

REHABILITATION AND CONSERVATION*

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I

URBAN GROWTH AND BLIGHT

Urban blight has emerged with increasing clarity as one of the less agreeable consequences of urban growth and change. It is presently one of the most serious problems facing American cities. Since the First Decennial Census in 1790, the proportion of urban population has increased from five per cent of the total to sixty-four per cent in the 1950 Census, and final 1960 Census figures will probably show a still higher proportion. The rapid growth of large cities has been characteristic; and, during the last three decades, the growth has been even more rapid in the suburbs and unincorporated fringes. Because city boundaries have changed little and areas for development within them have mostly disappeared, new developments have generally been beyond these boundaries. According to the preliminary 1960 Census figures, the suburban population has jumped almost fifty per cent in the last decade.

Concentrated urban living has focused attention upon the physical deterioration of cities, particularly central portions, and the social and economic conditions of slum and blighted areas. In 1956 slightly less than twenty-four per cent of all the dwelling units in the nation were found to be either dilapidated or deficient in plumbing. This represents a numerical total of 12.6 million dwelling units. Only seventy-six per cent of all occupied dwelling units in the nation in 1956 were in good condition and provided bath, private toilet, and hot running water.¹

The clearance and prevention of slums and blight are primarily local problems which require local solutions varying in detail from place to place. It is only because of the vast accumulation of blight and the limitations of available local resources that the problem has attracted national attention and demanded federal participation. The federal government's role has been to furnish necessary financial assistance to those cities meeting the objectives set up by the Congress.

Legislation primarily intended to assist American communities in coping directly with local problems of urban blight was first enacted in the Housing Act of 1949.² After more than ten years of operation under the federal statute, with its subsequent amendments—particularly the major amendments in the Housing Act of 1954³—

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¹ 3 U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, 1956 NATIONAL HOUSING INVENTORY, CHARACTERISTICS OF THE 1956 INVENTORY, UNITED STATES AND REGIONS, pt. 1, at 16, 17 (1959).

² 63 Stat. 413 (1949), 42 U.S.C. §§ 1441-63 (1958).

³ 68 Stat. 622, 42 U.S.C. § 1451 (1958).

thirty-eight urban renewal projects had been completed in thirty communities; there were 431 urban renewal projects with contracts authorized in 274 locations; and 328 additional projects were in the planning stage in 256 communities. In round figures, in connection with these activities, 65,000 parcels of real estate had been acquired by local public agencies, aggregating 7,750 acres of land; 103,000 families had been relocated from urban renewal areas into standard housing units; 117,000 dwelling units in 60,000 structures had been demolished; and 2,400 acres of land had been disposed of by the local agencies. In financial terms: \$1,402 million of urban renewal grant funds had been reserved for projects; \$935 million had been formally committed through federal grant contracts with local public agencies; \$1,359 million for planning advances and definitive and temporary loans had been committed; and \$309 million had been disbursed for urban renewal, relocation, and demonstration grants.

An increasing number of projects include rehabilitation as one of the methods used to deal with the problems of slum and blight. At the close of 1959, grant reservations had been approved for 120 projects involving rehabilitation, of which eighty-one are in the planning stage and thirty-nine are under federal grant contract. These projects, in total, embrace some 28,500 acres, three-fifths of which will be rehabilitated. Only about one-third of the nearly 231,000 dwelling units in these projects are scheduled for clearance.

II

URBAN RENEWAL BY REHABILITATION

Urban renewal under the federal statute⁴ contemplates a broad and inclusive series of actions for the elimination and prevention of slums and blight within appropriately selected areas. An urban renewal project may involve separately slum clearance and redevelopment, or rehabilitation and conservation, or a combination of such undertakings. The federal statute defines an urban renewal area to mean a slum area or a blighted, deteriorated, or deteriorating area approved as appropriate for an urban renewal project,⁵ but does not distinguish between rehabilitation and conservation. The terms are used interchangeably—distinctions between rehabilitation and conservation sometimes made by some writers relate to differences in degree. For purposes of this discussion, conservation and rehabilitation are regarded as synonymous under the federal statute.

Broadly, urban renewal by rehabilitation seeks to eliminate environmental and structural deficiencies which, if not adequately and timely dealt with, will create within the area such degree of blight that the only alternative is clearance and redevelopment. Generally, environmental deficiencies include poor land utilization, incompatible land uses, lack of adequate public facilities, and unsafe, congested street patterns and traffic hazards. Structural deficiencies may run the gamut from such unsafe and insanitary conditions as require demolition of some buildings to lesser

⁴ 63 Stat. 413 (1949), 42 U.S.C. § 1441 (1958).

⁵ 63 Stat. 380 (1949), 42 U.S.C. § 1460(a) (1958).

deficiencies correctable by improvement and repair. Accordingly, rehabilitation of an area may include some demolition and clearance, whereas if all or most of the structures were cleared the undertaking would not be characterized as a "rehabilitation" project.

As related to structures, rehabilitation can include all of the traditional elements of building alterations and additions, as well as repairs, maintenance, and other improvements. Annual expenditures for non-farm home improvements and care alone attest that rehabilitation is big business—although not as yet established as an identifiable component of the construction industry. In 1959, estimated over-all expenditures of \$11.235 billion were made for non-farm home improvements—\$4.435 billion for additions and alterations and \$6.800 billion for maintenance and repairs.⁶

The rehabilitation process of urban renewal involves the exercise of traditional powers of state and local governments, *in concert* with private actions, in a manner *planned* to eliminate or prevent deterioration of the urban renewal area. The protection of the public health, safety, and welfare; the prudent management of municipal services; and the balancing of those services with constantly increasing tax demands are not new. Neither is the common-sense principle of protecting public and private investment. These underlie every action and component of *planned rehabilitation*. However, there is now a significant, increased emphasis on *planned rehabilitation*. Implicit in this concept are: (1) *planned rehabilitation* actions by public bodies and agencies specifically empowered to act for this purpose under state and local law; (2) the focusing of special efforts in specifically designated geographical project areas within the jurisdiction of these public bodies; and (3) the organized and concerted application and execution of both public and private actions required under approved urban renewal plans.

III

REHABILITATION LEGISLATION IN URBAN RENEWAL PROGRAM

A. Federal Legislation

Rehabilitation was not authorized as part of the federal urban renewal program until the enactment of the Housing Act of 1954. Prior to 1954, the Housing Act of 1949 authorized only slum clearance and urban redevelopment. In the transition from slum clearance and redevelopment to urban renewal and planned rehabilitation, the original provisions for federal financial assistance were not changed. Three types of financial assistance are authorized: (1) advances—to enable local public agencies to prepare project surveys and plans; (2) loans—to finance the local public agencies' costs of project planning, assembly, clearance, and preparation of project land for disposition for uses in accordance with the approved redevelopment plan; and (3) capital grants—payable to local public agencies to help finance the difference between (a) the cost of project undertakings and (b) the proceeds from disposition of project

⁶ See appendix to this article.

land. In connection with urban renewal projects, as with respect to slum clearance and redevelopment projects, the federal grant may not exceed two-thirds of net project costs and the remaining one-third is required to be provided locally by way of cash, land, necessary site work or improvements, or supporting facilities.⁷ (Under an alternative formula the federal share is three-fourths of the net cost of the project, with the net project cost computed on a basis which eliminates certain administrative, legal, survey, and planning expenses from the project cost.)

Federal financial assistance continues to be subject to the following requirements: an advisory public hearing; the approval of the redevelopment plan; a showing that the redevelopment plan conforms to a general plan for the locality as a whole; a showing that maximum opportunity was afforded for redevelopment by private enterprise; and a feasible relocation plan to assure the relocation of families displaced from the project area.

The compelling need for a more comprehensive attack on the problems of urban slums and blight was clearly identified and the urban renewal and planned rehabilitation concepts were developed by the President's Advisory Committee on Government Housing Policies and Programs of 1953.⁸ In its report submitted in December 1953, the President's Committee found slums were growing faster than they were being cleared—and hence the slum clearance and redevelopment program under the 1949 Act, while useful, was not adequate for the prevention and elimination of slums. In its deliberations the Committee recognized that the heart of an urban renewal effort must be rehabilitation—unless the nation is prepared not only to give up its gigantic investment in a large portion of its existing structures, but also to step up its outlays for clearance and redevelopment to a level that staggers the imagination.

In its Report, the President's Committee recommended that,⁹

The Program of Federal loans and grants established by title I of the Housing Act of 1949 should be broadened. It should provide assistance to communities for rehabilitation and conservation of areas worth saving as well as for the clearance and redevelopment of wornout areas. It should make Federal loans and grants available for well-planned neighborhood projects at any stage of the urban renewal process provided they will clear blight and establish sound healthy neighborhoods.

The recommendation of the Committee was supported by the Economic Report of the President submitted to the Congress on January 28, 1954, which stated:¹⁰

A successful fight against blight can be waged in these cities only if it is planned and carried forward on a basis sufficiently broad to improve the character of a whole neighborhood. This calls for determined action at the local level in the planning and administration of broad and soundly conceived programs of neighborhood rehabilitation. In some cases, urban blight can be corrected only by the total clearance of an area and its sub-

⁷ 68 Stat. 622, 42 U.S.C. § 1451 (1958).

⁸ PRESIDENT'S ADVISORY COMM. ON GOVERNMENT HOUSING AND PROGRAMS, RECOMMENDATIONS (1953).

⁹ *Id.* at 5.

¹⁰ ECONOMIC REPORT OF THE PRESIDENT 86 (1954).

sequent redevelopment; more frequently, however, the need is for selective demolition and rehabilitation, thus conserving and renewing what is still useful in older neighborhoods.

The recommendations of the President's Committee were promptly developed by the Housing Agency and translated into legislative recommendations for the 1954 session of the Congress. After extensive hearings, the Congress enacted the Housing Act of 1954, which was approved by the President on August 2, 1954.¹¹

As indicated above, the 1954 urban renewal amendments of interest to this discussion preserved the basic form of federal financial assistance and the federal-local relationships established under the original slum clearance and redevelopment program. However, the Workable Program requirement and the program for the rehabilitation and conservation of blighted areas were new.

The Workable Program requirement, which is treated separately in this symposium,¹² further implements the National Housing Policy established in the Housing Act of 1949. It is a development beyond the original requirement that the Housing Administrator, in extending financial assistance for urban renewal, give consideration to the extent to which local public bodies have undertaken positive programs for the encouragement of housing cost reductions and for preventing the spread or recurrence of slums and blight through the adoption, improvement, and modernization of local codes and regulations relating to land use and adequate standards of health, sanitation, and safety for dwelling accommodations.

The 1954 amendments also included new FHA programs important to the urban renewal objectives. A new section 220 of the National Housing Act authorized mortgage insurance for the rehabilitation of existing dwellings or the construction of new housing in urban renewal areas.¹³ A new section 221 of the National Housing Act authorized special FHA mortgage insurance for new construction or rehabilitated housing anywhere in the community to assist in relocating families displaced as a result of urban renewal and other governmental actions.¹⁴

B. State Legislation

The enactment of state and local slum clearance and urban renewal legislation largely has been in anticipation of, or responsive to, the development of the federal

¹¹ 68 Stat. 622, 42 U.S.C. § 1451 (1958). Housing Administrator Norman P. Mason, in his testimony in *Hearings Before a Subcommittee of the Senate Committee on Banking and Currency on Housing Legislation of 1960*, 86th Cong., 2d Sess. 950 (1960), reiterated the underlying principle of planned rehabilitation when he testified:

"It is sheer folly to permit good neighborhoods to deteriorate to the point where they need extensive rehabilitation or clearance. Even the wealthiest nation in the world cannot afford to tear down and rebuild all its urban property which is affected by spreading blight. For urban renewal to succeed, we must emphasize the rehabilitation of areas which it is still economically feasible to save and the conservation of areas which are threatened with blight."

¹² See article by Rhyne, *The Workable Program—A Challenge of Community Improvement*, elsewhere in this symposium.

¹³ 68 Stat. 596 (1954), 12 U.S.C. § 1715k (1958).

¹⁴ 68 Stat. 599 (1954), 12 U.S.C. § 1715l (1958).

aid programs.¹⁵ As in the case of the federal legislation, the related enabling legislation in the various states originally authorized only slum clearance and redevelopment as distinguished from the broad urban renewal program. With respect to the initial federal program of slum clearance and redevelopment under the Housing Act of 1949, thirty-two states, along with the District of Columbia, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, had enacted enabling legislation by the end of 1953.

Following the passage of the 1954 urban renewal amendments to the federal statute, twenty-eight states, the District of Columbia, Puerto Rico, and the Virgin Islands amended or supplemented their earlier slum clearance and redevelopment statutes to authorize participation in the new urban renewal program. Also, some eleven states enacted legislation for the first time, including powers for both slum clearance and the broader urban renewal activities. As of January 1960, only the states of Idaho, Utah, Wyoming, and the territory of Guam had not enacted legislation for either slum clearance and redevelopment or urban renewal.

Generally, state statutes conferring urban renewal powers include those powers theretofore authorized to be exercised in connection with slum clearance and redevelopment. In addition to the power of eminent domain and the taxing power, the police power is brought into play. Also continued is the earlier pattern either of qualifying the city itself or the local housing authority, or else permitting the establishment of a specially created public body to carry out the broader urban renewal activities. Some of the more recent statutes also expressly provide for the adoption of workable programs in line with the requirements of the federal statute.¹⁶ The policy of maximum opportunity for participation by private enterprise continues to be emphasized and encouraged.¹⁷

As already stated, enabling statutes have been adopted in all jurisdictions, except three states and the territory of Guam, for the purpose of accomplishing the broad objectives of the urban renewal program. Aside from the broadly delegated police

¹⁵ Not included within this reference are the earlier state statutes relating to slum clearance coupled with low-rent public housing, or to state or municipal or private urban redevelopment. Also, it should be noted that some local slum clearance and redevelopment programs without Federal aid were initiated before the enactment of the Housing Act of 1949. See *People ex rel. Tuohy v. City of Chicago*, 394 Ill. 477, 68 N.E.2d 761 (1946); *People ex rel. Tuohy v. City of Chicago*, 399 Ill. 551, 78 N.E.2d 285 (1948); and *Belovsky v. Redevelopment Authority of Philadelphia*, 357 Pa. 329, 54 A.2d 277 (1947), which upheld such programs in Illinois and Pennsylvania.

Express constitutional provisions relating to slum clearance and urban redevelopment have been adopted in California, Georgia, Maryland, Missouri, New Jersey, New York, and Rhode Island. Of these, the provisions in Maryland, Missouri, New Jersey, and New York were adopted prior to the enactment of the Housing Act of 1949.

In Ohio it has been held that urban redevelopment is a proper function of municipal government which municipalities are authorized to undertake by the home rule provisions of the State Constitution. OHIO CONST. art. XVIII, § 3 (1912). See *State v. Rich*, 159 Ohio St. 13, 110 N.E.2d 778 (1953).

For a much fuller treatment of the history of state urban redevelopment legislation see Hill, *Recent Slum Clearance and Urban Redevelopment Laws*, 9 WASH. & LEE L. REV. 173 (1952).

¹⁶ See, e.g., ME. REV. STAT. ANN. ch. 90-B, § 4 (1959 Cum. Supp.); MO. REV. STAT. § 99.320(23) (1959 Cum. Supp.); MONT. REV. CODES ANN. tit. 11, ch. 39, § 11-3904 (1959 Cum. Supp.).

¹⁷ See, e.g., KAN. GEN. STAT. ANN. § 17-4744 (1955 Supp.); ME. REV. STAT. ch. 90-B, § 15 (1959 Cum. Supp.); MONT. REV. CODES ANN., tit. 11, ch. 39, § 11-3903 (1959 Cum. Supp.).

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powers for the adoption of local laws to aid in protecting the public health, safety, and welfare, some states have adopted additional statutes which are particularly important to the rehabilitation phase of urban renewal. These statutes, in general, expressly authorize municipalities to adopt measures requiring the repair, closing, or demolition of dwellings unfit for human habitation.¹⁸

IV

THE COURTS AND URBAN RENEWAL

The constitutionality of planned rehabilitation rests, for the most part, on the large body of decisions which have sustained slum clearance and redevelopment. Those decisions and the well-established and increasing recognition of the police power in the fields of land use and building restrictions will support (when appropriately authorized and executed) those activities generally regarded as essential to achieve the rehabilitation objectives of urban renewal.

That the courts have played a major supporting role in the efforts to renew our cities is witnessed by the decisions of the Supreme Court of the United States and of the highest courts of twenty-nine states, the District of Columbia, and Puerto Rico sustaining local slum clearance and redevelopment legislation and project activities against a variety of constitutional and procedural attacks. Three state supreme courts struck down local slum clearance and redevelopment statutes as unconstitutional—Georgia, Florida, and South Carolina.¹⁹ Of these initial thirty-two decisions, twenty-seven were handed down after the passage of the Housing Act of 1949. Since the beginning of the urban renewal program in 1949, there have been over 200 cases filed in thirty-four jurisdictions with respect to urban renewal projects and undertakings, exclusive of routine condemnation cases. Of these, fifty-five were dismissed in the trial court without a ruling on the merits; twenty-five were disposed of in either the trial court or on intermediate appeal, on the merits of the case; and ninety-four have been disposed of by either the state court of last resort or a federal court. The majority of these ninety-four cases involve questions of the constitutionality of the enabling acts; others challenge the proceedings and findings of the administrative bodies; and some involve such issues as discrimination in the relocation of occupants.

Litigation affecting the validity of slum clearance and redevelopment has reached the courts in various ways. The cases have arisen not only in connection with em-

¹⁸ See, e.g., IND. STAT. ANN. tit. 35, ch. 27, § 35-2701 (1949); N.C. GEN. STAT. ch. 160, art. 15, § 160-182 (1952); and WASH. REV. CODE tit. 35, ch. 35.80, § 35.80.010 (1959).

¹⁹ See *Housing Authority of City of Atlanta v. Johnson*, 209 Ga. 560, 74 S.E.2d 891 (1953); *Adams v. Housing Authority of City of Daytona Beach*, 60 So.2d 663 (Fla. 1952); *Edens v. City of Columbia*, 228 S.C. 563, 91 S.E.2d 280 (1956). However, in *Grubstein v. Urban Renewal Agency of the City of Tampa*, 115 So.2d 745 (Fla. 1959), the Supreme Court of Florida sustained the constitutionality of the Tampa urban renewal law as it applied to a project involving redevelopment of a slum (as distinguished from blighted) area. The court distinguished the *Adams* case in which it had held unconstitutional an earlier state-wide statute providing for clearance and redevelopment of blighted areas. The *Johnson* case in Georgia is no longer effective because of a constitutional amendment and new legislation, which were sustained in *Bailey v. Housing Authority of the City of Bainbridge*, 214 Ga. 790, 107 S.E.2d 812 (1959).

inent domain proceedings, but also in suits brought by property owners challenging the validity of administrative proceedings and findings prior to initiating land acquisition. Many of these cases arose in the form of a petition for injunctive relief to prevent the local public body or official from pursuing further urban renewal activities. The chief issue which has been litigated in all jurisdictions is whether a public use or purpose exists to justify the use of eminent domain and the expenditure of public funds.²⁰ As evidenced by the overwhelming weight of decisions upholding slum clearance and redevelopment, the courts have almost uniformly held that a public use or purpose constitutionally exists for such activities.

Although most courts uphold slum clearance as a public use or purpose, certain other factors have influenced the scope of decisions in this field. The future re-use of the project area has been considered relevant by some courts in determining whether a public use exists, especially when plans call for commercial re-use of an area.²¹ In an overwhelming majority of the cases the courts have sustained the acquisition of property for redevelopment purposes if the area involved qualifies as substandard under the applicable statutory definition.²² A few cases, however, attempt to distinguish (on the basis of the degree of deterioration and obsolescence) as to what kinds of areas may be taken over and cleared for redevelopment. One of the cases (Delaware) contains a dictum questioning that no public use is involved in the acquisition of a blighted (as distinguished from slum) area as defined in the state redevelopment act.²³ Although the taking of some vacant land has been justified on the ground that such acquisition was necessary to assure the proper redevelopment of the blighted area as a whole, the question whether vacant land as a general matter constitutes an appropriate subject for redevelopment has been raised in only a few decisions. However, there have been at least four state court decisions sustaining the use of eminent domain in connection with the redevelopment of predominantly vacant lands where there is some element of blight.²⁴ The

²⁰ Courts generally do not differentiate between the "public use" required to justify eminent domain and that required to authorize the expenditure of public funds. *But cf.* *Crommet v. City of Portland*, 150 Me. 217, 107 A.2d 841 (1954).

²¹ See *Housing Authority of City of Atlanta v. Johnson*, 209 Ga. 560, 74 S.E.2d 891 (1953); *Edens v. City of Columbia*, 228 S.C. 563, 91 S.E.2d 280 (1956); *Bristol Redevelopment and Housing Authority v. Denton*, 198 Va. 171, 93 S.E.2d 288 (1956). Future use for commercial purposes is generally upheld. Future use for educational purposes was challenged but upheld. See *Boro Hall Corp. v. Impellitteri*, 128 N.Y.S.2d 804 (Sup. Ct. 1954), *aff'd*, 283 App. Div. 889, 951, 130 N.Y.S.2d 6, 887 (2d Dep't 1954), *appeal dismissed*, 307 N.Y. 672, 120 N.E.2d 847 (1954); and *Bleecker Luncheonette v. Wagner*, 141 N.Y.S.2d 293 (Sup. Ct. 1955), *aff'd*, 286 App. Div. 828, 143 N.Y.S.2d 628 (1st Dep't 1955), *appeal dismissed*, 143 N.Y.S.2d 824 (1st Dep't 1955), 309 N.Y. 1029, 128 N.E.2d 760 (1955).

²² Such areas have been classified and defined in the various state redevelopment statutes as slum areas, blighted areas, deteriorated areas, decadent areas, substandard and insanitary areas, and redevelopment areas.

²³ *Randolph v. Wilmington Housing Authority*, 139 A.2d 476 (Del. 1958). See also *Adams v. Housing Authority of the City of Daytona Beach*, 60 So.2d 663 (Florida 1952), where the Florida Supreme Court found constitutional objection to the redevelopment of a "blighted" area.

²⁴ See, e.g., *Redevelopment Agency of City and County of San Francisco v. Hayes*, 122 Cal. App.2d 777, 266 P.2d 105 (1954), *cert. denied sub nom.* *Van Hoff v. Redevelopment Agency*, 348 U.S. 897 (1954); *People ex rel. Gutknecht v. City of Chicago*, 414 Ill. 600, 111 N.E.2d 626 (1953); *Oliver v. City of Clairton*, 374 Pa. 333, 98 A.2d 47 (1953). In the *Gutknecht* case, *supra*, the Illinois court

Supreme Court of Rhode Island, in an advisory opinion, upheld the taking of blighted areas for private redevelopment, but so interpreted the statute as to deny the right to take vacant or unblighted land, standing by itself, for such purposes.²⁵ The Maine court did not pass upon the constitutionality of a section of the redevelopment act relating to the acquisition of undeveloped vacant land.²⁶

Other constitutional issues have at times been raised in opposition to the validity of various state statutes. Such issues include whether redevelopment statutes involve an unconstitutional delegation of legislative power to local public bodies; whether a statute is too vague for proper administration or whether it contains reasonable standards to guide a planning board or governing body in making determinations under the act; whether redevelopment laws embrace more than one object (and whether such object is adequately expressed in the title of the law); whether statutes, by allowing sales of property by public bodies at a price less than that paid for such property or expended upon it, authorize the lending of credit, or the granting of a special privilege, by a state or municipality to a private individual or corporation; whether redevelopment acts contain unreasonable classifications of persons or property; whether the financing provisions of various redevelopment laws contravene constitutional debt limitations; and, finally, whether the public-hearing provisions of various state laws are adequate to meet constitutional due-process requirements.²⁷ Courts have consistently upheld statutes against contentions of this type.

Assuming the constitutionality of a state statute as applied to a particular undertaking in question, certain other problems have also arisen. Although a project area as a whole may meet the statutory criteria of slum or blight, there are fre-

sustained the constitutionality of a statute dealing specifically with the redevelopment of areas of predominantly blighted open land for residential purposes. This court later extended its holdings in the *Gutknecht* case and upheld the constitutionality of a statute relating to the acquisition and redevelopment of blighted open areas for commercial and industrial re-use. *People ex rel. Adamowski v. Chicago Land Clearance Commission*, 14 Ill.2d 74, 150 N.E.2d 792 (1958).

²⁵ Opinion to the Governor, 76 R.I. 249, 69 A.2d 531 (1949). In 1952, in a litigated case, the Rhode Island Supreme Court sustained the constitutionality of a subsequent redevelopment act in its application to a project which concerned the clearance and redevelopment of a slum-blighted area as defined in the statute. As to the validity of taking vacant land, the court made no intimation one way or the other. *Ajootian v. Providence Redevelopment Agency*, 80 R.I. 73, 91 A.2d 21 (1952). See also constitutional amendment of 1955, R.I. CONST. art. XXXIII, § 1 (1957).

²⁶ *Crommet v. City of Portland*, 150 Me. 217, 107 A.2d 841 (1954). See also, *Papadinis v. City of Somerville*, 331 Mass. 627, 121 N.E.2d 714 (1954), where the court withheld ruling on the validity of redevelopment of a "blighted open area," but in a later advisory opinion the court indicated that redevelopment of such an area constituted a public purpose. *Opinion of the Justices*, 334 Mass. 760, 135 N.E.2d 665 (1956).

²⁷ Although the provisions of state law for the holding of legislative-type hearings have unanimously been sustained against constitutional attack, they have been subject to some criticism by writers, on the basis that the hearings pragmatically afford little or no protection to property owners. See, e.g., *Sullivan, Administrative Procedure and the Advocatory Process in Urban Redevelopment*, 45 CALIF. L. REV. 134 (1957); *Note, Judicial Review of Urban Redevelopment Agency Determinations*, 69 YALE L. J. 321 (1959); *Note, Urban Renewal: Problems of Eliminating and Preventing Urban Deterioration*, 72 HARV. L. REV. 504, 513 (1959). The Yale note suggests several statutory solutions designed to reconcile conflicting interests and provide property owners with a fair opportunity to challenge a project, without resulting in undue delay and disruption of a project.

quently located within the designated area structures which are neither substandard nor deteriorated and some vacant parcels of land. Owners of these properties have often sought to invalidate a project in so far as it included such standard structures or vacant land. Courts have unanimously upheld such takings on the theory that once the area as a whole has been determined to meet the statutory criteria of slum or blight, it is a legislative and not a judicial question as to what structures and land in the area will be taken.²⁸ Similarly, it has been held not to be an abuse of discretion to allow certain structures to remain in a projected area.²⁹

Other side issues have been tried and determined by the courts in several states. The California law authorizes owner participation in urban redevelopment projects, but the court rejected an attack upon one project where owner participation was refused.³⁰ In New York, after a series of suits, the courts sustained the validity of a sale of project property to a religious institution.³¹ Recently in New Jersey, the court remanded a case on the ground that a conflict of interest existed on the part of certain members of the city council.³²

In view of the overwhelming judicial approval of the use of eminent domain and the expenditure of public funds in slum clearance and urban redevelopment projects, it seems doubtful that such projects will be successfully challenged on the ground that urban renewal is unconstitutional. For the past several years the emphasis in the decisions in this area has shifted from the question of constitutionality to various other questions, particularly the scope of judicial review of determination of blight.³³ As more urban renewal projects advance from the planning to the

²⁸ See, e.g., *Berman v. Parker*, 348 U.S. 26 (1954); *Gohld Realty Co. v. City of Hartford*, 141 Conn. 135, 104 A.2d 365 (1954); *Starr v. Nashville Housing Authority*, 145 F. Supp. 498 (M.D. Tenn. 1956), *aff'd*, 354 U.S. 916 (1957). Most courts have also reasoned that urban redevelopment and renewal is predicated upon an area concept, and once an area has been properly found to meet statutory criteria of slum or blight, the taking of any structure therein, whether or not substandard, cannot be challenged. Courts recognize that property may be needed to assure carrying out a feasible plan of redevelopment.

²⁹ *McAuliffe and Burke Co. v. Boston Housing Authority*, 334 Mass. 28, 133 N.F.2d 493 (1956).

³⁰ *Fellom v. Redevelopment Agency of the City and County of San Francisco*, 157 Cal. App.2d 243, 320 P.2d 884 (1958), *review denied*, 358 U.S. 56 (1958).

³¹ *64th Street Residences, Inc. v. City of New York*, 4 N.Y.2d 268, 150 N.E.2d 396 (1958), *cert. denied sub nom. Harris v. City of New York*, 357 U.S. 907 (1958).

³² *Griggs v. Borough of Princeton*, 162 A.2d 862 (N.J. Sup. Ct. 1960).

³³ On the question of the scope of judicial review exercised by the courts with regard to urban renewal project findings and determinations and the conclusiveness of such findings and determinations, see the following cases where the court upheld the validity of the project in question: *Berman v. Parker*, 348 U.S. 26 (1954); *Starr v. Nashville Housing Authority*, 145 F. Supp. 498 (M.D. Tenn. 1956), *aff'd*, 354 U.S. 916 (1957); *Donnelly v. District of Columbia Redevelopment Land Agency* (D.C. 1958), *aff'd*, 269 F.2d 546 (D.C. Cir. 1959), *cert. denied*, 361 U.S. 949 (1960); *Despatchers' Cafe, Inc. v. Sommerville Housing Authority*, 332 Mass. 259, 124 N.E.2d 528 (1955); *Worcester Knitting Realty Co. v. Worcester Housing Authority*, 335 Mass. 19, 138 N.E.2d 356 (1956); *Bowker v. City of Worcester*, 334 Mass. 422, 136 N.E.2d 208 (1956); *Kaskel v. Impellitteri*, 306 N.Y. 73, 609, 115 N.E.2d 659, 832 (1953), *cert. denied*, 347 U.S. 934 (1954); *Oliver v. City of Clairton*, 374 Pa. 33, 98 A.2d 47 (1953); *Schenck v. City of Pittsburgh*, 364 Pa. 31, 70 A.2d 612 (1950); *Babcock v. Community Redevelopment Agency of the City of Los Angeles*, 148 Cal. App.2d 38, 306 P.2d 513 (1957); *Allen v. City Council of Augusta*, 215 Ga. 778, 113 S.E.2d 621 (1960); and *Graham v. Houlihan*, 147 Conn. 321, 160 A.2d 745 (1960), *cert. denied*, 364 U.S. 833 (1960).

execution stage it is to be expected that future litigation will involve the validity and eligibility of individual projects under state and local laws.³⁴

The scope of review of the findings of cities and other local public bodies has been limited as a result of holdings that these findings are legislative in character. In the words of the Supreme Court of the United States:³⁵

Subject to specific constitutional limitations, when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive. In such cases the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation. . . . The role of the judiciary in determining whether that power is being exercised for a public purpose is an extremely narrow one.

The limited nature of judicial review in these cases is exemplified to an extreme in a recent decision handed down by the Supreme Court of Georgia, which, as the result of a constitutional amendment, reversed an earlier unfavorable decision. The Georgia court, in the case of *Allen v. City Council of Augusta*,³⁶ indicated that a determination of the existence of slum and blight by a redevelopment agency and a community is virtually conclusive; and therefore the responsibility for imposing reasonable limits on the exercise of judicially-approved urban renewal powers rests with cities and redevelopment agencies and not with the court. The court would go no further than find that the required legislative actions had been taken; it would not review whether such actions were supported by evidence.

The validity of slum clearance and urban redevelopment projects in their fullest aspect has been overwhelmingly sustained by the courts of last resort. In so far as slum clearance and urban redevelopment undertakings are concerned, the question of public use or purpose has been laid to rest. Subsidiary legal issues involved in the more comprehensive urban renewal undertakings, including conservation and rehabilitation activities, have not reached the courts. In one state, a statute authorizing conservation activities has been held constitutional,³⁷ but in no reported case has an actual project been tested. However, in view of the general judicial approval of the constitutionality of urban redevelopment statutes and undertakings, it would seem

³⁴ In both Virginia and Connecticut, where the general principle of slum clearance and urban redevelopment had been sustained by the courts as being constitutional, the question of the finality as to findings of fact by the body charged with that responsibility came to the attention of the highest court of the state. In the case of *Bristol Redevelopment and Housing Authority v. Denton*, 198 Va. 171, 93 S.E.2d 288 (1956), the Supreme Court of Appeals of Virginia held that under the factual situation presented by the record, a proposed area for a redevelopment project was not blighted or deteriorated within the purview of a statute authorizing the taking of property for slum clearance and redevelopment purposes. In *Bahr Corp. v. O'Brien*, 146 Conn. 237, 149 A.2d 691 (1959), the Connecticut Supreme Court of Errors, citing the proposition that redevelopment agency determinations are subject to judicial review to discover if they are unreasonable or in bad faith or are an abuse of the power conferred, held that the trial court erred in refusing to admit evidence that the inclusion of plaintiff's property within the project area was unreasonable, arbitrary, and an abuse of the agency's power.

³⁵ *Berman v. Parker*, 348 U.S. 26, 32 (1954).

³⁶ 215 Ga. 778, 113 S.E.2d 621 (1960).

³⁷ *People ex rel. Gutknecht v. City of Chicago*, 3 Ill. 2d 539, 121 N.E.2d 791 (1954); *Zisook v. Maryland-Drexel Neighborhood Redevelopment Corp.*, 3 Ill. 2d 570, 121 N.E.2d 804 (1954). These cases upheld conservation as a public use but did not involve application of conservation techniques to an actual project.

reasonable to assume that courts which may in the future consider any new problems will have a firm basis upon which to sustain the validity of comprehensive statutes authorizing rehabilitation and conservation activities.³⁸

The constitutionality of planned rehabilitation rests basically, as in the case of slum clearance and urban redevelopment, upon the proper exercise of the police power, the power of eminent domain, and the power of taxation. Of course, at the state and local level every action under the police power and the power of eminent domain and the expenditure of public funds may be scrutinized by the courts, but there are no basic constitutional bars to their being made effectively available to rehabilitate deteriorating areas. The constitutional issues with respect to these powers are posed in such completely malleable terms as "public purpose," "public use," "due process," and "reasonableness." In view of the legislative and judicial perception of expanded municipal actions necessary to protect the health, safety, and welfare of the community, it is reasonable to conclude that the comprehensive undertakings essential in the urban renewal process are constitutionally sound.

However, the existence of favorable constitutional decisions is not enough. There is still placed upon cities and redevelopment agencies the responsibility of imposing reasonable limits on the exercise of judicially-approved urban renewal powers.³⁹ There remains within the field of constitutionally permissible legislative action a choice of means. Among various means—various sanctions—what is at stake for the individual varies. On this, both the wisdom and the constitutionality of a measure may depend. An urban renewal program must be developed specifically with a view to the problems which the particular community faces, can expect to face, and hopes to avoid. Because the detailed problems are so varied, they suggest a broad range of possible public and private actions. This very large area of choice requires of responsible local officials sufficient technical capacity and sense of practicality to achieve a delicate balance of purpose in the administration of a program where individual property rights are sharply affected at the point where they begin to interfere adversely with the interests of the community.

Simon E. Sobeloff, former Solicitor General of the United States, who argued the *Berman* case for the Government, had this to say as to the significance of that decision to persons engaged in urban renewal activities:⁴⁰

³⁸ Note the broad language of the Supreme Court in *Berman v. Parker*, 348 U.S. 26, 33 (1954): "The concept of the public welfare is broad and inclusive. . . . The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled."

³⁹ The courts have indicated that there are limits to what can be done in the name of "redevelopment." See *Berman v. Parker*, 348 U.S. 26 (1954); and *Donnelly v. District of Columbia Redevelopment Land Agency* (D.C. 1958), *aff'd*, 269 F.2d 546 (D.C. Cir. 1959), *cert. denied*, 361 U.S. 549 (1960).

⁴⁰ Remarks of Simon E. Sobeloff at Annual Convention of National Association of Housing and Redevelopment Officials, at Cleveland, Ohio, Oct. 19, 1955. Mr. Sobeloff is now Chief Judge, United States Court of Appeals for the Fourth Circuit.

To say that a specific act is constitutional is to say no more than that the constitution does not prohibit government from acting. Whether government should take a particular action is not for the courts to decide. The wisdom of governmental action is the responsibility of legislators and administrators. An act may be constitutional but exceedingly unwise and, by the same token, we all know that acts thought exceedingly wise by some people may be very unconstitutional. It is, therefore, one thing to say that the decisions of our supreme courts indicate that the states have the power drastically to regulate and even take private property for the purposes of urban renewal. It is quite another thing to say that there are no limits imposed upon cities, redevelopment commissions, health departments, and housing authorities. These powers must be first clearly delegated by the people and then exercised with prudence, reason, and care. Ill considered exercises of power that the public will not accept, although constitutional, may work more mischief to urban renewal than an adverse court decision.

To those of you who share the responsibility for these activities, allow me a word of admonition. The most complete legislative authorization, the clearest sanction of your supreme court, and the most workable of workable programs are no better than the wisdom, the understanding, and devotion applied by those who administer and carry out the day-to-day work. The overriding public interest that gives you power must be constantly nurtured with understanding and you must act with due moderation and mindfulness of the rights and needs of an individual.

V

LOCAL CODES: THE CRUX OF PLANNED REHABILITATION

An urban renewal project may consist solely of slum clearance and redevelopment (land acquisition, site clearance and preparation, land disposition and redevelopment), or planned rehabilitation, or a combination of both such undertakings.⁴² Whether planned rehabilitation constitutes all or only a part of the urban renewal project undertakings, the objectives to be achieved are common to all actions, and there should be available for exercise, if necessary, the basic constitutional and legal powers of eminent domain, taxation, and the police power. Methods and techniques and the extent of public actions to be taken will vary in form and degree depending upon project site characteristics and the applicable urban renewal plan. Public powers and actions essential for successful planned rehabilitation consist of (1) taxation and eminent domain to provide public facilities and improvements; (2) eminent domain to eliminate conditions of slum and blight and to secure compatible land uses when these objectives cannot otherwise be achieved; and (3) the police

⁴² An example of urban renewal involving both slum clearance and planned rehabilitation is the Springfield, Oregon, Third Street Project. The project area covers some 149 acres, consisting of 263 improved lots, 119 of which contain dilapidated structures requiring acquisition, clearance, and redevelopment; 41 of which contain substandard structures requiring rehabilitation treatment; and 103 of which contain standard structures requiring no rehabilitation. These various lot characteristics are indiscriminately scattered throughout the project area. The urban renewal plan also provides certain complementary "environmental" project area improvements, including streets, sewers, street lighting, and landscaping—supporting facilities (outside the project area) including a park, school, improved streets, and highway lighting.

power to promulgate and enforce local codes⁴² to secure rehabilitation and compatible uses of private property.

Of these three essential state powers, the police power, embodying the enactment or improvement and the sound administration and effective enforcement of adequate local codes, is crucial to the successful long-term accomplishment of planned rehabilitation. In the meantime, inadequate minimum codes or ineffective enforcement procedures create problems for the accomplishment of successful rehabilitation in urban renewal areas. Where minimum code requirements are adequate, but the enforcement machinery and resources are ineffective, enforcement on a selective basis (project area) may be adopted.⁴³ Sometimes when problems result from inadequate code standards, so-called "project standards," which are higher than minimum code standards, are prescribed in the urban renewal plan.⁴⁴ Compliance with these higher standards will, for the most part, depend upon inducements and voluntary actions. When authorized by statute and when necessity for the action is properly demonstrated, offending structures may be acquired by the exercise of the power of eminent domain.⁴⁵ Municipal repair with resulting liens⁴⁶ and injunctive

⁴²For this discussion, the term "local codes" refers collectively to state statutes and local ordinances, codes, and regulations affecting land use, construction, maintenance, and occupancy of structures and comprehends zoning and subdivision control regulations, building, plumbing, electrical, and heating codes, fire, health and sanitary regulations, housing, and other occupancy codes.

⁴³Area enforcement is sometimes favored in order to achieve maximum utilization of available personnel. One study has concluded that area enforcement permits coordination between departments of the city government and that there is little or no waste of time travelling by inspectors from job to job when the inspection phase of enforcement is performed on an area basis. CITY OF LOS ANGELES, CALIFORNIA DEPT OF BUILDING AND SAFETY, CONSERVATION—A NEW CONCEPT IN BUILDING LAW ENFORCEMENT 44-46 (1958); 1 N.Y. STATE DIVISION OF HOUSING, HOUSING CODES, THE KEY TO HOUSING CONSERVATION, CODE ENFORCEMENT PROBLEMS AND RECOMMENDATIONS 40 (1958). The latter study urged that code enforcement be undertaken on an area-by-area basis so that enforcement efforts would not be spread too thin, citing several examples of municipalities that attempted to do too much in too short a period of time by enforcing their codes on a city-wide basis, and concluded that few municipalities have the manpower to enforce a housing code in every necessary area and that area enforcement is practical because in most municipalities, sections of bad housing are relatively concentrated. 3 N.Y. STATE DIVISION OF HOUSING, HOUSING CODES, THE KEY TO HOUSING CONSERVATION, ADMINISTRATIVE GUIDE FOR LOCAL PROGRAMS 1 (1958). See also *Gutknecht v. City of Chicago*, 3 Ill.2d 539, 121 N.E.2d 791 (1954); and *Williamson v. Lee Optical Co.*, 348 U.S. 483, 489 (1955), where the Supreme Court of the United States said: "[R]eform may take one step at a time. . . ."

⁴⁴The troublesome problem of varying housing standards throughout the city in relation to the degree of blight in differing neighborhoods is neither new nor peculiar to the urban renewal program. The 1947 proposal of E. R. Krumbiegel, M.D., Milwaukee Commissioner of Health, and long-time authority on housing standards, advocates a solution to this problem by classification of areas within a city on the basis of housing quality. His proposal (sometimes referred to as "Zoned Housing Code") contemplates three basic area classifications, (1) areas for demolition, (2) areas for rehabilitation, and (3) areas for protection, with progressively higher housing standards.

⁴⁵Generally, state enabling urban renewal legislation broadly authorizes the exercise of the power of eminent domain in aid of urban renewal project activities. One state statute expressly confers eminent domain powers upon failure or refusal of owners of substandard structures to rehabilitate in accordance with the approved urban renewal plan. CAL. HEALTH & SAFETY CODE § 33275 (Supp. 1959); see also *id.* §§ 33267, 33701, 33702, 33708, 33745.

⁴⁶Statutes and ordinances that authorize the imposition of municipal liens for the cost of repairs and improvements to private property have been sustained by the courts where such liens do not purport to take precedence over valid subsisting encumbrances. See *Central Sav. Bank v. New York*, 279 N.Y. 266, 18 N.E.2d 151 (1938), *opinion amended*, 280 N.Y. 9, 19 N.E.2d 659, *cert. denied*, 306 U.S. 661 (1939).

proceedings, including receivership,⁴⁷ may also hold promise of becoming effective tools in compulsory rehabilitation.

Without question, the failure to enact, improve, soundly administer, and effectively enforce adequate local codes, more than any other single cause, accounts for the huge tasks of the present urban renewal effort. Urban blight and the festering of slums were nurtured in this failure. The broad concepts of urban renewal, their evolution and objectives, and the attending costs forcefully attest the serious consequences of the neglect and default in this most important area of public action. In the past the emphasis has been on ways and means to deal with the *consequences of code failures*—not enough has been done to strike at *code failure*. This is not to deny the very substantial contributions of many responsible groups and code officials. Rather, it is to say that code failure has gone too long as the skeleton in our municipal closets.

To deal with the ultimate consequences of code failure, the first real and direct efforts were slum clearance and redevelopment necessitating huge expenditures for land acquisition, demolition, and the write-down losses in returning the land to proper uses. Through this experience there has now evolved the concept of planned rehabilitation as the heart of the urban renewal process. But both slum clearance and redevelopment and planned rehabilitation operate only in specific project areas, which must qualify as either slum or blighted areas or areas deteriorated or in the process of deterioration. Thus, while specific project areas are given concentrated urban renewal treatment, as a much too prevailing rule, the rest of the community is neglected and continues to develop more and more qualifying areas of slum and blight to be salvaged only by costly, and often harsh, urban renewal project actions.

These observations are by no means fresh impressions or new discoveries; they inhere in the basic urban renewal concept. The Workable Program requirement in the Housing Act of 1954 and the earlier policy of encouraging code improvement and modernization in the Housing Act of 1949 significantly recognized the serious implications of code failures.⁴⁸ The Workable Program has become a most important instrument and stimulant for code enactment and improvement. *But, to do*

See also *Jackson v. Bell*, 143 Tenn. 452, 226 S.W. 207 (1920); CHARLES S. RHYNE, *MUNICIPAL LAW*, § 26-25 (1957), for other cases dealing with the question of compulsory repair or demolition of sub-standard buildings.

⁴⁷ For instance, in Illinois municipalities are authorized to apply for a court order to repair, demolish, or bring a structure up to minimum code standards contained in ordinances or a community conservation plan. ILL. REV. STAT. ch. 24, § 23-70.3 (1959). A determination of the validity of § 23-70.2, which imposes a repair lien that does not take priority over existing encumbrances, was expressly avoided in *People ex rel. Gutknecht v. Chicago*, 3 Ill.2d 539, 21 N.E.2d 791, 798 (1954). To secure compliance with § 23-70.3, the City of Chicago in 1959 sought and obtained in the Superior Court of Cook County the appointment of a receiver to take control of certain privately-owned properties and make necessary repairs and improvements from funds borrowed by receiver's certificates which become first liens upon the properties. Appeal was initiated to the Supreme Court of Illinois, but was dismissed in 1960 because defendant failed to perfect the appeal. *City of Chicago v. Hansberry* (No. 35675, January Term, 1960).

⁴⁸ See article by Rhyne, *The Workable Program—A Challenge for Community Improvement*, elsewhere in this symposium, which discusses this entire area.

the entire job, new ways and means must be developed to assure a practical and sustained process of planned rehabilitation on a community-wide basis. If we are ever to work our way out of urban renewal project operations and the attending huge public costs, we must think and act in terms of planned rehabilitation on a community-wide basis—at the heart of which must be adequate local codes, soundly administered, and effectively enforced. In this direction, note should be taken of the recent testimony of Federal Housing Commissioner Zimmerman and Urban Renewal Commissioner Walker regarding the availability of FHA section 220 insurance for general community-wide rehabilitation. It was there pointed out that, while such insurance may be made available only in urban renewal project areas under approved urban renewal plans, it is not necessary that urban renewal loan or grant assistance support the project. Instead, project activities need consist of only three basic elements: (1) a comprehensive program of code enforcement; (2) a comprehensive program to obtain voluntary compliance with rehabilitation standards that are acceptable to FHA for mortgage insurance purposes; and (3) a commitment from the locality to eliminate any environmental conditions that are blighting the area or causing deterioration.⁴⁹

The potential of planned rehabilitation is measurable primarily in terms of successful local codes. But, upon taking stock, this all-important tool is too often found lacking, out-moded, or ineffective. Housing Administrator Mason, at the National Association of Housing and Redevelopment Officials Conference in Washington on February 3-4, 1959, stated:

The neglect of many municipal governments to enforce (as well as to modernize) housing, building, health, and zoning codes and ordinances is close to a national disgrace. If continued, it can nullify a well-rounded urban renewal campaign. It can make it dangerously lopsided. Unless these codes are enforced to the hilt, we are in danger of firing our urban renewal dollars into renewal areas to no effective purpose.

The greatest lack is probably in housing occupancy codes, as distinguished from building or construction codes. According to the 1960 *Municipal Year Book*, 229 cities of over 10,000 population reported some form of housing code. On this basis, for the nearly 1400 cities having over 10,000 population, only one out of every six cities has enacted a housing code.⁵⁰

A. The Influence of Economic Considerations

The levels of code standards, and their enforcement, are importantly determined by economics. Aside from the dramatic examples of violence to basic health and safety requirements (such as the contaminated well or structurally dangerous founda-

⁴⁹ See testimony of Housing Administrator Norman P. Mason and Federal Housing and Urban Renewal Commissioner in *Hearings Before a Subcommittee of the Senate Committee on Banking and Currency on Housing Legislation of 1960*, 86th Cong., 2d Sess. 951-59 (1960). See also URA procedures for "non-assisted" urban renewal projects, URBAN RENEWAL MANUAL bk. II, pt. 45, *Policies and Requirements for Local Public Agencies*.

⁵⁰ The urgent need for modernization of building codes has been characterized as "\$1 billion-a-year cost of code-enforced waste." *House and Home*, July 1958, p. 112.

tion or wall) affecting the relatively few, it is the ability to pay for housing that ultimately places a ceiling on the quality and enforcement of local codes. Effective enforcement of codes embodying raised standards presupposes, wherever a truly substantial segment of the population is affected: (1) that the people can afford the higher standards (although at some points this raises problems of subsidies such as welfare payments, public housing, relocation housing, or special aids and inducements for rehabilitation); and (2) that there is available the industrial capacity organized effectively to supply the needed services, materials, and equipment. These factors are apparent in the several programs of federal aid for housing, planning, and urban renewal; they are reflected in the increasing concern to find better ways and means to secure and enforce higher code standards in keeping with the higher levels of living standards and industrial production.

Code enforcement has always posed the difficult problem of balancing so-called "vested rights" or property rights with the demands of public health, safety, and welfare. If enforcement creates substantial hardships, either the level of standards is in jeopardy or the enforcement breaks down and becomes ineffective. Some brief references to the past will help better to bring into focus the dilemma of balancing objectives with economic considerations. The Urbanism Committee of the National Resources Committee in the report of June 1937 recommended that:⁵¹

Municipal authorities should modernize and aggressively enforce to the limit of their powers their building and sanitary codes and zoning ordinances; they should initiate the widest program of demolition possible thereunder; and, where existing building and sanitary codes and ordinances dealing with the demolition of unfit buildings are inadequate, these should be made more stringent in order to enable the community to rid itself of such structures. Where necessary, State laws authorizing such codes and ordinances should be enacted.

In the same report, the Committee recommended that:⁵²

Local-urban governments should consider the adoption of a single standard for buildings, old and new, and the progressive, wholesale condemnation under the police power, *after a reasonable period of grace*, of all buildings that either for structural or sanitary reasons, or for reasons of inadequacy of light and air, do not measure up to an acceptable standard of use and occupancy.

More directly addressed to the notion of deferred demolition were the 1942 study and recommendations of the Subcommittee on Housing Regulation, of the Committee on the Hygiene of Housing, Committee on Research and Standards of the American Public Health Association, which stated, in part:⁵³

The development of official local housing standards coupled with sound inspection and appraisal techniques should warrant the drafting and testing in court of more effective

⁵¹ NATIONAL RESOURCES COMMITTEE, *OUR CITIES—THEIR ROLE IN THE NATIONAL ECONOMY* 75-76 (1937).

⁵² *Ibid.* (Emphasis added.)

⁵³ *The Improvement of Local Housing Regulation Under the Law*, 32 AM. J. PUB. HEALTH 1263, 1275 (1942). (Emphasis added.)

regulations to deal with buildings and areas below a certain standard. For example, the courts might now sustain a law which would provide that seriously substandard dwellings shall be taken out of use *after a limited period allowed for amortization of any remaining economic value of the structures*. Local authorities might be authorized within certain limits to forbid rent collection after an appropriate deadline.

These early committees, pioneering in the concepts of *a reasonable period of grace* and *a limited period allowed for amortization of any remaining economic values of the structures*, were undoubtedly influenced in no small measure by prevailing economic conditions. Bold as these proposals may have appeared to some, it is significant and understandable that both Committees emphasized demolition of unfit and seriously substandard structures; they were seeking in these concepts to balance the needs with the limitations of the times. Even though the police power had theretofore been exercised and sustained to compel improvements and alterations to existing structures,⁵⁴ the Committees' recommendations were directed to structures requiring demolition. Through these concepts they were seeking practical means to achieve enforceable higher code standards, geared to the ability to pay and to the existing housing supply and availability of the necessary resources.

B. Amortization of Nonconforming Uses: A Useful Precedent

Except when acquisition is necessary under an urban renewal project plan or for other public uses, it should now fairly be conceded that nonsalvable structures should be demolished under the police power with little or no period of grace or so-called amortization. However, allowing the owner of a salvable substandard structure a reasonable period for compliance with local code standards would not differ in basic principle from the amortization of nonconforming uses concept as applied in the zoning process. This principle is not only equally sound, but applies with greater force to salvable structures in violation of local codes and may offer a means for more effective enforcement of higher code standards.

Shortly following the landmark case of *Euclid v. Ambler Realty Co.*⁵⁵ (which dealt only with prospective uses), the Louisiana courts sustained local legislation requiring elimination of a nonconforming grocery store and drug store after a one year amortization period.⁵⁶ Due to the relatively limited use of compulsory termination provisions in zoning ordinances, courts have, until recently, had few occasions to pass upon their legality.⁵⁷ However, although court cases are not numerous, there is sufficient support to consider this means an appropriate adjunct of land use control.

⁵⁴ *Commonwealth v. Roberts*, 155 Mass. 281, 29 N.E. 522 (1892); *Health Department v. Rector, Trinity Church*, 145 N.Y. 32, 39 N.E. 833 (1895); *Adler v. Deegan*, 251 N.Y. 467, 167 N.E. 705 (1929); *Adamec v. Post*, 273 N.Y. 250, 7 N.E.2d 120 (1937). The principle is now firmly established. See *Petrushansky v. State of Maryland*, 182 Md. 164, 32 A.2d 696 (1943); *Givner v. Commissioner of Health*, 207 Md. 184, 113 A.2d 899 (1955); *Givner v. State of Maryland*, 210 Md. 484, 124 A.2d 764 (1956); *Paquette v. City of Fall River*, 155 N.E.2d 775 (Mass. 1959); *Queenside Hills Co. v. Saxl*, 328 U.S. 80 (1946); *Richards v. City of Columbia*, 277 S.C. 538, 88 S.E.2d 683 (1955); *Boden v. City of Milwaukee*, 8 Wis.2d 318, 99 N.W.2d 156 (1959).

⁵⁵ 272 U.S. 365 (1926).

⁵⁶ *State ex rel. Dema Realty Co. v. McDonald*, 168 La. 172, 121 So. 613, cert. denied, 280 U.S. 556 (1929); *State ex rel. Dema Realty Co. v. Jacoby*, 168 La. 752, 123 So. 314 (1929).

⁵⁷ For a discussion of the decided cases on this subject see Annot., *Power to terminate lawful non-*

In the last ten years the courts have reviewed several significant zoning cases involving the amortization principle. In *Standard Oil Co. v. City of Tallahassee*,⁵⁸ the court sustained the validity of a provision of the local zoning ordinance requiring the discontinuance of certain nonconforming uses (including a gasoline filling station owned by plaintiff) after ten years. The court held that the enforcement of the ordinance did not entail any unjust discrimination or deprive the owner of due process. Two California decisions would seem to indicate the direction of judicial thinking. One of these cases, *Livingston Rock & Gravel Co. v. County of Los Angeles*,⁵⁹ upheld the validity of a provision in the Los Angeles county zoning ordinance requiring the termination of nonconforming uses after a period of years. The other case, *City of Los Angeles v. Gage*,⁶⁰ upheld a similar provision in the zoning ordinance of the City of Los Angeles. There seems to be an increasing acceptance of the idea that nonconforming uses can be gradually eliminated entirely by some sort of amortization program.⁶¹

Cases sustaining the amortization principle in zoning emphasize that the use of property is subject to the police power and the exercise of that power in the public interest frequently impairs property rights. They hold, in effect, that a reasonable amortization period provides an equitable means of reconciliation of the conflicting interests between the property owner and the public need and satisfies the requirements of due process.

Some few courts have refused to distinguish between immediate cessation and cessation after a tolerance or amortization period, or refused to end the nonconforming use within the prescribed period as being unreasonable. An Ohio case, *City of Akron v. Chapman*,⁶² involved the validity of a section in a zoning ordinance requiring the removal of a nonconforming use when the city council decided that such use had continued for a reasonable time. Subsequently the city council passed an ordinance determining that defendant's nonconforming use (a junk yard) had existed for a reasonable time and should be discontinued after one year. The Supreme Court of Ohio, in declaring the ordinance invalid as an unreasonable exercise of the police power, held that the owner was deprived of his right to the continued use of his property and to due process of law.⁶³ As a means of recon-

conforming use existing when zoning ordinance was passed, after use has been permitted to continue, 42 A.L.R.2d 1146 (1953).

⁵⁸ 87 F. Supp. 145 (N.D. Fla. 1949), *aff'd*, 183 F.2d 410 (5th Cir. 1950), *cert. denied*, 340 U.S. 892 (1950).

⁵⁹ 43 Cal.2d 121, 272 P.2d 4 (1954).

⁶⁰ 127 Cal. App. 442, 274 P.2d 34 (1954).

⁶¹ The Maryland Court of Appeals, in *Grant v. Mayor and City Council of Baltimore*, 212 Md. 301, 129 A.2d 363 (1957), held that neither the federal nor the Maryland Constitution invalidated a municipal zoning ordinance requiring the removal of a billboard, constituting a valid nonconforming use, within five years. In 1957, the Supreme Court of Kansas upheld the elimination after two years of an auto wrecking yard that had been a nonconforming use. *Spurgeon v. Bd. of Commissioners of Shawnee County*, 181 Kan. 1008, 317 P.2d 798 (1957). The Court of Appeals of New York, in a 4-3 decision, in *Harbison v. City of Buffalo*, 4 N.Y.2d 553, 176 N.Y.S.2d 598 (1958), upheld the validity of a zoning ordinance which required the elimination of a pre-existing nonconforming use within three years.

⁶² 160 Ohio St. 382, 116 N.E.2d 697 (1953).

ciling the cases that seem to reject the amortization theory, it may be suggested that the same result might have been achieved in these cases by characterizing the adjustment period as unreasonable under the circumstances. In the *Chapman* case, the court no doubt felt that the zoning ordinance was arbitrarily invoked in an attempt to outlaw a twenty-nine-year-old junk yard in one year.⁶⁴ A question that is likely to plague the courts for some time is how much time must the terminating provision allow the nonconforming use. The amortization principle employed in zoning is not only equally sound for the enforcement of housing and building code violations, but applies with greater force and reason when administered on a structure-by-structure basis and the amortization period and action required properly are determined in relation to the physical condition of specific offending structures.⁶⁵

Enforcement of local codes through the amortization concept would also result in other benefits. Through such enforcement there could be developed an effective community-wide structure-by-structure inventory in relation to local code compliance. Such an inventory would be useful in public land acquisitions through eminent domain in establishing valuations in relation to unlawful uses or conditions of structures.⁶⁶

VI

REHABILITATION: A CHALLENGE TO PRIVATE ENTERPRISE

By all odds, private enterprise—collectively, the materials producers, manufacturers, distributors, the crafts and services, the bankers, and by no means the least important, that unique entrepreneur, the American home-owner—holds the biggest stake in the fight to renew our urban communities.

In one way or another, private enterprise foots the tax bill, which increasingly

⁶⁴ Of quite the same import is *Town of Somers v. Carmarco*, 308 N.Y. 537, 127 N.E.2d 327 (1955), where the court held unconstitutional a zoning ordinance which would have required the cessation of a sand and gravel business on one year's notice. In the *Harbison* case, *supra* note 61, decided in 1958, the New York Court of Appeals distinguished its earlier decision in the *Camarco* case on the ground that "the period of termination was unreasonably short." 4 N.Y.2d at 562, 176 N.Y.S.2d at 604. Also somewhat akin is *City of Corpus Christi v. Allen*, 254 S.W.2d 759 (Tex. 1953), in which the application of an amortization provision to a particular automobile wrecking yard in a light industrial district was held improper.

⁶⁵ See Comment, 67 HARV. L. REV. 1203 (1954), criticizing decision in *Chapman* case.

⁶⁶ This distinction was stressed by Judge Van Voorhis in a strong dissenting opinion in *Harbison v. City of Buffalo*, *supra* note 61. He said: "This theory [amortization] to justify extinguishing non-conforming uses means less the more one thinks about it. It offers little more promise of ultimate success than the other theories which have been tried and abandoned. In the first place, the periods of time vary so widely in the cases which have been cited from different States where it has been tried, and have so little relation to the useful lives of the structures, that this theory cannot be used to reconcile these discordant decisions. Moreover, the term 'amortization', as thus employed, has not the same meaning which it carries in law or accounting. It is not even used by analogy. It is just a catch phrase, and the reasoning is reduced to argument by metaphor. Not only has no effort been made in the reported cases where this theory has been applied to determine what is the useful life of the structure, but almost all were decided under ordinances or statutes which prescribe the same time limit for many different kinds of improvements. This demonstrates that it is not attempted to measure the life of the particular building or type of building, and that the word 'amortization' is used as an empty shibboleth." 4 N.Y.2d at 574, 176 N.Y.S.2d at 614. (Emphasis added.)

⁶⁷ Guandolo, *Housing Codes in Urban Renewal*, 25 GEO. WASH. L. REV. 1, 47 (1956). See also, HHFA, OFFICE OF THE ADMINISTRATOR, DIVISION OF LAW, ADMISSIBILITY OF EVIDENCE OF ILLEGAL USE OR CONDITION OF PROPERTY IN EMINENT DOMAIN PROCEEDINGS (1951).

tolls the high costs of urban blight and neglect. At the municipal level, slum areas contribute about six per cent of the community's tax revenue, but require about forty-five per cent of the city's total expenditures for municipal services.⁶⁷ Federal expenditures and commitments for urban renewal aid are on the books in the hundreds of millions of dollars and increasing daily—and there must also be reckoned the millions of dollars of project expenditures provided by the localities themselves in carrying out their urban renewal undertakings.⁶⁸

It is the responsibility of private enterprise to find practical and profitable ways to accomplish the rehabilitation task—it must do the job or rehabilitation will become an additional function of government.

A. Rehabilitation: A Big Business

Rehabilitation is big business by any standard of measurement. Aside from the tax load, as previously mentioned, over \$11 billion were spent in 1959 for non-farm home improvements, additions and alterations, maintenance, and repairs.⁶⁹ Surveys have indicated that the rehabilitation business can generate \$15 billion worth of gross sales each year.⁷⁰

E. Everett Ashley III, Director, Statistical Reports and Development Branch, Housing and Home Finance Agency, in discussing the home rehabilitation market before the 1960 Annual Convention and Exposition of the National Association of Home Builders in Chicago, said:

You need not conclude either just because you come from a new, fast growing area that there is no opportunity for remodeling. A look at Census figures shows that even in the rapidly expanding areas in the West almost four out of every ten dwellings are 30 years of age or older. The ratio is slightly greater in the South. Here in the Midwest the proportion is better than six out of ten and a similar ratio prevails back East. Taking the country as a whole, some 30 million of our 55 million dwellings are at least 30 years old. This is the size of the target you are shooting at!

The enormous rehabilitation job confronting industry and government is first and foremost a challenge to private enterprise. Urban Renewal Commissioner Walker expressed the challenge along these lines:⁷¹

American industry has made a great contribution to the progress and aggressive development of the housing of this country to a standard which is second to none in the world. Without the cooperation and technical skill of industrial experience the Federal Government could not have so successfully increased the new housing inventory since World War II. Now the time has come for new forward strides to be taken in our housing program—the emphasis must shift from clearance and redevelopment to conservation and rehabilitation of existing housing if the job of urban renewal is to be effected across the

⁶⁷ URBAN RENEWAL DIVISION, SEARS, ROEBUCK & CO., ABC'S OF URBAN RENEWAL 7 (1957).

⁶⁸ But not all government-aid programs are at the expense of the taxpayer—FHA Title I Housing Renovation and Modernization Program and FHA Sections 220 and 221 rehabilitation and relocation programs are self-sustaining, as are all other FHA programs.

⁶⁹ See appendix to this article.

⁷⁰ The *Modernized Model Home Manual* (n.d.), issued by the Marketing Department of Life magazine. See also *House and Home*, July 1960.

⁷¹ Letter, Urban Renewal Commissioner Walker to H. N. Osgood, Aug. 23, 1960.

nation. It is essential that industry and banking use their great skills and technical experience in an all out joint effort with the Federal Government to find the answers to the problems surrounding the successful development of conservation. . . . We must create an industry, if you will, where investors can make a dollar and where lenders can feel a sense of security and get an adequate return on their money; the cost must be kept at a point where the people making improvements will be able to amortize and liquidate the cost in a reasonable time limit.

Unfortunately, the proven feasibility of planned rehabilitation on a large-scale basis has yet to be demonstrated successfully in any city of the United States. In the recent Senate Committee Report on the Housing Act of 1960, for instance, it is stated that part of the problem of expediting rehabilitation in urban renewal areas, particularly rehabilitation of structures for low- and moderate-income families, is a lack of proven examples of rehabilitated buildings to show property owners that improvements can be made at a cost which is not prohibitive.⁷²

In his preface to *Residential Rehabilitation: Private Profits and Public Purposes*, Miles L. Colean stated that the number of examples of rehabilitation in America was small.⁷³ The demonstration grant program under which federal grants are available to localities to demonstrate phases of urban renewal offers possibilities of developing new rehabilitation techniques.⁷⁴ Under this program, out of thirty-three projects approved, eleven relate to rehabilitation. Of the eleven relating to rehabilitation, two—one in Baltimore and one in New York City—involve actual rehabilitation as against theoretical studies or analyses. The demonstration grant program in Baltimore is not yet completed, and the one in New York City was just recently approved.

Successful experience in large-scale rehabilitation is wanting because private enterprise has not found (or, if you will, has not sought out) the inducements to employ its great collective potential in this field.

There are so many different segments of industry contributing to the total complex of rehabilitation—with each, more or less, self-relegated to its separate place—the manufacturer, distributor, banker, the crafts and services—that few have seen a sufficiently compelling inducement to create out of their own limited interests the organization and capacity to sell and service the rehabilitation potential.⁷⁵ But there are encouraging signs upon the horizon, and in typical American tradition private enterprise will, sooner or later, effectively meet the increasing needs of the rehabilitation task.

⁷² Senate Comm. on Banking and Currency, *Housing Act of 1960, Report*, S. REP. NO. 1575, 86th Cong., 2d Sess. 20 (1960).

⁷³ MILES L. COLEAN, *RESIDENTIAL REHABILITATION: PRIVATE PROFITS AND PUBLIC PURPOSES* (1959).

⁷⁴ Section 314 of the Housing Act of 1954, 68 Stat. 629, 42 U.S.C. § 1452a (1958), authorizes the Housing and Home Finance Administrator to make grants to public bodies to assist in developing, testing, and reporting methods and techniques for the prevention and elimination of slums and urban blight.

⁷⁵ In his testimony before the District Committee of the House of Representatives during consideration of H.R. 12761 (which became Pub. L. No. 86-715, 74 Stat. 815-16, 86th Cong., Sept. 6, 1960), Mr. John H. Haas, Executive Secretary of the Metropolitan Association of General Improvement Contractors, described the diversity in the Washington, D.C. area as follows: ". . . the picture of this industry is far more complex, complicated and, often, even confusing than most people expect. It covers an infinite variety of people and of goods and services, from the man who fastens a roof shingle or a bathroom tile to the company which pulls condemned houses out of trouble or builds an addition to an existing dwelling. There are

B. An Industry Aborning

The Housing Agency noted in its *Housing Accomplishments of 1959* that increasing efforts were being made to devise ways and means of bringing industry into the rehabilitation field on a big scale. Encouragingly, Urban Renewal Commissioner Walker recently reported at a congressional hearing:⁷⁶

I am very happy that we are now seeing the beginning, or birth if you will, of an industry for conservation, which has not previously existed.

There are some noteworthy examples of organized rehabilitation on a scale large enough to demonstrate feasibility and reasonable profit. One such example is Peter Turchon of Boston, who has built up a successful business by buying, rehabilitating, and selling about 500 houses per year. He has been rehabilitating property since 1925. Another example is Richeimer Modernizing Systems, Inc., of New York City, which has devised a business franchise system to foster and encourage rehabilitation as a business—franchise participants obtain the benefits incident to acting as a national organization in dealing with building suppliers and manufacturers, in setting up showrooms and models, and in promotional advertising. Still another example is John F. Havens of Columbus, Ohio, who has made a successful business of buying houses for rehabilitation and resale.⁷⁷

There are undoubtedly many examples of efficient, although small-scale, rehabilitation businesses throughout the country. Unfortunately, there are some home-improvement contractors—of the fly-by-night variety—whose unscrupulous methods victimized so many home-owners that stricter regulations have become necessary to protect the public. This was the situation in Washington, D. C., in the late summer of 1960 when the Congress, in the post-conventions session, completed enactment of Public Law 86-715,⁷⁸ which, along with stricter regulations, contains bonding requirements. In reporting the bill (which was strongly recommended by the Board of Commissioners of the District of Columbia), the House Committee of the District of Columbia related:⁷⁹

Recently, articles in the Washington Post and the Evening and Sunday Star newspapers have brought to the attention of the committee a growing pattern of complaints from homeowners in the District of Columbia who have been victimized by unscrupulous home improvement contractors.

27 definite skills and trade groups listed in the Yellow Pages, each one of which is primarily in the home improvement business, listing well over 5,000 names (but containing a great deal of duplication); when reduced to essentials—which is to say, tradesmen, contractors, and specialty dealers dealing in one or several phases of maintaining or increasing the livability or utility of a home—we find close to 1,000 such listings, doing an estimated volume of \$300,000,000 per year in the Metropolitan area." (Hearings, not printed.)

⁷⁶ *Hearings Before the Subcommittee on Housing of the Senate Committee on Banking and Currency*, 86th Cong., 2d Sess. 956 (1960).

⁷⁷ See URBAN RENEWAL ADMINISTRATION, MAKING REHABILITATION PAY—ONE MAN'S EXPERIENCE (1960).

⁷⁸ An Act Authorizing the Bonding of Persons Engaging in the Home Improvement Business and for Other Purposes, Pub. L. No. 86-715, 74 Stat. 815-16, 86th Cong., Sept. 6, 1960.

⁷⁹ House Comm. on the District of Columbia, *Authorizing the Bonding of Persons Engaging in the Home Improvement Business*, H.R. REP. No. 2145, 86th Cong., 2d Sess. 1, 2 (1960).

In the past 5 years such complaints made to the Better Business Bureau of Washington, D. C., have risen in rank among all complaints received by that bureau from sixth to third place, and in the past year such complaints have increased by approximately 40 per cent. Since all instances of fraud and abuse are not reported, it is apparent that there is a need for corrective legislation.

The complaints most frequently received stem from the following practices: contractors receiving full payment prior to completion of the job; misrepresentation of the starting and completion dates and of costs; sloppy, inferior work; incomplete work; substituted materials; various other breaches of contract; and, improper permits or no permits at all.

Only fly-by-night operators can profit by such practices. The established ethical home improvement contractor cannot since his greater financial responsibility furnishes an assurance that a homeowner can obtain redress for violation of a home improvement contract. Requiring home improvement contractors to furnish a bond for the protection of the public will insure that such contractors will be financially responsible.

Viewed philosophically, the District of Columbia experience, and similar experiences elsewhere, may be regarded as some of the labor pains in the birth process of a new industry. More importantly, however, it points up some extremely significant problems which the new industry must fully understand and provide against.

C. Some Government and Public Responses to the Problem

Government aid for rehabilitation has been available on the federal level for twenty-five years through the FHA Title I program, under which about \$13 billion of property improvement loans had been insured through June 30, 1960. More recently, in 1954, sections 220⁸⁰ and 221⁸¹ were added to the National Housing Act, which established the FHA in 1934. Section 220 authorizes FHA to issue mortgage insurance on liberal terms to assist in the construction or rehabilitation of dwellings in urban renewal project areas. Under section 221, FHA assists in the financing of new or rehabilitated dwellings (not required to be located in urban renewal areas) for families displaced by governmental action, such as slum clearance or code enforcement or acquisition of land for public improvements.

On the state level, a good example of government aid is the New York law authorizing cities until June 1, 1961, to adopt ordinances providing that any increase in assessed valuation resulting from alterations and improvements to certain existing multiple dwellings to eliminate unhealthy or dangerous conditions or to replace inadequate and obsolete sanitary facilities will be exempt from local real property taxes for a period of up to twelve years. The statute further provides that a locality may abate taxes on such property by an amount equal to $8\frac{1}{3}$ per cent of the cost of rehabilitating the structure each year for a period of ten years.⁸²

On the municipal level, New Orleans provides a good example with the experi-

⁸⁰ 68 Stat. 596 (1954), 12 U.S.C. § 1715k (1958).

⁸¹ 68 Stat. 599 (1954), 12 U.S.C. § 1715l (1958).

⁸² N.Y. REAL PROP. LAW § 489.

ence it had with its Home Improvement and Slum Prevention Division. In 1954, \$400,000 was appropriated to operate the Division. The city estimated that during that year the enforcement program generated more than \$10 million worth of rehabilitation business.

In California, the Oakland Urban Renewal Foundation was formed as a non-profit organization by a number of individuals and organizations to provide advisory services and assistance to property-owners in connection with the urban renewal program undertaken by the local public agency. Also, through donated funds the Foundation proposes to assist in financing rehabilitation in hardship cases.

In Ohio, the Cleveland Development Foundation was organized on a charitable basis to aid civic and governmental agencies to get under way a practical urban renewal program. A revolving fund of \$2 million was provided through subscription by civic-minded persons and business leaders. The Foundation assists in financing rehabilitation costs in hardship cases.

D. Industry Response to the Problem

Industry and other private groups have combined to form American Council to Improve Our Neighborhoods (ACTION), which represents all segments of national life, including commerce, finance, manufacturing, labor, religion, and the professions, with a view to helping provide in our nation's cities the best possible environment in which to live and earn a livelihood, with particular emphasis on good housing, efficient transportation, vigorous centers of commerce and culture, and adequate financing for private and public improvements. To achieve these objectives, ACTION provides a national research and information program, liaison with business, industry, government and the professions, and furnishes services to local citizens' groups.

Further, individual segments of industry are doing a great deal in the rehabilitation field. Many firms representing the varied private enterprise components involved in rehabilitation have developed specific educational and sales programs designed to aid industry and the public in better understanding the problems of rehabilitation. One example is the United States Gypsum Company, which, in cooperation with the National Association of Home Builders, published a booklet entitled *Operative Remodeling* in 1956. Another is Sears, Roebuck, and Co., which has had an active urban renewal program for over five years, wherein hundreds of local Sears store managers and other executives, encouraged by top management, have provided leadership and stimulus for their city's program to eliminate and prevent slums. To better equip its personnel to take active part in local community programs, Sears has provided a number of educational tools, including a slide film entitled "The Dollars and Sense of Urban Renewal," a film entitled "As Your Home Goes," an illustrated newsletter entitled "Urban Renewal Observer," and two primer-type booklets entitled *ABC's of Urban Renewal* and *Citizens in Urban Renewal*. In addition, the Sears Foundation has established an endowment

of ten annual graduate fellowships in city planning and urban renewal in an effort to help alleviate the shortage of experienced personnel in this field.

E. An Assist to Home-owners

A necessary complement to an effective rehabilitation industry is, for the lack of a better term, a clearing-house at the municipal level to serve the property-owner as a single-stop center for necessary information and the manifold actions which are brought into play through local code requirements and urban renewal activities.

All too frequently the home-owner who voluntarily or in compliance with local codes undertakes to rehabilitate his property is confronted with a series of problems, the answers to which he must seek out from several sources. In addition to understanding code requirements and obtaining necessary permits, he requires information concerning urban renewal objectives, construction materials and methods, and financing aids available for getting the job done.

The urban property-owner confronted with rehabilitation problems is not unlike the farmer of many years ago. Before the farmer had the assistance of the county agent, he lacked anyone to advise him of existing but unknown sources of guidance towards improved methods of farming. A parallel to this rural situation exists in the problem confronting the home-owner faced with the job of restoring his dwelling to the established code standards. An urban agent or home improvement counselor could advise on financing, code requirements, architectural design of desired structural changes, reliable contractor availability, material and labor sources, costs, and the many related questions. The office of the urban agent or home improvement counselor could be an information center where under one roof most of the needed help would be available. The lending institutions, contractors, material suppliers, architects, lawyers, and others could be enlisted for voluntary part-time counseling to supply these essential services. Much literature from material suppliers, banks, and others, relating to home improvement is available and could be distributed at the center. A lending library of books on modernization, including do-it-yourself material, would help to supplement the personal guidance provided. Another service the center could offer would be evening clinics on methods of home improvement.⁸³

⁸³ The Ford Foundation on August 8, 1960, announced that it had made a grant of \$125,000 to the University of Illinois, similar to grants made to Rutgers University and the University of Wisconsin, designed to help develop urban counterparts of the agricultural research, education, and extension programs of the land-grant colleges. These grants may point the way to the needed evolution of an urban agent or home improvement counselor. See Chicago Sun Times, Aug. 9, 1960, p. 5, col. 1.

APPENDIX
CONSTRUCTION INVOLVING REHABILITATION AND CONSERVATION
OF EXISTING DWELLING UNITS
(Millions of dollars)

| Year | EXPENDITURES FOR | | Year | EXPENDITURES FOR | |
|------|---|--|------|---|--|
| | Additions and alterations of existing private nonfarm dwellings | Maintenance and repairs of existing private and public nonfarm dwellings | | Additions and alterations of existing private nonfarm dwellings | Maintenance and repairs of existing private and public nonfarm dwellings |
| 1915 | \$ 140 | \$ 506 | 1940 | \$ 335 | \$ 1,256 |
| 1916 | 145 | 521 | 1941 | 375 | 1,333 |
| 1917 | 125 | 551 | 1942 | 225 | 1,232 |
| 1918 | 110 | 565 | 1943 | 160 | 1,217 |
| 1919 | 130 | 595 | 1944 | 220 | 1,315 |
| 1920 | 175 | 625 | 1945 | 516 | 1,527 |
| 1921 | 185 | 670 | 1946 | 1,307 | 2,705 |
| 1922 | 200 | 714 | 1947 | 1,960 | 4,200 |
| 1923 | 210 | 759 | 1948 | 2,467 | 4,800 |
| 1924 | 230 | 833 | 1949 | 2,200 | 4,800 |
| 1925 | 250 | 908 | 1950 | 2,400 | 4,600 |
| 1926 | 270 | 982 | 1951 | 2,490 | 5,000 |
| 1927 | 290 | 1,056 | 1952 | 2,787 | 5,300 |
| 1928 | 315 | 1,131 | 1953 | 2,955 | 5,300 |
| 1929 | 340 | 1,222 | 1954 | 3,013 | 5,700 |
| 1930 | 305 | 1,111 | 1955 | 3,376 | 6,500 |
| 1931 | 175 | 959 | 1956 | 3,695 | 7,000 |
| 1932 | 105 | 752 | 1957 | 3,903 | 7,400 |
| 1933 | 145 | 728 | 1958 | 3,862 | 6,800 |
| 1934 | 200 | 837 | 1959 | 4,435 | 6,800 est. |
| 1935 | 250 | 909 | | | |
| 1936 | 295 | 1,066 | | | |
| 1937 | 320 | 1,154 | | | |
| 1938 | 295 | 1,068 | | | |
| 1939 | 320 | 1,154 | | | |

Source: HOUSING AND HOME FINANCE AGENCY, THIRTEENTH ANN. REP. table A-23, at 306 (1960) (based upon U. S. Dep't of Commerce data).