MUNICIPAL BLIGHT DECLARATIONS

Today most of America's large cities contain declining residential and commercial neighborhoods in need of redevelopment.[1] Especially in older cities, economically strapped local governments can do little more than watch tax bases decline and crime rates rise, while private developers migrate to surburban areas boasting increasing populations and lower land and development costs.[2]

These neighborhoods suffer from "blight," a term describing any area undergoing a process of deterioration, usually characterized by substandard housing, abandoned structures, and underutilization of properties.[3] Municipal efforts toward improvement have created conflicts between redevelopment forces pushing for large scale condemnation and demolition in the name of the public good, and property owners whose individual interests suffer as a result.[4]

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1. The deterioration of America's urban cores has long been recognized as a serious and worsening problem and has inspired prolific commentary. *See, e.g.*, R. FUTTERMAN, THE FUTURE OF OUR CITIES (1961); V. GRUEN, THE HEART OF OUR CITIES (1964); Cook, *The Battle Against Blight*, 43 MARQ. L. REV. 444 (1960); Mandelker, *Public Purpose in Urban Redevelopment*, 28 TUL. L. REV. 96 (1953).

2. "[P]opulation growth in metropolitan areas continued to be overwhelmingly concentrated in the suburbs. This trend was first observed in the 'thirties, and it continued throughout the 'forties and 'fifties. During the 'sixties suburban population grew at a rate of five times that of the central city." Senate Committee on Banking, Housing, and Urban Affairs, *Population Characteristics: Central City Trends and Suburban Comparisons*, 1960-1970, in SUBURBANIZATION DYNAMICS AND THE FUTURE OF THE CITY 55 (J. Hughes ed. 1974).

This rapid out-migration from urban areas has left many cities caught in a downward economic spiral.

> Institutionally distressed cities are burdened with physical infrastructures in need of repair and servicing. The lack of fiscal capability among some cities to maintain, and where necessary to expand, infrastructure has led to a loss of jobs and population, resulting in further erosion of their tax bases and their fiscal vitality.

Weinstein & Clark, *The Fiscal Outlook for Growing Cities*, in URBAN GOVERNMENT FINANCE 105, 112 (R. Bahl ed. 1981).

3. Cook, *The Battle Against Blight*, 43 MARQ. L. REV. 444, 445-46 (1960).

4. Observers have long realized that urban redevelopment necessitates broad remedial action. As the Supreme Court observed in the landmark case of Berman v. Parker, 348 U.S. 26, 35 (1954), "If owner after owner were permitted to resist these redevelopment programs on the ground that his particular property was not being

Redevelopment statutes in many states permit municipal legislatures to declare urban areas blighted, opening the door for public redevelopment agencies to condemn the property and sell or lease the land to private developers at attractive rates.[5] This process stimulates private investment in public redevelopment. Opponents have challenged these statutes on their face as public subsidies to private developers.[6] Alternatively, owners of profitable enterprises within the designated area have disputed the authority of the municipality to declare their property blighted simply because surrounding properties suffer from disrepair.[7] This section examines the current state of these redevelopment controversies.

I. FACIAL ATTACKS

The most broadly based attacks on redevelopment legislation focus on the statutes' constitutionality. Challengers argue that by condemning private property for resale to—and development by—private, profit seeking parties, municipal redevelopment agencies are misusing their delegated powers of eminent domain.

The United States Supreme Court heard these charges in *Berman v. Parker*.[8] The plaintiffs in *Berman* challenged the authority of the District of Columbia Redevelopment Land Agency to take land through condemnation in order to sell or lease parcels to private enterprise.[9] Public takings resulting in private profit, they argued, violated the fifth amendment's mandate that the government condemn property only for a public purpose.[10] Justice Douglas, writing for a unanimous Court, stated emphatically that a city may validly consider the cleanup of depressed and unattractive areas a public purpose.[11] If the end is valid, the Court concluded, the mere fact that the

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used against the public interest, integrated plans for redevelopment would suffer greatly."

5. *E.g.*, ILL. ANN. STAT. ch. 67½ § 64 (Smith-Hurd 1967); MINN. STAT. ANN. §§ 462.415-21 (West 1963); R.I. GEN. LAWS §§ 45-31-1, 45-31-5 (1980).

6. *See* note 13 *infra*.

7. *See* notes 39-54 *infra*.

8. 348 U.S. 26 (1954).

9. D.C. CODE ANN. §§ 5-701 to -719 (1951) (current version at D.C. CODE ANN. §§ 5-801 to -840 (1981)).

10. "No person shall . . . be deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. CONST. amend V.

11. Justice Douglas noted that the legislature rather than the courts serves as the

legislature chose private enterprise as the means will not invalidate the condemnation.[12]

After *Berman*'s unambiguous approval of public/private cooperation for urban redevelopment under the federal constitution, property owners have turned toward eminent domain provisions in state constitutions for help, generally without success.[13] Missouri's experience with redevelopment legislation is in many ways representative of recent litigation. Chapter 353 of the Missouri Code[14] provides one of the nation's most innovative redevelopment schemes. Chapter 353 authorizes a municipal legislature to declare as "blighted" a parcel, block, or an entire neighborhood of city land.[15] The city then reviews proposals for redevelopment and approves a detailed development plan for the area, chartering the developer as a redevelopment

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"main guardian of the public needs to be served by social legislation," 348 U.S. at 32. In an impassioned statement Justice Douglas urged the cities to halt the spread of inferior housing conditions.

> [Inadequate housing conditions] may . . . 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.

Id. at 32-33.

Finally, he broadened the holding to include the promotion of beauty, as well as sanitation, as an admirable municipal objective. *Id.* at 33.

12. *Id.*

13. As early as 1954, of the 17 states whose courts had considered the constitutionality of condemnations by private redevelopment corporations, only Georgia and Florida held the program unconstitutional. Housing Auth. v. Johnson, 209 Ga. 560, 74 S.E.2d 891 (1953); State v. Town of North Miami, 59 So. 2d 779 (Fla. 1952). *See* Dalton v. Land Clearance for Redevelopment Auth., 364 Mo. 974, 985, 270 S.W.2d 44, 49-50 (1954). Since then, the trend has continued virtually unabated. *See generally*, Annot., 44 A.L.R.2d 1414 (Supp. 1981). In a recently decided case, the Michigan Supreme Court held that "alleviating unemployment and revitalizing the economic base of the community" are valid public purposes justifying the use of eminent domain even where property was not alleged to be blighted. Poletown Neighborhood Council v. City of Detroit, 410 Mich. 616, 634, 304 N.W.2d 455, 459 (1981).

14. MO. REV. STAT. § 353 (1969).

15. *Id.* § 353.020(2):

> "Blighted area" shall mean that portion of the city within which the legislative authority of such city determines that by reason of age, obsolescence, inadequate or outmoded design or physical deterioration, have become economic and social liabilities, and that such conditions are conducive to ill health, transmission of disease, crime or inability to pay reasonable taxes.

corporation.[16] This designation permits the corporation itself to condemn land in the blighted area pursuant to the redevelopment plan, without further municipal action.[17] This authority expedites property acquisition without possible hindrance from recalcitrant property owners or real estate speculators.[18] In addition, the statute grants a tax abatement on property value increases above the fair market value at the time of condemnation,[19] thereby lowering ownership costs and facilitating later sales to ultimate consumers.

Chapter 353 was challenged in *Annbar v. Westside Redevelopment Corp.*[20] by two hotel owners seeking to prevent construction of a proposed Hilton Hotel within a nearby redevelopment area.[21] The plaintiffs argued that the statute authorized a taking of private property by a private corporation for private benefit[22] in violation of the state constitution's public purpose requirement in the exercise of eminent domain.[23] The Supreme Court of Missouri cited the express approval of urban redevelopment in Missouri's constitution[24] and held

16. *Id.* § 353.060. This statute originally was limited in application to cities of over 350,000 in population (St. Louis and Kansas City), but was amended in 1976 to include all cities of 4,000 or more. *Id.* § 353.020(3) (1978). To date, however, only St. Louis and Kansas City have applied the statute.

17. *Id.* § 353.060 (1969).

18. Despite the availability of the condemnation power, Missouri's redevelopment corporations have used the power infrequently. Generally, the mere threat of its use convinces the property's owner to ask for a reasonable price, thereby saving both parties time and legal expenses. Interview with Eugene Kilgen, Executive Director, Washington University Medical Center Redevelopment Corporation, in St. Louis (June 2, 1981).

For a statistical analysis as to the extent property tax abatements make Chapter 353 properties more attractive to investors and more competitive in office space rentals, see D. MANDELKER, G. FEDER & M. COLLINS, REVIVING CITIES WITH TAX ABATEMENT (1980) [hereinafter cited as REVIVING CITIES].

19. MO. REV. STAT. § 353.110 (1969). The property's assessed value for purposes of property taxation remains unchanged for 10 years after the date of purchase. For the next 15 years, only half of the property's actual increase in value is taxed. *Id.*

20. 397 S.W.2d 635 (Mo. 1965).

21. *Id.* at 638.

22. *Id.*

23. MO. CONST. art. 1, § 28.

24. MO. CONST. art. 6, § 21 states in part:

Laws may be enacted . . . providing for the clearance, replanning, reconstruction, redevelopment and rehabitation of blighted, substandard or insanitary areas . . . and for taking or permitting the taking, by eminent domain, of property for such purposes. . . .

that the redevelopment served a primarily public purpose.[25] Although the use of condemnation could result in lower acquisition costs and thereby a competitive advantage for the new hotel, the court found the private benefit to be merely incidental to the overriding public benefit.[26] Moreover, because the constitution does not limit participation in redevelopment efforts to public agencies, the court upheld the municipal delegation of its eminent domain power to private parties.[27] In an earlier decision,[28] the court had upheld Chapter 353 tax incentives for subsequent buyers of redeveloped property,[29] citing another redevelopment provision in Missouri's constitution.[30]

Armed with this judicial encouragement, developers increasingly applied for and utilized municipal condemnation power directly, finding no need to wait for public agency action.[31] Investors brought substantial capital into the heart of St. Louis, a city long plagued by business flight to the suburbs.[32] As a result, the city has formally adopted a planning commission recommendation to "blight" all of downtown St. Louis.[33] For its part, the Missouri State Legislature radically reduced municipal eligibility requirements for use of Chapter 353.[34] Several studies have shown that Missouri's Chapter 353 has significantly aided its cities in attracting investment capital and in

25. 397 S.W.2d at 646.

26. *Id.*

27. *Id.* at 647.

28. Land Clearance for Redevelopment Auth. v. City of St. Louis, 270 S.W.2d 58 (Mo. 1954).

29. *Id.* at 65.

30. MO. CONST. art. 10, § 7 states in part:

> For the purpose of encouraging . . . the reconstruction, redevelopment, and rehabilitation of obsolete, decadent, or blighted areas, the general assembly by general law may provide for such partial relief from taxation of the lands devoted to any such purpose, and of the improvements thereon, by such method or methods, for such period or periods of time, not exceeding twenty-five years in any instance, and upon such terms, conditions and restrictions as it may prescribe.

31. REVIVING CITIES, *supra* note 18, at 73-74. Prior to these events, the Saint Louis Land Clearance for Redevelopment Authority was generally relied upon by Chapter 353 corporations for acquisition and clearance of blighted land, and occasionally received financial help for initial property acquisitions. *Id.* at 71-72.

32. *See* note 35 *infra*.

33. REVIVING CITIES, *supra* note 18, at 72 (citing St. Louis Plan Commission, Blighting Study for Downtown (1980)).

34. *See* note 16 *supra*.

the redevelopment of depressed areas.[35]

In some ways, however, judicial enthusiasm for Chapter 353's unconventional redevelopment methods may not be representative of the reception such proposals would receive in other states. The *Annbar* decision rested at least in part on unique provisions in Missouri's Constitution explicitly encouraging both redevelopment efforts[36] and tax abatements.[37] Absent such authority, judicial approval of innovative redevelopment techniques could be less assured.[38]

II. "As Applied" Attacks

Most challenges to redevelopment condemnation arise when property owners claim the city has arbitrarily included their land within the "blighted" area.[39] Such claims have rarely been successful. Courts generally accord great deference to municipal determinations that a particular piece of property is in fact "blighted."[40] In addition, courts will allow inclusion of concededly non-blighted property where the legislature finds the inclusion necessary for effective rede-

35. *See* National Council For Urban Economic Development, Local Incentives Can Work, the St. Louis Experience, (Oct. 1980); M. Norman, Community Participation in Redevelopment Planning with Reference to the Washington University Medical Center Redevelopment Project, (unpublished thesis, Department of Urban Studies, Washington University, 1975); National League of Cities, Dollars From Design (monograph to be published after April 1, 1982).

36. 397 S.W.2d at 647. On a broader foundation, however, the court also cited *Berman v. Parker*, *supra* note 8, for devising effective means to redevelopment objectives. *Id.* at 647.

37. *Id.* at 653. *See* note 30 *supra*.

38. *See* Gottlieb v. City of Milwaukee, 33 Wis.2d 408, 147 N.W.2d 633 (1967), where the court held that partial tax exemptions for urban redevelopment corporation property violated the uniformity provision in the state's constitution. *See generally* Reviving Cities, *supra* note 18, at 135-143 (analysis of the constitutionality of statutory redevelopment provisions in Ohio, Massachusetts, Wisconsin, New York, Pennsylvania and New Jersey).

39. *E.g.*, Parking Systems, Inc. v. Kansas City Downtown Redevelopment Corp., 518 S.W.2d 11 (Mo. 1974) (property owner alleged that only 14% of project area was occupied by substandard buildings); Leo Realty v. Redevelopment Auth. of Wilkes-Barre, 13 Pa. Commw. Ct. 288, 310 A.2d 149 (1974) (plaintiff's buildings were structurally sound).

40. Maglies v. Planning Bd. of East Brunswick, 173 N.J. Super. 419, 414 A.2d 570 (1980) (credible evidence sufficient); Seattle v. Loutsis Inv. Co., 16 Wash. App. 158, 554 P.2d 379 (1976) (legislative declaration will be deemed conclusion in the absence of fraud).

velopment.[41] As the United States Supreme Court stated in *Berman v. Parker*, "the need for a particular tract to complete the integrated plan rests in the discretion of the legislative branch."[42]

State legislatures have been expanding municipal discretion by providing broad and frequently amorphous definitions of what constitutes "blight."[43] Missouri, for example, defines "blighted areas" as those portions of the city which "have become economic and social liabilities,"[44] and such areas "may include buildings or improvements not in themselves blighted."[45] As a result of this permissive attitude, both judicial and legislative, municipalities have successfully "blighted" areas lacking *any* structures resembling the traditional concept of slums,[46] unimproved and open space areas,[47] and even areas containing profitable commercial enterprises.[48]

Surprisingly, California is the only state to retreat significantly from granting expansive discretion to its municipalities. In *Sweetwater Valley Civic Association v. City of National City*,[49] the California Supreme Court held that plaintiff's marginally profitable golf course was *not* a blighted area,[50] even under California's broad statutory definition.[51] The court held that it was insufficient for the city to

41. Hawley v. South Bend Dep't of Redevelopment, 383 N.E.2d 333 (Ind. 1978) (fact that project area larger than specific parcels needed for shopping mall not a fatal flaw); Maryland Plaza Redevelopment Corp. v. Greenberg, 594 S.W.2d 284 (Mo. Ct. App. 1979) (area may be declared blighted even though it contains structures outside the definition of blight).

42. 348 U.S. at 35-36.

43. *See* notes 44 & 51 *infra*.

44. MO. REV. STAT. § 353.020(2) (1969).

45. MO. REV. STAT. § 353.020(1) (1969).

46. Jersey City Chapter of the Property Owner's Protective Ass'n v. City Council, 55 N.J. 86, 259 A.2d 698 (1969) (redevelopment statute goes beyond removal of perceptually offensive slums); Cannata v. City of New York, 11 N.Y.2d 210, 182 N.E.2d 395, 227 N.Y.S.2d 903 (1962) (finding of tangible physical blight unnecessary).

47. Cordova v. Tucson, 16 Ariz. App. 447, 494 P.2d 52 (1972) (land unimproved except for buildings of historical significance); Pet Car Prods. v. Barnett, 150 Conn. 42, 184 A.2d 797 (1962) (plaintiff's property consisted partly of vacant or unimproved land and partly of land with non-substandard structures located thereon).

48. Berman v. Parker, 348 U.S. 26 (1954) (department store); Schweig v. City of St. Louis, 569 S.W.2d 215 (Mo. Ct. App. 1978) (fashionable retail shopping area).

49. 18 Cal.3d 270, 555 P.2d 1099, 133 Cal. Rptr. 859 (1976).

50. *Id.* at 279, 555 P.2d at 1104, 133 Cal. Rptr. at 864.

51. CAL. HEALTH & SAFETY CODE § 33030 (Deering) states in part that a finding of blight requires that the area suffer "either social or economic liabilities, or both, requiring redevelopment in the interest of the health, safety, and general welfare."

show merely "that the area is not being put to its optimum use."[52] Soon thereafter, apparently in response to speculative abuses, the California legislature amended its redevelopment statute to require a stronger showing that the inclusion of a non-blighted, non-contiguous area was necessary for effective redevelopment.[53] Presently, few states seem to be following California's conservative trend, although some courts are requiring municipalities to comply strictly with statutory procedural requirements.[54]

III. MUNICIPAL LIABILITY

In any application of the power of eminent domain, claims of its abuse will inevitably arise. Within the context of urban redevelopment, property owners have charged municipalities with unreasonable delays in instituting proceedings, thus allowing "doomed" properties to decline drastically in value before condemnation and compensation.[55] Properties falling within an area declared blighted by the city are especially susceptible to tenant loss, police and other public service decline, vandalism, and severely limited marketability.[56]

In many instances, land owners have brought inverse condemnation actions[57] to halt municipal redevelopment, with varying degrees

52. 18 Cal.3d at 277, 555 P.2d at 1103, 133 Cal. Rptr. at 863.

53. CAL. HEALTH & SAFETY CODE § 33320.2 (Deering Supp. 1981).

54. Salt Lake County v. Murray City Redevelopment, 598 P.2d 1339, 1344 (Utah, 1979) (substantial compliance with statute's notice requirement held insufficient); Yonkers Community Dev. Agency v. Morris, 37 N.Y.2d 478, 335 N.E.2d 327, 373 N.Y.S.2d 112 (1975) (more evidence of existence of substandard conditions required than agency's bare assertion).

55. *See generally* Note, *Inverse Condemnation: The Case for Diminution in Property Value as Compensable Damage*, 28 STAN. L. REV. 779 (1976).

56. Regarding the further decline of areas declared blighted the New Jersey Supreme Court stated:

> There can be no doubt that a declaration of blight ordinarily adversely affects the market value of property involved. This is unfortunate because in so many instances the physical taking of the property does not occur for a number of years. In the meantime the owner can only wait for that ultimate taking; there is usually no reasonable market otherwise open for sale of the property. Moreover, in the interim his good housekeeping incentive generally recedes and deterioration of the building sets in.

Lyons v. City of Camden, 52 N.J. 89, 99, 243 A.2d 817, 822 (1968).

57. A "de facto" taking occurs where the landowner is so deprived of the use and enjoyment of his property, through physical invasion or other governmental action, that his property is said to have been taken for public use, despite the lack of formal

of success.[58] While the mere declaration of blight does not constitute a compensable taking of private property under the fifth amendment,[59] courts have granted relief for additional renewal efforts by local governments short of actual occupancy. In *Garland v. City of Saint Louis*,[60] the U.S. Court of Appeals for the Eighth Circuit reversed a lower court ruling dismissing a claim for relief where no physical invasion or appropriation of property had occurred.[61] The court cited with approval[62] a 1964 Sixth Circuit case[63] awarding compensation to plaintiffs whose property was within an area declared blighted by the city and subjected to extensive redevelopment-related interference.[64] The Eighth Circuit distinguished[65] later Sixth Circuit cases[66] which denied relief to claimants whose properties were merely adjacent to the area designated for later acquisition. Thus, blight designation, insufficient alone to constitute a taking, may be compensable when accompanied by substantial interference with use and enjoyment of the property.

Many state courts have tended toward more limited forms of relief

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eminent domain proceedings. The landowner may file suit to compel inverse condemnation, in effect forcing the governmental body to formally condemn the property and pay just compensation. *See generally* D. MANDELKER, INVERSE CONDEMNATION: THE CONSTITUTIONAL LIMITS OF PUBLIC RESPONSIBILITY (1964); Stubbs, *Inverse Eminent Domain Resulting From Governmental Action*, in 1978 PLANNING, ZONING & EMINENT DOMAIN INSTITUTE 437 (S.W. Legal Foundation).

58. For a collection of recent decisions and their holdings or inverse condemnation see 3A P. ROHAN, REAL ESTATE TRANSACTIONS, pt. 2, 14-19.12 (Supp. 1980).

59. Danforth v. United States, 308 U.S. 271, 286 (1939).

60. 596 F.2d 784 (8th Cir. 1979).

61. 450 F. Supp. 239 (E.D. Mo. 1978).

62. 596 F.2d at 788.

63. Foster v. Herley, 330 F.2d 87 (6th Cir. 1964).

64. Municipal action taken in accordance with the city's redevelopment plan, which was later abandoned, included informing claimant he would receive no compensation for improvements made prior to condemnation; refusing to issue a building permit until claimant signed a waiver for damage claims; condemning and clearing several square blocks in the area; keeping a notice of lis pendens in effect for five years after informing those who inquired that claimant's property would soon be condemned. *Id.* at 88.

65. 596 F.2d at 788-89.

66. Sayre v. City of Cleveland, 493 F.2d 64 (6th Cir. 1974), *cert. denied*, 419 U.S. 837 (1974) (no taking where no evidence of city's intent to condemn plaintiff's property in near future); Woodlawn Mkt. Realty Co. v. City of Cleveland, 426 F.2d 955 (6th Cir. 1970) (court cannot infer a legislative intent to take property adjacent to but outside boundaries established).

in redevelopment cases, authorizing eminent domain awards commensurate with land values *before* rapid pre-condemnation decline,[67] but only if and when the city formally institutes eminent domain proceedings.[68] This approach adequately compensates property owners whose land the city has acquired after extensive delay, while permitting cities to drop redevelopment plans without liability, even after authorizing blight declarations.[69]

Perhaps the most interesting aspect of innovative redevelopment techniques is the question of municipal liability for acts of its private sector partner. In 1979, the Eighth Circuit ruled in *Young v. Harris*[70] that residents evicted by private redevelopment corporations using the city's power of eminent domain[71] were not eligible for benefits under the federal Uniform Relocation Assistance and Real Property Acquisitions Act of 1970.[72] This act provides that persons displaced by a federal agency or a state or local agency receiving federal financial assistance must receive compensation for relocation costs caused by public projects.[73] The Eighth Circuit, construing the stat-

67. New Jersey sets the date of valuation at the date of the declaration of blight. Jersey City Redevelopment Agency v. Kugler, 111 N.J. Super. 50, 267 A.2d 64 (App. Div. 1970). Other states use the date of legislative approval of the redevelopment plan. *See, e.g.*, Freeman v. Paterson Redevelopment Agency, 128 N.J. Super. 448, 320 A.2d 228 (1974); Pearsall v. Richmond Redevelopment and Housing Auth., 218 Va. 892, 242 S.E.2d 228 (1978); Maxey v. Redevelopment Auth., 94 Wis.2d 375, 288 N.W.2d 794 (1980).

68. See Freeman v. Paterson Redevelopment Agency, 128 N.J. Super. 448, 455, 320 A.2d 228, 232 (1974) for a listing of cases providing for pre-condemnation value diminution but denying inverse condemnation.

69. Allowing municipalities the flexibility to drop redevelopment plans with no liability for compensation ignores injuries suffered by property owners in these areas. In Freeman v. Paterson Redevelopment Agency, 128 N.J. Super. 448, 320 A.2d 228 (1974), plaintiff's land was declared blighted, and a redevelopment plan adopted by the redevelopment agency ten years prior to the suit. During this time plaintiff experienced tenant loss, and prospective tenants were told by the Agency that the property would be condemned within the year. *Id.* at 451-52, 320 A.2d at 230. Finally, plaintiff was informed that redevelopment efforts in his area were being postponed indefinitely. *Id.* In denying plaintiff's claims for damages or compelled condemnation, the court held that absent physical invasion or appropriation of property no relief could be provided unless and until the city formally condemned the property. *Id.* at 456, 320 A.2d at 232.

70. 599 F.2d 870 (8th Cir. 1979).

71. This delegation of power was performed under Missouri's Chapter 353. *See* notes 14-19 and accompanying text *supra*.

72. 42 U.S.C. §§ 4601-4655 (1976).

73. *Id.* § 4621 (1976).

ute narrowly, found that the redevelopment corporation was neither a government agency,[74] nor were its activities "sufficiently intertwined [with those of the city] to characterize them as one project undertaken by a state instrumentality."[75] The court stressed the corporation's private ownership and financing[76] in finding that mere use of the government's condemnation power is insufficient to qualify as a government agency under the Act.[77]

More startling, however, is a federal district court's recent ruling that municipalities need not pay compensation for successful inverse condemnation claims arising from actions of a private redevelopment corporation.[78] In the Eighth Circuit case of *Garland v. City of Saint Louis*,[79] discussed earlier,[80] the court held that a redeveloper's precondemnation activities could so impair plaintiff's beneficial use of his land, even absent physical appropriation, that a de facto taking could occur,[81] and remanded the case, *inter alia*, for a determination of municipal liability.[82] On remand, the district court relied on the *Young v. Harris* holding—that use of eminent domain was insufficient to turn a private corporation into a public agency—to bar imputation of liability from the corporation to the city.[83] The court explained that the corporation/city relationship was neither one of agency[84] nor of independent contractor/principal.[85] They were

74. 599 F.2d at 877.

75. *Id.*

76. *Id.*

77. In a concurring opinion to *Young v. Harris*, Judge McMillian expressed regret over the limitations of the Act:

> As the majority discussed, the legislative history of [the Act] indicates that Congress did not intend this Act to apply to relocations effectuated by private developers, even though these developers may be assisted financially by the federal government. In light of the recent trend in government programs of enticing private enterprise to undertake endeavors once assumed solely by governmental entities, I question whether the original scope of [the Act] is still appropriate.

Id. at 880 (McMillian, J., concurring). *See generally* Comment, *The Uniform Relocation Act: Eligibility Requirements for Relocation Benefits—Young v. Harris*, 19 URBAN L. ANN. 207 (1980).

78. Garland v. City of St. Louis, 492 F. Supp. 402 (E.D. Mo. 1980).

79. 596 F.2d 784 (8th Cir. 1979).

80. *See* notes 60-66 and accompanying text *supra*.

81. 596 F.2d at 787.

82. *Id.* at 789.

83. 492 F. Supp. at 404-05.

84. *Id.*

merely separate, cooperating entities working toward a mutually beneficial goal.[86]

The district court's application of the *Young v. Harris* rationale to the constitutional requirement of compensation for public takings of private land is inappropriate. The *Young* court considered the corporation's use of the eminent domain power as relevant to but not determinative of the condemnor's status as a governmental agency under the relocation assistance statute.[87] The right to compensation for public use of private land, however, flows not from the public or private status of the condemnors, but from the exercise of the condemnation power itself.[88] For a municipality to argue that a public purpose justifies the delegation of its eminent domain authority to a private corporation,[89] while disclaiming the constitutional duty to compensate dispossessed land owners because the private condemnor is only acting in "furtherance of its own profit-motivated objectives"[90] seems conveniently inconsistent. The fifth amendment demands that just compensation be paid upon a taking of private land for public use, and if a taking has occurred, either by formal proceeding or de facto appropriation, then compensation is due.

IV. CONCLUSION

Redevelopment legislation authorizing public/private alliances and tax abatements will become increasingly important municipal tools against inner-city deterioration. Neither incidental benefit nor detriment to private interests will invalidate the use of eminent domain for land acquisition and clearance. Judicial deference toward

85. *Id.*

86. *Id.*

87. 599 F.2d at 876-77.

88. ". . . nor shall private property be taken for public use, without just compensation." U.S. CONST. amend. V. By using the passive voice, the framers imply that the identity of the agent is irrelevant. A plain meaning interpretation would require compensation for any public purpose taking. *Cf.* Norwood v. Baker, 172 U.S. 269, 277 (1898) (compensation due when private property taken "by a state *or under its authority* for public use") (emphasis added).

89. Annbar v. Westside Redevelopment Corp., 397 S.W.2d 635 (Mo. 1965).

90. Garland v. City of St. Louis, 492 F. Supp. 402, 404 (E.D. Mo. 1980).

legislative determinations of the means necessary to accomplish redevelopment is likely to continue.

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