 320, 324 (Mo.) (en banc), *cert. denied*, 429 U.S. 941 (1976).

authority acted arbitrarily is upon the challenging party.[612] In *Allright Missouri, Inc. v. Civic Plaza Redevelopment Corp.*, the Missouri Supreme Court again upheld a blight determination. The court reviewed the evidence before the city council that the majority of structures were over forty years old, that the condition of those structures ranged from very poor to excellent and that the appraised valuations were low.[613] Although the court found that the evidence upon which the city council relied for its blight determination compelled neither a clear conclusion that the area was or was not blighted, it held that "the legislative body reasonably could have determined . . . that the area was 'blighted' within the meaning of applicable statutes and ordinances."[614] Although the evidence which the legislative authority examined was not conclusive, the court found room for differences of opinion and a reasonable basis for the blight determination sufficient to uphold the authority's decision.[615] It then rejected plaintiffs' argument that the planning commission's disapproval of the plan constituted conclusive evidence that the area was not blighted and that redevelopment was not necessary."[616] The court found that the recommendation did not bind the council because Chapter 353 vested authority to make a blight determination solely in the city's legislative body and not with the planning commission.[617] In both *Parking Systems, Inc.* and *Allright*, the Missouri Supreme Court established a deferential standard of review of blight determinations and indicated that courts should uphold determinations that are fairly debatable.

The Missouri Supreme Court's decision in *Tierney v. Planned Industrial Expansion Authority of Kansas City*[618] demonstrates the extent of deference that courts will give to a legislative determination of blight. In *Tierney*, the plaintiffs challenged a blight determination under the Planned Industrial Expansion Act[619] on grounds that the area was not blighted.[620] Plaintiffs presented evidence that streets and alleys comprised twenty-seven percent of the area and surface parking comprised

612. *Id.* at 324.
613. *Id.* at 323.
614. *Id.* at 324.
615. *Id.*
616. *Id.* at 323.
617. *Id.*
618. 742 S.W.2d 146 (Mo. 1987) (en banc).
619. MO. REV. STAT. §§ 100.300-.610 (1986).
620. *Tierney*, 742 S.W.2d at 151.

an additional thirty-seven percent. The plaintiffs argued that "the greater part of the property in the area cannot properly be described as blighted" when more than half of the area was comprised of sound structures.[621] Despite the evidence, the court refused to "sit as a court of appeal over the decisions of the council," and held that the plaintiffs did not meet their burden of proof that the blight determination constituted "an arbitrary or unreasonable abuse of legislative authority."[622] It stated that the city council could conclude that the existence of streets and parking lots constitute blight conditions when those uses "consume valuable urban land" and inhibit "more economically intense . . . uses."[623] Although the *Tierney* court did not review the Urban Redevelopment Corporations Act, the decision vividly demonstrates that it is virtually impossible for a property owner to challenge successfully a blight determination, implying that in Missouri the legislative authority need only find that the area can be put to a higher and better use to avoid a court finding that its decision was arbitrary and capricious.

In *Oberndorf v. City and County of Denver*,[624] the United States District Court for the District of Colorado held that the party stated a cause of action under 42 U.S.C. § 1983 when it alleged that the blight determination resulted from collusion between the city and the developer. Plaintiff alleged that the defendants used the urban renewal law to assist the developer to obtain properties it was unable to purchase. The court held that the action was proper. It did not limit the plaintiffs' claim to an inverse condemnation action for just compensation for the property because in this case they alleged that the defendants acted illegally and fraudulently.[625] The court stated that "the critical difference is that plaintiffs allege illegitimate conspiratorial action *outside the ambit of the public policy contemplated by the legislative branch when it enacted statutes regarding condemnation.*"[626] Although the court in *Oberndorf* only decided whether plaintiffs stated a cause of action, the decision arguably indicates that the actions of a legislative body when it makes a blight determination must rise to the level of illegal conduct to provide the property owner with grounds to challenge that action.

621. *Id.*
622. *Id.*
623. *Id.*
624. 653 F. Supp. 304, 316 (D. Colo. 1986)
625. *Id.* at 315.
626. *Id.* (emphasis in original).

E. *Conclusion*

Urban redevelopment statutes typically require that a legislative body make a blight determination as a precondition to the approval of a redevelopment project. For the most part, the statutory definitions of blight are general and, therefore, give the city a great deal of discretion in its determination of what constitutes a blighted area. These definitions primarily emphasize the age and condition of structures; however, the discretion afforded by the statutes and the judicial deference to those decisions permit the legislative authority to go beyond the elimination of slums and blighted areas to the encouragement of economic development. In order to challenge a blight determination after *Tierney* and *Oberndorf* it is arguable that a property owner must prove that the legislative body acted fraudulently or illegally. Because of this judicial deference, a showing of arbitrariness or unreasonableness may present an insurmountable barrier for the plaintiff challenging the blight determination.

PART VI. CHAPTER 353 AND THE ELIMINATION OF BLIGHT

A. *Refocusing the Discussion*

This article has focused on the following issue: Whether Chapter 353 is blight driven, or does the statute's purpose extend to economic development projects in areas that lack the traditional indicia of blight and do not provide direct benefits to the urban poor? To resolve the issue, this Article has attempted to develop a legislative history for Chapter 353 and has examined in detail the public purpose doctrine and the concept of blight.

B. *Conclusions*

Chapter 353 should not, as a legal matter, be viewed only as a blight driven statute. In other words, it is inaccurate to suggest that the Missouri legislature enacted Chapter 353 only to eliminate areas that might meet a layperson's concept of blight and for constructing housing. Instead, the legislature enacted a statute that is capable of doing much more than eliminating areas characterized by a high percentage of unsound structures. Four factors contribute to these conclusions.

First, while the legislative history of Chapter 353 does support the conclusion that the legislatures originally intended, at least in part, to remedy obvious cases of urban blight and to encourage housing construction, the legislature did not restrict the statute to remedying blight

in the form of areas predominated by dilapidated and deteriorating structures. In addition, the legislature did not include in the 1945 statute any housing component whatsoever. The statute expressly defined "redevelopment" to include "[t]he provision of such industrial, commercial, residential or public structures and spaces as may be appropriate."[627] Thus, only an extremely restrictive analysis of the statute would limit Chapter 353 to only remedying blight in the traditional sense by providing direct benefits, such as housing, to the urban poor.

Second, both the statutory definition of blight and the view that blight is a socio-economic process rather than a set of static conditions support the use of economic development for urban redevelopment projects. Local governments have used urban redevelopment statutes in a two-pronged attack on urban problems.[628] Local governments attempt to attack the symptoms of urban deterioration while also attempting to arrest the underlying economic conditions contributing to that deterioration. By attempting to wage a battle on both fronts, local governments have arguably been unsuccessful in bringing urban deterioration under control.[629]

Third, it appears that legislators included blight determinations in urban redevelopment statutes to support the use of the eminent domain power in urban redevelopment projects.[630] The concept of public use or purpose that purportedly limits the exercise of the eminent domain power has greatly expanded since the late 1930s and early 1940s, however. Thus, a court's strict limitation on a local government's discretion in making a blight determination would defeat redevelopment when it is now clear that that determination is not necessary to support the use of the eminent domain power.

The fourth and final factor that suggests that a blight determination should not be an overly restrictive conditon on legislative power, indicating that redevelopment statutes are not solely blight driven, is the deference that courts give to legislative decisions regarding urban redevelopment. Implicitly, the courts recognize that legislative bodies are more competent to determine the need for, and propriety of, urban

627. MO. REV. STAT. § 353.020(8) (Supp. 1988).

628. Greene, *supra* note 170, at 226-37.

629. *Id.* at 236-37.

630. Linhoff, *Development of the Concept of Eminent Domain*, 42 COLUM. L. REV. 597 599 (1942); Note, *Public Use, Private Use and Judicial Review in Eminent Domain*, 58 N.Y.U.L. REV. 409, 413 (1983).

redevelopment projects.[631] Thus, judicial deference results in providing local governments with a great deal of flexibility in dealing with urban problems.

At the same time, however, the courts do provide a safety net by making it possible to invalidate a blight determination or the use of the eminent domain power when the government's conduct is egregious. Courts in several states have invalidated legislative action when the government did not comply with statutory requirements[632] and have upheld claims under the federal constitution when a property owner alleges collusion of the government and the redevelopment corporation.[633]

C. *The Elimination of Blight and Public Policy*

The legal conclusions reached in this Article should not be taken as an endorsement for the policy decisions that underlie the use of urban redevelopment statutes for purely economic development projects. There is a substantial difference between suggesting that the use of statute is legal and suggesting that the use is good policy. Critics of the economic development model argue that it often is unnecessary to provide Chapter 353 benefits for economic development projects, because those projects would be undertaken without the benefits. Critics also argue that projects often are not cost efficient in the long run and that projects may have undesirable side effects. The most severe criticism of Chapter 353 is that the statute, at least when used for economic development projects, benefits an already privileged class at public expense.

The criticisms of the economic development model of urban redevelopment can be validated only through the examination of empirical data. Even then, the data may be equivocal and inferences will need to be drawn. This appraisal of the local government's use of Chapter 353 must, however, be left to the political process rather than judicial intervention. If citizens feel that their government is misusing public resources and powers, the citizens can exercise their displeasure at the

631. *See* Parking Sys. v. Kansas City Downtowns Redevelopment Corp., 518 S.W.2d 11, 15 (Mo. 1974); Levin v. Township Comm. of Bridgewater, 57 N.J. 506, 539, 274 A.2d 1, 18, *appeal dismissed*, 404 U.S. 803 (1971); Magleis v. Planning Bd., 173 N.J. Super. 419, 421, 414 A.2d 570, 572 (1980).

632. *See e.g.*, Sweetwater Valley Civic Assn. v. National City, 18 Cal.3d 270, 278-79, 555 P.2d 1099, 1103, 133 Cal. Rptr. 864 (1976)(en banc)(refusal to uphold blighting of profitable golf course); Bristol Redevelopment & Hous. Auth. v. Dinton, 198 Va. 171, 180, 93 S.E.2d 288, 294 (1956)(area as a whole not blighted).

633. Oberndorf v. City & County of Denver, 653 F. Supp. 304, 315 (D. Colo. 1986).

ballot box. In addition, citizens can work to effect changes in the state law and local ordinances. Indeed, recent controversy surrounding Chapter 353 stimulated legislative changes.[634] If the public is not comfortable with granting extensive benefits to urban redevelopment projects that are justified in terms of economic development, then amendments to Chapter 353 should be enacted to restrict local government discretion when making blight determinations, determining the extent to which tax benefits will be granted, or deciding whether it should delegate its eminent domain power to a private corporation.

D. *Summary*

Courts should not narrowly construe Chapter 353 as a blight driven statute. Although a blight determination is a prerequisite for project approval under the statute, the courts should continue to give great deference to a legislative finding of blight. The legislative history of Chapter 353, the law on the public purpose doctrine, and the law relating to blight determinations support the conclusion that economic development projects are within the original purposes of Chapter 353. Those who object to this use can resort to the ballot box and, in eggregious cases, can seek judicial invalidation of governmental action.

634. MO. REV. STAT. §§ 353.010, 353.020, 353.110.3 (1986 & Supp. 1988); KANSAS CITY, MO. CODE §§ 36.5-36.10 (1986).