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an "exception."[63] The fact that traffic generators are permitted by zoning ordinances is not a carte blanche approval of these generators by the zoning authorities. Rather it is a realistic determination that such uses are needed in a limited way for the public convenience and welfare. However, when the general welfare of the community will be undermined by such a use, it is no answer that traffic is a police matter, or that the board is an administrative body.[64] The New York courts are now in the "hybrid" stage. It is submitted that the next stage is to dissipate the distinction between the town board acting legislatively and the board of zoning appeals acting administratively.[65] By discarding the distinction there would be sufficient latitude within which traffic and its effects could be intelligently considered under the concept of the general health and welfare.

REDEVELOPMENT: ADMINISTRATIVE PROCEDURE, FINALITY AND JUDICIAL REVIEW

To reconstruct and plan our cities so as to provide more adequately for the health, safety, and welfare of the urban community, blighted areas must be condemned and redeveloped. What is a blighted area and who may so determine? What opportunity must be given a landowner in the "blighted area" to object to the determination, and what procedure is to be followed? May the courts upset the administrative decision; and if so, under what circumstances may they do so? What limitations, if any, are there on judicial review? These are but some of the questions presented when a municipality undertakes to redevelop an area.

Administrative Finding and Procedure Employed in Redevelopment

Most redevelopment statutes presuppose the existence of deteriorating areas within the state. Such areas may have structures unfit for habitation and use due to age, dilapidation, excessive land coverage, insufficient provisions for light, air, sanitation, or excessive population density.[1] It has been said that these

63. The fact that a zoning ordinance classifies certain uses as permissive when approved by the board of zoning appeals, under considerations approved in the O'Hara case (see text accompanying note 48 supra), should not (and did not there) foreclose the board's right to consider the traffic problem.

64. To preclude a board of appeals from refusing to grant the "exception" in an area due to the traffic congestion that would result, is to deny the board the consideration of the community's safety and welfare.

If it is mandatory that the board of zoning appeals approve every application for "exception" without considering the safety and general welfare so long as the applicant has met the standards set forth, a district zoned residential may be so affected that the original purpose would be completely frustrated.

65. This innovation would not do violence to the basic distinction between a legislative and administrative body. It would result merely in a more reasonable (not arbitrary and capricious) interpretation of safety and welfare. See In the Matter of O'Hara, 389 Pa. 35, 131 A.2d 587 (1957) (interpretation held constitutional).

1. N.Y. Munic. Law § 72-m(1). See also Cal. Health & Safety Code §§ 33040-44; Ill. Ann.

conditions are a breeding ground for juvenile delinquency, infant mortality, crime and disease.[2] In addition, blighted areas depreciate the value of adjacent properties, have a tendency to curtail investments, and leave to the state or municipality a progressive diminution of tax revenues.[3]

Most states vest in their municipalities the power to prevent the spread of slums through redevelopment.[4] Redevelopment statutes vary, however, in the kind and in the degree of safeguards given a landowner whose property is marked for condemnation as part of a redevelopment program. The legislators are confronted with a problem. Aware that blighted areas are a menace to the general community, they must at the same time be sensitive to the property rights of individual landowners. Under the statutes of Illinois[5] and Massachusetts,[6] for example, the property owner is given relatively little protection. The Illinois Housing Authority is authorized to investigate unsanitary housing conditions[7] and has the option of holding either a private[8] or public hearing.[9] Before condemnation, the only necessary step is written approval by the State Housing Board.[10] The same procedure is followed in Massachusetts except that the State Housing Board must hold a public hearing.[11]

At the other extreme, the most thorough, complex, and protective enactment on redevelopment is the California Community Redevelopment and Housing Law.[12] The California statute provides for both a redevelopment agency[13] and a planning commission.[14] A preliminary redevelopment plan is formulated by a planning commission[15] and submitted to a redevelopment agency, which drafts a tentative plan on the basis of the preliminary one.[16] Before presenting

Stat. ch. 67½, § 2 (Smith-Hurd 1959); Mass. Ann. Laws ch. 121, § 26JJ (1957); Pa. Stat. Ann. tit. 35, § 1702 (Supp. 1960).

2. Cal. Health & Safety Code § 33045; Ill. Ann. Stat. ch. 67½, § 2 (Smith-Hurd 1959); Mass. Ann. Laws ch. 121, § 26JJ (1957); N.Y. Munic. Law § 72-m(1)(b); Pa. Stat. Ann. tit. 35, § 1702 (Supp. 1960).

3. N.Y. Munic. Law § 72-m(1)(b).

4. N.Y. Munic. Law § 72-m(1)(e). See also Cal. Health & Safety Code § 33047; Ill. Ann. Stat. ch. 67½, § 2 (Smith-Hurd 1959); Pa. Stat. Ann. tit. 35, § 1702 (Supp. 1960).

5. Ill. Ann. Stat. ch. 67½, §§ 1-27e (Smith-Hurd 1959).

6. Mass. Ann. Stat. ch. 121, §§ 26JJ-26MM (1957).

7. Ill. Ann. Stat. ch. 67½, § 8.1 (Smith-Hurd 1959).

8. No definition is given for the term "private hearing," but it is presumed that it means information gathered by agents of the housing authority from individual landowners. Such information becomes part of the record used to determine whether the area will be condemned. Ill. Ann. Stat. ch. 67½, §§ 8.6, 172 (Smith-Hurd 1959).

9. The Illinois statute authorizes the use of a public hearing where landowners may voice their opinions as to the condition of the area. All evidence presented at the public hearing forms part of the record, but the agency is not bound by the technical rules of evidence. Ill. Ann. Stat. ch. 67½, § 172 (Smith-Hurd 1959).

10. Ill. Ann. Stat. ch. 67½, § 14 (Smith-Hurd 1959).

11. Mass. Ann. Laws ch. 121, § 26KK (1957).

12. Cal. Health & Safety Code §§ 33000-33954.

13. Cal. Health & Safety Code § 33200.

14. Cal. Health & Safety Code § 33451.

15. Cal. Health & Safety Code § 33500.

16. Cal. Health & Safety Code § 33502.

the tentative plan to the legislative body, the agency must hold a public hearing, allowing affected landowners an opportunity to submit alternative plans.[17] Upon submission of the tentative plan, the legislative body may approve, reject, or modify it,[18] but only after a public hearing where interested parties can offer their objections.[19] If the tentative plan is approved by the legislature, the redevelopment agency has to prepare a plan for which it may hold additional public hearings.[20] The plan must be reviewed by the planning commission,[21] and, if approved, it may be adopted by majority vote of the entire membership of the legislature.[22] Any dissatisfied landowner is given a thirty day period in which to appeal the adoption of the redevelopment plan to the courts. After the thirty day period has expired, the validity of the administrative proceedings is conclusively presumed, except as to matters affecting jurisdiction, and then the agency has the authority to execute the plan.[23]

Between these two extremes most states have adopted a plan whereby the local governing body must first designate a given area slum or blighted. The redevelopment agency can then submit its proposals to the planning commission for either recommendations or approval. Upon recommendations or approval by the latter body, the plan must be ratified by the governing body, but only after a public hearing.[24]

17. Cal. Health & Safety Code §§ 33530, 33534.

18. Cal. Health & Safety Code § 33561.

19. Cal. Health & Safety Code §§ 33562, 33565.

20. Cal. Health & Safety Code § 33700.

21. Cal. Health & Safety Code § 33704.

22. Cal. Health & Safety Code § 33705. If the planning commission disapproves the plan, the legislature will need a two-thirds vote for adoption.

23. Cal. Health & Safety Code § 33746.

24. Alaska Comp. Laws Ann. §§ 40-7A-1 to -28 (Supp. 1958); Iowa Code §§ 403.5 to -.19 (1958); Kan. Gen. Stat. Ann. §§ 17-4742 to -4761 (1959); Mo. Ann. Stat. §§ 99.300 to -.660 (1952); Nev. Rev. Stat. §§ 279.010 to -.380 (1960); N.M. Stat. Ann. §§ 14-49-1 to -19 (Supp. 1959); N.C. Gen. Stat. §§ 160-454 to -474 (1951); N.D. Cent. Code Ann. §§ 40-58-01 to -19 (1960); Okla. Stat. Ann. tit. 11, §§ 1601-20 (1959); R.I. Gen. Laws Ann. §§ 45-32-1 to -47 (1956); Tex. Rev. Civ. Stat. art. 1269*l* (Supp. 1960); Vt. Stat. Ann. §§ 3201-18 (1959); Wash. Sess. Laws ch. 42 (1957); W. Va. Code Ann. §§ 1409(96)-(118) (1955).

Some states require approval of the redevelopment plan by a governmental body but do not require a public hearing. See, e.g., Ala. Code tit. 25, §§ 96-104 (1958); Ark. Stat. Ann. §§ 19-3056 to -3063.6 (Supp. 1959); Colo. Rev. Stat. Ann. §§ 69-4-1 to -14 (1953); N.H. Rev. Stat. Ann. §§ 205.1 to -.12 (1955); S.C. Code §§ 36-401 to -414 (1952); Tenn. Code Ann. §§ 13-813 to -827 (1956); Va. Code Ann. §§ 36-48 to -55 (1950). The housing authority in three states cannot act or condemn land until the local governing body has declared that slum and blight do, in fact, exist within the municipality. The authority is authorized to hold hearings but no other agency need approve its plans. See Fla. Stat. Ann. §§ 421.01 to -.35 (1960); Me. Rev. Stat. Ann. ch. 93, §§ 1-22 (1954); Md. Ann. Code art. 44A, §§ 1-33 (1957). In Arizona, Delaware, and Hawaii, the local planning commission must give its recommendations to the local governing body before the latter group can approve the plans of the redevelopment agency, which must be done after a public hearing. Ariz. Rev. Stat. Ann. §§ 36-1471 to -1491 (1956); Del. Code Ann. tit. 31, §§ 4501-43 (1953); Hawaii Rev. Laws §§ 143-1 to -38 (1955).

It is to be noted that the administrative hearing is legislative in nature. Consequently,

It is suggested that the property owner and the community at large will be adequately protected with a procedure which includes: (1) a public hearing by the administrative agency; (2) recommendations by the planning commission; (3) approval by the governing body after a public hearing; and (4) a thirty day provision for judicial review for the protection of dissatisfied landowners.

CONSTITUTIONAL VALIDITY OF REDEVELOPMENT ACTS

The earliest attack on the redevelopment laws was on constitutional grounds. It is well settled that the courts may review the question of public use involved in redevelopment laws and may annul such laws if the taking of land is not for a public use.[25] While the overwhelming majority of cases have upheld redevelopment acts,[26] two cases have found these acts invalid.[27] The latter cases held that since land taken by eminent domain was to be sold to private entrepreneurs for commercial and industrial use, a public purpose was not present. The majority view is that the clearance of the slum or blight is, in and of itself, a public purpose and that, therefore, the actual use to which the land is finally put is immaterial.[28] The minority view has received little support and much criticism.[29]

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unsworn witnesses, denial of cross-examination, lack of subpoena power, and consideration by the tribunal of judicially inadmissible evidence will not be grounds for reversal. Wilson v. City of Long Branch, 27 N.J. 360, 142 A.2d 837 (1958).

25. Adams v. Housing Authority, 60 So. 2d 663 (Fla. 1952); Housing Authority v. Johnson, 209 Ga. 560, 74 S.E.2d 891 (1953); Edens v. City of Columbia, 91 S.E.2d 280 (S.C. 1956).

26. E.g., Rowe v. Housing Authority, 220 Ark. 698, 249 S.W. 2d 551 (1952); Gohld Realty Co. v. City of Hartford, 141 Conn. 135, 104 A.2d 365 (1954); Zurn v. City of Chicago, 389 Ill. 114, 59 N.E.2d 18 (1945); Velishka v. City of Nashua, 99 N.H. 161, 106 A.2d 571 (1954); Murray v. LaGuardia, 291 N.Y. 320, 52 N.E.2d 884 (1943), cert. denied, 321 U.S. 771 (1944); David Jeffrey Co. v. City of Milwaukee, 267 Wis. 559, 66 N.W. 2d 362 (1954).

27. In Adams v. Housing Authority, 60 So. 2d 663 (Fla. 1952), the redevelopment plan was invalidated because it provided that land taken by eminent domain was to be sold to private enterprises for commercial and industrial purposes. The court held that this was not a public purpose and that any benefit to the public, i.e., the clearance of the blight, was purely incidental. See also Housing Authority v. Johnson, 209 Ga. 560, 74 S.E.2d 891 (1953).

28. E.g., Berman v. Parker, 348 U.S. 26 (1954); Opinion of the Justices, 254 Ala. 343, 48 So. 2d 757 (1950); People ex rel. Touhy v. City of Chicago, 394 Ill. 477, 68 N.E.2d 761 (1946); In re Slum Clearance, 331 Mich. 714, 50 N.W.2d 340 (1951); Schenck v. City of Pittsburgh, 364 Pa. 31, 70 A.2d 612 (1950); Ajootian v. Providence Redevelopment Agency, 80 R.I. 73, 91 A.2d 21 (1952).

29. E.g., Blankenship v. City of Decatur, 269 Ala. 670, 115 So. 2d 459 (1959); Grubstein v. Urban Renewal Agency, 115 So. 2d 745 (Fla. 1959); State ex rel. Bruestle v. Rich, 159 Ohio St. 13, 110 N.E.2d 778 (1953); Davis v. City of Lubbock, 326 S.W.2d 699 (Tex. 1959) (dictum); Hunter v. Norfolk Redevelopment & Housing Authority, 195 Va. 326, 78 S.E.2d 893 (1953). See also Bailey v. Housing Authority, 214 Ga. 790, 107 S.E.2d 812 (1959); 101 U. Pa. L. Rev. 411 (1952); 39 Va. L. Rev. 236 (1953).

SCOPE OF JUDICIAL REVIEW

A landowner who seeks to save his property by arguing that the area proposed for condemnation is, in fact, not a blighted or slum area has little chance of success.[30] The legislative determination is not open to judicial review unless it is arbitrary, capricious, unreasonable, or made in bad faith.[31]

In *Davis v. City of Lubbock*,[32] the court stated:

> [T]he designation of the area to be taken for the renewal project is a legislative function, political in nature, and . . . the function of the court is limited to ascertaining whether or not the function has been exercised in a legal manner and that there has been no fraudulent, arbitrary or capricious action.[33]

The *Davis* case stated what is now the accepted rule. It has been said, however, that a legislative determination that an area is blighted will be set aside if members of the legislative body whose votes are needed to constitute a quorum have conflicting interests.[34] In *Griggs v. Borough of Princeton*,[35] it appeared that two members of the borough council were faculty members of Princeton University, that the University owned a controlling interest in the Princeton Municipal Improvement Corporation, and that the latter, in turn, owned land within the redevelopment area and was a potential participant in the rehabilitation plan. The court found a possible conflict of interest, noting

30. Other landowners have unsuccessfully attempted to save their property by arguing that while the area in general is blighted, such is not true of the property. The Supreme Court in Berman v. Parker, 348 U.S. 26, 34-35 (1954), stated: "[T]he piecemeal approach, the removal of individual structures that were offensive, would be only a palliative. The entire area needed redesigning so that a balanced, integrated plan could be developed for the region, including not only new homes but also schools, churches, parks, streets, and shopping centers. In this way it was hoped that the cycle of decay of the area could be controlled and the birth of future slums prevented."

31. Graham v. Houlihan, 147 Conn. 321, 160 A.2d 745 (1960); Gohld Realty Co. v. City of Hartford, 141 Conn. 135, 104 A.2d 365 (1954); Schenck v. City of Pittsburgh, 364 Pa. 31, 70 A.2d 612 (1950); Balsamo v. Providence Redevelopment Agency, 84 R.I. 323, 124 A.2d 238 (1956); Davis v. City of Lubbock, 326 S.W.2d 699 (Tex. 1959). Cf. Berman v. Parker, supra note 30; Bowman v. Kansas City, 361 Mo. 14, 233 S.W.2d (1950).

32. 326 S.W.2d 699 (Tex. 1959).

33. Id. at 712.

34. In Wilson v. City of Long Branch, 27 N.J. 360, 142 A.2d 837 (1958), the trial judge agreed with the agency's finding of blight after making a personal tour of the area and noting evidence of its conditions. The Supreme Court of New Jersey affirmed, recognizing the general rule, but avoiding the question of whether the trial court's action was proper since all were in agreement that the area was in fact blighted. Likewise, in Sorbino v. City of New Brunswick, 43 N.J. Super. 554, 129 A.2d 473 (Super. Ct. 1957), the trial judge viewed the area before upholding the legislative determination of the existence of a blighted condition. Thus, the New Jersey courts, while in harmony with the general rule of limiting judicial review to the arbitrariness of the agency's decision, are more prone to investigate the facts underlying the legislative decision. Such trials seem to be within the bounds of constitutionality as long as the judiciary does not substitute its judgment for that of the legislature.

35. 33 N.J. 207, 162 A.2d 862 (1960).

that it was the mere existence of the conflict and not the actual effect which invalidated the resolution. The court went on to state that only the sternest necessity would permit a contrary holding. Just what type of "sternest necessity" would compel the court to ignore a conflict of interest was not stated. The blighted condition quite obviously does not constitute such a necessity.

Conclusion

While the eradication of slums is a goal which no one would question, it is equally important to safeguard the property rights of the individual landowners. Judicial review of the legislative finding of blight is not essential for the accomplishment of the former or the protection of the latter. The administrative board with its trained investigators and expert administrators is better equipped than the judiciary to conduct hearings, gather facts, and conclude therefrom whether a blighted condition exists. A legislative determination, therefore, should be conclusive save for conflict of interest, bad faith or arbitrariness.