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THE BATTLE AGAINST BLIGHT

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I. THE EFFECT OF BLIGHT.

Recently two newspapers in one of the large cities of our state carried front page stories relating to substantial reductions in assessments for several major downtown properties that had just taken place in that city.[1] An editorial appearing in one of the papers the next day stated that the citizens of that city ought to be concerned about the deterioration of the city's core. The editorial further went on to state that the situation needs immediate and drastic treatment and that unless the value of the downtown property is shored up the tax base of the city will be seriously damaged.[2]

The disease of blight which affects many municipalities throughout our state and nation is similar to cancer in that it is constantly spreading. It has an effect upon *all* persons within a particular metropolitan area, even those living in the far outlying areas.

As the years go by the effect will become more and more apparent unless it is stopped.

Between the years 1890 and 1956, the population of the United States increased from 63 million to 164 million—an increase of approximately 250%; however, in 1890 about 1/3 of the population was in urban communities. Yet in 1956 approximately 2/3 of the population was contained within urban communities. Thus, the urban population during this period increased by approximately 500%. The rural population during this same period had only a 50% increase.[3]

In 1939 it was found that slum and blighted areas comprised about 20% of the metropolitan residential areas and contained 33% of the population, yet they contributed: 45% of the major crimes, 50% of the arrests, 55% of the juvenile delinquency, 60% of the tuberculosis victims, 50% of the disease, 35% of the fires, 45% of the city services costs and only 6% of the tax revenues (real estate).[4]

When an area within a city becomes a slum, the taxpayers in the remaining portions of the city may pay as much as 90% of the cost of servicing the blighted area.[4a]

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[1] Milwaukee Sentinel, February 10, 1960.
Milwaukee Journal, February 10, 1960.

[2] Milwaukee Journal, February 11, 1960, page 1.

[3] Steiner, *Report on Urban Renewal in the United States,* in Miller, *New Life For Cities Around the World,* pp. 178-179 (1959).

[4] Reynolds, *Post-War Urban Redevelopment,* Federal Works Agency, Washington (1939).

[4a] Steiner, *Our Housing Jungle and Your Pocketbook,* pp. 43 to 44 (1960). A study was conducted in the city of Cleveland in 1933 under Federal auspices by Monsignor Robert B. Navin, President of St. John College of Cleveland.

It is estimated that a large portion of the increase in population during the next 20 years will consist of growth in the metropolitan centers. It is expected that by 1975 nearly ¾ of a 230 million population will be urban residents. The problems presented by slum and blighted areas will be compounded by this upward spiral of urban growth.[5]

The President's Advisory Committee on Governmental Housing Policies and Programs in 1953 stated:

> The fact is that our cities are caught in a descending spiral which leads to widespread municipal insolvency. The accumulated and continuing spread of blight eats away at the accessable base of the cities. As the blight spreads, it is inevitably followed by crime, fire, disease and delinquency. Thus, does the need for city services increase. But the city's ability to meet the increased budget is automatically impaired by the very blight that creates the demand. More blight, more demand for services, less revenues to meet the demand—that is the downward spiral in American cities. Most often the cities with the greatest slum problem have the least capacity to deal with it. * * *[6]

II. Some of the Causes of Blight

Blight is something more than deteriorated structures. It involves improper land use.[7] Therefore its causes, originating many years ago, include not only outmoded and deteriorated structures, but unwise planning and zoning, poor regulatory code provisions,[8] and inadequate provisions for the flow of traffic.

One of the reasons for the spread of blight is that the persons who are living in the areas immediately adjacent to the blight lose interest in maintaining the high standards of their own property if they see that nothing is being done to check the disease as it moves about them. Many of these persons eventually move further into the outlying areas of the municipality. However, the disease continues to spread. It is aided by a vicious circle in that the necessary lowering of rentals in the blighted areas means that the owner has less money with which to keep up his property. In turn this leads to lower rentals and the

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The survey covered a near downtown tract of 333 acres. In 1932 the area yielded about $225,000 in real estate taxes. The cost to the city in maintenance and welfare services for that same area was nearly $2,000,000, a deficit of $1,775,000. Father Navin stated that if the cost of other city services were prorated, that is, administrative expenses, hospitalization and medical services, court costs, etc., the deficit for the area would have been closer to $2,500,000. It was also observed that the total cost of maintaining and operating the area for one year was nearly 25% of the appraised value of the land and buildings in the area.

[5] Hemdahl, *Urban Renewal,* p. 17 (1959).

[6] Steiner, *supra* note 3, Supplement Number 4 (U.S.A.), p. 188.

[7] Hemdahl, *supra* note 5, p. 14.

[8] Mattison, *Elimination of Blighted Areas in Cities,* in Rhyne, *Municipalities and the Law in Action,* pp. 247-248 (1945).

vicious circle continues. The land values, assessments and tax return to the municipality from the land all diminish in the same proportion.

III. Legislation Available to Aid in Blight Elimination and Control.

It is clear that blight must not only be eliminated but that measures must be taken to prevent its recurrence.

There are a number of tools which are available to the federal, state and local governments to both cut out the blight at its core and check its spread into the healthy parts of the metropolitan area. The purpose of this article is to cite some of the tools and the improvements that have been made in them in the past few years.

This discussion will relate mainly to urban renewal and redevelopment rather than other phases of the solution to the problem of blight. Other phases mentioned briefly hereafter relate to planning operations such as zoning, preparation of a master plan,[9] preparations of an official map[10] and local subdivision regulations;[11] organization of a regional planning commission involving several counties;[12] traffic engineering enforcement of building, plumbing, electrical, health and housing codes and the razing of unsafe building.[13]

A. Basic Concept of Federal Legislation

Urban renewal is the official federal governmental program in the United States focused upon the eradication of slums and the causes which produce them. It is concerned with the clearance and recreation of neighborhoods in the deteriorated areas of the city as well as the rehabilitation and conservation of the other areas of the city which are not as badly afflicted with the disease of blight.

Urban renewal projects, under the program, are undertaken by a city, county or state in an urban renewal area.[14] After the land is assembled and its blight cleared, it will be sold or leased for redevelopment by private industries, corporations and public agencies. The financial loss which results from the process of acquiring the property, demolishing the buildings, and preparing the land for new uses, is absorbed by public funds. Under the federal law the absorption of 1/3

[9] Wis. Stat. §62.23(3) (1957).
[10] Wis. Stat. §62.23(6) (1957).
[11] Wis. Stat. §236.45 (1957).
[12] Wis. Stat. §66.945 (1957) as amended by Wis. Laws 1959, Ch. 596.
[13] Wis. Stat. §66.05 (1957) as amended by Wis. Laws 1959, ch. 215 and 335.
[14] Steiner, *supra* note 3, p. 177. Such projects may include the acquisition of land, demolition of structures, installation of streets, parks and other improvements, and the disposition of acquired lands for uses which are specified in the urban renewal plan. It may also include plans for the voluntary rehabilitation of structures in the area which are not acquired as well as conservation.

of the loss is sustained by the local government and 2/3 by the federal government.[14a]

B. STATE LEGISLATION

Urban renewal laws were first adopted by the states rather than by the federal government. However, there was some early federal legislation relating to public housing units.[15]

Two types of urban renewal laws were passed in a number of states. The first was designed to encourage private financial institutions to participate in slum clearance and redevelopment. The second established redevelopment corporations controlled wholly by the local government which then could sell or lease the area to be redeveloped, to private redevelopment corporations.

In Wisconsin, the Urban Redevelopment Law, Section 66.405 to 66.425 of the Wisconsin Statutes, and the Blighted Area Law, Section 66.43, both passed in 1945, were typical of the basic legislation.[16]

These laws had to have certain basic characteristics such as:

1. A means whereby all of the property in a given area could be assembled under one ownership so that, (a) the blight could be cleared and, (b) restrictions could be placed upon the entire area according to a plan to prevent the recurrence of blight; (the power of eminent domain had to be available) and
2. Some means of solving the financial problems resulting from the high costs of land acquisition and the destruction of structures.

The Urban Redevelopment Law provides the method through which a redevelopment corporation can acquire land by purchase or by requesting the city to acquire such land for it by condemnation.[17] The redevelopment corporation can proceed to redevelop land subject to certain regulations. The redevelopment plan must be approved by the local planning commission and the local governing body.[18]

[14a] Steiner, *supra* note 3, p. 182, 42 U.S.C.A. 1413.

[15] Steiner, *supra* note 3, pp. 177-178. In 1937, the United States Housing Act was passed to provide financial assistance to states and cities to eliminate unsafe and unsanitary housing, to eliminate slums, and to provide decent, safe and sanitary housing for low-income families. This act established a program of Federal loans for development of public housing units.
Section 66.40 of the Wisconsin Statutes, created by ch. 525, Laws 1935 provided the original machinery for the clearance of unsafe and unsanitary housing and the operation of housing projects in cities of the first class in Wisconsin. Subsequent amendments included a removal of its restriction to cities of the first class.

[16] Mattison, *Blight and Slum Area Elimination Through Urban Redevelopment Laws,* in Rhyne, *Municipalities and the Law in Action,* pp. 453, 457 (1946).

[17] Wis. Stat. §66.413 (1957).

[18] Wis. Stat. §66.406(2) (1957).
Wis. Stat. §66.406(3)(c) (1957) provides, amongst other things, a requirement that the area be not less than 100,000 square feet except that it may

Because of the high cost of land acquisition and assemblage and demolition of structures, there is a provision for an inducement to redevelopers by freezing the assessment for taxation for a certain number of years (not to exceed 30).[19] It is frozen at the assessment which existed prior to the transfer of the land to the redevelopment corporation. This gives an exemption from taxes which would result from all newly created values for the period of the exemption. When that period expires the city will benefit from the increased tax collection. There are similar tax-freeze provisions in the laws of other states. Tax-freeze provisions have been declared valid in certain jurisdictions.[20]

During the period of tax exemption the redevelopment corporation shall not pay or declare as interest on its income, debentures and as dividends on its stock, an amount which, in the aggregate, is in excess of 6% of the development cost.[21]

Recently a plan for a development under this law known as "Marine Plaza" was approved by the Common Council of the City of Milwaukee. Considerable controversy arose over the issue of an assessment freeze relating to that project.[22]

The Blighted Area Law enables cities to acquire land necessary or incidental to a redevelopment project in a slum or blighted area; by purchase, gift or condemnation; under a plan approved by the Planning Commission and the Common Council.

The land can then be sold or leased at its use value for redevelopment. The local government absorbs the difference between the cost of acquisition and clearance and the use value. The law provides that financial assistance can be accepted from the federal government as well as other sources. One of the aims of this legislation is that a local government will benefit from the higher tax rate resulting from the increased value of the land under the new use.[23]

C. First Federal Legislation

The Housing Act of 1949 was the first federal legislation which enabled private enterprise, local government and the federal government to combine resources in a joint attack on blight. The act authorizes federal aid in the form of loans and grants to the local com-

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be smaller when undertaken in connection with a public improvement provided it is of sufficient size to allow its redevelopment in an efficient and economically satisfactory manner and to contribute substantially to the improvement of the area in which the redevelopment is located.

[19] Wis. Stat. §66.409 (1957).

[20] Opinion of the Justices, 135 N.E. 2d 665, (Mass., 1956); Hermitage Co. v. Goldfogle, 199 N.Y.S. 382, 394, 395 (1923); Mars Realty Corp. v. Sexton, 253 N.Y.S. 15, 17, 18 (1931).

[21] Wis. Stat. §66.41, 66.405(3)(b) (1957).

[22] *Top Banks Battle Over Rebuilding Milwaukee,* Business Week, p. 92 (July 4, 1959).

[23] Mattison, *supra* note 16, p. 458.

munities to operate the program and to help absorb the initial losses resulting from the acquisition and clearance of slums.

By combining the use of the Wisconsin Blighted Area Law and the financial aid of the federal government under the Federal Housing Act of 1949, cities in Wisconsin commenced urban renewal operations.

The City of Milwaukee commenced two slum clearance projects under this program known as the Lower Third Ward Redevelopment Project and the Hillside Project. Other slum clearance projects are pending under later amendments to the Housing Act of 1949. The City of Madison has also commenced slum and blight clearance projects under the Housing Act of 1949 as amended.[24]

D. PROCEDURES UNDER WISCONSIN BLIGHTED AREA LAW.

In proceeding with such a project the law directs the planning commission of the city to develop a general plan, including maps and charts, etc. which is intended to serve as a general framework or guide of development within which the various areas and redevelopment projects may be more precisely planned. The plan must include a land use plan designating the proposed general distribution and locations of various types of land uses throughout the city.[25]

The law further provides that the Common Council will adopt a redevelopment plan for a particular area which has been designated by the Common Council as blighted. This plan must conform to the general plan of the city.[26]

After the plan is certified to the Common Council, it proceeds to acquire the property by purchase, eminent domain or otherwise. In doing so, the city proceeds under Chapter 32 of the Wisconsin Statutes, or any other laws applicable to the city.[27] Chapter 275 of the Laws of 1931 as amended, known as the Kline Law, contains an alternative provision for condemnation by cities of the first class.

After the land is acquired and assembled, it may be leased or sold

[24] Housing and Home Finance Agency—Urban Renewal Administration, *Urban Renewal Project Directory*, p. 27, June 30, 1959.

[25] Wis. Stat. §66.43(5) (1957).

[26] Wis. Stat. §66.43(5)(b)(2) (1957). The plan should be sufficiently complete to indicate its relationship to definite local objectives as to (1) appropriate land uses; (2) improved traffic, (3) public transportation, (4) public utilities, (5) recreational and community facilities, and (6) other public improvements in the project area. It includes (a) a map showing the existing uses and condition of the real property, (b) a land use plan showing proposed uses of the area, (c) information showing the standards of population density, land coverage and building intensity in the area after redevelopment; (d) a statement of proposed changes, if any, in zoning ordinances and building codes and ordinances; (e) a statement of the number and kind of site improvements and additional public utilities which will be required to support the new land uses in the area after redevelopment, and (f) a statement of a feasible method proposed for the relocation of the families to be displaced from the project area.

[27] Wis. Stat. §66.43(4)(b) (1957).

at fair market value for uses in accordance with the plan.[28] The law provides protective measures to insure compliance with the restriction designed to prevent the recurrence of blight.[29]

The Blighted Area Law was declared valid by the Wisconsin Supreme Court in *David Jeffrey Co. v. Milwaukee.*[29a] The court stated in that case that legislation concerning slum clearance and urban redevelopment projects similar to the Wisconsin Blighted Area Law had been upheld in many jurisdictions.

It was held by the court that the acquisition of property by a city pursuant to the Blighted Area Law for the purpose of eliminating blighted areas and preventing the spread and recurrence of blight conditions in such areas, the removal of structures and improvement of sites, the sale or leasing of property for redevelopment incidental thereto and with restrictions to prevent the recurrence of blight, are for public purposes and uses for which the power of eminent domain may be properly exercised; and that a city may acquire and assemble areas to carry out the purposes of the act, and *may lease or sell such property to private persons or redevelopment corporations as provided by the act.*

The court held that the fact that the property taken may not long remain in public use or ownership, does not in itself mean that the use will not be a public use, and that the city may not be invested with the power of eminent domain in acquiring the same, it being the character of the use and not its extent which determines the question of public use.

The court further stated that the law is directed against slum and blighted areas, not individual structures, and that the act of acquisition and clearance are two purposes in the elimination of a blight problem, and that there remains a third and important purpose, that is, redevelopment of the areas so vitally essential to its return to the community duly safeguarded from the danger of blight recurrence.

The case of *Berman v. Parker*[29b] was decided by the United States Supreme Court shortly after the *Jeffrey Case.* There it was held that property which, standing by itself, is innocuous and unoffending may be taken for a redevelopment project.

E. Condemnation Proceedings—Form of Verdict

When a city cannot acquire all of the land in a redevelopment project by purchase or any other means, it must resort to condemnation.

The Constitution of the State of Wisconsin is one of the very few

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[28] Wis. Stat. §66.43(6) (1957).
[29] Wis. Stat. §66.43(9) (1957).
[29a] 267 Wis. 559, 66 N.W. 2d 362 (1954).
[29b] 348 U.S. 26 (1954).

in the nation with a requirement that a municipal corporation obtain a jury verdict of necessity before it can take private property for public use.[30]

A question arose in the condemnation proceedings brought by the City of Milwaukee to acquire land for its first redevelopment project with regard to the form of verdict which would be submitted to the jury. A very large number of persons with interests in the parcels of real estate within the Lower Third Ward Redevelopment Project, which had not been acquired by other means, were defendants. The condemnation law[31] under which the City of Milwaukee was proceeding provided that the court may in its discretion submit to a single jury the determination of such necessity as to one or more than one or all of the parcels of property sought to be taken.[32]

In view of the fact that the Blighted Area Law is directed against areas and not individual structures, it was the position of the City of Milwaukee that the form of the verdict had to contain a single question as to the necessity of taking of all of the property in the project area not yet acquired.

The Supreme Court held that the constitutional provision that no municipality should take private property for public use against the consent of the owner without the necessity therefor being first established by a verdict of a jury, does not make it mandatory on the trial court to submit the issue of the necessity of the taking of each separately owned parcel to a jury rather than on an entire area basis, when an entire area is involved.[33] It was held that the question as to form of the verdict was a matter of discretion for the court under the Kline Law.

The Supreme court held that in case of submission to the jury in a single question the rights of individual property owners will be protected by the trial court's instructing the jury that, if they determine that there is no necessity for taking any part of the whole, the jury must find no necessity of taking as to the entire area.

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[30] Wis. Const. art. XI, §2. Joint Resolution No. 47 was passed by the Wisconsin State Legislature in 1959 to amend Article XI, Sec. 2 of the Constitution to read: "No municipal corporation shall take private property for public use against the consent of the owner without the necessity thereof being first established in the manner prescribed by the legislature." This then leaves it up to the state legislature to make a determination as to whether or not a jury verdict is necessary in this type of eminent domain proceeding. Under Article XII of the Constitution, such resolution must be agreed to by a majority of all the members elected to each house of the legislature to be chosen at the next general election. Then such amendment must be approved and ratified by a majority of the electors of the state before it can become an amendment to the Constitution.

[31] Wis. Laws 1931, ch. 275 as amended.

[32] *Id.* §7(3).

[33] State *ex rel.* Milwaukee v. Circuit Court, 3 Wis. 2d 439, 88 N.W. 2d 339 (1958).

F. ADDITIONAL STATE LEGISLATION FOR URBAN RENEWAL

1. *Blight Elimination and Slum Clearance Act—Providing for Creation of Redevelopment Authorities.*

In 1958, during a special session of the state legislature, Section 66.431, Wisconsin Statutes, was created providing for the creation of redevelopment authorities in the cities of the state.[34] Under that law such redevelopment authorities were given power to acquire land through condemnation without a jury verdict of necessity, in the same fashion as public utilities. Under the law the authority was authorized to transact business and exercise any of the powers granted to it whenever the local legislative body of the city adopts a resolution declaring in substance that there exists a need for urban renewal within the city. The law provides that the Commissioners of the authority are appointed by the Mayor with the approval of the Common Council of the city.

The local legislative body under the law maintains certain powers, including approval of the boundaries of an urban renewal project plan and approval of the sale and disposition of land once acquired, and control over the financial resources of the authority except money which can be borrowed. The city's power includes control over expenditures for salaries, office operations and facilities.

The authority is given power to employ personnel, borrow money, issue revenue bonds, issue notes and debentures, and enter into contracts and to exercise such other and further powers as may be required or necessary to effectuate the purposes for which the law was enacted, including the power of eminent domain.

The procedural aspects as to the preparation of redevelopment and renewal plans are similar to Section 66.43, Wisconsin Statutes.

a. Condemnation Procedure for Redevelopment Authority Under 1958 Law Invalid.

The provisions of Chapter 3, Laws of the Special Session of 1958 which exempt a redevelopment authority from the requirement of obtaining a jury verdict of necessity in condemnation proceedings were held invalid in the case of *Redevelopment Authority v. Canepa.*[34a]

The court held that certain elements of the law suggested that the city has such control over the authority that it might be considered a department of the city. Therefore, the constitutional requirement of a jury verdict of necessity applies to such an authority. The court made certain comments regarding the difficulty caused by the constitutional requirement of a jury verdict of necessity, and cited the remarks of the governor that the existence of the requirement might

[34] Wis. Spec. Sess. Laws 1958, ch. 3.
[34a] 7 Wis. 2d 643, 97 N.W. 2d 695 (1959).

result in the lapse of millions of dollars from the federal government to complete urban renewal programs.

The court stated at page 658:

> * * * It seems strange and an anachronism that in 1959 the legislature is prohibited from intrusting to the officers of our cities the power to take private land for public purposes similar to the power which the legislature is permitted to give to the officers of privately owned utility corporations as well as the officers of numerous governmental bodies other than cities and villages. * * *
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> * * * If it be true that the federal assistance, which is essential to great progress in the field of redevelopment and urban renewal, cannot be made available as long as the inclusion of particular parcels of land is subject to a jury verdict, and if it is not considered feasible to assign the task of urban renewal and redevelopment to any unit of government other than a city or an agency subordinate to the control of the city, then we are in a stalemate where it is impossible to have substantial progress in this field as long as sec. 2, art. XI of the constitution remains in its present form.

b. Amendments to Redevelopment Authorities Law in 1959.

Following this decision changes were made to Section 66.431, Wisconsin Statutes, during the 1959 session of the Wisconsin Legislature.[35]

Among the changes was one providing that the authority could proceed with the acquisition of property by eminent domain under Chapter 32 of the Wisconsin Statutes except as to special provisions contained in Section 66.431 or any other laws relating to condemnation procedures of redevelopment authorities.

Some of the special provisions of Setcion 66.431 are:

(1) There is no requirement that the authority negotiate for the acquisition of property before proceeding with the exercise of the power of eminent domain.[36]

(2) The condemnation procedure combines the issues to be tried by a jury, as to necessity of taking the property and the amount of compensation to be paid for the property, in one proceeding.[37]

(3) The law provides that a redevelopment plan approved by the authority shall not be subject to challenge in the condemnation proceedings, it being intended that the jury shall determine the necessity of taking the several parcels of property included in the petition in order to carry out the plan.[38]

(4) The law also provides that the jury shall return a single verdict

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[35] Wis. Laws 1959, chs. 410, 515, 613.
[36] Wis. Laws 1959, ch. 613 [66.431 (8) (a)].
[37] Wis. Laws 1959, ch. 613 [66.431 (8) (b) (2)].
[38] Wis. Laws 1959, ch. 613 [66.431 (8) (b) (5)].

as to the necessity with respect to all parcels included in the petition.[39]

(5) The law then goes on to provide that if the jury returns a verdict of no necessity with respect to the taking of the property included within the petition, the authority may modify the plan with the approval of the local legislative body. Following that modification the authority may commence a proceeding in the circuit court not less than three months nor more than six months following the jury determination of no necessity. In that subsequent proceeding the court shall submit separate questions with respect to the necessity of the taking of each parcel of property and shall also at the same time submit the matter of compensation.[40]

G. Additional Federal Legislation—Workable Program

In 1953 an Advisory Committee on government policies and progarms appointed by the President made a report to the effect that the program which was at that time in progress for slum and blight elimination was not sufficient to keep up with the inroads that blight conditions were continuing to make throughout the cities of the nation.

Thereafter the Housing Act of 1954 added certain requirements to the federal program of aids in order to make an all out fight against slums and blight. Section 101(C) of the Housing Act of 1949 as amended[40a] provides that no contract can be entered into for any loan or capital grant under that Act for new projects unless there is presented to the administrator, by the locality, a workable program. This workable program is the community's own plan to eliminate existing blight and to stop the development of further blight. Certain objectives have to exist in such a program, such as (1) development of a general plan for the locality's growth and change; (2) measures to strengthen and enforce the laws regarding construction, use and occupancy of buildings; (3) identification and analysis of blighted areas; (4) organizational and financial blueprints; (5) resources for rehousing displaced families; and (6) a pattern for machinery to promote active participation of the citizenry.[40b]

This Act further provides the following aids to fight blight: (1) the concept of the urban renewal area and surrounding districts as an entity susceptible to broader, more varied and more thorough-going treatment than was the case with the former concept of the slum clearance program; (2) encouragement of rehabilitation and conservation activity within the urban renewal area; (3) governmental insurance of mortgage loans on new or rehabilitated dwellings in renewal areas based on a foreseeable future property value rather than on existing

[39] Wis. Laws 1959, ch. 613 [66.431 (8) (b) (7)].
[40] Wis. Laws 1959 ch. 613 [66.431 (8) (e)].
[40a] 68 Stat. 590, 623, 42 U.S.C.A. 1451(c).
[40b] Steiner, *supra* note 3, p. 178.

ones and on terms more attractive financially than those available under the normal government programs of underwriting the private financing of housing;[41] (4) government insurance of mortgage loans on privately financed relocation housing also with special financing advantages.[42] (5) Authority for government purchases of mortgages on redevelopment and relocation housing to facilitate the continuing flow of private financing of housing production; (6) urban planning grants on a matching basis, for city planning in small communities and metropolitan areas; (7) demonstration grants for experimental undertakings which contribute more significantly to the improvement of methods and techniques for the elimination and prevention of slums and blight and serve best to guide renewal programs in other communities. The Act also provides for other financial support such as relocation payments up to $100.00 for an individual or family and up to $2,500.00 for a business concern, to cover necessary moving expenses and other direct loss of property resulting from displacement from the project area.[43]

1955 has been described as a year in which transition was made from slum clearance and redevelopment of blighted areas to a technique of rehabilitation and conservation of deteriorating areas.[44]

H. Local Workable Program

The City of Milwaukee was one of the leaders of the nation in proceeding with measures as called for in a workable program.[45]

Such a program calls for not only clearance of slums and blight in the core of the city by the employment of a number of additional means to accomplish the rehabilitation of the areas adjoining the hard core of blight, and the conservation of these adjoining areas as well as the peripheral areas where blight does not yet exist.

In rehabilitating areas the local public agency's main job is to acquire land and buildings either to do the rehabilitating itself and sell the structures, or to sell the buildings to those who agree to handle the rehabilitation. The operation is supplemented by police power enforcement of regulations and demolition of the buildings which cannot be rehabilitated. Building codes, zoning ordinances, health and sanitation codes and housing codes add to the enforcement features of rehabilitation and conservation.[46]

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[41] Section 220 of the National Housing Act as amended, 12 U.S.C.A. 1715K.
[42] Section 221 of the National Housing Act as amended, 12 U.S.C.A. 1715*l*.
[43] Steiner, *supra* note 3, pp. 178, 182.
[44] Crowley, *Urban Redevelopment,* in Rhyne, *Municipalities and the Law in Action,* p. 333 (1956).
[45] Crowley, *Urban Redevelopment,* in Rhyne, *Municipalities and the Law in Action,* p. 19 (1954).
[46] Woodbury, *Urban Redevelopment Problems and Practices,* pp. 318-319 and 324-327 (1953).

There are a number of tools which are provided in the State of Wisconsin to accomplish such a workable program.

1. *Wisconsin Urban Renewal Acts—Provisions for Workable Program*

Section 66.435, Wisconsin Statutes, known as the Urban Renewal Act, authorizes municipalities to plan and undertake urban renewal projects.

Section 66.435 (4) (a) provides for the workable program. It also gives municipalities power, where there are structures that are unsafe or insanitary or dangerous to the health, safety or welfare of the residents, to enact ordinances to prevent such conditions and to cause the repair or demolition or removal of such structures.

This law provides the means for stronger regulations than formerly existed to combat the problem of unsafe and unsanitary conditions in buildings.

For many years Section 66.05, Wisconsin Statutes, has been used for the purpose of razing unsafe buildings. The building inspector is the officer who usually administers the enforcement of the law. Its usefulness is evident in that during the years 1958-59, 2,785 buildings were razed in the City of Milwaukee—of these, 1,121 were condemned and 1,664 were razed by permit.[47] However the law provides only for the closing of buildings which are unfit for human habitation but not in danger of structural collapse.[48] Such buildings can then remain standing for an indefinite period of time although they are not occupied.

Section 66.435, Wisconsin Statutes, referred to above provides the machinery for passage of ordinances for the demolition of structures which are unfit for human habitation. This statute also relates to the passage of ordinances to prevent buildings from becoming unfit for human habitation.[49]

2. *Housing Code—Important Part of Workable Program*

The City of Milwaukee in 1955 revised its housing code considerably.[49a] Such code constitutes an important part of a workable program for conservation of housing within the city.[50]

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[47] Department of Building Inspection and Safety Engineering, City of Milwaukee, *Condemnation Report for the Year 1958.*
Department of Building Inspection and Safety Engineering, City of Milwaukee, *Condemnation Report for the Year 1959.*

[48] Wis. Stat. §66.05(2) as amended by Wis. Laws 1959, ch. 335.

[49] Wis. Stat. §66.435(4) (a) as amended by Wis. Laws 1959, ch. 474.

[49a] It is interesting to note that the Health Commissioner of the City of Milwaukee, Dr. Edward R. Krumbiegel, was Chairman of a subcommittee on the Substance of Housing Regulation of the American Public Health Association Committee on Hygiene of Housing which prepared a suggested or "Model Code" in 1952 entitled "A Proposed Housing Ordinance Regulating Supplied Facilities, Maintenance and Occupancy of Dwellings and Dwelling Units."

[50] Redevelopment Authority of City of Milwaukee, *Recertification of Workable Program for Urban Renewal,* June 1959.

On November 3, 1959 the Supreme Court of Wisconsin rendered an important decision regarding the validity of such code in *Boden v. Milwaukee.*[51] In that case it was contended by the plaintiffs that the ordinances as sought to be applied to their building, a single family structure, deprived them of property without due process of law.

The Supreme Court reiterated the established rule that it is a legitimate exercise of the police power to require existing buildings used for human habitation to meet reasonable prescribed standards in order to protect the health and safety of the occupants.[52]

The court stated at page 325 of that decision that:

> The city's police power with respect to enacting building regulations is not restricted to situations which only affect the public health and safety, but extends to anything which is for the good order of the city or the public welfare. Sec. 62.11(5), Stats. The prohibition of a condition that tends to depress adjoining property values falls within the scope of promoting the general welfare and does not violate due process.[53]

The court held that it found nothing so oppressive in the affirmative requirements of the ordinance, including the requirement that exterior wood surfaces shall be kept reasonably protected by paint, as would warrant the court in holding that it is unreasonable.[54]

It was also held that a single family dwelling which becomes unfit for occcpancy because of lack of repairs and unsanitary conditions may be condemned to effectively protect occupants and licensees.[55]

In this same connection, in the case of *Berman v. Parker*[56] the Supreme Court of the United States enunciated the doctrine that it is within the power of the legislature, under the concept of public welfare, to determine that a community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled, and that the power of eminent domain can be used to accomplish this.

The court said this at pages 32-33:

> Public safety, public health, morality, peace and quiet, law and order—these are some of the more conspicuous examples of the traditional application of the police power to municipal

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[51] 8 Wis. 2d 318, 99 N.W. 2d 156 (1959).

[52] *Id* at 324, 99 N.W. 2d at 160; Brennan v. Milwaukee, 265 Wis. 52, 60 N.W. 2d 704 (1953); Adamec v. Post, 273 N.Y. 250, 7 N.E. 2d 120, 109 A.L.R. 1110 (1937).

[53] State *ex. rel.* Saveland Park Holding Corp. v. Wieland 269 Wis. 262, 270, 69 N.W. 2d 217 (1955); Pierro v. Baxendale 20 N.J. 17, 118 A. 2d 401, 408 1955); and Best v. Zoning Board of Adjustment, 393 Pa. 106, 141 A. 2d 606, 612, 613 (1958). The Saveland Park case has been characterized in an article entitled *Aesthetics in Zoning* by Fred G. Stickel, III, in 1956 NIMLD Muni. L. REV. 351, as one of the most earth-shaking decisions in the field of zoning.

[54] Boden v. Milwaukee, 8 Wis. 2d 318, 325, 99 N.W. 2d 156 (1959).

[55] *Id.* at 328, 99 N.W. 2d 156 (1959).

[56] 348 U.S. 26 (1954).

> affairs. Yet they merely illustrate the scope of the power and do not delimit it. . . . Miserable and disreputable housing conditions may do more than spread disease and crime and immorality. They may also suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make living an almost insufferable burden. They may also be an ugly sore, a blight on the community which robs it of charm, which makes it a place from which men turn. The misery of housing may despoil a community as an open sewer may ruin a river.

Conclusion

It is evident that in the State of Wisconsin there are a large number of tools available to carry out a workable program of not only clearing slums and blight and redeveloping such areas, but also for rehabilitating adjacent areas and conserving the remaining parts of the city from the spread of blight.

These tools include (1) careful planning making use of (a) a master plan, (b) an official map, (c) subdivision regulations and (d) a regional planning commission as well as other planning implements; (2) good traffic engineering; (3) firm and consistent enforcement of codes such as (a) zoning codes, (b) building codes, including electrical and plumbing codes, (c) new and broader housing codes, (d) health and sanitation codes; (4) enforcement of special statutes and ordinances relating to such matters as razing of buildings; (5) Urban renewal projects including (a) urban redevelopment projects to cut out the core of the blight by [1] private redevelopers, or [2] local governmental bodies combined with private redevelopers; and (b) rehabilitation and conservation in connection with the codes mentioned above; and (6) provision for facilities for rehousing displaced families. In addition to the above there is one more essential feature to a workable program—that is active participation by the citizenry.

Use of such programs can help to start the trend of population back to the center of cities by the creation of more desirable residential, commercial and manufacturing areas. This in turn can help to protect cities from a decline in their assessable base, thus placing them on as sound a financial basis as possible.