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FROM PLOWS TO PLIERS—URBAN HOMESTEADING IN AMERICA

I. Introduction

When the concept of homesteading is mentioned two separate examples come to mind—the federal homestead program¹ and the state homestead exemption given a family to protect its property from debt.² This latter protection is the most widely known form of homesteading. It has been justified on several grounds,³ and exists in one form or another,⁴ in the majority of American jurisdictions.

1. This act provided for the grant of land at a minimum price with full title to vest only if the property was occupied for five years. The grant was limited to the heads of families over twenty-one years of age, with minor exceptions. The purpose had to be “settlement and cultivation.” The family was protected by the grant of full title in the event the father died before the five years expired. Homestead Act, ch. 75, 12 Stat. 392 (1862), *as amended*, 35 Stat. 639 (1909), *as amended*, 43 U.S.C. §§ 161-302 (1970).

2. The Federal Homestead Act also included this protection: “Sec. 4: That no lands acquired under the provisions of this act shall in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of the patent therefor.” Homestead Act, § 4, at 12 Stat. 393.

3. Homestead laws are a matter of public policy for the protection of the family. In *Kleinert v. Lefkowitz*, 271 Mich. 79, 86, 259 N.W. 871, 873 (1935), the court stated that: “The constitutional homestead exemption was fixed by the people; does not depend upon . . . equity jurisprudence; and was to preserve the home for the family, even at the sacrifice of the just demands of creditors, for the reason [that] the preservation of the home was regarded as of paramount importance.” This reasoning has remained the prime motivation behind the homestead exemption. See Comment, *Intentions, Mortgages and the Homestead Exemption: A Matter of Estoppel*, 24 BAYLOR L. REV. 187 (1972). The homestead exemption has also been used to promote homeownership. *Bigelow v. Dunphe*, 143 Fla. 603, 197 So. 328 (1940).

4. Delaware has no homestead exemption of any type. Both Pennsylvania and Massachusetts have exemptions. MASS. ANN. LAWS ch. 188, §§ 1-10 (1955), *as amended*, MASS. ANN. LAWS ch. 188, §§ 1-10 (Supp. 1972) (maximum of \$10,000); PA. STAT. ANN. tit. 12, §§ 2162, 2164 (1968). At what value the property granted an urban homesteader would be valued for the purposes of the homestead protection is not established. Homesteading generally means the protection of residential property by artificial means from certain legitimate obligations of the owners. *In re*

Several east coast cities have recently added a third example which uses the features of previous homestead plans⁵ to achieve the purposes of the various housing programs. Under this new program, a family receives a grant of a home at a minimum price on condition that it occupies the residence and improves it to satisfy all applicable codes.⁶ In return, the property is transferred to the homesteader,⁷ thus benefiting both the city and the individual.⁸ Additionally, some of the urban homesteading statutes grant protection from the tax laws and other ordinances that could limit ownership.⁹

This comment will analyze the urban homesteading program in terms of traditional homesteading concepts and urban renewal. The possibility of expanding the concept to a national scale will also be considered.

II. Urban Homesteading Statutes

The urban homestead differs from prior federal and local programs in that rehabilitation of a neighborhood rather than benefit to the family is the primary motivation.¹⁰ However, the effect is the same; settlement or resettlement of areas where people would not choose to live without some kind of inducement.¹¹

Miller, 27 F. Supp. 999, 1001 (S.D. Cal. 1939) (California law); Bartold v. Lewandowska, 304 Mich. 450, 8 N.W.2d 133 (1943).

5. WILMINGTON, DEL., ORDINANCE 73-047, WILMINGTON, DEL., REV. CITY CODE ch. 33A (1973) [hereinafter cited as WILMINGTON ORDINANCE]; PHILADELPHIA, PA. ORDINANCE 543 (1973) [hereinafter cited as PHILA. ORDINANCE]. Baltimore, Maryland is proceeding without specific authorization under the general charter powers of the city. MD. CONST. art. XI, § 9.

6. The minimum occupancy period is three years in Wilmington. WILMINGTON ORDINANCE § 4.

7. It is an express condition in the conditional deed given to the urban homesteaders in Wilmington. Wilmington Conditional Deed 2.

8. The city benefits through the improvement of the neighborhood and the return of the property to the tax rolls. The individual obtains the house at its repair cost rather than at the full purchase price.

9. The Philadelphia proposal includes a realistic reappraisal of the homestead property before conveyance and grants exemption from the real property tax on improvements. PHILA. ORDINANCE § 6.

10. *Id.* WILMINGTON ORDINANCE.

11. The Pre-emption Act, ch. 16, §§ 9, 10, 5 Stat. 453 (1841), granted land to states which could be sold in units of 160 acres, for a minimum of

While the ownership of a home remains a goal shared by the majority of American families,¹² it is one which countless housing programs have failed to satisfy. Urban homesteading is the most recent program designed to promote urban renewal and home ownership. Led by Wilmington, Delaware, whose plan is already in operation,¹³ Philadelphia has adopted a similar program for urban homesteading.¹⁴

Wilmington deserves credit for being the first city to implement an urban homesteading program.¹⁵ Homesteading was first proposed as a campaign promise in the 1972 mayoral election,¹⁶ although it had already developed a "certain currency among urban housing professionals"¹⁷ of the Delaware valley.

\$1.25 an acre. The requirements for this privilege were the same as those adopted by the Homestead Act of 1861. The proceeds from these sales were to be applied to internal improvements. The pre-emption right was denied to those who already owned 320 acres or who were moving from private to public land within the same state. For a full discussion of the motivation and methods of American homesteading see, B. HIBBARD, *HISTORY OF PUBLIC LAND POLICIES* (1965); R. ROBBINS, *OUR LANDED HERITAGE: THE PUBLIC DOMAIN 1776-1936* (1942).

12. REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 477 (Bantam 1968).

13. Wilmington Evening Journal, Aug. 23, 1973, at 13, col. 1; *Id.*, Aug. 24, 1973, at 2, col. 1.

14. PHILA. ORDINANCE.

15. While the use of the term urban homesteading and some of the methods involved are new, the idea of preserving and improving neighborhoods is not. Slayton, *Conservation of Existing Housing*, 20 *LAW & CONTEMP. PROB.* 436 (1955). This article discounts the possibility of individuals rehabilitating property after government action. *Id.* at 446-55. The problem of abandoned housing has been approached by others with little success. Senator Brooke introduced "The Abandoned Properties and Neighborhoods Act of 1970," 116 *CONG. REC.* 24300 (1970), to provide federal assistance to finance neighborhood improvements to encourage continued occupation of housing properties. In addition, the proposal would have made funds available for home rehabilitation. No provision was made for abandoned buildings owned by governmental units.

16. A local controversy exists as to which city, Wilmington or Philadelphia, first developed the idea of urban homesteading. The credit seems to be deserved by Philadelphia Councilman Joseph Coleman for first seeing the potential in the program.

17. Letter from Edward L. Gulczynski to Richard Lieto, July 9, 1973,

Wilmington's ordinance is prefaced with language that indicates the ordinance's multiple purposes; to help alleviate the City's severe shortage of habitable dwellings; to eliminate further creation of blighted abandoned houses; and to return abandoned properties to the tax rolls.¹⁸ Despite its small size¹⁹ and population,²⁰ Wilmington has acquired title to over 2,000 properties²¹ through owner abandonment,²² tax liens, gifts, and other legal processes.²³ These properties are presently unoccupied, deteriorated and unproductive.²⁴ The result is domino-like; leading to neighborhood deterioration with further blight and abandonment of properties. By giving these abandoned homes to enterprising individuals willing to restore them to habitability the City hopes to reverse the trend.

The emphasis of Philadelphia's program is different. Philadelphia

on file in the *Fordham Urban Law Journal* office (the author is the Housing Coordinator of Wilmington) [hereinafter cited as Letter from Edward Gulczynski].

18. WILMINGTON ORDINANCE.

19. The city is situated on the Delaware River thirty miles south of Philadelphia and has a radius of approximately three miles. 7 *Encyclopedia Britannica* 151 (15th ed. 1962).

20. Wilmington's population, according to the 1970 census, is 80,386. *THE WORLD ALMANAC AND BOOK OF FACTS* 163 (1972).

21. *Wilmington Evening Journal*, Sept. 7, 1972, at 3, col. 1.

22. Abandonment occurs when a landlord no longer provides services to an occupied building and allows taxes and mortgages to go unpaid, leading to inhabitability and resident dislocation. Abandoned buildings must be distinguished from those merely vacant due to renovation or demolition, or for some other social or economic purpose. Identifiable states of abandonment include: decline in neighborhood socio-economic status, social or ethnic change within a neighborhood, property speculation and exploitation, disinvestment (lack of maintenance, mortgage default and tax arrears), desertion of the area by middle and working class elements of the population and the emergence of the "crisis ghetto" (a marked increase in female headed families and crime rates, with a decrease in family income, years of schooling and male employment) and abandonment. Claytor, *Abandoned*, 28 *J. HOUSING* 271, 272 (1971), summarizing, CENTER FOR COMMUNITY CHANGE & NATIONAL URBAN LEAGUE, *THE NATIONAL SURVEY OF HOUSING ABANDONMENT* (1971). See Nachbaur, *Empty Houses: Abandoned Residential Buildings in the Inner City*, 17 *How. L.J.* 3 (1971).

23. WILMINGTON ORDINANCE, Preamble.

24. *Wilmington Evening Journal*, Sept. 11, 1972, at 18, col. 1.

is attempting to extend home ownership to low-income families²⁵ as well as to rehabilitate abandoned properties, limit blighted, unsightly and ghetto areas, and, hopefully, return the properties to the tax rolls. Emphasis is on a social welfare purpose rather than an economic goal.

Both statutes create Homestead Boards to be appointed by the Mayor.²⁶ The Philadelphia City Council provides a list of acceptable prospective Board members who represent certain interest groups involved in this area of public policy.²⁷ The composition of the Wilmington Board, on the other hand, is left entirely to the Mayor. There are no membership qualifications such as familiarity with the problems of urban housing, residency, or racial or sexual composition mentioned.²⁸ Members of both Boards serve without compensation.²⁹ Wilmington's Board serves for an unspecified term, apparently until resignation, misbehavior, or at the pleasure of the Mayor.³⁰ The appointments in Philadelphia last for three years.

25. PHILA. ORDINANCE § 6(h).

26. The Wilmington Board is to consist of three to five members, WILMINGTON ORDINANCE § 8; the Philadelphia Board has eleven members and a chairman, PHILA. ORDINANCE § 2. Both boards have the power to appoint a secretary. In Philadelphia he is to be a member of the board; his status is unclear in Wilmington. The secretary's functions are not stated in either statute.

27. PHILA. ORDINANCE §§ 1, 2. The list must contain three names for each of the six positions open to the public and two names for the two positions to be held by members of the City Council and designated by the City Council President. The Executive Director of the Philadelphia City Planning Commission, the Executive Director of the Redevelopment Authority, and the Deputy Managing Director for Housing serve on the Homestead Board ex-officio. The twelfth member of the Board, the chairman, is appointed by the Mayor at his discretion.

28. In exercising his discretion the Mayor of Philadelphia appointed the Councilman who created the homestead concept, Joseph Coleman, as the Chairman of the Homestead Board. Discretion does not have to be negative. *Phila. Inquirer*, Sept. 19, 1973, § 3-D, at 1, col. 1.

29. PHILA. ORDINANCE § 3; WILMINGTON ORDINANCE § 9.

30. When not specified in the statute, city charter provisions of state law may govern the establishment of length of term in office. For example, in Philadelphia, the PHILADELPHIA HOME RULE CHARTER § 9-200 (1953) provides that "any appointed officer may be removed at the pleasure of the appointing power." A recent case on this point is Philadelphia Anti-

Initial appointments will be for less than three years to create a staggered membership which will allow for continuity of program and policy regardless of changes in the City administration.³¹

The power of the Wilmington Homestead Board is limited by the ordinance itself and by a complete lack of funding from the City Council.³² The Board's major functions are ministerial. Indeed, the Homestead Board's primary function appears to be the matching of homestead applicants to homestead properties. The express power of the Board to promulgate "regulations consistent with the purpose and spirit of the Homestead program as outlined herein"³³ is merely the power to pass regulations that are reasonable and consistent with the rest of the homestead ordinance. Thus, while the Homestead Board can pass regulations on how, when and where homestead properties can be advertised and can provide homestead application forms and methods of processing applicants, the Board does not have the power to change the statutory qualifications that the homesteader must satisfy. The Board cannot change the period of time a homesteader has to rehabilitate the property, or the length of required residence before the awarding of fee simple title.³⁴ These

Poverty Action Comm. v. Rizzo, 363 F. Supp. 503 (E.D. Pa. 1973).

31. PHILA. ORDINANCE § 4.

32. Letter from Edward Gulczynski, *supra* note 17. The only recent homestead expenses have been the cost of publishing announcements of the program and credit checks on applicants. Printing and legal services have been provided in house. To continue to operate the program at ten units per quarter, however, Housing Coordinator Gulczynski has estimated a need for a \$40,000 appropriation. This would be used to add staff to maintain records on individual homesteaders and for communicating with and screening new applicants. Nevertheless, he states, "[a]scribing all of these costs to the 'cost of development' would still show homesteading by far as the cheapest government sponsored housing program of the many that have been attempted in the past decade." *Id.*

33. WILMINGTON ORDINANCE § 10.

34. Among the powers delegated to the Wilmington Homestead Board are: "(1) [r]eview and publicize, by newspaper advertising or some other effective method, the availability of Homestead Program properties; (2) [a]ccept and review applicants and determine the qualifications of applicants within the criteria established by this Ordinance and regulations promulgated hereunder; (3) [a]pprove and certify applicants with a view toward compatibility of the applicant and the parcel assigned to

powers, along with even the formal execution of the homestead deed itself,³⁵ remain with the Mayor and the City Council. Furthermore, even those regulations that are passed by the Board in its narrow scope of authority are subject to veto power by the City of Wilmington Law Department,³⁶ which attempts to keep all city agency regulations within the restrictions of the City Charter.

Other limitations on the powers of the Homestead Board appear throughout the ordinance. While the Board is to cooperate with and "utilize the aid and assistance of other relevant City agencies in the furtherance of the duties and responsibilities of the Board,"³⁷ there is no implied authorization to work with the Delaware Slum Clearance and Housing and Urban Development Administration or with the Federal Department of Housing and Urban Development (HUD).³⁸ Both these agencies own a considerable amount of property in the City of Wilmington.³⁹ Coordination with these two agen-

him; (4) [a]pprove and recommend the execution, by the Mayor and the City Clerk, of the conditional deed to the assigned parcel upon the applicant being approved; (5) [a]pprove and recommend the execution, by the Mayor and the City Clerk, of all documents necessary to convey fee simple title to the assigned parcel to the applicant upon the applicant's fulfillment of all conditions enumerated in Section 4 hereof." *Id.* § 11.

35. The Wilmington Conditional Deed contains all of the conditions of the Wilmington Ordinance. They are made an express condition to the transfer of the fee simple. Wilmington Conditional Deed 2. The homesteaders agree by contract to allow periodic inspection of the property and to vacate the property thirty days after written notice of failure to satisfy the conditions of the deed. *Id.* at 3. This is to occur "after due consideration" by the Wilmington Homestead Board. The regulations of the Wilmington Homestead Board are incorporated into the deed as well as in the original ordinance. *Id.* at 4.

36. WILMINGTON ORDINANCE § 10. Presumably this is the office of the City Solicitor, the office responsible for the drafting of the ordinance. The function of the Law Department will be measured by attempts at the expansion of Homestead Board power.

37. *Id.* § 12.

38. The Delaware statutes authorize cooperation between agencies and the city government. DEL. CODE ANN. tit. 31, §§ 4501-43 (1953).

39. The Department of Housing and Urban Development (HUD) owns 322 single family properties in Wilmington; 3,261 in Philadelphia; 15,465 in Detroit; and 6,906 in Seattle. 116 CONG. REC. 20145 (daily ed. Nov. 9, 1973).

cies remains with the Mayor and City Council. Whatever cooperation that might develop among them remains unsettled at this point.⁴⁰ The Wilmington Homestead Board does not in fact have the authority to select property for homesteading.⁴¹ This power is vested in the City Department of Licenses and Inspection and the Department of Planning and Development.⁴² Together, these two departments are to "compile and maintain a catalog of all unoccupied dwellings and vacant lots owned by the City which the Department of Licenses and Inspection shall determine to be parcels that can be utilized for rehabilitation or new construction by private individuals."⁴³

40. The Mayor, the City Council and the City Planning Commission will determine the amount of cooperation the Homestead Board will have with particular outside agencies. This will depend on the degree of support given the experiment in urban homesteading.

41. WILMINGTON ORDINANCE § 2.

42. *Id.*

43. *Id.* This section seems to authorize urban renewal as well as urban homesteading. The city has, thus far, only made grants to urban homesteaders. Among the factors to be used in determining if renewal is the solution are: the cost of rehabilitation compared to the cost of demolition and new construction; the suitability of the land use; population and building density; traffic patterns; the adequacy of public facilities; the problem of the relocation of tenants; the time that a particular rehabilitation will take; the general plans for the area; the architectural and historical value of the buildings; and, the need for expanding community services. Nachbaur, *Empty Houses: ABANDONED RESIDENTIAL BUILDING IN THE INNER CITY*, 17 *How. L.J.* 3, 6 (1971). None of these tests is suggested in the statute. The list of properties available for homesteading must be approved by the City Planning Commission and then submitted to the City Council which must approve by resolution. The views of the City Planning Commission are to be based on future "uses consistent with overall urban renewal planning." WILMINGTON, DEL., REV. CITY CODE § 30-12(b) (1973). The City Council must approve in accordance with "the public purpose of improving the quality of housing in accordance with the Homestead Program and not as the sale of surplus land." WILMINGTON ORDINANCE § 3. The houses offered for homesteading are either single or row houses, predominately brick, two to three stories, with several bedrooms. They have little or no operable plumbing, electrical wiring or heating. Most of the houses are about fifteen feet wide. If located in the middle of the row, they have twenty foot backyards. The twin houses have both side

In contrast to Wilmington's Homestead Board, Philadelphia's is given much more express authority.⁴⁴ It is also funded by the City and empowered to hire salaried staff and obtain assistance from other agencies.⁴⁵ Specifically, the Board is empowered to select appropriate vacant properties and structures for homesteading.⁴⁶ The Board can also institute foreclosure proceedings against vacant property and structures to obtain title in the City's name for prompt transfer to homesteaders.⁴⁷ Public nuisance proceedings against deteriorated and blighted structures, whether vacant or occupied, for purposes of demolition and eventual award to homesteaders can also be initiated.⁴⁸ The Board can recommend tax and housing code exemptions during rehabilitation.⁴⁹ Like the Wilmington Board, the Philadelphia Board also approves and matches applicants to homesteads.⁵⁰ But the Philadelphia Board is further empowered to help the homesteader apply and obtain any necessary financial assistance to complete the rehabilitation.⁵¹

One curious addition in Philadelphia's Homestead Act is the Board's power to "[r]ecommend to the City Council the establish-

and backyards. Of the first homesteads, the twenty-three considered ideal were homesteaded first. All were within two miles of the city center. The City presently has about two thousand properties and acquires two or three hundred more each year. The average cost to the City is five hundred dollars per house. Before homesteading, the City had to expend additional funds to rehabilitate or demolish the property. The owners right to redeem the property from the City formerly lasted for one year after title went to the City. To facilitate urban homesteading the period has been reduced to three months. Wilmington Homestead Board, Questions and Answers About Homesteading in Wilmington (information sheet available from Wilmington Homestead Board) [hereinafter cited as Questions and Answers]. Wilmington Evening Journal, May 17, 1973, at 1, col. 1; Letter from Edward L. Gulczynski, *supra* note 17.

44. PHILA. ORDINANCE §§ 7, 8.

45. *Id.* § 7.

46. *Id.* § 6(A).

47. *Id.* § 6(B).

48. *Id.* § 6(C).

49. *Id.* § 6(D), (J).

50. *Id.* § 6(E).

51. *Id.* § 6(H).

ment of various Community Homesteading Areas,"⁵² which shall be established by City Council ordinance. In these areas, local councils are to be appointed "consisting of local community and civic organizations and indigenous community leaders to promote, assist, and advise the Board on homesteading programs in their respective area."⁵³ This provision is designed to encourage meaningful and active participation by the local population in implementing the homestead plan. In this respect, the homesteading plan parallels the various community action programs administered by the Philadelphia Anti-Poverty Commission, established under the Economic Opportunity Act of 1964,⁵⁴ and the model city program, established under the Demonstration Cities and Metropolitan Development Act of 1966.⁵⁵ The Board's power to pass regulations is, like Wilmington's, subject to scrutiny by the Law Department of the City.⁵⁶

Philadelphia's statute has also omitted any authorization to work with relevant state housing authorities or HUD. Because of the greater need for funding to assist low income families to obtain homesteads for rehabilitation, and the limited willingness and resources of the Philadelphia financial community, coordination with state and federal programs seems imperative.

While the qualifications for becoming a homesteader under the two programs follow similar patterns, there are specific differences. Wilmington requires a homesteader to be eighteen years old and the head of a family;⁵⁷ Philadelphia has a twenty-one year old minimum, unless the applicant is the head of a family.⁵⁸ Both require

52. *Id.* § 6(K).

53. *Id.*

54. *Comprehensive Group Health Serv. v. Temple Univ.*, 363 F. Supp. 1069 (E.D. Pa. 1973); *Philadelphia Anti-Poverty Action Comm. v. Rizzo*, 363 F. Supp. 503 (E.D. Pa. 1973).

55. *North City Area-Wide Council, Inc. v. Romney*, 428 F.2d 754 (3d Cir. 1970), *cert. denied*, 406 U.S. 963 (1972).

56. PHILA. ORDINANCE § 5. This is similar to the Wilmington provision. It is a curious way to delegate watchdog authority.

57. WILMINGTON ORDINANCE § 4(1).

58. *Id.* § 4(2); PHILA. ORDINANCE § 6(E)(1). This provision enables the head of a family to homestead irrespective of his age. Both acts also require the homesteader to be an American citizen or one who has declared his intention to become one, or a registered alien. *Id.* § 6(E)(2); WILMINGTON ORDINANCE § 4.

proof of financial ability and/or the necessary building trades skills.⁵⁹ Wilmington requires occupancy of the property by the homesteader and his family for not less than three years,⁶⁰ while Philadelphia has a five year occupancy requirement⁶¹ in order to obtain transfer of the fee simple. All homesteaders must contractually agree to rehabilitate the property.⁶² Wilmington is more specific in calling for frequent inspections by the Department of Licenses and Inspections to determine if the property is being improved in a satisfactory manner.⁶³ If the inspection reveals that the homes-

59. PHILA. ORDINANCE § 6(E)(3); WILMINGTON ORDINANCE § 4(3). Since the Philadelphia approach is intended to benefit low income groups the qualifications for homesteading may, of necessity, be lower than those in Wilmington. Moreover, unlike Wilmington which requires personal financial ability, Philadelphia will consider financing through banks or means otherwise sufficient to meet the financial ability criteria. In Wilmington five of the first ten homesteaders were single individuals. Eight of the winning families were Black, eight were from the City of Wilmington, one from Philadelphia, and the other from elsewhere in New Castle County, Delaware. *Wilmington Evening Journal*, Aug. 25, 1973, at 2, col. 5. An estimated \$9,000 minimum is needed in Wilmington to rehabilitate a house to meet local standards. *Id.* Low income and welfare recipients are unlikely to meet the income requirements even with supplementation. These groups are neither the intended beneficiaries of the ordinance, nor is it designed to solve their problems. Questions and Answers, *supra* note 43, at 3. "Know-how" ability is undefined in either program. It apparently means carpentry skills and other crafts.

60. WILMINGTON ORDINANCE § 4(4)(d).

61. PHILA. ORDINANCE § 6(E)(5).

62. *Id.* § 6(E)(4), Building and Housing Code standards must be met in two years. *Id.* § 6(D). It is unclear when the two year period is to commence; from the date of conveyance or sixty days thereafter. A conditional deed will be executed with a fee simple title to be conveyed at the end of the five year period. This is designed to reduce turnover and to prevent speculation. Wilmington provides an eighteen month period to bring the property up to satisfaction of all applicable codes. WILMINGTON ORDINANCE § 4(4)(a).

63. *Id.* § 4(4)(b). Reasonably satisfactory progress is a difficult determination to make. The standard will ultimately depend on the good faith of the parties. If the required renovation is extensive and time consuming, and there is no general contractor to commence the work immediately, then the eighteen month statutory period could run before the work is completed.

teader is unable or unwilling to proceed with the needed reconstruction the City can remove him upon thirty days notice of the failure.⁶⁴ There is no provision for recapture of the property in Philadelphia's ordinance. Upon conveyance of the fee simple to the homesteader both Homestead Boards cease to exercise any control over the property and the homesteader is free to use his property like any other homeowner.

Within these statutory schemes, urban homesteading is a unique approach to solving the problem of abandoned homes. As compared to other rehabilitation programs, its uniqueness results from the fact that it is a locally originated, controlled, operated, and funded program.⁶⁵ It enables the average citizen to understand the immediate burdens and benefits of rehabilitation without the assistance of legal counsel, thus generating enthusiasm and participation.⁶⁶ As yet, there are no complicated inter-agency relationships for the participant to comprehend.⁶⁷ The qualifications are simple. The home-

64. *Id.* § 4(4)(c). The thirty day provision for eviction is ambiguous with respect to one's status as a homesteader. It may help define him as either a tenant at will or month to month. Inability and unwillingness are highly subjective terms and are undefined in the ordinances. They raise problems with respect to the nature of the proceedings that might be necessary for eviction. Administrators are not allowed to act in an arbitrary or capricious manner. DEL. CODE ANN. tit. 10, § 6103 (1953). No administrative or judicial procedure is established for the review of the decisions of the Homestead Board. Assuming that the building is rehabilitated to comply with the City Housing Code and then allowed to deteriorate again, the homesteader would still have the thirty day period to repair the premises. See WILMINGTON ORDINANCE § 4(4)(c). Whether the requirement of maintenance after satisfactory rehabilitation is that of constant repair is unclear. The parcel has to be lived in and occupied for a three year period, but what this means is also unclear.

65. This will remain true as long as the financing is arranged by the individual homesteader. See REPORT OF THE PRESIDENT'S COMMISSION ON URBAN HOUSING, A DECENT HOME 54-59 (1968) [hereinafter cited as KAISER COMMITTEE REPORT].

66. This is not to deny that the general language of the ordinances will be subject to later complications as homesteading develops. For the first ten houses distributed in Wilmington, there were one hundred applicants from a broad cross-section of society. Wilmington Evening Journal, June 8, 1973, at 3, col. 4.

67. In Wilmington the prospective homesteader only comes in contact

steader does not have to worry about failure to continue to meet statutory standards, *i.e.*, the homestead becomes his if he maintains and cares for the property.⁶⁸ He is not forced to leave should his income rise above a certain level, or if neighboring tenants feel he is undesirable, as in other types of low income housing projects.⁶⁹

Some of these advantages exist to a greater degree in Wilmington than in Philadelphia. This is primarily because of the smaller, and hence more manageable scope of the existing homesteading plan, the smaller number of existing housing redevelopment or rehabilitation programs with their concomitant agencies and tenant associations, and the small size of the City itself. By comparison, because Philadelphia has devoted more time and money to urban renewal and rehabilitation projects than any other city in the United States,⁷⁰ it is replete with many federal, state, and city housing agencies with overlapping jurisdictions, as well as numerous tenant organizations and community groups.⁷¹

with the Homestead Board.

68. The results of the program will be the investment of individuals rather than of the government. This should remove the stigma that is attached to government housing in the minds of those who are not in need of assistance. Whether the success of the program will generate the collateral improvements the City desires is a question that remains unanswered. Improved housing has a significant impact on physical health, although standing alone it may have little causal affect on mental health, family stability, juvenile delinquency, employment, or levels of job skills or education. Comment, *Government Programs to Encourage Private Investment in Low-Income Housing*, 81 HARV. L. REV. 1295, 1313 n.122 (1968) [hereinafter cited as *Government Programs*].

69. *Id.* at 1306-08.

70. See, *North City Area Wide Council, Inc. v. Romney*, 428 F.2d 754, 756 (3d Cir. 1970), *cert. denied*, 406 U.S. 963 (1972). The plaintiff group consisted of 458 associated persons from 115 organizations within the target area. Together with seven non-profit corporations, upon consultation with HUD and the City, plaintiff group was to administer the model cities program. HUD then objected to the Philadelphia Model Cities Program because of the heavy involvement of the plaintiff in the non-profit corporations and because of the insufficient involvement of the City of Philadelphia. *Id.*

71. Philadelphia has over thirty thousand vacant and deteriorated structures, many in neighborhoods with high and increasing crime rates. *Phila. Inquirer*, Sept. 2, 1973, § 6-B, at 1, col. 1.

Once the problem of coordination is overcome, the problems of accessibility and accountability must then be met by the Homestead Board. Wilmington has two thousand abandoned houses now, and acquires about two or three hundred more each year. Philadelphia has twenty to thirty-five thousand abandoned houses and acquires a proportionately greater number of abandoned houses each year—an indication of the greater complexity and possible impact of an urban homesteading plan in Philadelphia.⁷²

In addition to the problems of agency administration most cities are faced with several complex problems including crime, inadequate public facilities and services, unemployment, substandard health care, poverty and racial discrimination. With a larger concentration of all these problems in Philadelphia, it is unreasonable to expect either white or black suburban middle class citizens to return. Only in Wilmington with its smaller size and less complex problems does this seem to be a realistic possibility. In Philadelphia, therefore, primary participation in the program will be by low income residents. This may cause the program to become dependent on federal aid and involve the city with the frequent changes of federal policy.

In contrast, the Wilmington program has encouraged upper and middle class private investment in the inner city. Wilmington urban homesteading is an urban renewal plan that cannot be castigated as yet another subsidy for low income groups. Positive improvements by homesteaders should generate collateral enthusiasm and improvements by other homeowners and lessors in the neighborhood. As rehabilitation capital flows into an area, local business will benefit. The end of the outward migration of middle class families will bring investment, involvement and improvement to inner city

72. See Silverman, *Homeownership for the Poor: Subsidies and Racial Segregation*, 48 N.Y.U.L. REV. 72 (1973). Even programs which are designed to defeat racial segregation have a history of failure. This segregation is the result of many factors including the reluctance of both blacks and whites to mix. *Id.* at 84. Builders often build with one racial group in mind. U.S. COMM'N ON CIVIL RIGHTS, HOME OWNERSHIP FOR LOWER INCOME FAMILIES; A REPORT ON THE RACIAL AND ETHNIC IMPACT OF SECTION 235 PROGRAM 55 (1970). To disperse income groups is a difficult problem, a lottery system, as used in Wilmington, eliminates many of the discriminatory factors.

neighborhoods. These benefits include stable family groups and decreased housing turnover, thus creating a more cohesive neighborhood.

Unlike other urban renewal projects, the effect of Wilmington's urban homesteading may be to create neighborhoods mixed racially and economically.⁷³ Population density will be held constant within the homestead area, consequently public facilities will not be overburdened. The Wilmington program, being locally controlled and financed, is isolated from changes in federal and state housing programs. The program might even be considered profitable if the payment of taxes by the homesteaders is considered.

Urban homesteading is, of course, no panacea to urban housing ills, nor is it without problems of its own. In Philadelphia, with the likelihood of low income family participation,⁷⁴ families are less likely to have either the financial ability or the needed "know-how" to homestead. Wilmington has not yet considered or dealt with this problem. Homesteading does not solve the problems of a shortage of housing due to an increasing population because it does not multiply units quickly or cheaply enough.⁷⁵ Isolated homesteading in deteriorated neighborhoods will have little effect and will not en-

73. Emphasis is on social welfare rather than on neighborhood improvement. *See* note 24 *supra*.

74. The filtering theory is based on the assumption that as higher income groups move into better housing, families in the next lowest economic group move into the better housing left behind. This theory has been sharply criticized on the ground that the price decline necessary to bring a dwelling unit within the reach of an income group lower than the original tenant results in a policy of under-maintenance, and, therefore, rapid deterioration in the quality of housing. Furthermore, racial discrimination probably plays a large part in preventing low income Negro families from moving into moderate income neighborhoods even when housing opportunities are within reach. *Government Programs* 1298 n.27.

75. Quirk, Wein & Gomberg, *A Draft Program of Housing Reform—The Tenant Condominium*, 53 CORNELL L. REV. 361 (1968). The authors estimate the different costs of rehabilitation. In 1967 rehabilitation of apartment units in New York City cost \$9,120 per unit including the cost of acquisition, and \$7,870 per unit if there were no acquisition costs. *Id.* at 379. In New York, rehabilitation work is primarily non-union but paid at union rate. *Id.* at 382. The new construction cost ranges from \$12,000 to \$18,000 for the same unit. *Id.* at 383 n.93.

courage participation by other families afraid for their safety. Homesteading in block size units may lead to resentment from the surrounding neighborhood,⁷⁶ since neither program includes a priority for present residents of the neighborhood. Although homesteading in block size units does offer the advantage of safety in numbers coupled with higher property values, assembling such an area for the influx of outsiders is almost impossible.⁷⁷ The solution appears to be the location of homesteaders on individual properties that are concentrated in one neighborhood. This will incorporate most of the advantages afforded by the blocksize concept, while minimizing neighborhood resistance.

To maintain the success of such a homesteading program it will be necessary to insure a supply of applicants for homesteads in order to protect the rehabilitation investment of the already active homesteaders.⁷⁸ Continued interest can be induced through tax abatements for rehabilitated property.⁷⁹ Such abatements can be gradually removed as the homesteader remains on the property and should cease on his sale of the homestead to another owner. The Homestead Boards might contract with building supply firms to provide supplies at discount for the homesteaders. Additionally,⁸⁰

76. Federal housing projects have been required to file environmental impact statements. *Hiram Clarke Civic Club, Inc. v. Lynn*, 476 F.2d 421 (5th Cir. 1973); *Jones v. Lynn*, 354 F. Supp. 433 (D. Mass. 1973).

77. This is less true in Philadelphia where urban homesteading is aimed at lower income groups. The involvement of middle income families helps preserve the investment.

78. The use of property taxes to finance education has recently been challenged in several states. However, the Supreme Court in *San Antonio Ind. School Dist. v. Rodriguez*, 411 U.S. 1 (1973), held that it was constitutional. While real estate taxes have been opposed for many different reasons it is clear that "heavy taxation of housing consumption seems to run counter to the goal of upgrading urban environments. The fear of increased tax assessments deters rehabilitation." KAISER COMMITTEE REPORT 101.

79. Hopefully, the Internal Revenue Service will not tax the transfer of the homestead as a gift by the city to the homesteader. See *Government Programs* 1212 nn.117 & 118, for a discussion of the depreciation provisions of the Internal Revenue Code which encourage the rapid turnover of slum properties.

80. This assumes that corporate responsibility was not just a passing promotional scheme. See McCall, *Profit: Spur for Solving Social Ills*, 51

the homesteader could be guaranteed a market for his house at the cost of the improvements.⁸¹ These factors could induce the city to provide and maintain adequate services in the area.

Besides insuring a supply of homesteaders, there is a need to insure a supply of homesteads. Rehabilitation of existing properties as a solution to inner city neighborhood restoration is a recent development.⁸² Practical methods of accurately determining building abandonment⁸³ have only been implemented within the past two years. The process has not been regularized in most cities, and depends on ad hoc surveys⁸⁴ conducted by agencies for different purposes.⁸⁵ To expand the homesteading program to properties that could be feasibly rehabilitated requires an efficient identification program that can act before vandals destroy the property. Philadelphia uses its water meter readers for this purpose.⁸⁶ The city distributes the list of abandoned property to the Homestead Board⁸⁷ which,

HARV. BUS. REV. 46 (1973); Andrews, *Can the Best Corporations Be Made Moral*, 51 HARV. BUS. REV. 57 (1973).

81. If the Homestead Board or other governmental body were required to purchase the property if no willing buyers could be found then the city would be induced to provide adequate city services to avoid that possibility. This guarantee would spur the investment of private money.

82. "Rehabilitation has under various programs grabbed more headlines than it has produced standard housing." NATIONAL COMMISSION ON URBAN PROBLEMS, *URBAN AND RURAL AMERICA: POLICIES FOR FUTURE GROWTH* 15 (1968).

83. Housing is abandoned for a combination of reasons including tight money, rising costs of maintenance, over-zealous code enforcement, years of nonenforcement, absentee ownership, obsolete construction, poor management, rising crime, rent control, racial tensions, vandalism, taxes and zoning. Nachbaur, *Empty Houses: Abandoned Residential Buildings in the Inner City*, 17 HOW. L.J. 3, 5-6 (1971).

84. Salkowitz, *Data Systems*, 28 J. HOUSING 187 (1971).

85. In Philadelphia, policemen, housing inspectors, fire inspectors, water meter readers, and Collection Department personnel (water and real estate taxes) were used at various times to gather data on the location of abandoned houses. *Id.* at 187-88.

86. *Id.* at 188.

87. Six classifications have been developed: (1) locked and apparently habitable; (2) open and apparently habitable; (3) sealed and possible for rehabilitation; (4) open and possible for rehabilitation; (5) sealed, probable nuisance; and, (6) open and a public nuisance. *Id.* at 188-89.

in turn, creates the necessary abandonment master file.⁸⁸

Once the abandoned status has been determined, the city must obtain legal title to the property. This can be done through sheriff foreclosure, public nuisance or eminent domain proceedings. Such proceedings fall within the city's power to protect the health, safety and welfare of its residents.⁸⁹ One problem raised by the innovative taking required for urban homesteading is whether the public benefit of an improved neighborhood sufficiently outweighs the private benefit to satisfy the due process clause of the fourteenth amendment.⁹⁰ This issue has never been litigated in a situation where a municipality is taking property from an individual to transfer it directly for the use and enjoyment of another individual.⁹¹ A valid exercise of eminent domain requires that the taking of property be for a public purpose. Urban renewal has been recognized as a public purpose and various urban renewal programs have granted the power to acquire property through eminent domain proceedings. The exercise of this power has generally been upheld except where the public purpose involved in the taking is proven to be secondary to some other purpose,⁹² such as private benefit.⁹³ While almost all

88. *Id.* at 190.

89. "It is declared as a matter of legislative determination that congested and unsanitary housing conditions . . . are a menace to the health, [and] safety . . . of the citizens of this state." DEL. CODE ANN. tit. 31, § 4101 (1953).

90. U.S. CONST. amend. XIV; *Wright v. Walcott*, 238 Mass. 432, 131 N.E. 291 (1921).

91. In *Gigliotti v. Redevelopment Auth.*, 362 F. Supp. 764 (W.D. Pa. 1973), it was said that "there has never been a case where the legislative determination of what constitutes a proper public use has been judicially overruled. *Id.* at 766. See E. DUMBAULD, *THE BILL OF RIGHTS AND WHAT IT MEANS TODAY* 99-100 (1957).

92. A Redevelopment Authority is not allowed to change plans in bad faith. "Such a policy [eminent domain] does not provide the Authority with any power to acquire one man's lands by condemnation in order to satisfy another man's needs." *Redevelopment Auth. v. Owners or Parties in Interest*, 1 Pa. Cmwlth. 378, 389, 274 A.2d 244, 250 (1971). An authority has no power to condemn for a private purpose. *Golden Dawn Shops, Inc. v. Redevelopment Auth.*, 3 Pa. Cmwlth. 314, 282 A.2d 395 (1971).

93. "[T]hat slum clearance is the dominant or primary purpose of such acts, and redevelopment is a subordinate purpose, linked to the pri-

eminent domain plans confer some private benefit, in the homesteading situation this benefit is both significant and obvious. There is some recognition that changing conditions require that the concept of public purpose be redefined.⁹⁴ The discretion of the legislature in determining the public purpose of urban renewal is complete, and the courts are constrained to apply these statutes objectively.⁹⁵ The burden of proving private benefit superior to public purpose is on those opposing the taking.⁹⁶ Given past practices, it is unlikely that courts would bar property obtained through eminent domain from being used in urban homesteading.

Once the applicants have been awarded property, the success of the program will depend, to a significant degree, on the acceptance of the homesteaders by the neighborhood.⁹⁷ Prior consultation between the Homestead Board and community groups, as mandated

mary purpose by provisions designed to prevent the recurrence of the slum, but a subordinate purpose necessitated by the need to put the land to some use." *Randolph v. Wilmington Housing Auth.*, 37 Del. Ch. 202, 209, 139 A.2d 476, 483 (Sup. Ct. 1958). Once the public purpose, slum clearance, has been achieved, then the authority can put it to a productive use and is not barred by any benefit it receives from this land. *Papadinis v. Somerville*, 331 Mass. 627, 630, 121 N.E.2d 714, 717 (1954). Each case has to be considered on its facts and a determination as to whether the public or private purpose is dominant. "[I]t is plain that an expenditure is not necessarily barred because individuals as such may profit, nor is it necessarily valid because of incidental benefit to the public." *Allydonn Realty Corp. v. Holyoke Housing Auth.*, 304 Mass. 288, 292-93, 23 N.E.2d 665, 667 (1939).

94. "[T]he phrase 'public purpose' is not capable of precise definition, and that as changing conditions create changing public needs, so also the concept of what is a public purpose changes." *In re Opinion of the Justices*, 54 Del. 366, 373, 177 A.2d 205, 212 (1962).

95. The court is only to consider what the "[l]egislature reasonably could consider" to be a valid purpose for the taking. *Massachusetts Housing Fin. Agency v. New England Merchants Nat. Bank*, 356 Mass. 202, 212, 249 N.E.2d 599, 606 (1969).

96. *In re Bruce Ave*, 438 Pa. 498, 505, 266 A.2d 96, 99 (1970).

97. If rehabilitation costs more than the dwelling is worth, it would bar the project. Rehabilitation is never cheap, the price varies according to the city and the structure involved. See, Quirk, Wein & Gomberg, *A Draft Program of Housing Reform—The Tenant Condominium*, 53 Cornell L. Rev. 361, 379-382 (1968).

in Philadelphia, is one way to create a proper atmosphere. Failure of other rehabilitation programs to do so has resulted in community hostility.⁹⁸ Hostility is heightened when an urban renewal plan brings an influx of people of different racial, social and economic backgrounds. In Philadelphia's low income neighborhoods a lowering of financial requirements to be met by homestead applicants may be needed to allow any interested family to participate.⁹⁹ Of course, lowering requirements¹⁰⁰ carries the danger of a higher than acceptable failure rate for the homesteading program.¹⁰¹

If homesteaders are to come from the lower end of the economic spectrum, the source of financing for the necessary repairs becomes more important and more difficult to obtain.¹⁰² Banks have traditionally been unwilling to invest in slum areas where property values deteriorate rapidly. Nevertheless, Wilmington banks have demonstrated some interest in making unsecured loans to homesteaders. It should be noted, however, that in Wilmington the applicants were pre-screened lower middle and middle class families or individuals with a high likelihood of success in homestead rehabilitation.¹⁰³

98. Anreder, *Long Way from Haven*, Barron's, Nov. 19, 1973, at 11, col. 1. Breagy, *Boston*, 30 J. HOUSING 327, 331-32 (1973).

99. Comment, *Rehabilitation in Boston Proved and Disapproved*, 27 J. HOUSING 83 (1970). The Boston Rehabilitation Plan (BURP) conceived by HUD and operated by the Federal Housing Administration (FHA) rehabilitated 2700 structures in the Roxbury-Dorchester ghetto. Neither the Boston Housing Authority nor the local Tenant's Association of Boston were consulted in the planning or operation of the program. Resentment resulted from the relocation methods, the failure to hire blacks or to train residents and alleged poor workmanship. BURP is now a failure.

100. The ownership of real property by a welfare recipient in New York does not effect the eligibility of the recipient but "[t]he public welfare official may, however, require, as a condition to the granting of aid or the continuance thereof, that he be given a deed of a mortgage on such property. . . ." N.Y. SOC. SERV. LAW § 360 (McKinney 1966).

101. If this is done the Homestead Board will have to become more sophisticated to develop the expertise and competence necessary for the coordination of the many subsidy programs which will be involved.

102. KAISER COMMITTEE REPORT 96-98.

103. The Farmer's Bank of Wilmington had agreed to supply mortgage money. The bank is 51 percent owned by the State of Delaware. Telephone Interview with Edward L. Gulczynski, Sept. 24, 1973.

Thus the banker's risk was comparatively minimal.¹⁰⁴

A second source of financing for homesteaders could be city bond issues. Recently, Wilmington sold a one million dollar bond issue for the Wilmington City Housing Corporation. Proceeds from this sale were to be used for the Federal Rehabilitation Mortgage Program. Efforts are being made to transfer these funds to the Urban Renewal Department of the Wilmington Housing Authority.¹⁰⁵

Wilmington has available a third source of financing—the Delaware State Housing Finance Agency, established in 1968.¹⁰⁶ This agency is empowered to sell bonds to finance mortgages. These funds, joined with federal monies funneled through the Agency, could be used for homesteading. While not specifically authorized by statute, the agency could contribute pending such authorization.¹⁰⁷ The last major source of potential homestead funds is the federal government.

104. The Wilmington homesteader's conditional deed does not allow encumbrances on the property. If the homesteader defaults on any loan which would require a lien on the homestead, the City would reacquire possession of the property. The City would then attempt to place another homesteader on the property who would be willing to assume the debt. If none can be found, the bank would lose its money. *Id.*

105. *Id.*

106. DEL. CODE ANN. tit. 31, §§ 4301-4322 (1970).

107. Alexander, *Fifteen State Housing Finance Agencies in Review*, 29 J. HOUSING 9 (1972). Only fifteen states have housing finance agencies including Delaware, Massachusetts, New York and Pennsylvania. New York, which established the first in 1960, has recently created an additional agency to coordinate rehabilitation. Its purpose is "a public purpose of the state to promote the preservation and rehabilitation of such substandard and insanitary areas and to encourage the private investment of mortgage capital upon regulated terms in housing accommodations situated in such areas. . . . The purpose of such corporation shall be to provide mortgage insurance for qualified loans advanced by financial institutions so that owners of housing accommodations situated in neighborhood preservation areas might obtain the necessary funds to rehabilitate substandard, deteriorating or dilapidated accommodations and to recast existing mortgage indebtedness upon a long-term basis, making such accommodations available for occupancy at an affordable cost." Law of June 22, 1973, ch. 924, § 701 [1973] McKinney Sess. Laws of N.Y. 1731-32.

III. Federal Urban Renewal Programs

Concerted federal housing activity dates from the 1930s.¹⁰⁸ Many different types of federally subsidized programs have been enacted.¹⁰⁹ The common purpose stated in national housing acts has been to provide a "decent home and a suitable living environment for every American family."¹¹⁰ Most programs have provided funds to local housing authorities to pay for new construction, or more recently for rehabilitation.¹¹¹ Under the "housing allowance" concept recently proposed by President Nixon,¹¹² grants to local housing

108. The National Housing Act, 12 U.S.C. § 1701 (1970), was enacted in 1934.

109. For an excellent history, description and analysis of federal housing programs on which much of this section is based see KAISER COMMITTEE REPORT 53-73. Among the purposes have been the creation of jobs, clearing slums, improving the tax base of the central cities, helping the middle class obtain mortgage financing and shoring up the banking system.

110. Housing Act of 1949 § 2, 42 U.S.C. § 1441 (1970). See also the Urban Growth and New Community Title of the Housing and Urban Development Act of 1970, 12 U.S.C. § 1701(t) (1970).

111. President's Message, State of the Economy, U.S. Code Cong. & Admin. News 411, 414, 93d Cong., 1st Sess. (March 15, 1973); President's Message, *Federal Housing Policy*, U.S. CODE CONG. & ADMIN. NEWS 3298, 93d Cong., 1st Sess. (Oct. 15, 1973).

112. The Housing and Urban Development Act of 1968 proposed construction and rehabilitation of twenty-six million housing units within a decade, six million to be provided for low and moderate income families. President Nixon has proposed an eighteen month moratorium on new commitments for subsidized housing with only some of this to be replaced by a Community Development Special Revenue Sharing Plan. Nenko, *Housing and Community Development Issues Looming for 1973 White House/Congressional Debate*, 30 J. HOUSING 63 (1973). As announced by HUD Secretary James Lynn in September, 1973, the multitude of housing programs will be replaced by a "housing allowance concept." The poor would receive a cash grant equal to the difference between the local market price of "appropriate housing" and what the family can "afford to pay" for housing. Since "repairing existing housing rather than new construction is the key to the entire program" according to Lynn, it seems that, in part, a federal homestead program has been established to encourage rehabilitation. Of course, this lacks the element of required residence which pulls the other programs together. Federal policy officials have indicated that "many of the boarded up houses in the older sections of Philadelphia

authorities would be replaced by direct aid in the form of cash allowances to individual families who must find their own housing in the free market.¹¹³ This would probably include abandoned housing which potentially could be homesteaded.

There are several federal programs¹¹⁴ in operation which provide subsidies for homeownership,¹¹⁵ rehabilitation, condominiums¹¹⁶ and apartment subsidies.¹¹⁷ Funds from all these programs could be

might qualify." Before houses could be admitted they would have to be rehabilitated by their owners, but not under existing programs. "Lynn admitted that the program might have the effect of raising rent but the housing supply would not be increased." This problem does not exist if the homesteader lives in his own home and does not pay rent. *Phila. Inquirer*, Sept. 16, 1973, § 3-K, at 1, col. 5. For a recent criticism of the program see, *N.Y. Times*, Oct. 14, 1973, § 8, at 1, col. 5. For recent support see *N.Y. Times*, Nov. 11, 1973, § 8, at 1, col. 6. See also, Kristof, *Federal Housing Policies: Subsidized Production, Filtration and Objectives: Part II*, 49 *LAND ECON.* 163, 172-73 (1973).

113. See note 111 *supra*.

114. Most of the programs are part of the National Housing Act § 234, 75 Stat. 169 (1961), *as amended*, 12 U.S.C. § 1701 (1970).

115. National Housing Act § 1235, 12 U.S.C. § 1701 (1970). This statute assists low and moderate income families in acquiring homeownership by authorizing periodic payments to be made on behalf of the family. Homes can be new or rehabilitated and can be for one or two families. The standards to be used are: "(A) the property involved is located in a neighborhood which is sufficiently stable and contains sufficient public facilities and amenities to support long-term values, or (B) the purchase of or rehabilitation of such property plus the mortgagor's related activities and the activities of other owners in the neighborhood, together with actions to be taken by public authorities, will be of such scope and qualities as to give a reasonable promise that a stable environment will be created in the neighborhood." 12 U.S.C. § 1715(2)(j)(3) (1970). This is not an exciting approach. See Edson, *Section 235 and 236—The First Year*, 2 *URBAN LAW.* 15 (1970); Schafer & Field, *Section 235 of the National Housing Act, Home Ownership for Low Income Families?* 46 *J. URBAN L.* 667 (1969).

116. National Housing Act § 115, 12 U.S.C. § 1715 (1970). This section provides cash grants to low income homeowners for rehabilitation.

117. *Id.* § 236, 12 U.S.C. § 1701 (1970). It is similar to the federal mortgage program except that the aid is to rental projects designed for low income families. Tenants are expected to pay 25 percent of their income to housing, with the federal government paying the excess. Up to 40 percent of a project can be occupied by tenants being subsidized by this

combined to finance a national homestead program. In particular section 235 of the National Housing Act (homeownership) could be merged with the Philadelphia and Wilmington homestead program, while, section 234 (condominiums) and section 236 (apartment rental) would be useful in New York City should a homestead program be created for apartment buildings. There are additional federal programs which would permit low income families to become homesteaders without committing more than twenty-five percent of the family's income to housing expenses.¹¹⁸

Problems exist for urban homesteading in cities that will require federal financing for the program. The present sections 234, 235 and 236 have not worked well¹¹⁹ or widely enough;¹²⁰ the slow flow of funds has ceased;¹²¹ and the prospects for passage of the new "housing allowance" program are bleak.¹²² A recent court decision has further clouded the area.¹²³

Inasmuch as the federal government appears to have abandoned the housing subsidy programs¹²⁴ in favor of direct subsidy of low

program. These projects are administered by HUD in the states which have urban homesteaders. Alexander, *Fifteen State Housing Finance Agencies in Review*, 29 J. HOUSING 9, 12 (1972).

118. Rent supplement programs such as section 101 of the Housing and Urban Development Act of 1965, 12 U.S.C. § 1701s (1970) require the tenant to pay 25 percent of income towards the rent with either the federal government or the local public housing authority paying the difference for the existing rental unit. Because of Congressional pressure these programs have received insufficient funds and have been tied up with regulations. KAISER COMMITTEE REPORT 64-65.

119. Robinson, *Homeownership for the Poor Jeopardized by Mortgage Problems*, 30 J. HOUSING 284 (1973); *Section 235 Existing Homeownership Suspended*, 28 J. HOUSING 15 (1971).

120. See N.Y. Times, Oct. 10, 1973, at 17, col. 1.

121. *Id.* Jan. 9, 1973, at 1, col. 3, announcement of cuts in subsidies criticized, *id.* Jan. 28, 1973, § 1, at 44, col. 3; *id.* § 8, at 1, col. 5.

122. The events surrounding Watergate have distracted Congressional attention from other problems. Scandals within HUD involving political appointments to career civil service positions have diverted HUD from its own work. *Id.* Nov. 11, 1973, § 1, at 1, col. 3.

123. *Pennsylvania v. Lynn*, 362 F. Supp. 1363 (D.D.C. 1973).

124. Indeed, top HUD officials have been quoted as saying the President's real objective is "to get the government out of the housing business." *Bus. Week*, Sept. 29, 1973, at 36, col. 3.

income groups, it is suggested that the federal government also abandon its claims of ownership to abandoned properties. In the spirit of the "new federalism"¹²⁵ the Federal Housing Authority (FHA) might transfer its properties to a state agency or a local homestead board.¹²⁶ These agencies under their own homestead authorization could then transfer the property to qualified homesteaders or, if appropriate, demolish the property. This would create a truly coordinated effort to eliminate blighted areas.

Such an effort would be particularly effective under the "housing allowance" program. This program assumes that the free market supply of housing units is adequate to satisfy demand.¹²⁷ While there may be sufficient housing stock from new construction for upper and middle income groups, housing for lower income persons is in short supply.¹²⁸ A primary source of low income housing is the result of filtering, that is, as upper and middle income families move to new housing, their old housing becomes available to poorer families. The homestead program would increase the housing supply for low income families and involve the homesteader in his community. This benefits both the neighborhood and the individual and operates as an effective merger of programs.¹²⁹

125. The "new federalism" is a concept which involves government decentralization and general revenue sharing. See N.Y. Times, Nov. 11, 1973, § 1, at 33, col. 1.

126. Under the Federal Homestead Act the federal government gave homestead land directly to the individual citizens, or to those who intended to become citizens. As this land was in federal territory there were no serious problems. Urban homesteading will take place within the states; to avoid difficulty the federal government should dispose of the land through a state agency of some sort. Under the Pre-emption Act of 1841, land was transferred to the state for sale to the public. See note 11, *supra*.

127. President's Message, *Federal Housing Policy*, U.S. CODE CONG. & ADMIN. NEWS 3299, 93d Cong., 1st Sess. (Oct. 15, 1973): "But—as our housing study concludes—the forces which will do the most to shape the future of housing in America will be the forces of the marketplace: families with sufficient real income and sufficient confidence to create an effective demand for better housing. . . ."

128. President Nixon's proposal relies on the "filtering process" to provide homes to low income families. *Id.* at 3298, 3304, 3307.

129. If low income families become homesteaders under a housing allowance program some sort of immediate grant would be required to subsi-

If homestead programs are to be extended it is essential that the local Homestead Boards be given statutory authorization to deal with the complex of federal and state agencies that already exist and hold property. The boards will require increased financial and administrative powers and sophistication. The extension of the program in the context of the present federal subsidy system could occur if the federal agencies reimburse the Homestead Boards for administrative expenses and if an initial lump sum subsidy or loan is passed on to the individual homesteader for the rehabilitation work.

IV. New York City

Despite an apparent lack of knowledge or enthusiasm for urban homesteading in New York City,¹³⁰ there is a great deal of interest in rehabilitation programs which utilize private capital. This is clear from the enactment of several state laws affecting the City.

The first of these measures established the New York City Rehabilitation Mortgage Insurance Corporation (REMIC).¹³¹ REMIC's corporate purpose is "to insure portions of private mortgage loans extended by publicly regulated financial institutions to owners of housing accommodations within neighborhood preservation areas designated by the City Planning Commission."¹³² Two types of mortgage loans will be insured; "preservation loans"¹³³ and "rehabilita-

dize the rehabilitation. Some inter-agency transfer of funds would enable the homesteader to take the property from the state and pay back the cost of rehabilitation from the housing allowance for the stated number of years before the conditional grant becomes permanent. This shifts the burden of subsidy from the federal government to the state agency. The state will have to develop a plan to bring private funds into redevelopment. See the discussion of REMIC, *infra* note 146.

130. This has been changing recently as both Congressman Koch of Manhattan and the New York Daily News have come out in support of urban homesteading for New York City. Congressman Edward Koch, News Release, (Nov. 9, 1973); N.Y. Daily News, Nov. 19, 1973, at 45, col. 1.

131. Law of June 22, 1973, ch. 924 [1973] McKinney Sess. Laws of N.Y. 1730.

132. MEMORANDUM OF LEGISLATIVE REPRESENTATION OF CITY OF NEW YORK, NEW YORK CITY REHABILITATION MORTGAGE INSURANCE CORPORATION—ESTABLISHMENT, [1973] McKinney Sess. Laws of N.Y. 2282.

133. *Id.* at 2282-83. This loan would refinance existing mortgages at

tion loans."¹³⁴ REMIC does not have the authority to issue bonds. Its funds are generated by an annual interest premium of one-half of one percent on the outstanding principal of loans, and from a capital appropriation from the City.¹³⁵ REMIC was enacted to assure an adequate supply of private mortgage capital upon reasonable financial terms to enable the owner to rehabilitate or renovate his property before deterioration becomes serious.¹³⁶ It is imperative that private funds become available to help preserve New York's housing stock, since the cost of new construction is excessive and the federal freeze on subsidies restricts that source of funding. REMIC is designed to reduce the high rate of abandonment and demolition of housing in New York City.¹³⁷

The second major enactment was the "Special Proceeding to Convey Title to Abandoned Multiple Dwellings to the City,"¹³⁸ a method for the City to exercise its power of eminent domain. A multiple dwelling will be declared "abandoned" upon a finding of fact.¹³⁹

a lower interest rate for up to thirty years and finance the acquisition of housing accommodations.

134. *Id.* This loan would be used to rehabilitate housing accommodations.

135. *Id.* Additionally, REMIC will receive an initial capital grant from the City of New York in the amount of \$7,500,000. New York City can issue bonds for REMIC. *Id.*

136. Law of June 22, 1973, ch. 924, § 701 [1973] McKinney Sess. Laws of N.Y. 1732.

137. In 1972 over fifteen thousand units were abandoned. MEMORANDUM OF LEGISLATIVE REPRESENTATION OF CITY OF NEW YORK, *supra* note 132, at 2283.

138. Law of June 22, 1973, ch. 864 [1973] McKinney Sess. Laws of N.Y. 1638, *amending* N.Y. REAL PROP. ACTIONS LAW (McKinney Supp. 1973), by adding art. 19-A.

139. A multiple dwelling will be declared abandoned if "(a) [i]n the case of an occupied dwelling, the owner has failed for a period of at least three consecutive months either to demand rent or instituted summary proceedings for non-payment thereof, and the department finds that the dwelling has become a danger to life, health or safety as the result of the owner's failure to assume his responsibility for its condition. Such failure may be shown by such facts as an owner's failure to make repairs, supply janitorial services, purchase fuel or other needed supplies, or pay utility bills. (b) [i]n the case of a vacant dwelling, it is not sealed or continuously guarded as required by law, and either of the following facts

Within twenty-one days after service of notice upon the owner, mortgagee, lienors and lessees of record, the City can institute proceedings in the supreme court to secure title for itself.¹⁴⁰ A judgment in favor of the City extinguishes forever the rights and interests of all notified of the proceeding. This statute indirectly provides a warning that the City will require that property be kept useful and occupied if the owner is to continue in possession.¹⁴¹ After the City takes title it has the option of rehabilitating or demolishing. The rehabilitation could be by the City, by contractors, or by private individuals. An urban homestead plan could fit into the scenario at this point. The plan could be financed through loans insured by an expanded REMIC program.¹⁴² However, if REMIC assistance is used to encourage low income families to homestead, the REMIC program would have to be modified. Existing limitations on the amount of capital that can be insured would have to be altered to provide the cash necessary to rehabilitate a multiple dwelling.¹⁴³ REMIC would also require increased funding if it is to be a useful vehicle for homesteading, but the basic apparatus already exists.¹⁴⁴

exists; (i) [a] vacate order of the department or other governmental agency currently prohibits occupancy of the dwelling; or (ii) [t]he tax on such premises has been due and unpaid for a period of at least one year." N.Y. REAL PROP. ACTIONS LAW § 1971(1) (McKinney Supp. 1973).

140. *Id.* § 1973(1).

141. *Id.* § 1974(3).

142. Law of June 22, 1973, ch. 924, § 709 [1973] McKinney Sess. Laws of N.Y. 1739-42.

143. Under the present REMIC rules, only 90 percent of the outstanding principal balance of the loan can be insured. However, in multiple dwellings which make up the majority of the housing stock in New York City, its total can not be over 33 percent of the outstanding loans. This would prevent the agency from aiding the homesteading of apartment and tenement buildings. *Id.* § 706, at 1737-38.

144. REMIC will prove useful to urban homesteading only in conjunction with other sources of financing. In New York there is already a program for loans to owners of existing multiple dwellings. N.Y. PRIV. HOUS. FIN. LAW §§ 400-406 (McKinney 1962). A more recent program is the Small Loans to Owners of Multiple Dwellings to Remove Substandard or Insanitary Conditions, *id.* §§ 450-455 (McKinney Supp. 1973). This act also creates agencies to rehabilitate existing structures through limited profit housing companies limited dividend housing companies as well as

V. Conclusion

Urban Homesteading is an interesting, innovative, and serviceable program for rehabilitating abandoned single family dwellings in small cities. It will work for neighborhood improvement when the program can attract middle and upper class families who are economically self-sufficient. Where the program attracts families with insufficient economic resources or building skills, it will be less likely to succeed. This economic problem is not eased by the present shortage of federal and state financing. Such funds would, beyond paying for the rehabilitation, provide the needed neighborhood services that tend to tie a new community together and prevent the deterioration that leads to abandonment in the first place.

If urban homesteading becomes just another plan for subsidizing low income housing, as it may in Philadelphia, it may simply add to the confusion and failure that already exists as a result of past urban renewal programs. It will be far more difficult for the program to operate successfully in cities like New York where the housing stock is mostly multiple dwellings.

Urban homesteading is best used as a specialized tool¹⁴⁵ for improving neighborhoods in smaller cities. Over-extension could, unfortunately, lead to the complete abandonment of a program which can provide a significant solution to some housing problems.

through urban development corporations. The New York City Housing Development Corporation can issue bonds, notes or other public obligations to obtain funds to make low interest loans for rehabilitation of existing housing. Its administrator sits on the REMIC board. Merger would not be difficult. *Id.* §§ 650-670.

145. It will not solve the housing shortage for single people, elderly citizens, or working mothers who prefer to rent. It does not assist those without a steady income or those who are not equipped to handle the problems that homeownership entails. *Hearings before the Subcomm. on Home Financing Practices and Procedures of the Comm. on Banking and Currency, 91st Cong., 1st Sess., pt. 1, at 66-72 (1969).*

Outline of a Model Urban Homestead Bill

I. Purpose: To encourage private rehabilitation of abandoned or delapidated houses, apartments and other residential buildings, where normal private or governmental development of the structures is economically unfeasible or has been neglected for a three year period.

II. Authority: The Homestead Board is established pursuant to (city code/mayoral powers/ city council authorization/ city referendum).

III. Homestead Board:

A. Membership:

1. Appointed by (the Mayor/City Council or elected);
2. Shall consist of ____ members;
3. Members shall be representatives of certain constituencies; the city council; the city housing authority; savings and loan associations; the building trades; clergymen; and the general public from the homestead area;
4. Term of office is ____ years, to be staggered;
5. Salary shall be ____;
6. Full-time staff is authorized.

B. Powers:

1. Locate and compile a catalogue of all private, city, state and federally owned abandoned or dilapidated structures appropriate for inclusion in homesteading, utilizing the aid of other city, state and federal agencies;
2. Institute foreclosure proceedings against such private properties to transfer title to the city for homesteading, and recommend such for state and federal properties;
3. Advertise the homestead program and available properties;
4. Establish reasonable and appropriate standards to be met by homestead applicants to allow the greatest number of participants in the program;
5. Approve homestead applicants on a "first in time is first in right" basis, unless "probability of success" is substantially higher with a subsequent applicant. City residents to receive priority over all other applicants;
6. Aid and assist applicants to apply for and receive financial and technical assistance from savings and loan associations, trade

unions, vocational schools, institutions of higher education and local business;

7. Make announced quarterly inspections of the homesteads during rehabilitation to report on progress;

8. Award fee simple title to homesteaders who have met the homestead requirements of section IV;

9. Repossess property for the city upon proper notice and hearing, unless waived by the homestead applicant, for unreasonable failure or inability to comply with the rehabilitation, occupancy or other homestead requirements;

10. Make payments for the reasonable value of improvements on property returned to the Homestead Board for good faith failure to comply with the rehabilitation, occupancy or other homestead requirements;

11. Recommend to the city council or appropriate state and federal agencies exemption from real property tax laws for homestead properties;

12. Consider suspension of certain building and housing codes during rehabilitation;

13. Coordinate city homesteading with existing local and federal agencies with similar programs;

14. Make such other administrative rules and regulations necessary to implement the provisions of this ordinance.

IV. Homestead Qualifications:

Homestead applicants will certify that the following requirements have been met:

1. Applicant has reached the age of majority or is a head of a family;

2. Applicant is a United States citizen or a registered alien;

3. Applicant has contractually agreed to rehabilitate the approved structure within a three year period after initial transfer of conditional title;

4. Applicant has agreed to live in and occupy the structure for five continuous years.

V. Funding:

A. The city shall establish and maintain a rehabilitation fund of ____ dollars to be administered by the Homestead Board as hereinafter provided:

1. The assets of the fund shall be used exclusively for rehabilitation loans;

2. Rehabilitation loans shall be granted exclusively to those selected to homestead;

3. No rehabilitation loan shall be made until a conditional deed has been issued;

4. The rehabilitation loan shall be for a term of five years;

5. All rehabilitation loans shall be subject to an interest rate of ___ percent per annum to be computed on the basis of the unrepaid principal of the loan.

B. All funds received as partial payment of the rehabilitation loans shall be redeposited in the rehabilitation fund, and may be used for rehabilitation loans.

C. The Homestead Board may require security for the rehabilitation loans.

D. The Homestead Board may make regulations governing the distribution of rehabilitation loans, and the maintenance of the rehabilitation fund.

VI. Miscellaneous:

A. Severability clause.

B. Effective date.