

THE ORIGIN, DEVELOPMENT, AND DECLINE OF BOSTON'S
ADULT ENTERTAINMENT DISTRICT:
THE COMBAT ZONE

by

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Submitted to the Department of Urban Studies and Planning on
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for the Degree of Master in City Planning

Abstract

This thesis has three goals. The first goal is to describe how the Boston Redevelopment Authority (BRA) has been the major force behind the origin, development, and decline of Boston's official adult entertainment district known as "The Combat Zone." The second goal is to analyze the BRA's actions towards the Combat Zone in terms of two major theoretical models. The first model, a gentrification model, attempts to explain the BRA's actions by focusing on the agency's primary role as an agent in Boston's gentrification process. This model proposes that the BRA's actions towards the Combat Zone have been motivated by a desire to facilitate and protect the City's gentrification process. The second model, a constitutional law model, attempts to explain the BRA's actions by focusing on the agency's secondary role as a regulator of First Amendment Speech rights. This model proposes that the BRA's land use policies towards the Combat Zone have controlled the "expression" of commercial sex establishments by determining where these businesses can operate in the City. This model describes how the BRA's actions in creating and legitimizing the Combat Zone were constitutional, but calls into question the constitutionality of the agency's present efforts to eliminate the Combat Zone. The final goal of this thesis is criticize the BRA's present policy and make recommendations as to what policies should be implemented in the future.

Thesis Supervisor: Dr. Gary T. Marx
Title: Professor of Sociology

TO MY FATHER

Giuseppe Giorlandino
(1919-1977)

A very learned man
who did not need a college degree
to prove it.

PER MIO PADRE

Giuseppe Giorlandino
(1919-1977)

Un uomo di grande intelligenza
chi non abbia bisogno di titoli
accademici per provarlo

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bene gioia.

Salvatore Michael Giorlandino
January 15, 1986

INTRODUCTION

THE ORIGIN, DEVELOPMENT, AND DECLINE OF BOSTON'S ADULT ENTERTAINMENT DISTRICT: THE COMBAT ZONE

A. Overview of the Thesis

For almost 25 years, Boston's commercial sex trade has been based in a four block area along Lower Washington Street in the city's downtown section.(1) This area, popularly known as the "Combat Zone," has had a controversial history. Some have labeled the Combat Zone as "Satan's Playground," while others have concluded the area is representative of the reality that there always will be a market for the sale of "sexual goods and services." In 1974, Boston adopted this reality as policy and enacted a zoning ordinance which made the Combat Zone Boston's official adult entertainment district. The city's goals were to contain the sex trade on Lower Washington Street, upgrade the area, and create a safe neighborhood. Although the city was successful in containing the Combat Zone, it was not able to achieve its other goals. To many Boston residents, the Combat Zone was and still is synonymous with crime, prostitution, and street violence.(2) Many have called for the area's elimination, which may in fact occur if recent trends continue. In recent years, Combat Zone patronage has declined sharply and a number of sex businesses operating in

the area have closed causing many to speculate that Boston's commercial sex trade will disappear from Boston in a few years.

The Combat Zone's history raises several important questions for study:

1. How did the Combat Zone originate?
2. Which city agency has played a major role in the Combat Zone's origin, development, and decline?
3. What has this agency done?
4. What motivated this agency to enact its policies? Are there theories or models which help explain the agency's decisions?
5. Should the agency's present policies continue? If not, what policies should be pursued?

The goal of this thesis is to attempt to answer these questions. First, the author will describe how the Boston Redevelopment Authority (BRA) has been the major force behind the Combat Zone's origin, development, and decline. The second goal of this thesis is to analyze the BRA's actions towards the Combat Zone in terms of two major theoretical models. The first, a gentrification model, attempts to explain the BRA's actions by focusing on the agency's primary role as an agent in Boston's gentrification process. This model proposes that the BRA's policy decisions are motivated by a desire to facilitate and protect the city's gentrification process. The second model, a constitutional law model attempts to explain the BRA's actions by focusing on the agency's secondary role as

a regulator of First Amendment speech rights. This model proposes that the BRA's land use policies towards the Combat Zone have controlled "the expression" of commercial sex establishments by determining where these businesses can operate in the City. This model describes how the BRA's actions in creating and legitimizing the Combat Zone were constitutional, but calls into question the constitutionality of the Agency's present efforts to eliminate the Combat Zone. The final goal of this thesis is to criticize the BRA's present policy and make recommendations as to what policies should be implemented in the future.

B. Methodology Used

In Part I, the extent of the BRA's involvement in the Combat Zone's history was documented by:

1. books and journal article on city planning issues, land use and zoning controls, police enforcement, and pornography regulation;
2. government documents such as BRA planning reports, municipal newspapers, and city council proceedings; and
3. newspaper articles written about the Combat Zone from 1974 to 1984.

In Part II, the gentrification model is based on the gentrification and urban renewal theories of Chester Hartman, George Raymond, and Herbert Gans. These urban planners have not written about the Combat Zone, but their theories can be used to analyze and explain the BRA's

actions towards the Combat Zone. The constitutional law model is based on the United States Supreme Court's rulings in two "adult-use zoning" cases, Young v. American Mini-Theaters(3) and Schad v. Borough of Mount Ephraim(4). In these cases, the Supreme Court sanctioned the implementation of land use controls by city planning agencies to regulate the expression of commercial sex establishments. While these cases did not consider the propriety of the BRA's actions towards the Combat Zone, they nevertheless established guidelines as to what city planning agencies can and cannot do to regulate the expression of commercial sex establishments.

In Part III, the conclusions and recommendations are those of the author who takes responsibility for their content.

FOOTNOTES

Introduction

1. "Commercial sex trade" is defined as the group of businesses which engage in the sale of sexually explicit goods and services. These include operating pornographic movie theaters and peep shows; selling pornographic books and magazines; operating houses of prostitution; and establishments offering live nude entertainment, whether in bars, cabarets, or theaters. See: Arden H. Rathkopf, The Law of Zoning and Planning (4th Edition) (New York: Clark Boardman Company, Ltd., 1983), Chapter 17B.02 "Zoning of Sex Businesses," p. 17B-23.
2. Boston Globe, December 24, 1984, p. 25.
3. 427 U.S. 50, 96 S.Ct. 2440 (1976).
4. 452 U.S. 61, 101 S.Ct. 2176 (1981).

PART I

THE COMBAT ZONE'S HISTORY: 1880-1984

CHAPTER 1

The Origins of the Combat Zone

A. The Combat Zone and Its Antecedents: The Scollay Square Years: 1880-1962

The Combat Zone's present location is the product of urban renewal that took place in Boston in the early 1960's. Boston's first "adult entertainment district" was Scollay Square, an area that is now known as Government Center.(1)

Scollay Square had a long and diverse history.(2) From the early 1800's to the late 1880's, the area was known as a resort and cultural center for members of the city's and world's elite. The area was filled with some of the nation's finest and most exclusive hotels.(3) These included the American House, Quincy House, the Crawford, and the Revere, whose patrons included the Prince of Wales, the Grand Duke Alexis, United States President Franklin Pierce, and Statesman Daniel Webster.(4) Scollay Square was also the home of famous opera houses and theatres which featured performances by some of the era's most famous stage stars, such as Matilda Heron, Charles Kean, Junius Brutus Booth, John Wilkes, Lola Montez, Cora Mowatt, E.L. Davenport, Charlotte Cushman, and the "eminent" Macready.(5)

By the late 1800's, however, the elite's abandonment of the city for the suburbs, combined with the new influx of European immigrants, led to a change in Scollay Square's patronage. The elite hotels and theaters were replaced by

low-rent lodging houses, burlesque theaters, and "honky tonk" bars.(6) These businesses increased as the First and Second World Wars made Scollay Square the port of call of the United States Military, particularly Navy men.(7) The wars caused the Charlestown Navy Yard to be filled with battle ships to be repaired and refitted. Scollay Square "was a perfect place for the Navy men to go have a final fling before going overseas."(8) According to a Boston historian:

"a burlesque theater, a penny arcade, two or three dine-and-dance spots, a bowling alley, a shooting gallery, and several taverns with discreetly dim booths completed the picture of what 'Jack Ashore' considered the requisites for a well spent evening."(9)

The Navy Men would frequently become drunk and engage in street brawls with either the owners, employees, or patrons of Scollay Square businesses. These brawls would make news, causing the city's well-to-do to label Scollay Square the "cross roads of hell;" "a burial ground not listed in any guidebooks;" and "an area bounded on one side by vagrants and grubby bars, on another by night clubs and slot machine arcades, and on a third by saloons exuding an aroma of sauerkraut and steam."(10) These negative depictions were quite interesting, given the fact that many of the "local devines" were some of Scollay Square's best customers.(11) Journalist Stewart H. Holbrook commented upon this phenomenon in his article about the Howard

Theatre, one of Scollay Square's most famous burlesque houses:

"No rural yankee in my time, or in my father's time, had seen Boston until he had furtively witnessed a performance at the Old Howard. It was the same at Harvard, and graduates of that university like to relate how the eminent John Fiske, the great philosopher, used to remark that the Harvard curriculum included 'Howard Athenaeum I, II, III, IV.' A similar remark has been attributed by later generations of students to Charles Townsend Copeland, to Albert Bushnell Hart, and to practically every other well known professor except Bliss Perry. No sea-faring man who ever made the Port of Boston went away without paying a visit to 34 Howard Street. No traveling salesman missed it, and there is ample reason to believe that no out-of-town person missed it either."(12)

During its heyday, the Scollay Square businesses were often the target of small but very vocal anti-vice groups. The most famous of these were Boston's Watch and Ward Society.(13) The Society felt that Scollay Square was "a sink of sin" that was corrupting the "morals" of Bostonians. The society often pressured law enforcement officials to raid and shut Scollay Square businesses down.(14) Often, the society would take the law into its own hands by raiding the businesses and hauling off the managers and performers to jail.(15) At first, Scollay Square businesses protested such harrassment, but later realized that "such moral hubbub was good for business."(16) The Society's raids (as well as the Police ones) it turns out, had the unintended consequence of increasing and not decreasing the number of customers patronizing the Scollay Square establishments.

This was due to "the lewd stories that would circulate after each raid regarding the utter depravity going on inside the businesses." (17) In short, the Society succeeded in getting businesses shut down here and there, but for the most part the sex trade went on undisturbed in Scollay Square until the early 1960's.

B. From Scollay Square to Lower Washington Street: The 1960's

The early 1960's marked a new era in Boston. Boston had a new mayor in John Collins and "Urban Renewal" was the talk of the town. The newly created Boston Redevelopment Authority (BRA) under the directorship of Edward J. Logue was charged with drafting and implementing plans that would reverse Boston's post World War II economic decline. (18) With the aid of millions of dollars provided by the Federal government, the BRA embarked on a massive urban renewal program to make "Boston a center of commerce and culture." (19)

Most of the BRA's efforts were concentrated in the central business district in order to "stimulate large-scale private rebuilding, add new tax revenues to the dwindling coffers of the city, and halt the exodus of middle-class whites to the suburbs." (20) Scollay Square, which abutted the central business district, did not fit into the BRA's plans. To the BRA, Scollay Square was a symbol of Boston's decline from its glory days. (21) The area's tattoo parlors, burlesque houses, honky-tonk bars, and low rent lodging

houses had no place in a "world class" city. The BRA proposed razing Scollay Square and spending \$50 million to transform the area into a civic center filled with government buildings and private office structures.(22) The "Government Center" Project was supposed to be a showcase project that would spark a private office development boom.(23) The focus of the master plan was the construction of a new Boston city hall, designed by I.M. Pei that "would be a striking and dramatic building, surrounded by an eight acre brick plaza."(24)

The BRA plan attracted a cross section of political support. The liberal reformers supported the plan because it would replace a "blighted area;"(25) the monied interests supported the plan because it would subsidize private real estate development;(26) and the anti-vice groups supported the plan because, in their view, the plan would destroy Boston's sex-trade once and for all. The only groups opposed to the plan were Scollay Square's businesses, workers, and poor residents who would be displaced and uprooted. Despite their opposition, the BRA "using early land requisition funds, took title to every building in Scollay Square by 1962 and within a matter of months razed virtually all the buildings."(27) Foundations were then laid for the new government structures. The structures were completed by the end of the 1960's.(28)

The BRA's Government Center Project accomplished its purpose of destroying Scollay Square, but it did not destroy

the adult entertainment market. While most of the area's businesses closed up permanently, others relocated to a four block area along Lower Washington Street--the site of the present day Combat Zone. This two block area was bounded by the central business district on the north, the Chinatown residential area on the east, the Tufts and New England Medical Center complex on the South, and the Boston Common on the West.(29) The businesses relocated there "because not only were the rents low, but the area was only six to seven blocks from their previous location."(30) Thus, the businesses were close to the bulk of their best customers: middle and upper class office workers, tourists, and shoppers who frequented downtown Boston. In short, Lower Washington Street's "low rents, locational advantages, and a growing public acceptance in the late 1960's of sexually explicit films, books, magazines, and clubs assured the growth of the area's sex businesses."(31)

Footnotes

Chapter 1

1. Boston Redevelopment Authority, "Entertainment District Study: Interim Report," April, 1974, p. 4.
2. Scollay Square was named after William Scollay, a prominent late 18th century Boston landowner. See: George F. Weston, Jr., Boston Ways: High By and Folk, (Boston: Beacon Press, 1967), p. 192.
3. Weston, op.cit., p. 195.
4. Weston, op.cit., p. 195.
5. Stewart H. Holbrook, "Boston's Temple of Burlesque," The American Mercury, Vol. LVII, No. 144 (April 1944), pp. 411-416, reprinted in Howard Mumford Jones and Bessie Zaban Jones, The Many Voices of Boston: A Historical Anthology, 1630-1975 (Boston: Little, Brown, 1975) pp. 386-392. This source will be hereafter cited as Jones. The source for this footnote can be found in Jones, op.cit., p. 389.
6. "Honky tonk" bars were bars where prostitutes tended to congregate. The new patrons of Scollay Square were referred to as "people of notoriety" by their predecessors, Weston, op.cit., p. 195.
7. Weston, op.cit., p. 195.
8. Ibid.
9. Weston, op.cit., p. 196.
10. Jonathan Kaufman, "From Scollay Square Tattoo Parlors to Combat Zone Porno Films," Boston Globe, December 27, 1984, p. 25.
11. "Local devines" is the term Stewart H. Holbrook used to describe the elites. Jones, op.cit., p. 387.
12. Jones, op.cit., p. 387.
13. The Society was made up of political conservatives and religious leaders.
14. Many of the activities in Scollay Square, particularly prostitution and burlesque shows were prohibited by Massachusetts obscenity laws.
15. Jones, op.cit., p. 387.

15. Jones, op.cit., p. 387.
16. Ibid.
17. Ibid.
18. "From 1950 to 1970, Boston's population went from 800,00 to 600,000. Its economic base eroded as manufacturing firms moved south or to suburban locations. Its tax base, always narrow because Boston was in city of such compactness, declined in each passing year and the property tax rate was raised again and again to keep the city solvent." See: Robert J. Ryan, "Boston Rediscovered," HUD Challenge, Vol. 10, No. 9, September 1979, p. 16-17.
19. Ryan, op.cit., p. 17.
20. The BRA's efforts were similar to those being employed by other cities at the time. See: Herbert Gans, "The Failure of Urban Renewal," in Jewel Bellush and Murray Hausknecht (editors), Urban Renewal: People, Politics, and Planning, (New York: Anchor Books, 1967), p. 465-484.
21. According to former BRA Executive Director Robert J. Ryan: "Scollay Square served as graphic testimony of Boston's decline in the Post War II era. Once...the location of gracious hotels, Scollay Square was filled with tatoo parlors, burlesque houses, and honky-tonk bars". See Ryan, op.cit., p. 19.
22. Ryan, op.cit., p. 19.
23. Ibid.
24. Ibid.
25. Liberal reformers as a matter of "liberal principle" favored slum clearance under renewal because it would spur economic development by creating jobs and make urban areas more "pleasant looking." See: Jewel Bellush and Murray Hausknecht, "Urban Renewal and the Reformer," in Bellush, op.cit., p. 189-197.
26. Bellush, op.cit., p. 12.
27. Ryan, op.cit., p. 19. The area bulldozed was approximately 40 acres.
28. These structures were (1) the new Boston City Hall; (2) the Twin Federal John F. Kennedy office towers; and (3) the Saltonstall State House Building.

29. Norman Marcus, "Zoning Obscenity: Or the Moral Politics of Porn," 27 Buffalo Law Review 1, 3 (1977).
30. William Toner, "Regulating the Sex Businesses," American Society of Planning Officials Report No. 327 Planning Advisory Service, November 27, 1977, p. 7. The rents were low in part because the buildings were not in good physical condition.
31. Toner, op.cit., p. 7.

Chapter 2

The Development of the Combat Zone

A. The Combat Zone Threatens to Expand Beyond Lower Washington Street: 1970-1974

By the early 1970's, "topless bars and cabarets, adult movie theatres, pinball parlors, and adult bookstores had proliferated along lower Washington Street." (1) The area, which had been dubbed "The Combat Zone," had unquestionably become Boston's new center for adult entertainment. (2) Everyone it seemed -- "business executives; old men in raincoats; couples young, old, married or single; and suburbanites were flocking into the Combat Zone daily to check out the latest in adult entertainment." (3)

Most Bostonians accepted the turn of the events without protest; many were accepting, apathetic or felt far removed from the Combat Zone's activities. (4) This attitude changed, however, when the Combat Zone's burgeoning sex businesses started to expand into other downtown locations and the city's neighborhoods. Upper Washington Street's retail and commercial establishments complained about the Combat Zone's businesses that were "creeping up" from Lower Washington Street; Chinatown residents complained about Combat Zone prostitution that was spilling into their neighborhood; Back Bay residents complained about an x-rated theatre opening up on upper Boylston Street; and Beacon Hill residents complained about an adult bookstore that had opened up near the State House. (5) All these

groups feared that the sex businesses would blight their neighborhoods by increasing crime and reducing property values. They all demanded that the Combat Zone be kept in check.(6)

Law enforcement officials meanwhile were hard pressed in their attempt to control the expansion of the Combat Zone through the use of the State's obscenity laws. A series of court decisions had made the task of securing obscenity convictions difficult if not impossible to obtain.(7) The United States Supreme Court's 1973 landmark ruling in Miller v. California had been the first blow.(8) Miller was an anti-pornography decision which its supporters believed would lead to the end of commercial sex businesses. Instead, the case added more confusion to a body of already confused obscenity jurisprudence. In the case, the Supreme Court broke with precedent and ruled:

1. obscene materials could be regulated by the states without showing that the material was utterly without redeeming social value;
2. no one would be subject to prosecution for the sale or exposure of obscene materials unless these materials depicted or described in a patently offensive way "hard core" sexual conduct specifically defined by the regulating state law, as written or construed; and
3. obscenity was to be determined by applying "contemporary community standards."(9)

Miller's "community standard" introduced more uncertainty than ever in the obscenity area.

"One of the resultant problems of the decision was the question of defining the 'community' - was it the neighborhood, city, judicial district or state the allegedly obscene material was located in? Assuming the geographic area of the community was defined, determination of the standards of people within the area became a further difficult task."(10)

Another resultant problem of the Miller decision (or blessing, depending upon your point of view) was that State Supreme Courts began declaring their state obscenity laws unconstitutional because they did not comply with Miller requirements. The Massachusetts Supreme Judicial Court (SJC) was one such court. In 1974, the SJC's decision in Commonwealth v. Horton held that sex businesses could operate in the Combat Zone and anywhere else in Boston or Massachusetts without the fear of prosecution unless the legislature enacted a new and constitutional obscenity statute.(11) Even if the legislature did enact such a law, it would take months or even years to shut down any sex businesses because their activities would first have to be adjudicated obscene.(12) There was talk in the streets that Massachusetts, and particularly its capital, Boston, would become a "mecca of pornography."(13)

B. The BRA to the Rescue: The Containment of the Combat Zone and the 1974 Zoning Ordinance

The BRA, meanwhile, had been monitoring the Combat Zone's development and expansion with extreme interest. The agency had not anticipated the area's birth and was

concerned that its expansion would threaten downtown private real estate development and blight the city's neighborhoods.(14) Even before the Horton decision had been handed down, BRA Director Robert Kenney had informed Mayor Kevin White that obscenity control was a failure and that a new regulatory approach was needed.(15) In the spring of 1974, the BRA, at the Mayor's request, actively entered the fray with the hope of coming up with the new regulatory approach.

At first, the BRA toyed with the idea of razing the Combat Zone - it would use its eminent domain powers to condemn all the properties on Lower Washington Street, raze them, and then sell them to private real estate developers at a reduced price.(16) The BRA scrapped the idea after learning that the plan's displacement consequences would make matters worse.(17) The planners at the agency realized that, although they could physically destroy Lower Washington Street, they could not destroy the demand for the area's "goods and services." The sex businesses, with their economic strength and new found legal protections, would just open up shop in new neighborhoods. Hence, the BRA "resigned itself to the idea that sex entertainment would continue to be a fixture in Boston and confined its efforts to containing it rather than trying to snuff it out."ⁿ(18)

The agency then looked to other cities for guidance. Detroit, Michigan provided a possible solution. In 1972, Detroit had adopted a new regulatory approach towards its

burgeoning sex businesses after years of attempting to regulate them through obscenity laws. This innovative approach was zoning regulation. "By focusing on the effects of sex businesses and not on the content of their products, it was possible for Detroit to treat the adult theaters and adult bookstores like any other uses in the zoning code, thus taking the effective step in controlling them."(19) Detroit had adopted the zoning regulatory approach after it commissioned a planning study on the effects of sex businesses on surrounding neighborhoods.(20) The study noted that the concentration of such businesses often resulted in deteriorating property values, higher crime rates, traffic congestion, and depressed neighborhood conditions.(21) Hence, a zoning ordinance was enacted that dispersed the uses and kept them separate from one another.(22) Under terms of the ordinance, no adult business could be located within 1000 feet of another adult business; furthermore, no adult business could be located within 500 feet of a residential area.(23) The zoning ordinance did not censor the activities going on inside the businesses (as obscenity laws attempted to do), but instead "imposed a coron sanitaive around them as city planners had once buffered residences from glue factories."(24)

The BRA was intrigued by the Detroit scheme but was troubled by its "dispersal" orientation. Dispersing the Combat Zone's sex business into other parts of the city was the very thing the agency did not want to do.(25) Even if the BRA wanted to disperse the businesses it could not do so

because of Boston's small physical size and numerous residential areas.(26) The practical effect of the enactment of a dispersal scheme in Boston would be that a sex business would always abutt a residential area and not be allowed to operate.(27)

Not finding the "dispersal" scheme a viable option, the BRA then focused its energies on coming up with a zoning proposal that would contain the operation of sex businesses within the Combat Zone's borders on Lower Washington Street.(28) The Agency was aware that there were problems with such a proposal. The Detroit planners had demonstrated that areas with heavy concentrations of sex businesses tended to be blighted and unsafe.(29) The Combat Zone, with its dilapidated buildings, streets, and sidewalks, appeared to be another good example.(30) Furthermore, the area was unsafe late at night. Hence, the BRA felt a need to come up with a containment proposal that would also attempt to get rid of the Combat Zone's "skid row" image.(31)

In drafting its plan, the BRA consulted with downtown business leaders, community groups, and the owners of several combat zone businesses.(32) The business and community group leaders were more concerned with containing the combat zone than improving aesthetics. Combat Zone business owners on the other hand, expressed support for the BRA's concern to upgrade the area but at the same time were suspicious of the agency's motives.(33)

In April, 1974, the same month the Massachusetts Supreme Judicial Court declared the state obscenity laws unconstitutional, the BRA completed a draft proposal that made both groups happy.(34) The agency proposed the enactment of a zoning ordinance that would officially designate the Combat Zone as the city's "adult entertainment district." This district would be the only place in the city where sex businesses could operate undisturbed as long as they did not engage in prostitution or other illegal activities.(35) No sex businesses would be allowed to operate beyond lower Washington Street between Essex and Kneeland Streets.(36)

The BRA also proposed measures to get rid of the Combat Zone's "skid row" image. Two million dollars would be spent over a two year period to make the area a celebrated entertainment district similar to the Piccadilly Circus and Soho in London, and Tivoli in Copenhagen.(37) The first phase of renewal would be to give the Combat Zone a positive image by changing its name to "Liberty Tree Park."(38) To make sure that the name would "stick," the agency proposed the construction of a public park with the same name on the corner of Boylston and Essex Streets -- the Combat Zone's "main entrance" and where the actual Liberty Tree once stood.(39) The second phase of renewal would be to repair the area's streets and sidewalks and provide new street lighting.(40) The third phase of renewal would be to rehabilitate the area's buildings through private investment.(41) The BRA believed that if the sex business

owners knew they were secure in their locations, they would be more willing to invest in improvements.(42)

In June of 1974, the BRA completed its study and went public with its proposal. Most of the public reaction was favorable. The downtown business leaders and community groups the BRA had consulted with were pleased because at last the Combat Zone would be contained. Combat Zone businesses were pleased because they were given long sought after legitimacy. The plan even drew praise from and made strange political bed fellows out of liberal State Representative Barney Frank and conservative columnist William F. Buckley.(43) As for the critics, the Boston Police Department Vice's Squad was very skeptical and thought the plan would not work. Many members of the Squad were offended that a bunch of city planners were telling them how to control vice in the city.(44)

Others like State Senator Joseph Timilty, a Kevin White detractor, called the plan a "multi-million dollar sham" whose sole purpose was to provide "entertainment for out-of-town salesmen."(45) Timilty called for the razing of the Combat Zone and allocation of the proposed renewal funds to programs designed to upgrade the city's neighborhoods.(46) Boston Herald Columnist Cornelius Dalton agreed with Timilty and urged that "a small bomb be dropped on the Combat Zone" to keep it from causing any more problems.(47) Surprisingly enough, the Boston City Council, which had some

notable outspoken members like Louise Day Hicks, offered very little comment on the BRA plan.(48)

Having weathered the storm of public reaction, the BRA's next hurdle was getting the Boston Zoning Commission to enact the plan. Approval was likely, but the BRA was worried that an organized drive by the plan's opponents would delay its enactment. At first the BRA's worst fears appeared to becoming true. During the summer of 1974, three powerful groups came out against the plan. The first was the Christian Science Church. It was opposed to the plan because it believed the BRA was legitimizing "immorality."(49) The second was the Tufts-New England Medical Center (Tufts). Tufts bordered the Combat Zone on the South and felt that the area "was a threat to Tufts' 6500 employees, patients, visitors, and students who had to walk through the area each day to get to the facility."(50) Tufts argued that legitimizing the Combat Zone's status "would multiply the area's problems with respect to safety and threaten the facility's ability to deliver health care and education if its staff and patients were reluctant to come there."(51) The third group to come out against the plan was the Sack Theater Chain (The Sack). The Sack was the plan's most vocal opponent. It called the Combat Zone "Satan's playground" and "a malignancy comprised of pimps, prostitutes, erotica, and merchants of immorality whose growth had to be removed and not confined and perpetuated."(52) Despite the moralistic rhetoric,

The_Sack's real opposition to the plan stemmed from economic self-interest.(53) It was no secret that the Combat Zone had stolen many customers away from the "legitimate theaters" and The_Sack felt that a legitimized adult entertainment district would take more customers away."(54)

Despite the opposition of the Christian Science Church, Tufts, and The_Sack theatres, the organized drive against the BRA's plan never came to pass. As the summer rolled on, the school busing crisis began to dominate the media headlines and Bostonians began to worry about whether a race war was going to break out in the streets. The Zoning Commission held its hearings on the BRA plan without much noise or fanfare in the month of September. Those who had already expressed their support or opposition to the plan testified at the hearings and left.(55) In November, the Zoning Commission officially approved the BRA plan in its entirety.(56) In so doing, the Commission very quietly created Boston's first official adult entertainment district - "Liberty Tree Park."

Footnotes

Chapter 2

1. Norman Marcus, "Zoning Obscenity: or the Moral Politics of Porn," 27 Buffalo Law Review 1, 3 (1977).
2. The area was dubbed "the Combat Zone" for reasons yet unclear to this day. Some say the area was given that name in deference to the Navy men who had been the sex businesses' best customers when they were located in Scollay Square. Others say the area was given that name because of the infamous street brawls that would take place once in a while between patrons, owners, and employees of the sex businesses. See: Jonathan Kaufman, "From Scollay Square Tattoo Parlors to Combat Zone Porno Films," Boston Globe, December 27, 1984, p. 25.
3. One of the most interesting stories of the time came out of the suburban town of Andover, Massachusetts. The Boston Globe reported in an April 28, 1974 article that a group of Andover residents had rented tour buses to take them to Boston's Combat Zone in order to see Deep Throat, one of the most popular x-rated films of the early 1970's. See: "Porno Ruling Loosens up the Combat Zone," Boston Globe, April 28, 1974, p. 60.
4. Residents in other American cities had the same attitude towards their own sex businesses. See: W. Cody Wilson, "Law Enforcement Officers' Perceptions of Pornography as a Social Issue" 29 Journal of Social Issues, NO. 3, p. 48 (1973).
5. Boston Redevelopment Authority, "Entertainment District Study: Interim Report," April, 1974, p. 25. (Hereafter cited as "BRA 1974 Report")
6. Ibid.
7. The early 1970's was a period of new obscenity definitions and the period when there was a "growing recognition of the inability of judges to distinguish what was obscene from what was not." Marcus, op.cit., p. 1.
8. 413 U.S. 15, 93 S.Ct. 2607 (1973).
9. 93 S.Ct. at 2616.

10. Arden H. Rathkopf, The Law of Zoning and Planning (4th Edition) (New York: Clark Boardman Company, LTD., 1983), Chapter 17B.02 "Zoning of Sex Businesses," p. 17 B-8 n. 14.
11. 365 Mass. 164, 310 N.E. 2d 316 (1974).
12. Rathkopf, op.cit., p. 17 B-8, note 13.
13. "Porno Ruling Loosens Up the Zone," Boston Globe, April 28, 1974, p. 1.
14. BRA 1974 Report, p. 25, 27.
15. Ibid.
16. Originally the BRA's Park Plaza Urban Renewal Project which was on the Combat Zone's western border, had called for the razing of all the properties on Lower Washington Street. As explained in the text, BRA officials changed their minds when they realized that the plan would not destroy the sex trade but displace it into other parts of the city. See "BRA Seeks to Change Combat Zone's Image," Boston Globe, June 7, 1974, p. 3.
17. Ibid.
18. James Sterba, "Pornography Fight Lags Across the Nation," New York Times, November 26, 1974, p. 24.
19. William Toner, "Regulating the Sex Businesses," American Society of Planning Officials Report No. 327 Planning Advisory Service, No. 327, Nov. 4, 1977, p. 1-2.
20. Ibid.
21. Toner, op.cit., p. 2.
22. Ibid.
23. Toner, op.cit., p. 3.
24. Norman Marcus, op.cit., p. 28-29. According to Marcus:

"Zoning regulations have historically been designed to prevent harm, eg. by separating incompatible uses, by limiting the density and scale of neighborhoods, by prohibiting or restricting development when public services are unavailable, and by protecting adjoining parcels from invasion of their light and air. It was not until 1926 that the constitutionality of a zoning ordinance was tested by the

"Supreme Court. In a landmark decision, Village of Euclid v. Ambler Realty Company, 272 U.S. 365 (1926), the Supreme Court validated a comprehensive zoning plan. The Court's holding was narrow. However, the general test of a zoning ordinance suggested by the court is still instructive. Before a zoning ordinance can be declared unconstitutional, its provisions must be shown to be clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare."

The constitutionality of Detroit's Zoning scheme was upheld by the United States Supreme Court in Young v. American Mini-Theaters, 427 U.S. 50, 96 S.Ct. 2440 (1975). We will explore the Young ruling in Chapter 5.

25. Richard Hudson, "Combat Zone Plan: Shrink It, BRA would like to surround the Area," Boston Globe, August 22, 1977, p. 6.
26. Ibid.
27. Ibid.
28. Marcus, op.cit., p. 3.
29. See notes 19-23.
30. BRA 1974 Report, p. 9-12.
31. Toner, op.cit., p. 2.
32. The business leaders were represented by the Boston Retail Trade Board; the community groups were from the Back Bay, Beacon Hill, Bay Village, and Chinatown neighborhoods which abutted the Combat Zone; and the Combat Zone businesses were represented by Debra Beckerman -- the area's "public relations" person. See "Zoning Niche Could Protect the Combat Zone," Boston Globe, September 8, 1974, p. 52.
33. The Combat Zone business owners were suspicious because of the legitimate manner the BRA was going about its business. Up until that point, the business owners had been of the opinion that the only way to get anything from the Government was through graft. See: David O'Brian, "Banned In Boston Again?," Boston Phoenix, July 5, 1977, p. 6.
34. BRA 1974 Report, op.cit.

35. The BRA said that it made sense to create the adult entertainment District in the Combat Zone's location because (1) a majority of the city's sex businesses were located there; and (2) containing the businesses in a compact area would make policing them easier and avoid their spread into other areas of the city. BRA 1974 Report, p. 26.
36. Interestingly enough, the proposed ordinance made no mention of the words "sex business" or "pornographic business establishment." The BRA had deliberately not used these words in order to avoid a possible court fight over how these words were defined. Instead the agency referred to the businesses in question as "adult uses" by emphasizing the "adults-only" characteristic of virtually all x-rated movie theaters, adult bookstores, peep shows, and strip clubs. It defined "adult use" as an establishment which
- "is customarily not open to the public generally but only to one or more classes of the public, excluding any minor by reason of age."
- See Toner, op.cit., p. 11.
37. The Boston City Record - Official Chronical of Municipal Affairs, Vol. 66, No. 25 (June 25, 1974), p. 399; and "BRA seeks to change the Combat Zone's Image," Boston Globe, June 7, 1974, p. 3. The Piccadilly Circus and Soho in London, England, and Tivoli in Copenhagen, Denmark were and still are internationally famous adult entertainment districts. These districts are sanctioned by the English and Danish national governments, are popular tourist spots for American and European travellers, and enjoy reputations as being safe neighborhoods albeit characterized by sex businesses. BRA officials concluded that these districts were safe and attractive to tourists because the districts were well maintained by local governments and well patrolled by local Police forces. BRA officials believed that if these conditions existed in the Combat Zone, the Zone would also be another world famous adult entertainment district.
38. BRA 1974 Report, p. 29.
39. The "Liberty Tree" was the name of a tree that had been a symbol of the American Revolution. It was at the Liberty Tree "that the first act of resistance to British rule over the American colonies took place - a protest against imposition of the Stamp Act on the Massachusetts Bay Colony by the British Parliament. On August 14, 1765, Andrew Oliver, the Stamp Officer and third highest crown official in the colony was hung in

"effigy from a branch of the Liberty Tree. The outcry against the Stamp Act was so great that Oliver, a wealthy merchant publicly resigned his office at ceremonies under the tree attended by Sons of Liberty and other citizens. The Liberty Tree which had become a symbol of revolt was chopped down by a gang of Tories, who were encouraged by British officials. After the Revolution, a "Liberty Pole" was erected on the stump of the old elm." See: Cornelius Dalton, "The Worst Possible Solution," Boston Herald, September 9, 1974, p. 29. It is not really clear why the BRA wanted to rename the area "Liberty Tree Park." One possible explanation is that the BRA succumbed to "Bicentennial fever": it was during this time the nation started to prepare for the 200th anniversary celebration of the American Revolution to take place in 1976.

40. The BRA 1974 Report, p. 29.
41. The BRA 1974 Report, p. 31.
42. The Boston City Record, op.cit., p. 399.
43. Before being elected to the United States Congress in 1980, Barney Frank first served as an advisor to Boston Mayor Kevin White and then later represented Boston's Beacon Hill and Back Bay neighborhoods in the Massachusetts House of Representatives. As a state legislator, Frank often advocated for the decriminalization of prostitution and pornography. Frank believed that commercial sex businesses would always exist and that it was a waste of law enforcement time to prosecute them. William Buckley was also for pragmatic approaches towards commercial sex businesses, albeit not for the same reasons Frank was. Buckley explained why in an article written shortly after the BRA released its proposal:

"The Boston Experiment should be indulged. The Anti-obscenity people should keep quite about it, and their counterparts should accept a little self restraint and see how it works... In the U.S. we are given to pragmatic solutions and it is generally agreed that for instance in certain areas in Harlem, peaceful bookmakers are not going to be disturbed by the police, though they would be if they started to practice their wares openly on Madison Avenue."

See: Buckley, "Boston's Newest Arrangement With Sin," Boston Globe, June 21, 1974, p. 52.

44. See the comments of Deputy Police Superintendent John Doyle in "BRA seeks to Change Combat Zone's Image," Boston Globe, June 7, 1974, p. 3.
45. "Combat Zone Plan Called Sham," Boston Herald, June 8, 1974, p. 4. Timilty often clashed with Mayor Kevin White on many facets of urban policy. Timilty unsuccessfully challenged White for Mayor in 1975 and 1979.
46. Ibid.
47. Cornelius Dalton, "The Name Change Won't Help," Boston Herald, June 10, 1974, p. 15. Dalton was also outraged the BRA was going to desecrate a Revolutionary War Symbol by re-naming the Combat Zone "Liberty Tree Park." See: Dalton, "The Worst Possible Solution," Boston Herald, September 9, 1974, p. 29.
48. The only comment that came out of the City Council was in July of 1974 when City Council President Gerald O'Leary called for City Council hearings to assess the "BRA's plan to legitimize the 'strip and gyp' establishments in the Combat Zone." The hearings never took place. See: Proceedings of the Boston City Council-1974, July 29, 1974, p. 476. There are two possible explanations for lack of city council comment: One, most of the council members, especially the outspoken Louise Day Hicks were pre-occupied with the school busing crisis. Two, the city council could not really do anything even if it wanted to. The Boston City Council has been labeled "worse than a rubber stamp, because at least a rubber stamp leaves an impression." Comments of Robert F. Wagner, Jr., former Deputy Mayor of New York and Harvard Fellow-Institute of Politics, John F. Kennedy School of Government, Harvard University, April 1984. (Mr. Wagner also referred to New York's city council as another example).
49. See: Ian Menzies, "BRA Right to Contain the Combat Zone," Boston Globe, October 17, 1974, p. 18.
50. "Tufts to Fight Combat Zone Plan," Boston Herald, September 10, 1974, p. 10.
51. Ibid.
52. "Sack Theatres Oppose Combat Zone Plan," Boston Herald, September 11, 1974, p. 12.

53. The Sack was quick to rant and rave above the alleged debauchery going on in the Combat Zone but was rather silent about the explicit sex and violence in some of its "R" rated features like "The Godfather, Part I and II" and "Death Wish."
54. "Legitimate Theatres" was a term the BRA used to describe movie theaters that did not show pornographic films.
55. Those who testified in favor of the plan were:
1. BRA Director Robert Kenney
 2. State Rep. Barney Frank
 3. Debra Beckerman, Spokesman for the Combat Zone Businesses
 4. Daniel J. Ahern,
Director of the Back Bay Civic Association
 5. Peter Chan, Director
Chinatown City Hall
 6. Stuart Robbins, Manager
Beacon Hill City Hall
 7. Frank Bronstein,
President of the Retail Board of Trade

Those who testified against the plan were

1. attorneys for the Sack Theaters
2. attorneys for Tufts-New England Medical Center
3. representatives from Don Bosco High School (a high school located near Tufts).

Source: Janice Elliott, "BRA's Proposal to Contain City's Combat Zone is Blasted, Defended," Boston Globe, September 12, 1974, p. 4.

56. When the Combat Zone was officially zoned as the city's adult entertainment District, few people at the time realized what a valuable piece of real estate the Combat Zone would become in the early 1980's. See: Jonathan Kaufman, "From Scollay Square Tattoo Parlors to Combat Zone Porno Films," Boston Globe, December 27, 1984, p. 25. We will explore this issue in Chapter 3.

CHAPTER 3

The Decline of the Combat Zone

A. The Rise and Fall of Liberty Tree Park: 1975-1976

Once the BRA's proposal became a reality, the next challenge for the agency was living up to its goals. Containing the businesses on Lower Washington Street would not be a problem; the zoning laws would effectively prohibit further growth. On the other hand, upgrading the Combat Zone and making it a safe neighborhood were real challenges.

1. Upgrading the Combat Zone

Initially, the BRA's proposals were implemented smoothly. In early 1975, the BRA enacted tough sign controls, upgraded streets and sidewalks, and invested two hundred fifty thousand dollars to build "Liberty Tree Park" on the corner of Boylston and Essex Streets.(1) However, a major stumbling block occurred when the BRA proposed a plan whereby Combat Zone store owners would renovate the interiors and exteriors of their buildings through private investment. New facades, interior lighting and space design were called for by the plans. At first the store owners willingly complied with the BRA proposal; nevertheless, in the long run few renovations were made.(2) The BRA, frustrated by the slow progress, was unsuccessful in pressuring the store owners to step up their renovation efforts.(3) The agency and the store owners began engaging

in heated exchanges. The BRA accused the owners of acting in bad faith by reneging on their promises to make renovations. The Combat Zone store owners, on the other hand, blamed the BRA for lack of progress on the renovations. The owners claimed that the BRA proposals were unreasonable and expensive. They also claimed they had no objections to making renovations but the BRA did not understand "that such ventures cost a lot of money and could not occur overnight."(4) Hostilities between the two groups became so intense that the BRA boycotted the June 1975 dedication ceremonies for Liberty Tree Park.(5)

Given these difficulties, it was obvious by the fall of 1975 - not even one year after the zoning scheme had been enacted - that the BRA was not going to meet its goal of totally renovating the Combat Zone by the end of 1976. In the long run, the construction of Liberty Tree Park was the only major physical change in the area.(6)

2. Making the Combat Zone a Safe Neighborhood

The BRA's goal of making the Combat Zone a safe neighborhood was doomed from the start. Initially, the BRA insisted that Combat Zone Safety would be the sole responsibility of the Police; the agency would not provide the Police with advice, nor would it monitor police performance.(7) This abdication of responsibility to the police may have been the BRA's biggest blunder. The agency failed to acknowledge that the Boston Police Department's

internal divisions were so serious at this time that the police could not possibly be expected to independently develop a consistent management plan for controlling crime in the Combat Zone. Nowhere was this failure of Police effectiveness more apparent than in the Department's handling of Combat Zone prostitution.

The problems with prostitution control began with Mayor Kevin White's surprise midnight "undercover tour" of the Combat Zone in February, 1975. It was an election year, and the Mayor wanted to show Bostonians he was concerned about the Combat Zone's activities.(8) The BRA's zoning scheme had been in effect for several months and the Mayor wanted to see for himself how things were working out. The Mayor and his entourage, which included several deputy mayors and members of the press corps, visited several strip clubs and had drinks with strippers and their patrons. The Mayor was propositioned several times by prostitutes that were working in the clubs. Although he declined their offers for "a good time," White enjoyed their company. At the end of the tour, White told the press corps that he had had "fun" and said:

"My idea of a city has room for these places. I don't condone everything that goes on here, but if they don't disturb the theaters or residential areas, what harm are they doing?"(9)

Hence the Mayor by his words and actions told the Police Department to go easy on Combat Zone prostitution. Many in

the Police Department were all too happy to oblige the Mayor, albeit for different reasons.

One faction, led by Police Commissioner Robert DiGrazia, privately agreed with the Mayor that prostitution was a victimless crime, not deserving of prosecution.(10) DiGrazia allegedly sent out a directive telling members of the Department to ignore Combat Zone prostitution and concentrate on other law enforcement problems.(11) A second faction, led by the commanders and officers of the District I Police station, were delighted by the Mayor's views. The Combat Zone was in District I's service area and for years its officers had accepted bribes for ignoring prostitution violations and tipping off store owners of impending raids.(12) To District I, the Mayor's attitude was interpreted as "business as usual." The third faction was represented by a group of vice officers led by Deputy Police Superintendent (and future Police Commissioner) Joseph M. Jordan. This group despised the Combat Zone and the BRA for having legitimized it.(13) Jordan and his cohorts went along with the Mayor's policy because in their view it would lead to the Combat Zone's demise.(14) They believed that the Mayor's kind words for prostitutes would dramatically increase Combat Zone prostitution, which in turn would lead to an increase in street crime in the area. The "Vice" faction was apparently correct.

Once rumor spread that prostitution was allowed in the Combat Zone, the number of prostitutes in the area rose

dramatically.(15) Prostitution was no longer carried on discreetly inside Combat Zone businesses, but openly on the streets.(16) Competition between prostitutes became so stiff, that prostitutes began fighting over "johns." When prostitutes did not take in enough money to satisfy their pimps, they resorted to street crime for additional funds.(17) Many robbed their "johns" at gun or knife point; others travelled in packs and began mugging passerbys on the streets; still others developed the "Fondle and Pick Pocket" scam to steal wallets.(18) Although a few prostitutes were arrested, most got away with their street crimes. The widely perceived indifference on the part of the police encouraged this proliferation of prostitution and related criminal activity.(19)

By the fall of 1976, the Combat Zone was known as "an attractive and lucrative tenderloin district for prostitutes and their consorts."(20) The Police, especially Commissioner DiGrazia, were heavily criticized for their failure to control Combat Zone prostitution. DiGrazia, whose policies had contributed to the Combat Zone problems, refused to shoulder any responsibility and instead claimed the police were doing the best they could.(21) BRA officials, meanwhile, watched from the sidelines, wondering whether their "adult entertainment district" was a failure.

In November of 1976, three incidents occurred which ended the Combat Zone's brief tenure as Liberty Tree Park.(22) The first was Police Commissioner DiGrazia's release of a 572 page report by his Special Investigations

Unit (SIU) on the activities of the District I Police Station. The report documented the precinct's widespread incompetence and corruption in monitoring Combat Zone prostitution activities.(23) The SIU Report also detailed how the precinct's commanding officers and footpatrolmen took bribes from prostitutes, pimps, and Combat Zone business owners in exchange for not bringing charges against them.(24)

The second event was DiGrazia's resignation and Mayor White's selection of Joseph M. Jordan to succeed him. Many speculated that DiGrazia had released the SIU report to "save face" and that White's subsequent appointment of Jordan indicated that, in the Mayor's opinion, the BRA's plan was a failure.(25) Jordan made clear that one of his highest priorities would be "cleaning up" the Combat Zone.(26)

The third incident was the Combat Zone murder of Harvard football player Andrew Puopolo.(27) Puopolo was the tragic victim of the "Fondle and Picket-Pocket" scam. He had gone to the Combat Zone with several of his Harvard teammates to see the strip tease performances at the Naked I. The Naked I was the highlight of an evening that had included dining at Harvard Club to celebrate the end of the football season. Puopolo and his friends watched performances at the Naked I until closing time at 2 a.m.. On their way back to their cars, they encountered a group of prostitutes on Washington and Boylston Streets who

propositioned them. The prostitutes were turned down, but persisted in their solicitations by fondling several of the youths. In the process, one of the prostitutes was able to steal a wallet. When the pick-pocketed youth discovered his wallet was missing, he accused the prostitutes of stealing it and demanded it back. The prostitutes denied stealing it and a loud argument erupted on the street. Lurking in the shadows were nine men who served as the prostitutes' "muscle men" in the scam. When it appeared that Puopolo and his friends were going to get the wallet back, the men ran out and began attacking the youths. During the scuffle, Puopolo was stabbed in the heart; he died one month later after lapsing into a coma.

After Puopolo's violent attack, which made national headlines, it became apparent to the BRA that its two year mission to make the Combat Zone "respectable" was a failure. The agency then began to ponder ways to eradicate the Combat Zone.

B. The BRA's New Game Plan: The Gradual Eviction of the Combat Zone from Lower Washington Street: 1977-1984

1. The New Game Plan Is Drafted: 1977-78

After Andrew Puopolo's attack, Police Commissioner Jordan held a news conference to declare that he "would no longer tolerate prostitution, liquor violations and other crimes in the Combat Zone." (28) In conjunction with the District Attorney's office, Jordan launched the biggest crackdown on Combat Zone crime in recent memory. (29) The

crackdown consisted of increased Police presence in the area coupled with a bureaucratic crackdown on liquor licenses.(30) By early 1977, Jordan had succeeded in permanently closing four of the thirty six businesses in the district.(31) However, as the year progressed, Jordan's crusade began to slow down for a number of reasons.

In the first place, the media's attention upon the issue was relatively short. As time went by, publicity over Puopolo's death diminished, and business began to return to normal in the Combat Zone. The Police, no longer subjected to public scrutiny, had decreased motivation to prosecute Combat Zone crime.(32) Secondly, court complaints about dockets over crowded by vice cases discouraged further prosecution by the Police.(33) In addition, many Combat Zone businesses launched a counter offensive against the city by bringing court challenges for alleged constitutional violations.(34) Finally, Jordan realized that the Police could never rid the city of the Combat Zone as long as it was protected by the zoning laws created by the BRA.

The BRA in the meantime began reviewing two possible measures to get rid of the Combat Zone. BRA officials first considered repealing the 1974 zoning ordinance, which would effectively take away the Combat Zone's zoning shield.(35) However, the agency rejected this plan concluding that such a repeal would only encourage sex businsses to relocate to the downtown business district and the city's

neighborhoods.(36) The other proposal considered was repealing the 1974 zoning ordinance and creating another adult entertainment district somewhere else in Boston.(37) This plan was also rejected because it would not eliminate the Combat Zone's problems but just concentrate them someplace else.(38)

Faced with these impractical planning solutions, the BRA initially concluded that it would not be possible to eradicate the Combat Zone. However, the agency quickly took note of an interesting phenomenon: the Combat Zone was right in the middle of the downtown real estate development boom.(39) In just a short number of years, the Combat Zone's location on Lower Washington Street had become "a critical junction in the city's commercial spine because it was the link between the Upper Washington Street retail district and the more formal Back Bay and Prudential Center."(40) There was evidence that because of its prime location, "the Combat Zone was being prodded and tugged by increasing development pressures from all directions."(41) On the North, the \$130 million Lafayette Place development - with 250,000 square feet of retail space and 500 room hotel was about to be constructed. On the South, the Tufts - New England Medical Center was planning to build a new hospital wing and a \$20 million, 13,000 square foot research center on the corner of Kneeland and Washington Streets: On the east, Chinatown's Economic Development Council had plans to purchase Combat Zone real estate for the specific purpose of evicting the sex businesses operating there. Finally, on the

west, the BRA's Park Plaza Hotel Project, along with the construction of a new State transportation building with 600,000 square feet of space were about to get under way.(42) The BRA concluded that all these development pressures along the outskirts of the Combat Zone would "become anchors from which other private developers would extend further into the Zone."(43) Once this intense development began, the Combat Zone's demise seemed inevitable because the sex businesses "would face stiff competition from conventional businesses for scarce ground floor space, and would be forced to pay considerably higher rents in order to stay in operation."(44) Furthermore, by keeping the 1974 zoning ordinance in effect, the evicted sex businesses would be forced to re-locate outside the city if they wanted to stay in business.(45)

The BRA realized that this "gradual eviction process" would not begin until the development projects around the Combat Zone neared completion in the early 1980's.(46) The agency resolved in the meantime to do everything it could to encourage the downtown redevelopment boom's encroachment into the Combat Zone.(47)

2. The Waiting Period: 1979-1983

Between 1979 and 1983, several interesting developments occurred which boosted the BRA's hopes to eliminate the Combat Zone. During this period, although the number of Combat Zone businesses remained stable, the Combat Zone lost its status as the primary market for sexual goods and

services.(48) A combination of technological changes in adult entertainment and a tremendous growth in suburban sex businesses caused the Combat Zone's patronage to sharply decline.

In 1979, the introduction of the video cassette recorder (VCR) in the consumer market revolutionized both adult and conventional entertainment. The VCR enabled both Bostonians and suburbanites alike to purchase or rent pornographic films which were pre-recorded on video tapes, for viewing in the privacy of their own homes instead of Combat Zone movie theaters.(49) To many people watching a sex film at home was more convenient, safer, cheaper, and "respectable" than watching it in the Combat Zone.(50) X-rated video tape sales and rentals were increasing so quickly that by 1983, commentators had begun concluding that the place to watch pornographic films was not in the Combat Zone, but "at home, on a television set connected to a video machine."(51)

Also during that four year period, the Combat Zone began experiencing major competition from suburban adult entertainment establishments. From 1977 to 1983, sex businesses opened up in at least 12 suburban communities.(52) At one point, the growth was proceeding at such a rapid rate that the State legislature empowered cities and towns to use zoning laws to sharply restrict the areas where adult uses could legally operate.(53) Most of the businesses quietly opened up in Peabody. Peabody's

location on Route 128 made it a popular rest spot each day for commuters coming home from work in Boston. Sex businesses, however, were not warmly received in other areas, particularly in Chelsea and Stoughton. In Chelsea, a working class suburb north of Boston, many residents were angered by the Parkway Plaza Adult Cinema's opening in 1980.(54) The residents were opposed to the sexually explicit nature of the cinema's movies and were worried about the theater's blighting influences. The theater was the site of many demonstrations where residents chanted, "No Combat Zones in Chelsea!"(55) Over a three year period, the theater was convicted 18 times for violating obscenity laws but continued to remain open.(56)

In Stoughton, the 1983 arrival of the "Times Square Bookstore" produced much heated controversy and protest. When obscenity prosecutions failed to shut down the bookstore, town selectmen enacted a zoning ordinance to "quarantine" the establishment from the rest of the town. According to a town official:

"We figured the stuff would stay in the Combat Zone, but what happened in Stoughton made us pretty nervous. It meant a store like that can come in anywhere."(57)

3. The Eviction Proceedings Begin with the Help of a New Mayor: 1984

While Combat Zone patronage was declining, developer interest in land in and around the Combat Zone was on the increase. By 1982, the Lafayette Place, Park Plaza Hotel,

and State Transportation Building projects were nearly completed.(58) As the amount of available downtown land to develop became more scarce, the price of downtown office space began to sky-rocket.(59) The Combat Zone, with its cheaper land values and close proximity to the central business district appeared to be an attractive place for development activity.

Major land speculation began in the area, soon after City Councillor Raymond Flynn was elected Mayor of Boston in 1983. Flynn had run on a "pro-neighborhood plank," and was critical of BRA policies which he claimed emphasized downtown redevelopment at the expense of the city's neighborhoods.(60) Flynn, however, made it clear that he did not want to dismantle the downtown redevelopment boom but just spread its "riches" to the neighborhoods. He also supported the BRA's attempts to get rid of the Combat Zone. Flynn's opposition to the Combat Zone stemmed in part from his personal dislike of commercial sex businesses. He did not support "the concept that pornography should be allowed within the confines of a geographic area and sanctioned by city government."(61) His opposition also stemmed from his genuine concern for the groups that were saddled with the Combat Zone. He felt that the promises that had been made to the Chinese community in 1974 to win its support for the adult entertainment zoning ordinance had been broken and the community had been forced to share space with a unruly neighbor.(62) He was also worried about people who had to

walk through the area each day, including students like his son who went to Don Bosco High School and people who worked or visited hospital patients at Tufts.(63) Flynn was pleased to see that in recent years, the downtown redevelopment boom was threatening to eliminate the Combat Zone. He resolved to do everything in his power as Mayor to encourage these activities of the development community, which would "eliminate the elements of the porno business from Lower Washington Street."(64)

In early 1984, Flynn made his position on the issue known to the development community. In a series of public statements, Flynn said that "adult entertainment districts had no place in Boston" and that "he would go to great lengths to stifle or stymie its development in the Combat Zone."(65) Flynn and his new BRA Director, Stephen Coyle then met with several developers to inform them that the Combat Zone did not have a future and that the city would encourage their efforts to redevelop the area.(66) In one highly publicized case, both Flynn and Coyle met with representatives from the Swiss-Air Corporation. Swiss-Air had expressed an interest in building a 500 room hotel at Lafayette Place but was hedging because of the Combat Zone's proximity.(67) Flynn and Coyle told the Swiss-Air Officials that they did not have to worry about the Combat Zone because the city was going to "clean the area up." According to the Mayor:

"As soon as I told them (Swiss-Air) my feelings, they immediately went into negotiations and finalized the deal to build the Lafayette Swiss Hotel."(68)

The Mayor's and BRA Director Coyle's actions apparently encouraged other real estate developers interested in embarking on development projects in and around the Combat Zone. In 1984, five multi-million dollar land transactions occurred which resulted in the eviction of six Combat Zone adult businesses. In the first transaction, Bass Brothers, a Texas Corporation, spent \$12 million to purchase 600 Washington Street, a seven story office building which abutted the Combat Zone.(69) Bass began renovating the building for the purpose of renting office space to service sector businesses. In the second transaction, All Right Parking Corporation spent \$1.5 million for two buildings housing pornographic theaters located across the street from the Bass building.(70) The Corporation evicted the theaters and announced its plans to raze the buildings and build either a parking garage or office tower.(71) In the third transaction, the BRA and the Chinese Economic Development Council finalized plans for a \$12 million China Trade Center which would occupy a seven story building in the heart of the Combat Zone -- the corner of Washington and Boylston Streets.(72) Following the announcement of the project, the Council evicted four sex businesses operating in the building, including The Silver Slipper, one of the Zone's most famous strip bars. In the fourth transaction, Hunneman Company, a Boston Real estate firm renovated an office

building at 120 Tremont Street on the fringe of the Combat Zone and began renting office space to downtown businesses at \$19 per square foot.(74) This rental fee was four times greater than the previous \$5 per square foot but was \$12-13 cheaper than office space in "fancier" downtown buildings such as 60 State Street. In the last transaction, Covenant House, a New York based religious and charitable organization sold the Hotel Avery to Developer Barry Hoffman for \$1.5 million.(75) Hoffman then made plans to convert the hotel into office condominiums.

By the end of 1984, it appeared that Mayor's wishes were being fulfilled and that the BRA's seven year old gradual eviction plan had been set into motion. Many began concluding that the Combat Zone was a thing of the past and would soon be transformed into a new center for office and retail development.(76) Others believed that the year's turn of events was just a coincidence and that the Combat Zone would survive.(77) Regardless of which observation was correct, there was no doubt that Mayor Flynn and the BRA would continue their war against the Combat Zone.(78)

Footnotes

Chapter 3

1. William Toner, "United States Cities Face Combat in the Erogenous Zone," Planning, No. 8, Vol. 43, September 1977, p. 18.
2. David O'Brian, "Banned in Boston Again? Plans to Upgrade the Combat Zone Have Been an Utter Failure - and There is Plenty of Blame to Go Around," The Boston Phoenix, Vol. 6, No. 27, July 5, 1977, p. 6. (hereafter cited "O'Brian I")
3. Ibid.
4. George McKinnon, "City Will Snub Park Dedication," Boston Globe, June 11, 1975, p. 23.
5. Ibid.
6. David O'Brian, "A Separate Peace of Sort," Boston Phoenix, Vol. 7, NO. 28, July 11, 1978, p. 8.
7. Boston Redevelopment Authority. "Boston's Adult Entertainment District," January, 1976, p. 3.

The BRA justified its position on the grounds that, as a planning agency, it should only concern itself with improving the Combat Zone's physical and visual environment, and that what went on inside and outside Combat Zone buildings was the concern of the police.
8. Comments of former Boston Police Commissioner Robert DiGrazia (1972-1977) as reported in Joan Vennoch, "Combat Zone Cleanup Poses Its Own Questions," Boston Globe, December 29, 1984, p. 2.
9. John B. Wood, "Boston Mayor White Visits the Combat Zone," Boston Globe, February 9, 1975, p. 12.
10. Vennoch, op.cit., p. 2; O'Brian I, op.cit., p. 12.
11. Ibid.
12. O'Brian I, op.cit., p. 12; John Kifner, "Boston Combat Zone Becomes Target of Police Crackdown," New York Times, December 4, 1976, p. 10.
13. O'Brian I, op.cit., p. 12.

14. Ibid.
15. Barbara Milman, "New Rules for the Oldest Profession: Should We Change Our Prostitution Laws?," 3 Harvard Women's Law Journal 1, 54 (1980).
16. Ibid.
17. Ibid.
18. The prostitutes were aided by "muscle men" hired by pimps to beat up any "john," mugging or pick-pocket victim that protested having their valuables stolen. See: Alexander Harves, Jr., "Harvard Athlete is Stabbed After Combat Zone Melee," Boston Globe, November 17, 1976, p. 22.
19. O'Brian I, op.cit., p. 12.
20. Editorial, Boston Globe, November 19, 1976, p. 22
21. DiGrazia claims he was "tough" on the Combat Zone but "institutional weaknesses in the Police Department caused police officers to turn the other way at illegal activities in the Zone." See: Vennochi, op.cit., p. 2.
22. See: Kifner, op.cit.
23. Ibid.
24. Ibid.
25. Ibid.
26. Ibid.
27. Harves, op.cit., p. 1, 22.
28. Paul Feeney and Peter Mancusi, "Police Officials Say X-rated Zone Idea Fails," Boston Globe, November 30, 1976, p. 1.
29. Ibid.
30. Ibid. State Liquor laws prohibited the serving of liquor in establishments that engaged in illegal activities. It was thought that the revocation or denial of liquor licenses to strip bars could put these establishments out of business.
31. Daniel Ahern, "The Combat Zone Is Moving North," Boston Herald, September 2, 1977, p. 9.
32. Milman, op.cit. p. 54.

33. Vennochi, op.cit., p. 2.
34. Ibid.
35. Richard Hudson, "Combat Zone Plan: Shrink It; BRA would like to surround the Area," Boston Globe, August 22, 1977, p. 6.
36. Ibid.
37. Ibid. Some of the sites the BRA had considered creating an adult entertainment district area were:
 1. North Station;
 2. the "Leather District" near South Station;
 3. The Fort Point Channel Area; and
 4. one of the Islands in Boston Harbor
38. Hudson, op.cit., p. 6.
39. Boston Redevelopment Authority. "Lower Washington Street Area Program for Revitalization," June, 1978, p. 3 (hereafter cited BRA 1978 Report). The boom had been sparked by the BRA's urban renewal policies of the 1960's and early 1970's. See: Robert Ryan, "Boston ReDiscovered," HUD Challenge, Vol. 10, No. 9, September, 1979, p. 19.
40. BRA 1978 Report, p. 3.
41. Ibid.
42. Ibid.
43. Hudson, op.cit., p. 6.
44. Comments of BRA Director Robert Walsh, as reported in Anthony J. Yudis, "Nutrition Center at Combat Zone Border," Boston Globe, January 20, 1978, p. 3; and BRA 1978 Report, p. 19.
45. This was because under the 1974 zoning law the only place one could operate a sex business was in the Combat Zone!
46. BRA 1978 Report, p. 19.
47. BRA 1978 Report, p. 20.

48. Between 1979 and 1983 the number of sex businesses in the Combat Zone remained between 25 and 27. See "Boston's Adult District," Boston Globe, February 13, 1983, p. 60.
49. The video cassettes were available at dozens of outlets in Boston and in the suburbs. See: "Home Viewing of X-rated Tapes Popularizes 'Adult Fare'," Boston Globe, February 14, 1985, p. 1. Nationwide 25% to 50% of all pre-recorded video cassettes sold were pronographic. See: Alan Weinstein, "Regulating Pornography: Recent Legal Trends," Land Use and Zoning Digest, Vol. 34, No. 2 (1982), p. 8-9.
50. Boston Globe, February 14, 1983, p. 1.
51. Ibid. Nationwide, commercial sex establishments, especially movie theatres, were experiencing a decline in business. This decline in business prompted Al Goldstein, a nationally known "sex entrepreneur" to say:
- "I'd hate at this moment to be the owner of a pornographic theater. Their obsolescence is inevitable. Some people say I'm a doomsayer, but I think the technology speaks. X-rated films should never have been seen in theaters anyway. It's o.k. to see a horror film in a theater, but the point of a porno film is to turn you on, and a porno theater isn't the best place for that. The ideal context is the home."
- Weinstein, op.cit., p. 8-9.
52. Colin Nickerson, "Massachusetts Communities Using Zoning Laws to Restrict Porn," Boston Globe, March 19, 1984, p. 17. The suburban commercial sex trade had its roots in the 1977 Police raids on the Combat Zone. The four strip bars that were shut down in those raids re-opened in Peabody, a suburban town along Route 128. See: Ahern, op.cit., p. 9.
53. Nickerson, op.cit., p. 15.
54. "Chelsea's Mayor Walks Out on Stormy Fair Share Meeting," Boston Globe, April 4, 1982, p. 26.
55. "Chelsea's Theater Again is Target of Protestors," Boston Globe, October 23, 1983, p. 36.

56. Boston Globe, February 14, 1983, p. 1. The penalties levied at the theater's owners were usually fines that were factored in the cost of doing business.
57. Nickerson, op.cit., p. 17.
58. Jonathan Kaufman, "Real Estate Development Boom Threatens 'Adult Entertainment'", Boston Globe, December 27, 1984, p. 24.
59. Ibid.
60. In 1983, Mayor Kevin White decided not to seek a 5th term as Mayor citing "personal reasons." Flynn ran against Melvin King, another political progressive and the first black candidate to wind up as a finalist in a Boston Mayoral election campaign.
61. Vennochi, op.cit., p. 2.
62. Steve Curwood, "Flynn to Push Campaign Against City's Combat Zone," Boston Globe, November 23, 1984, p. 36.
63. Ibid.
64. David Farell, "Ray Flynn's War on the Combat Zone," Boston Globe, December 23, 1984, p. A21 (Focus section).
65. Curwood, op.cit., p. 36.
66. Ibid.
67. Ibid.
68. Ibid.
69. 600 Washington Street's value had tripled since 1981. In that year, Massachusetts developer Sidney Covich purchased the property for \$4 million dollars. As developer interest in the Combat Zone increased, so did its property values. See: Kaufman, op.cit., p. 1.
70. Kaufman, op.cit., p. 24.
71. Ibid.
72. Ibid.
73. Ibid.
74. Ibid.
75. Covenant House purchased the hotel in 1982 for \$600,000.

76. Kaufman, op.cit., p. 24.
77. Ibid.
78. Farrell, op.cit., p. A21 (Focus Section). No data is yet available to determine if the rate of 1984 Combat Zone land speculations continued on into 1985. However, there are indications that the Combat Zone's image is beginning to be transformed from a "commercial sex center" to a "commercial development center." See: "Trade Center Marks `Beginning of New Chinatown': \$12 million Project Symbolizes the Waning Hold of the Combat Zone," Boston Globe, January 12, 1986, p. 44.

PART II

ANALYZING THE COMBAT ZONE'S HISTORY

Introductory Note to Part II

In Part I, we saw how the BRA has been instrumental in the Combat Zone's creation, legitimation, and decline. The next topic of study is analyzing the BRA's actions during the time period described. The question is rather simple: Are there theories or models which can help explain the BRA's policies towards the Combat Zone and its predecessor Scollay Square?

As a student of both urban gentrification, and the constitutionality of urban public policy, the author offers two models for discussion. Chapter 4 analyzes the BRA's policies according to a model which categorizes the agency as an "agent in the gentrification process." Chapter 5 analyzes the BRA's policies according to a model which categorizes the agency as "a regulator of First Amendment rights."

The Gentrification Model:

The BRA as an Agent in the Gentrification Process

A. Introduction

Gentrification (1) has been the cornerstone of American city planning since the Post World War II era.(2) From the late 1940's to the late 1960's, the Federal government's urban renewal program provided city planning agencies with billions of dollars in federal aid and the power of eminent domain to condemn lower-class neighborhoods, raze the buildings, and re-sell the cleared land to private developers at a reduced price.(3) Urban renewal was intended to "stimulate large-scale private rebuilding, add new tax revenues to the dwindling coffers of the cities, revitalize their downtown areas, and halt the exodus of middle-class whites to the suburbs."(4) In the 1970's and 1980's, Federal programs such as the Urban Development Action Grant Program (UDAG) have provided city planning agencies with "public funds to attract real estate development and persuade private businesses to move into, remain in, and expand within the city."(5)

While there are sharp disagreements over the merits of gentrification and its impact on the poor, there is general agreement regarding the role city planning agencies have played in the process. As illustrated below, three noted

urban planners -- Chester Hartman, George Raymon and Herbert Gans, disagree over the propriety of gentrification - but all agree that city planning agencies have served as "agents in the gentrification process." (6) In their view, all city planning policy is motivated by a desire to further the gentrification process. Hence, they might analyze the BRA's actions towards Scollay Square and the Combat Zone in accordance with a model which focuses on the BRA's role in furthering Boston's gentrification process.

B. The Possible Analyses of Hartman, Raymond, and Gans

How might Hartman, Raymond and Gans describe the BRA's actions towards Scollay Square and the Combat Zone?

Hartman, as a Marxist and ardent opponent of gentrification, might view the BRA's actions as the furthering of elite interests. Hartman believes all city planning agencies work against lower class interests because "they are dominated by economic elites and assist the elites in their entrepreneurial activities by establishing groundrules, and providing the necessary supports and infrastructure to facilitate the functioning of the private market." (7) These "necessary supports" include "making municipal infrastructure improvements, taking land by eminent domain, furnishing central direction and guidelines, and providing the financial incentives to guarantee investments by private developers." (8) Hartman might thus categorize the BRA's razing of Scollay Square as a "land grab" intended to

facilitate Boston's gentrification process by sparking a private downtown office development boom.(9) He might label the BRA's legitimation and containment of the Combat Zone as a measure designed solely to protect property values in elite neighborhoods, not an innovative measure to regulate commercial sex establishments.(10) And lastly, he might view the BRA's Combat Zone gradual eviction plan as another "land grab" intended to provide the economic elite with another source of cheap real estate when other downtown properties become too expensive.(11)

Raymond, an ardent supporter of gentrification might take a diametrically opposite view.(12) First, he might argue that the BRA's actions did not hurt the lower classes because commercial sex establishments were the target of BRA policies. Second, he might argue that if the lower classes did suffer, their plight was a small price to pay for Boston's progress. He might view the razing of Scollay Square as one of the BRA's best decisions by arguing that the Government Center Project sparked a development boom which helped Boston collect more taxes, bring back the upper and middle classes, make better use of downtown land, stimulate private investments, and restore Boston's civic pride.(13) Likewise, Raymond might praise the BRA's legitimation and containment of the Combat Zone on the grounds that the policy prevented commercial sex establishments from spreading into the city's downtown area and inhibiting much needed real estate development.(14) Furthermore, he might argue that the BRA is justified in

getting rid of the Combat Zone because the area cannot be made "respectable" and is a "blighting influence" in the middle of the city's downtown development boom.(15)

If Hartman and Raymond made these analyses, they both would be distorting reality. Gans, on the other hand, might offer an analysis which might expose these distortions. First, Gans might dispute Hartman's contention that all city planning agency decisions are dominated by the economic elites. Although Gans believes that economic elites have a powerful input in the development of urban policy, he does not believe the elites are always united or that they always get what they want.(16) Gans might thus refer to the BRA's 1974 zoning scheme as a perfect example. He might argue that the plan split the elites, and was supported and opposed by a cross section of the Boston Community.(17) Further he might contend that the BRA failed to achieve its goals for "Liberty Tree Park" because of Combat Zone businesses owners' failure to renovate and the agency's naivete' about the problems at the Boston Police Department.(18)

Secondly, Gans might neither agree with Hartman that gentrification is always a bad thing(19) nor might he agree with Raymond that a city planner's sole responsibility should be to further the gentrification process.(20) In Gans view, the replacement of old neighborhoods by new buildings for business, institutional or higher value residential use is accepted as a proper function of the

government, but he condemns the failure of planning authorities to provide new low-income housing or adequate monetary compensation for those evicted.(21) In other words, Gans might support Raymond's contention that planning agencies should help gentrify cities, but he would take strong issue with Raymond's implicit view that the needs of the poor should be forgotten or sacrificed in the process. Hence, Gans might criticize the BRA for not have taken into account the needs of the poor when the agency decided to raze Scollay Square and later to transform the Combat Zone into a new center for downtown real estate development. He might contend that these plans solely guaranteed benefits for the middle and upper classes while providing none for the poor.

C. Conclusion

If Gans offered the above analysis, it would be the best of the possible gentrification explanations. Gans' analysis might both point out the weaknesses in Hartman's "conspiracy oriented" model(22) and expose the value laden nature of Raymond's allegedly value neutral "economic efficiency" model.(23)

The next chapter will explore how the BRA's gentrification activities make the agency a regulator of First Amendment Speech rights.

Footnotes

Chapter 4

1. "Gentrification" is the process of middle and upper class resettlement of the city. See: Deborah Auger, "The Politics of Revitalization in Gentrifying Neighborhoods: The Case of Boston's South End," 45 Journal of the American Planning Association 515 (1979)
2. Some would contend gentrification has always been the cornerstone of American city planning. According to M. Christine Boyer, city planners have always been "caught up in serving the capitalist system's need for an ordered and efficient setting for obtaining profits." See: Boyer, Dreaming the Rational City: The Myth of American City Planning, (Cambridge: MIT Press, 1983).
3. Herbert Gans, "The Failure of Urban Renewal: A Critique and Some Proposals," in Jewel Bellush and Murray Hausknecht, (editors), Urban Renewal: People, Politics, and Planning, (New York: Anchor Books, 1967), p. 465 (hereafter cited Gans in Bellush and Hausknecht, op.cit.)
4. Ibid. The displaced slum dwellers were supposed to be relocated in "decent, safe, and sanitary" housing but no more than 20% of the \$3 billion of federal urban renewal funds received by cities in the late 1950's and 1960's were earmarked for projects to improve the living accommodations of lower income families. See: Bellush and Hausknecht, op.cit., p. 373.
5. Peter Wolf, Land In America: Its Value, Use, and Control, (New York: Pantheon Press, 1981), p. 349. Boston's Copley Place Project is a case in point. The Developers of the \$500 million project, Urban Development Investment Corporation, received an \$18.8 million UDAG grant to build:
 - 2 luxury hotels with accommodations of almost 2000 rooms;
 - a commercial office building with 845,000 square feet of office space; and
 - a retail building to be occupied by the Neiman-Marcus Department Store Chain.See: Robert Guenther, "Two Projects in Central Boston Aim for High-Ticket Shoppers," Wall Street Journal, April 13, 1983, p. 29.

6. An "agent" is a force facilitating a certain result. See definition of "agent" in Webster's Third New International Dictionary (Unabridged) (Springfield, Mass.: G&C Merriam Company, 1961).
7. Chester Hartman, The Transformation of San Francisco, (New Jersey: Rowman and Allanheld Publishers, 1984), p. 320.

Hartman's conclusions are based on his study of San Francisco's gentrification process. Hartman contends that San Francisco's development history since World War II:

"has been overwhelmingly dominated by business interests, those in the position to reap the largest profits from the development. They have controlled and peopled the city's government at all levels. They have established their own planning and watchdog mechanisms and agencies, and funded others to ensure the kind of future they want." (Hartman, op.cit., p. 319).

Hartman contends that "what has happened in San Francisco can and should serve as a guide for analyzing the forces at work elsewhere." (Hartman, op.cit., p. 326).

8. Hartman, op.cit., p. 15.
9. As noted in Chapter 1, the goal of the BRA's government center project was to spark a private downtown office development boom.
10. He might contend that BRA saddled the working class Chinatown community with the Combat Zone, but spared the elites in the Back Bay and Beacon Hill.
11. To prove his point, Hartman might use San Francisco's Yerba Buena Project as an example. Yerba Buena is a multi-million dollar office development project that was built in a low income area because (in Hartman's view) property values there were lower than most other parts of the city's downtown.
12. Raymond believes that:

"cities deprived of their upper and middle classes, and thus composed of the poor, would inevitably entail a serious deterioration in

"the quality of our entire civilization, since it is the cities, not the suburbs, that have always carried and nurtured this precious, complex heritage."

See: George M. Raymond, "Urban Renewal: Controversy," in Bellush and Hausknecht, op.cit., p. 491. (hereafter cited Raymond, in Bellush and Hausknecht, op.cit.)

13. Gans, in Bellush and Hausknecht, op.cit., p. 469 commenting on city planners reflecting Raymond's attitudes. People like Raymond claim the poor are an economic drain on the nation's cities. He sympathizes for their plight but "will not sacrifice the city for them." (See: Raymond, in Bellush and Hausknecht, op.cit., p. 491). Furthermore, he believes in the "trickle down theory", namely the belief that good economic climates for the elites will result in increased benefits to the poor such as jobs and better housing.
14. See Chapter 2 where one of the BRA's reasons for containing the Combat Zone was to prevent its spread into the city's downtown.
15. Raymond might argue that it is inefficient to have unproductive land in the middle of development activity.
16. Evidence of Gans' belief that the elites do not control the system can be deduced from Gans' criticisms of the Federal Urban Renewal Program. While criticizing the Program for failing to cater to the needs of the Lower classes, Gans nevertheless recommended working within the establishment politico-socio-economic order to:

"transform (urban renewal) from a program of slum clearance and rehabilitation into a program of urban rehousing." See: Gans, in Bellush and Hausknecht, op.cit., p. 472.)
17. See Chapter 2 where the BRA's zoning proposal was supported and opposed by liberal and conservative politicians, members of the business establishments, and representatives from working class and elite neighborhoods.
18. As for the Combat Zone's decline, Gans might argue the area would have shrunk anyway because of the technological changes in adult entertainment and the growth of suburban commercial sex establishments.

19. Gans is a proponent of "economic integration." He has gone on record as praising mixed income housing developments. (See: Gans, in Bellush and Hausknecht, op.cit., p. 474 where Gans praises a New York housing program which "put low- and middle income people in the same middle-income project with the former getting the same apartments at smaller rentals.")
20. See Gans' response to Raymond in Gans, "Urban Renewal: Controversy," in Bellush and Hausknecht, op.cit., p. 497-504.
21. Matthew Edel commenting on city planners holding the views of Herbert Gans, in "Urban Renewal and Land Use Conflicts," 3 The Review of Radical Political Economics 76 (1971).
22. Hartman would deny his analysis is "conspiracy oriented." In his study on San Francisco's gentrification process, Hartman writes:

"although much of private sector planning and manipulation are done out of public view, it would be incorrect to describe the transformation of San Francisco as a larger-scale secret conspiracy. Rather, its an influence of powerful public and private sector actors operating in their class and personal interests..." (Hartman, op.cit., p. 319).

But in the same breath, Hartman says:

"as to be expected the golden rule often explains the outcome - those who have the gold get to make the rules. In an economic and political system which relies so centrally on private market forces to initiate investment and create economic activity, the large corporations and their plans appear as the only game in town: their decisions on whether and where to invest become the reference point. Their decisions create or destroy jobs and the city's tax base. The private investment community thus comes to be seen as performing functions in the public interest."

(Hartman, op.cit., p. 320)

23. Raymond would deny being insensitive to the needs of the poor; instead he would claim it is the critics of gentri-fication policy who are insensitive. He would claim that while the critics are well motivated, they nevertheless aid and abet slumlords who desire to keep the status quo. See Raymond, in Bellush and Hausknecht, op.cit., p. 489-490.

The Constitutional Law Model:

The BRA as a Regulator of First Amendment Speech Rights

A. Introduction

The BRA's gentrification policies involving the Combat Zone have also made the agency a regulator of First Amendment Speech rights. The agency, through its land use policies has controlled the "expression" of commercial sex establishments by determining where these establishments can operate in the city.(1) As discussed below, the United States Supreme Court, in two "adult-use zoning" cases, has sanctioned the implementation of land use controls by city planning agencies to regulate the expression of commercial sex establishments. While these cases did not consider the propriety of the BRA's actions towards the Combat Zone, they nevertheless established guidelines as to what city planning agencies can and cannot do to regulate the expression of commercial sex establishments. It is clear these guidelines support the constitutionality of the BRA's actions in creating and legitimizing the Combat Zone. However, these same guidelines may call into question the constitutionality of the BRA's present intent to gradually evict Combat Zone businesses through redevelopment activities on Lower Washington Street.

B. The Young Case

The Supreme Court first sanctioned the implementation of land use controls by city planning agencies to regulate the expression of commercial sex establishments, in the Court's landmark decision Young v. American Mini Theaters.⁽²⁾ In Young, the Court upheld the constitutionality of Detroit's attempts to use zoning regulations to control the growth of commercial sex businesses.⁽³⁾ The zoning ordinance had been challenged by American Mini-Theaters ("American Theaters"), a porno-graphic movie theater chain, on the grounds that the ordinance:

1. violated the 1st Amendment's free speech clause because it constituted a prior restraint on expression; and
2. violated the 14th Amendment's equal protection clause because it classified pornographic theaters differently from other theaters.⁽⁴⁾

The United States District Court for the Eastern District of Michigan dismissed American Theaters' action, holding that "the Detroit ordinance was a rational attempt to preserve the city's neighborhoods."⁽⁵⁾ The court reached this decision after "hearing testimony by urban planners and real estate experts who opined that locating several adult businesses in the same neighborhood tended to attract an undesirable quantity and quality of transients, adversely affected property values, caused an increase in crime, and encouraged residents and businesses to move elsewhere."⁽⁶⁾ The United States Court of Appeals for the Sixth Circuit

reversed the District Court's decision concluding that the ordinance was an unconstitutional prior restraint on expression.(7)

Detroit Officials appealed to the United States Supreme Court which reversed the Sixth Circuit's decision, by a close 5-4 vote.(8) In an opinion written by Justice John Paul Stevens:

"the court was not persuaded that the ordinance had any significant deterrent effect on the exhibition of films protected by the First Amendment's freedom of speech provision, and found that the city's interest in planning and regulating the use of property for commercial purposes was clearly adequate to support the kind of restrictions applicable to all theaters within the city limits."(9)

It was the first time that the Supreme Court sanctioned the notion that expression could be restrained before it was disseminated. Justice Stevens rationalized the Court's decision by contending that commercial expression, particularly the expression of commercial sex businesses, was not on the same level as political expression. In the Justice's view:

"Few of us would march our sons and daughters off to war to preserve the citizen's right to see 'Specified Sexual Activities' exhibited in the theaters of our choice."(10)

To Justice Stevens, the Detroit ordinance struck a balance between the needs of city officials "attempting to preserve the quality of urban life" and the needs of

individuals desiring to patronize sex establishments because the "ordinance did not restrict the showing of pornographic films, but only the concentration of the theaters which exhibited adult films."(11)

C. The Constitutionality of the BRA's actions

The Court in Young indicated in passing its approval of zoning schemes such as the BRA's containment of the Combat Zone when the Court ruled:

"It is not our function to appraise the wisdom of its [Detroit's] decision to require adult theaters to be separated rather than concentrated in the same area. In either event, the city's interest in attempting to preserve the quality of urban life is one that must be accorded high respect. Moreover, the city must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems."(12)

However, the Supreme Court made it clear in Young that municipalities could not use zoning controls to prohibit commercial sex businesses from operating in all parts of the city.(13) The Court reinforced this restriction on municipal power in a subsequent decision, Schad v. Borough of Mount Ephraim(14). In Schad, the Court declared a New Jersey township zoning ordinance unconstitutional because it banned all adult entertainment in the municipality.(15) Although the zoning ordinance did not expressly prohibit adult entertainment, it was clear upon implementation of the ordinance that adult entertainment was being suppressed.(16)

The Schad decision may mean that the BRA's present effort to gradually eradicate the Combat Zone from Lower Washington Street is unconstitutional. As discussed in Chapter 3, the BRA's policy since 1977 has been to encourage downtown real estate interests to develop in an around the Combat Zone in order to drive out the area's sex businesses. Under this policy, sex businesses forced out of the Combat Zone cannot relocate to other parts of the city because the 1974 zoning ordinance only allows such businesses to operate in Lower Washington Street -- the area from which the businesses were evicted. Hence, it could be argued that the BRA's policy is unconstitutional because:

1. the policy is designed to eventually exclude all adult businesses from the city; and
2. the policy has transformed the 1974 zoning ordinance into a measure which furthers the exclusion process.(17)

There are two possible defenses the BRA could offer to this constitutional attack.(18) The first is lack of state action. Here, the agency could claim that the Combat Zone's decline was not fostered by governmental action but by economic pressures brought on by downtown development, and changes in adult entertainment patterns. However, such a defense would be inadequate. Courts have ruled that:

"a tolerance of economic burden is appropriate in judging a zoning ordinance that has no impact on protected speech. But when a claim of suppression is raised, an exclusive focus on economic impact is improper."(19)

Not only would an economic defense be improper, but it would also be disingenious. It is well established that the BRA exerts a strong influence over Boston's downtown development projects.(20) As for the changes in adult entertainment, most of the adverse effects have been on pornographic movie theaters and, to a lesser degree, on other forms of adult entertainment.(21) Furthermore, regardless of the economic pressures, there is ample documented proof that the BRA has been supportive of expanding downtown development into the Combat Zone.(22)

Another defense the BRA could offer is that its policy will not exclude sex businesses from Boston because not all sex establishments would be driven out by the redevelopment process. Under this theory, several Combat Zone businesses would remain because they would have enough financial resources to compete against developers for Combat Zone property.(23) Such a defense would also be inadequate because it ignores the fact that the gradual eviction policy would effectively eradicate a majority of the Combat Zone's sex businesses. In other words, the fact that the redevelopment process does not eliminate all sex businesses from the Combat Zone does not relieve the BRA of its constitutional obligations not to promote a zoning scheme that results in significantly suppressing adult entertainment.

D. Conclusion

The BRA's present policy whether constitutional or not raises several important questions: Should the policy continue? What will happen if the policy is declared unconstitutional? And, if the policy should be abandoned, what should be in its place? These questions are the topic of study in the next chapter.

Footnotes

Chapter 5

1. See BRA's Chapter 1 where the BRA's razing of Scollay Square was designed to get rid of the area's sex businesses; see Chapter 2 where the BRA's enactment of the 1974 zoning ordinance was designed to contain the sex trade on Lower Washington Street and prohibit it from operating in other parts of the city; and see Chapter 3 where the BRA's gradual eviction plan was designed to slowly eradicate the Combat Zone's sex trade and prohibit its relocation to other parts of the city.
2. 427 U.S. 50, 96 S. Ct. 2440 (1976).
3. Chapter 2 describes how Detroit was the first city in the nation to use zoning laws to regulate commercial sex businesses.
4. Frank Schnidman, "Legal Notes--Young v. American Mini-Theaters," Urban Land, November 1976, p. 23. American Theaters had owned two pornographic movie theaters within 1000 feet of one another, but after the zoning ordinance was enacted Detroit forced one of the theaters to shut down. Under the zoning ordinance a sex business could not be located within 1000 feet of another sex business, nor could such establishments be located within 500 feet of a residential area.
5. Schnidman, op.cit., p. 23. The court's decision was recorded in American Mini-Theaters v. Gribbs, 373 F. Supp. 363 (1974). The court in Gribbs found that the ordinance had a substantial relation to protecting the public health, safety, morals, and general welfare of Detroit's citizens.
6. James F. Henry and Thomas R. Schutt, "Adult Use Zoning: How Far Can a Municipality Go?," 171 Illinois Bar Journal 158, 159 (1982).
7. Schnidman, op.cit., p. 23.
8. see note 2.
9. Schnidman, op.cit., p. 23.
10. Stevens, J., 427 U.S. 50, 70, 96 S. Ct. 2440 (1976).

11. Schnidman, op.cit., p. 23.
12. Ibid. As for Scollay Square, the Supreme Court ruled eight years before the area's razing that city planning agencies could condemn private property by eminent domain and subsequently redevelop the property by either building new government structures or disposing of the property by sale or lease to private enterprise in accordance with a renewal plan. See: Berman v. Parker, 348 U.S. 26 (1954). The Berman case, decided 22 years before Young, made no mention of First Amendment implications but rather, provided the support for the BRA's plans to get rid of Scollay Square's sex trade.
13. In an important footnote to the Young decision, Justice Stevens indicated that "the situation would be quite different if the [Detroit] ordinance had suppressed or greatly restricted access to lawful speech." See: Daniel R. Mandelker, Land Use Law, (Charlottesville, VA: Michie Company, 1982), p. 128. This is because the expression of commercial sex businesses is presumed protected by the First Amendment unless adjudicated obscene.
14. 452 U.S. 61, 101 S.Ct 2176 (1981).
15. Arden H. Rathkopf, The Law of Zoning and Planning (4th Edition), (New York: Clark Boardman Ltd., 1983), p. 17 B-16.
16. Ibid. As explained in the text, Mount Ephraim's zoning ordinance did not specifically say "all adult uses are hereby banned in this township." Instead, the ordinance read that "adult uses could not operate in zoning area A nor in B nor C, etc." which effectively prohibited adult entertainment from operating anywhere in the township.
17. Several federal courts have already struck down adult use concentration zoning ordinances which have effectively excluded sex businesses from the municipality or have limited sex businesses to undesirable and commercially unsuitable areas of the municipality. In these cases, the courts have reached their decisions after thoroughly reviewing the impact of the ordinance on the opportunities for sex businesses within the community. See: Mandelker, op.cit., p. 127. Listed below are the cases in which concentration ordinances have been declared unconstitutional:

- (1) Keego Harbor Co. v. City of Keego Harbor, 657 F. 2d 94 (6th Cir. 1981)
 - (2) CLR Corp. v. Henline, 520 F. Supp. 760 (W.D. Mich. 1981)
 - (3) Purple Onion, Inc. v. Jackson, 511 F. Supp. 1207 (N.D. G.A 1981)
 - (4) Ellwest Stero Theaters, Inc. of Texas v. Byrd, 472 F. Supp. 702 (N.D. Tex. 1979)
 - (5) Bayside Enterprises, Inc. v. Carson, 450 F. Supp. 646 (M.D. Fla. 1978).
 - (6) Basiardanes v. City of Galveston 682 F.2d 1203 (5th Cir. 1982)
18. Speculation over the constitutionality of the BRA's policy has caused agency officials to make public statements where they claim they are cognisant of the constitutional rights of Combat Zone sex business owners. See: Jonathan Kaufman, "Real Estate Development Boom Threatens 'Adult Entertainment'," Boston Globe, December 27, 1984, p. 24.
 19. Basiardanes v. City of Galveston, 682 F.2d 1203, 1214 (5 cir. 1982).
 20. The BRA's influence over development policy could not be more evident than in Mayor Flynn's and BRA Director Coyle's negotiations with representatives from Swiss-Air involving the proposed construction of the Lafayette Place Hotel. (See Chapter 3)
 21. See the comments of Al Goldstein in note 51, Chapter 3.
 22. See part B of Chapter 3.
 23. See statements of William Condo, BRA official in charge of Combat Zone redevelopment in Kaufman, op.cit., p. 24. Regina Quinlan, a lawyer for several Combat Zone businesses is also of the opinion that not all of Boston's sex businesses will leave the Combat Zone. See: Kaufman, op.cit., p. 24. As explained in the text both Condo and Quinlan neglect to deal with the issue that even if several sex businesses do remain, the BRA will have still succeeded in ridding the city of a majority of them.

PART III

LESSONS LEARNED FROM THE COMBAT ZONE'S HISTORY
AND RECOMMENDATIONS FOR THE FUTURE

Should the BRA's Present Policies Continue?

A. The Legal and Equitable Arguments Against the BRA's Present Efforts

It is the author's opinion that the BRA's Combat Zone gradual eviction plan should be halted for a number of reasons.

1. The Possible Illegality of the BRA's gradual eviction policy and its consequences.

First, as discussed in Chapter 5, the BRA's plan may be unconstitutional.(1) If a court holds that the plan is unconstitutional, the 1974 zoning ordinance will be null and void.(2) The BRA would then be forced to make some tough policy decisions as to how Boston's sex trade should be regulated. The agency could allow sex businesses to open up all over the city or it could decide to create a ther adult entertainment district. Given the agency's historic hostility towards the dispersal of sex businesses, the agency would likely opt for another concentration zoning scheme. The question that arises is where will the agency put this new district?

"The zoning process is a distributive process in which benefits are conferred on some and denied to others. Because zoning decisions are not neutral in their consequences, politicians must take responsibility for the

"patterns of benefits and costs which result from particular zoning policies. Technical expertise and planning principles cannot be regarded as sufficient grounds on which to base inherently distributive policies."(3)

Furthermore, if the BRA enacts a new district, the locational restrictions cannot be so severe as to significantly reduce, or possibly eliminate altogether, public access to sex businesses.(4) The BRA must also be sensitive to lessons learned from the Combat Zone's experience, namely that Police practices must be monitored, and a rational and realistic prostitution policy must be adopted. If the BRA decides to create another adult entertainment district or decides to change its present policy by keeping the Combat Zone, the agency should seriously consider legalizing "indoor" prostitution but continue to outlaw street prostitution. The Combat Zone's history clearly illustrates how prostitution has always been and will continue to be a major component of Boston's commercial sex trade. The history also illustrates how unregulated street prostitution has been the source of many street crimes while indoor prostitution carried on in Comabt Zone houses of prostitution, strip bars and night clubs has posed less of a problem. Legal scholar Barbara Milman has noted that people tend to be more affronted by street prostitution than they are by indoor prostitution. According to Milman, indoor prostitution is seen as being a "private activity", out of the view of disinterested individuals while street prostitution is seen as a "public nuisance" infringing upon

the disinterested individual's right not to be exposed to such an activity.(5)

This "private-public" distinction about prostitution is a good one because street prostitution does impinge on the rights of disinterested individuals. There is no reason why street prostitution should be tolerated when prostitution can be carried on in private indoors. Furthermore, street prostitution is the only component of the commercial sex trade which is carried on outdoors. The activities of pornographic movie theaters and peep shows, adult bookstores, houses of prostitution, and strip bars are all carried on indoors away from public view. Given its public nuisance aspects, there is no reason why street prostitution should be accorded special treatment.

2. The Inequitable Nature of the BRA's Gradual Eviction Policy

Even if the BRA's present efforts are constitutional, they should be discontinued nevertheless, because they are not equitable. Despite the problems of the Combat Zone,

"Lower Washington Street is one of the few parts of the city which is still open to all. The rest of the downtown is increasingly becoming off limits to people who are not affluent, and not white, and are not middle class."(6)

As Gans has often stated, city planning should be a mechanism for the spreading of benefits to a cross section of the community.(7) City planners should renew urban areas

to attract the upper classes but they should also improve the living conditions of the poor in the process. Transforming the Combat Zone from a commercial sex center into a commercial office development center may make the development community happy and fatten the City's tax coffers, but will do nothing for the City's poor.(8) As one commentator recently put it:

"If you get rid of the Combat Zone, you'd probably create another 'Yuppie' enclave. Do we really need more of these?"(9)

The answer is no.

B. Summary and Recommendations

The argument against the BRA's gradual eviction policy should neither be construed as a condemnation of all the BRA's previous policies nor as a whole hearted defense of the Combat Zone's sex trade. The BRA deserves credit for being instrumental in getting the 1974 zoning ordinance enacted. The agency realized the impracticalities of obscenity regulation and came up with a zoning solution which satisfied patrons of sex establishments and individuals opposed to such businesses operating in their neighborhoods. The agency was naive about the realities of Police enforcement but the actions of Combat Zone businesses has left much to be desired. Since the enactment of the 1974 zoning ordinance, these businesses have not really helped to improve their public standing. If anything, they have given

the public more reasons to eliminate the Combat Zone. The businesses have reneged on Combat Zone renovation plans; they have been as much to blame as the Police for fostering an "Anything Goes in the Combat Zone" attitude; and they have repeatedly antagonized Chinatown residents by conducting street prostitution in that community.

Chinatown residents have all the right in the world to be angry about the Combat Zone's existence and can hardly be blamed for wanting the area eliminated. But as discussed above, eliminating the Combat Zone has legal and politico-socio-economic consequences which can make matters worse than they already are. However, this does not mean that Chinatown residents should be forced to continue to endure all the spill over crime from the Combat Zone. Hence, the author recommends that the BRA should:

1. halt its present Combat Zone gradual eviction policy;
2. keep the Combat Zone; and
3. work closely with the Boston Police Department in making the Combat Zone a safe neighborhood by
 - a. strictly enforcing criminal laws; and
 - b. decreasing the public nuisance aspects of Combat Zone prostitution by legalizing indoor prostitution activity, but vigorously prosecuting all street prostitution in an outside the Combat Zone. This includes jailing pimps, as well as prostitutes and their customers. (10)

The Combat Zone, if well-patrolled, would not only prevent the area's activities from spilling into Chinatown, but would also make the Combat Zone "as safe as adult entertainment districts in European cities such as Copenhagen, Stockholm, and Amsterdam."(11)

Footnotes

Chapter 6

1. A constitutional challenge to the plan will likely come when a significant number of sex businesses have been evicted from the Combat Zone.
2. This is because the ordinance was used to further the exclusion process.
3. Stuart P. Proudfoot, "Private Gains and Public Losses: The Distributive Impact of Urban Zoning," 11 Policy Sciences 203 (1979).
4. Arden H. Rathkopf, The Law of Zoning and Planning (4th Ed.), (New York: Clark Boardman Company, Ltd., 1983), p. 17B-18.
5. Barbara Milman, "New Rules for the Oldest Profession: Should We Change Our Prostitution Laws?," 3 Harvard Women's Law Journal 1, 59 (1980).
6. Boston Globe, December 28, 1984, p. 14.
7. See Chapter 4.
8. The housing problems of the poor are well documented. The poor need housing and they will not find it in a downtown skyscraper or office building.
9. Comments of William Condo, BRA official in charge of Combat Zone development as quoted in Boston Globe, December 28, 1984, p. 14. Condo's comments are interesting given the fact that the BRA has been on a eight year crusade to transform the Combat Zone into a 'yuppie' enclave.
10. According to legal scholar Barbara Milman:

"Properly designed and properly enforced, a zone might control the public nuisance aspect of prostitution most effectively. Customers and prostitutes would know where to go to find each other, those who are offended by visible prostitution would know where not to go."
See: Milman, op.cit., p. 59.
11. Milman, op.cit., p. 59, commenting on the need for a strong law enforcement presence in adult entertainment districts.

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