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RESPONSIVE URBAN RENEWAL:

THE NEIGHBORHOOD SHAPES THE PLAN

Urban renewal has suffered many epithets in its eighteen-year life. Despite the program's real achievements, which have revived entire sections of major cities, skeptics remain noisy and unconvinced. Some insist that the program has been subverted; what Congress hoped would eradicate the slums and build housing for the poor has left the worst slums unscathed and has produced office buildings and expensive apartments in basically sound neighborhoods. Others maintain that the program has dealt with slums cyclonically, that it has leveled homes and blocks without compassion for the persons uprooted, who, fleeing before the storm, have become a new class of urban emigré. Still other critics complain that urban renewal has created barricades around the ghetto, that in providing decent housing to the Negro, within, it has sapped his incentive to move into white environs. Despite their contradiction, all of these criticisms bear some truth, and their telling has fed much of the disillusion which the enemies of urban renewal continue to nourish. Yet the essential truth remains: only massive infusions of federal subsidy, encouragement, and prodding can stimulate the private and local governmental action needed to rebuild our nation's cities. We must expand, not contract, urban the renewal program.¹ Our effort should

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1. The United States Civil Rights Commission recently warned that an attack on slum problems should be the nation's "first priority." U.S. CIV. RIGHTS COMM'N, REPORT (November 22, 1967). Such an assault would command wide

be to seek improvement, deriving wisdom from the program's accomplishments, not to preach repeal because of its disappointments. In this spirit, constructive—we hope—we have written this article.

* * * * *

Englewood² occupies nearly five square miles ((3,060 acres) of Chicago's teeming south side and houses a present population of 140,000. Beginning in 1961, aided by a federal survey and planning advance, the City undertook to replan Central Englewood—an 80 acre *mélange* of homes and shops—as a commercial center which would service the larger Englewood area. To accomplish this, most of the existing dwellings would be cleared and their occupants (some 525 family households, mainly Negro) relocated; realigned streets, parking lots, and a pedestrian mall and arcade would replace the housing. In July, 1964, after two open meetings before its Committee on Housing and Planning, the Chicago City Council adopted the renewal plan. Six months later, the federal government agreed to provide \$13 million, its share of the project cost.

Alarmed site occupants finally took formal action when 127 individual residents (all Negro) and a neighborhood association sought an injunction in the United States District Court. Their complaint described procedural irregularities, deficiencies in the relocation plan, violations of state and federal law stemming from the elimination of residential units, and a conspiracy between the city and various commercial interests to create a "no-Negro buffer zone" between the shopping area and the surrounding residential community. The defendants moved at once to dismiss the complaint, and the District Court, after oral argument, granted the motion. Appeal to the Seventh Circuit was unavailing and the United States Supreme Court denied certiorari. Except for their forlorn prospects in a state con-

support. Attitudes of Negroes (and of Whites) toward urban renewal were sharply clarified in the nationwide Louis Harris poll in early August, 1967. Asked to suggest "two or three main reasons" for the recent riots, 68 per cent of the Negroes named lack of decent housing for Negroes—the reason named more than any other. Asked whether they thought a federal program to tear down ghettos and cities would help prevent a recurrence of the riots, 84 per cent of the Negroes said yes (63 per cent of the Whites said yes). *After the Riot: A Survey*, NEWSWEEK 18-19 (August 21, 1967).

2. The description of the Englewood controversy is taken from the briefs and opinions in *Green Street Ass'n v. Daley*, 250 F. Supp. 139 (N.D. Ill. 1966), *aff'd*, 373 F.2d 1 (7th Cir. 1967), *cert. denied*, 87 S. Ct. 2054 (1967).

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demnation proceeding,³ where a court almost certainly will acquiesce in the city's plan and limit relief to monetary compensation for property taken, the residents of Central Englewood have lost the campaign, conceivably because they waited far too long to commit their forces.

Why were the plaintiffs not given a hearing in the forum of their choice? Their claim for federal jurisdiction was multi-faceted, resting variously on section 10 of the Administrative Procedure Act (judicial review of agency actions),⁴ and on the "substantial federal question" provisions of Title 28.⁵ To support the latter, plaintiffs asserted a deprivation of rights given them under two civil rights statutes⁶—those of 1866 and 1964—as well as rights accorded by the urban renewal statute itself. In dealing with the scope of review accorded by the Administrative Procedure Act, the courts relied heavily—and ritualistically—on a Seventh Circuit precedent⁷ which de-

3. The condemnation proceeding is only one of several ways in which site owners or occupants may be able to challenge an urban renewal plan in the state courts. *See, e.g.*, *Pet Car Products, Inc. v. Barnett*, 150 Conn. 42, 184 A.2d 797 (1962). But the availability of alternative procedures does not alter our conclusion that the prospects for eventual success remain bleak.

4. 5 U.S.C. § 1009 (1964).

5. 28 U.S.C. § 1331(a) (1964).

6. 42 U.S.C. § 1982 (1964) (Civil Rights Act of 1866):

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

42 U.S.C. § 2000(d) (1964) (Civil Rights Act of 1964):

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Whether Title VI creates in private individuals a legally enforceable right which will support their independent suit remains uncertain. The Seventh Circuit, in the *Englewood* case, has said no, but the court's reasoning seems to misread the Statute. 373 F.2d at 8-9. In school desegregation cases, individuals' suits based partly on the non-compliance of local school systems with Federal guidelines issued in response to Title VI have been heard; *see, e.g.*, *Davis v. Board of School Commissioners*, 364 F.2d 896 (5th Cir. 1966). Even more germane is *Gautreaux v. Chicago Housing Authority*, 265 F. Supp. 582 (N.D. Ill. 1967), where Negro tenants in or applicants for public housing were held to have a right under Title VI to have public housing sites selected without regard to racial composition of either surrounding neighborhoods or of projects themselves.

For further discussion, *see* the text at pages 96-97 *infra*.

7. *Harrison-Halstead Community Group, Inc. v. Housing and Home Finance Agency*, 310 F.2d 99 (7th Cir. 1962), *cert. denied*, 373 U.S. 914 (1963) (property owners on renewal site denied federal standing because of failure to show injury to their "private rights").

nied a hearing to a group of site occupants who had complained about an earlier Chicago urban renewal project. The courts found the "federal question" assertion more troublesome, but decided finally that the several statutes did not give plaintiffs the right claimed, or—if this were not the case—that the plaintiffs had failed to make a showing either of a prima facie violation or of an inadequate redress in the state court condemnation proceedings.

In reading these opinions, and many others like them,⁸ one is struck by the extreme reluctance of courts, both state and federal, to touch an urban renewal case where an approved plan is under attack. This reluctance is easily understood, if one is not led astray by the reasons that courts give: a deference to legislative decision (the city council's approval of the plan) and to administrative determination (the redevelopment agency's findings and conclusions); or, as in the *Englewood* case, an absence of jurisdiction or lack of standing. What lies at the root of the court's self-denial is reluctance to unravel a plan that has been many years in the making, that has built up community expectations, and that has presented several opportunities for discussion, persuasion, and attack during its years of preparation.⁹ This unwillingness, in turn, is responsive to the widely-shared opinion that the courtroom is the improper milieu for planning (or unplanning) the physical and human development of a community. As the defendants in the *Englewood* case stressed in their briefs, the project under attack was to be the commercial center for an area 40 times its size, and the 127 individual plaintiffs were seeking to block a redevelopment that would eventually benefit 140,000 persons. Moreover, even the delay of such a plan—for the course of a trial and inevitable appeals—might set in motion a wave of repercussions that would be difficult to foresee and which few judges would risk unleashing on a community. During this interim, while condemnation is stayed, land values might rise, increasing project costs beyond the limits of local and federal funds committed or even available to the venture; demand conditions might change, so as to undo the reuse assumptions that underpin the renewal scheme;

8. See, e.g., *Berry v. Housing and Home Finance Agency*, 340 F.2d 939 (2d Cir. 1965); *Johnson v. Redevelopment Agency*, 317 F.2d 872 (9th Cir. 1963), *cert. denied*, 375 U.S. 915 (1963); *Harrison-Halsted Community Group, Inc. v. Housing and Home Finance Agency*, 310 F.2d 99 (7th Cir. 1962), *cert. denied*, 373 U.S. 914 (1963); *Gart v. Cole*, 263 F.2d 244, (2d Cir. 1959), *cert. denied*, 359 U.S. 978 (1959); *City of Chicago v. R. Zwick Co.*, 27 Ill. 2d 128, 188 N.E.2d 489 (1963), *appeal dismissed* 373 U.S. 542 (1963).

9. See text at pages 81-87 *infra*.

the terms and availability of construction financing or municipal borrowing might become less advantageous; existing community or political support for the program might despair and vanish; federal moneys might be diverted to cities ready to proceed; urgently needed public improvements, such as schools and neighborhood centers, which depend upon the urban renewal scheme for their financing, might be indefinitely delayed; and assuming the neighborhood is indeed a "blighted" one, the deterioration might get far worse and even spread. Also, courts recognize that what often appears as a plausibly stated grievance simply conceals the anger or anxiety that many persons feel when forced to leave their homes and businesses, or, in the case of some landowners, the attempt to gain leverage—through the threat of delay—in negotiating a condemnation settlement. Since malcontents and schemers (or their attorneys), as well as the man who is *legally* aggrieved, can draft a complaint that will withstand a motion to dismiss, it is far better, perhaps, to leave all parties to the ordinary political and administrative processes—and spare the courts some flak. In short: because the case for their self-restraint is compelling, courts are not likely to become activists about urban renewal. Instead, the political and administrative arenas are where the major attempts must be made to gain a responsive dialogue between the urban renewal planner and the community for whom (and, hopefully, with whom) he plans. In the balance of this article, we will consider how to advance this dialogue and, when necessary, how to protect the interests of the community when effective and responsive dialogue is not made possible.

I. THE URBAN RENEWAL PROCESS

Knowledge of the urban renewal process is essential for anyone wishing to organize or advise a neighborhood scheduled for renewal. Reading of the statutes, state¹⁰ and federal,¹¹ is not enough; in the way of complex programs generally, much of the relevant law lies in the administrative guidelines and regulations. The most important repository for such detail is the Urban Renewal Manual,¹² a three-

10. For illustrative state statutes, *see, e.g.*, CAL. HEALTH & SAFETY CODE § 33000 *et seq.* (West 1967); CONN. GEN. STAT. ch. 130 (1963); ILL. STAT. ANN. ch. 67½, § 63 *et seq.* (Smith-Hurd 1966); N.Y. GEN. MUN. LAW § 500 *et seq.* (McKinney Supp. 1967).

11. The federal urban renewal provisions begin at 42 U.S.C. § 1441 (1964).

12. U.S. HOUSING & HOME FINANCE AGENCY (HHFA), URBAN RENEWAL ADMIN., URBAN RENEWAL MANUAL (1960) (hereinafter cited as MANUAL).

volume loose-leaf publication to which we will allude continually. The struggle to remain informed—not an easy one—requires use of another federal service, the LPA Letter,¹³ which supplements the Manual and transmits changes to it. Various specialized guidelines¹⁴ have also been promulgated. The interested attorney or organization should have a copy of all these, as well as the form for the planning advance contract and the form for the loan and capital grant contract.

The process we speak of has three major components: the bureaucratic machinery—federal and local; the flow chart, to wit, the stages through which each urban renewal project passes; and the constraints which limit agency discretion. We turn now to describe the components.

A. The Agency Structure

One of the 89th Congress's many achievements was elevation to cabinet status of the agency that had been shepherding the nation's housing and urban development programs.¹⁵ Formerly the Housing and Home Finance Agency (HHFA), now the Department of Housing and Urban Development (HUD), this officialdom directs urban renewal, and related programs such as public housing, model cities, and FHA. Within the Department, an Assistant Secretary for Renewal and Housing Assistance has overall charge of urban renewal, but the field work—the day-to-day dealing with the local community, the processing of project applications, and the superintending of project executions—is handled by a network of seven regional of-

The MANUAL was regularly updated until the end of 1965. Thereafter, the Department of Housing and Urban Development (HUD), successor to HHFA, relied on the LPA LETTER, *infra* note 13, to transmit regulatory and procedural changes.

13. LPA LETTERS and The MANUAL may be obtained from the office of the Assistant Secretary for Renewal and Housing Assistance, Department of Housing and Urban Development, Washington, D. C. 20410.

14. *E.g.*, HUD, WORKABLE PROGRAM FOR COMMUNITY IMPROVEMENT, PROGRAM GUIDE (Feb. 1966) [hereinafter cited as PROGRAM GUIDE]. To explain the Program further, the Department has issued seven bulletins, one for each of the Workable Program requirements. The newest set of directives govern the model cities program. CDA (CITY DEMONSTRATION AGENCY) LETTERS NOS. 1-3 and TECHNICAL ASSISTANCE BULLETIN NO. 1, all dated October 30, 1967, were issued by HUD Model Cities Administration in late November.

15. Department of Housing and Urban Development Act, 5 U.S.C. § 624 (Supp. II, 1966).

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fices.¹⁶ The regional office also reviews every request for certification (or recertification) of a community's workable program, but only the Secretary has statutory power to give final approval.¹⁷

A diagram of HUD's organizational structure follows on page 82.¹⁸

Urban renewal's direction within the community rests with the local public agency (the LPA) and the local governing body (the municipal legislature). Their division of responsibility is set by state and local statute, and by federal regulation, and will be delineated in the sections below. The LPA may be a specially constituted redevelopment or urban renewal agency, although the local (public) housing agency is sometimes designated. Increasingly, the authority given LPAs has extended beyond the strict limits of urban renewal. Thus, the newly-formed Housing and Development Administration consolidates New York City's urban renewal, code enforcement, rent control, housing rehabilitation, middle-income housing, and model city programs within a single agency.

B. The Stages of Urban Renewal

Although not formally a part of the urban renewal project, the prerequisite for every project¹⁹ is local adoption of a "Workable Program for Community Improvement." Added by Congress in 1954,²⁰

16. Region I (New York City): Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont.

Region II (Philadelphia): Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, West Virginia.

Region III (Atlanta): Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

Region IV (Chicago): Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin.

Region V (Fort Worth): Arkansas, Colorado, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, Texas.

Region VI (San Francisco): Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, Wyoming, Guam.

Region VII (San Juan, Puerto Rico): Puerto Rico, Virgin Islands.

17. 42 U.S.C. § 1451(c) (1964). This non-delegatability of the Secretary's power extends also to the approval of the relocation program, *infra*.

18. SUBCOMM. ON HOUSING AND URBAN AFFAIRS OF THE SENATE COMM. ON BANKING AND CURRENCY, 90th CONG., 1st SESS., PROGRESS REPORT ON FEDERAL HOUSING PROGRAMS 22 (Comm. Print 1967) [hereinafter cited as SENATE PROGRESS REPORT].

19. The Workable Program requirement also applies to federal contributions for public housing and to federal mortgage insurance under 12 U.S.C. §§ 1715K, 1715(s)(d)(3) (Supp. II, 1966).

20. 42 U.S.C. § 1451 (c) (1964).

**SECRETARY
UNDER SECRETARY**

**DEPUTY UNDER SECRETARY FOR
POLICY ANALYSIS AND
PROGRAM EVALUATION**

Policy analysis, program evaluation,
PPBS, data systems design, and
statistics and reports

**ASSISTANT SECRETARY FOR
MORTGAGE CREDIT AND
FEDERAL HOUSING COMMISSIONER**
Deputy Assistant Secretary

**FEDERAL NATIONAL
MORTGAGE
ASSOCIATION**
Mortgage purchase,
sales, and manage-
ment and liquidation,
under FNMA Char-
ter Act.

**FEDERAL
HOUSING
ADMINISTRATION**
Mortgage Insurance
Program; Rent Sup-
plement Program;
Community Diplo-
mation.

**ASSISTANT SECRETARY FOR
RENEWAL AND HOUSING
ASSISTANCE**
Deputy Assistant Secretary

The Assistant Secretary for Renewal and Housing Assistance is the principal adviser to the Secretary on programs of renewal and housing assistance. He directs and coordinates, on behalf of the Secretary, the Department's activities with respect to these programs, and supervises the organization units to which they are assigned.

The programs he supervises include: slum clearance and urban renewal program (renewal projects, rehabilitation grants, code enforcement projects, demolition projects, general neighborhood renewal plans, and community renewal programs); rehabilitation loans; low-rent housing programs; college housing loans; loans for elderly housing; neighborhood facilities; open-space land (urban parks and central city); urban beautification (central city); Workable Programs for Community Improvement; and relocation for all Department programs.

**ASSISTANT SECRETARY FOR
METROPOLITAN DEVELOPMENT**
Deputy Assistant Secretary

The Assistant Secretary for Metropolitan Development is the principal adviser to the Secretary on programs of metropolitan development. He directs and coordinates, on behalf of the Secretary, the Department's activities with respect to these programs, and supervises the organization units to which they are assigned.

The programs he supervises include: urban planning assistance program; planned metropolitan development incentive grants; advances for public works planning; administration of comprehensive planning requirements; metropolitan area planning coordination; mass transportation loans, grants, and demonstrations; basic water and sewer grants; open-space land and urban beautification (outside central city); advance acquisition of land; public facilities, loans and liquidating programs; school construction; and academic facilities.

**ASSISTANT SECRETARY FOR
DEMONSTRATIONS AND
INTERGOVERNMENTAL RELATIONS**
Deputy Assistant Secretary and Director
of Urban Program Coordination

The Assistant Secretary for Demonstrations and Intergovernmental Relations is the principal adviser to the Secretary on program and functions of demonstrations, research, intergovernmental relations, urban program coordination, and emergency preparedness. He directs, and supervises, on behalf of the Secretary, the Department's activities with respect to these programs, and supervises the organization units to which they are assigned.

The programs and functions he supervises include: comprehensive city demonstration programs; low-income housing and urban renewal demonstrations; intergovernmental relations studies; State, county, city coordination and liaison for Department, Federal-State training program; city planning fellowships program; development of proposed Institute of Urban Development; clearinghouse service; urban studies and housing research; open-space land and urban beautification studies; urban planning research and demonstration; public facilities technical advisory services; surveys of public works planning; study of codes, zoning, etc.; natural disaster study; comprehensive market analysis; and defense planning.

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the workable program requirement has been amplified by HUD to include seven major items;²¹ most directly concerning us are the ones relating to relocation, citizen participation, and neighborhood analyses.²² Approval of the workable program is given by HUD on a year-to-year basis. Annual recertification, which at one time was fairly automatic, faces increasingly rigorous standards.²³ Recertification—and hence new projects dependent upon it—frequently is held up for several months (or longer) pending satisfaction of HUD comments, and the recertification documents are accompanied by a list—often long—of conditions which must be met before the next annual federal review.

The formal beginnings of an urban renewal project typically occur when the local governing body designates an urban renewal area, and authorizes the LPA to apply to HUD for a survey and planning advance.²⁴ Many states require that there be a legislative

21. The seven components, in short-hand form, are (1) codes and ordinances, (2) comprehensive community plan, (3) neighborhood analyses, (4) administrative organization, (5) financing, (6) housing for displaced families, and (7) citizen participation.

22. The neighborhood analyses component is described at *infra* note 24. Its importance seems to have grown with statutory enactment in 1965 of 42 U.S.C. § 1451(e) (Supp. II, 1966). This provision bars HUD, for projects receiving approval of Survey and Planning advances after August 10, 1965, from signing a loan and grant contract unless the Workable Program has sufficient content to permit evaluation of the urban renewal project and the project is in accord with the program. HUD has indicated that a neighborhood analysis, which has been completed for a significant portion of the area, can satisfy this requirement. LPA LETTER No. 412, April 3, 1967. The 1965 amendment provides an additional ground for possible challenge of the urban renewal plan—*i.e.*, the extent to which it is not in accord with, or its need has not been established in, the Workable Program.

23. The annual request for recertification is submitted on form HUD-1082 (12/65), which is 27 pages long. As of December 31, 1966, a total of 2,936 communities had obtained initial approval of their Workable Program, but only 1,108 programs were still active. Of the 1,828 expired programs, recertification was being sought, but had not yet been granted, in 358 instances. In the remaining 1,470 cases, the community had abandoned its Workable Program. SENATE PROGRESS REPORT, *supra* note 18, at 94. The conditions of recertification probably were being negotiated in most of the 358 pending cases. Neighborhood organizations could use this annual review process as the occasion for petitioning the Secretary to require the municipality to improve performance in citizen participation, relocation, *etc.*

24. 42 U.S.C. § 1452(d) (Supp. II, 1966). Such advances are eventually repaid from capital grant funds if an urban renewal project results from the Survey and Planning activity. Otherwise, the loan is forgiven.

On occasion a feasibility study may precede a Survey and Planning application. HUD will advance funds for such a study when there are special problems

finding that the area is either a slum, or is blighted, deteriorated, or deteriorating²⁵ (or words of similar import). Unless state law requires more, HUD demands only a finding that the area "is appropriate for an urban renewal project," except when the planned reuse is predominantly non-residential, in which case the governing body must indicate that such reuse is "necessary for the proper development of the community."²⁶ Designation does not mean, inevitably, that urban renewal will be undertaken in the area. Rather, it is an initial showing, preliminarily substantiated, that conditions warrant the community's attention. Even at this early stage, however, the LPA must have some rough notions about plan specifics,²⁷ because the survey and planning application must show the type of treatment tentatively proposed for each section of the area and an estimate of the federal grant which will be needed to carry out the project. When making the advance of funds for survey and planning activities, HUD will also reserve the estimated federal share of the final project cost.

The survey and planning advance will enable the LPA to open a field office in the proposed project area,²⁸ to employ community re-

concerning relocation, land disposition, financial feasibility of possible reuse, or the locality's legal powers. Illustrations in MANUAL § 42-1. HUD does not require formal adoption of a resolution by the local governing body in support of the LPA request for a feasibility study advance.

Also in advance of the Survey and Planning application, the LPA is expected to undertake neighborhood analyses, as one of the Workable Program requirements. HUD, ANSWERS ON NEIGHBORHOOD ANALYSES, PROGRAM GUIDE No. 3 (Feb. 1966) [hereinafter cited as PROGRAM GUIDE No. 3]. HUD describes a neighborhood analysis as "the first essential step" in planning for code improvement, rehabilitation, conservation, and clearance. Neighborhoods are to be delineated for prospective treatment, and data are to be gathered on housing conditions, family characteristics, the extent and location of blight, the adequacy of community facilities, *etc.* *Id.* at 1. HUD recommends that the analysis be utilized in laying the groundwork for neighborhood support of eventual renewal activity by developing community organization and giving it a voice in the decision-making process. *Id.* at 3. Funds for neighborhood analyses are obtainable under the Urban Planning Assistance Grant (Section 701) Program, 40 U.S.C. § 461 (1964) and the Community Renewal Program, 42 U.S.C. § 1453(d) (1964).

25. *See, e.g.,* CAL. HEALTH & SAFETY CODE § 33030-33034 (West 1967); ILL. STAT. ANN. ch. 67½, § 65 (Smith-Hurd 1966); N.Y. GEN. MUN. LAW § 502 (McKinney Supp. 1967).

26. MANUAL § 4-1-1, Exhibit B.

27. MANUAL § 4-1-1, Exhibit A; *id.* at § 10-4-1, at 1-2.

28. The purpose of the site office is to provide a variety of services related to relocation, neighborhood organization, social services, rehabilitation, *etc.* Neighborhood groups should insist that such an office be established at the outset of Survey and Planning to provide all the services and also to serve as a focal point for citizen participation in planning. *See* LPA LETTER No. 334 (June 8, 1965).

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lations personnel to work with the neighborhood in developing the plan, to begin property rehabilitation activities, and, ultimately, to produce the project plan. As we shall see, this planning stage, which generally lasts two years or longer, offers the critical opportunity for site occupants and other interested citizens to influence the project's complexion. Throughout this period, a constant exchange between the LPA and neighborhood should be taking place. When it does not, the plan that emerges must struggle to gain neighborhood support.

When the LPA is ready with a plan, it then submits to HUD the Final Project Report, Part I of the Application for Loan and Grant.²⁹ This is a most elaborate submission. It contains the proposed Urban Renewal Plan and supporting documentation in great detail—for example, project boundaries, designation and description of buildings to be cleared or rehabilitated, plan objectives, reuse intentions and controls, relocation arrangements, acquisition cost and disposal price estimates, and the city's anticipated non-cash grants-in-aid. It must also contain a report on "minority group considerations." With this application, the LPA solicits HUD's tentative approval of the project pending ratification of the plan by the local governing body and submission of the Part II application. In reviewing the Final Project Report, HUD will often issue comments detailing the revisions necessary to achieve an acceptable plan.

By federal statute, a public hearing must precede any acquisition of land within the project area.³⁰ By HUD regulation, a public hearing must also precede approval of the urban renewal plan by the local governing body.³¹ Ordinarily, the statutory and the regulatory hearing are the same, and occur after HUD's approval of the Part I application.³² The time and place, and the body before whom the

29. MANUAL § 4-2-1, at 1-5.

30. 42 U.S.C. § 1455(d) (1964).

31. MANUAL § 4-3, at 1.

32. Unless there is early land acquisition, *infra*, or a major change after plan adoption, one public hearing is all that federal law requires; in point of fact, however, the project is likely to be aired whenever the LPA or the local governing body meets to consider some aspect of the plan, such as the application for the Survey and Planning advance.

Where state law permits, the locality may acquire real property in the project area prior to formal adoption of the Urban Renewal Plan. See 42 U.S.C. § 1452(a) (1964). HUD loans are available for acquisition, management, relocation, and demolition expenses, and, to a limited extent, land disposition activities. Such acquisition must be approved by the governing body, and if relocation is necessary, the relocation program must also be approved. The pro-

hearing is held (it need not be the local governing body or the LPA), and the hearing procedures are left to state or local law. Publication of a notice of hearing must occur not less than ten days prior to the hearing.³³ During this interval, the Relocation Program must be available for inspection,³⁴ although the regulations do not demand a similar disclosure for the plan itself (they should!). At the hearing, a "reasonable opportunity shall be afforded to all persons, including representatives of organizations . . . to present their views with respect to the project."³⁵

After the public hearing, the entire plan must be acted upon and adopted, by both the LPA and the local governing body.³⁶ In its resolution, the municipal legislature must make specific findings as to the area's eligibility for urban renewal, the necessity for any clearance or non-residential development, and the feasibility of the relocation plan.³⁷ The LPA then files Part II of the Application for Loan and Grant,³⁸ which sets forth the approved plan, together with resolutions of approval, certification of procedural regularity, and commitments of local grants-in-aid.

If all is well, HUD and the LPA will enter into the Contract for Loan and Capital Grant,³⁹ and the execution phase of the project will start. But except for small clearance projects, planning seldom ends when execution begins; a plan is apt to change many times in execution. HUD's prior written consent is required for a change in any *basic* element of an approved plan, and if the change involves a revision of project boundaries or necessitates an increase in the federal loan and grant or other rewriting of the loan and grant con-

cedural requirements, including a public hearing, notice thereof, and an opportunity to inspect the relocation plan, are the same for both early land acquisition and project approval. A challenge to the regularity of an early land acquisition, while more limited in scope than a challenge to the overall plan, might be taken when HUD reviews the application for an early acquisition loan.

33. MANUAL § 4-3, at 2.

34. *Id.* See also MANUAL § 16-1, at 2.

35. *Id.* at § 4-3, at 1.

36. MANUAL § 4-2-2.

37. These are but a few of the required findings that must accompany the governing body's adoption of the Urban Renewal Plan. *Id.* at § 4-2-2, Exhibit A.

38. *Id.* at § 4-2-2.

39. The Contract for Loan and Capital Grant (known colloquially as the "loan and grant contract") establishes the rights and duties of HUD and the LPA with respect to the urban renewal project. Of critical importance to the local community, the contract assures the necessary financing for completing the project.

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tract, an amended Part I application must be filed.⁴⁰ Plan changes must obtain the same local approvals as original submissions and may require a new public hearing under the provisions of state law, local law, or the Contract for Loan and Capital Grant.⁴¹

During execution, the LPA files regular progress reports⁴² and submits periodic requisitions for federal financial assistance. During the execution stage, federal supervision includes on-site inspection by HUD field personnel and intensive HUD audits of the agency's records and accounts.

C. The Constraints Which Limit Discretion

One need only look at the hundreds of pages of HUD requirements which are contained in the Urban Renewal Manual, LPA Letters, Contract for Planning Advance, and Contract for Loan and Capital Grant to see how carefully the LPA must proceed through each project stage. Moreover, although the possibilities for innovation, flexibility, variety, and sophistication have increased with the advent of new program tools, in many respects, the reins on LPA discretion are being tightened as Congress and HUD respond to program objectives and to the abuses—real and imagined—that have sometimes beset urban renewal. Familiarity with these constraints is essential, both to participate meaningfully in the planning process and to monitor the LPA's day-to-day decisions.

In the pages that follow, we summarize the constraints that bear most directly on the plan's responsiveness to the needs of site occupants. The reader should treat our discussion as indicative rather than exhaustive; for we would have overburdened both the reader and the text if we had tried to examine any of the constraints to its last detail.

40. MANUAL § 10-3-3.

41. MANUAL § 4-3, at 1. *See also* Bridgeport Taxpayers Association v. City of Bridgeport, 26 Conn. Supp. 239, 248-49, 217 A.2d 718, 723-24 (1965).

42. MANUAL § 32-2, at 1.

	<i>Frequency</i>
Report on Relocation of Families and Individuals	Quarterly
Report on Relocation of Business Concerns and Nonprofit Organizations	Quarterly
Physical Progress Report	Semi-annual
Report of Families Moved to Substandard Housing	Quarterly
Report for Financial and Budget Review	Semi-annual

1. *Selection of the Project Area and Areas for Clearance*

We should begin by making one distinction clear. When we speak of "urban renewal," we are referring to the entire panoply of programs that can qualify for Title I assistance under the formula contained in the Housing Act of 1949 as amended.⁴³ Slum clearance and redevelopment, or simply "redevelopment," is only one of these programs, although it was the first (and continues to be the lightning rod for most urban renewal criticism). But a Title I project may involve no clearance at all, or it may involve clearance in combination with such other urban renewal activities as rehabilitation, code enforcement, construction of public improvements, community organization, etc.⁴⁴ As we are about to see, the criteria for clearance are now far more rigorous than are those for general designation as an "urban renewal area."

Under federal statute, an "urban renewal area" means one that is "blighted, deteriorated, or deteriorating."⁴⁵ Congress has left to HUD the responsibility for giving substance to these terms. To qualify generally for Title I assistance, the Manual reads,⁴⁶ an area "must contain deficiencies to a degree and extent that public action is necessary to eliminate and prevent the development or spread of deterioration and blight. Specifically, at least 20 per cent of the buildings in the area must contain one or more building deficiencies, and the area itself must contain at least two environmental deficiencies." The Manual then lists six categories of building deficiencies⁴⁷ and eight of environmental deficiencies.⁴⁸ Older urban neighborhoods will often have at least one building in five suffering from "inadequate original construction or alterations" or "inadequate or unsafe plumbing, heating, or electrical facilities"—two of the six listed building deficiencies. The presence of two or more environmental deficiencies is equally endemic, for the list includes "unsafe, congested, poorly designed, or otherwise deficient streets" and "inadequate public util-

43. 42 U.S.C. § 1453 (1964). HUD will make capital grants for either two-thirds or three-fourths of the net project cost, the fraction depending generally on the locality's population or the locality's agreement to absorb overhead expenses.

44. Renewal area residents may also be entitled to rehabilitation grants, 42 U.S.C. § 1466 (Supp. II, 1966), rehabilitation loans, 42 U.S.C. § 1452(b) (Supp. II, 1966), and diagnostic and referral services, LPA LETTERS Nos. 347 (Sept. 14, 1965), 367 (April 5, 1966). "Diagnostic" is a euphemistic way of identifying the need of site residents for homemaking and social services.

45. 42 U.S.C. § 1460(a) (1964).

46. MANUAL § 3-1, at 1.

47. *Id.*

48. *Id.* at 1-2.

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ities or community facilities contributing to unsatisfactory living conditions or economic decline." However, for a project area to be eligible, the deficiencies must be present to a reasonable degree in all parts of the area, unless, by a heavy burden of proof, the LPA can establish that inclusion of the non-affected parts "is necessary to achieve the urban renewal objectives for the total project area" or "to bring the project area to a sound boundary."⁴⁹

While many neighborhoods can qualify for urban renewal assistance, not every urban renewal area, or part thereof, can qualify for clearance. Congress in 1965 underscored its commitment to the alternative of conservation and directed HUD not to approve any demolition unless the LPA could make an affirmative showing that clearance was needed.⁵⁰ HUD has regulated that clearance of an entire project area, or sizable part thereof, will be unacceptable unless more than 50 per cent of the buildings are *structurally* substandard "to a degree requiring clearance," or more than 20 per cent of the buildings are structurally substandard to such a degree that additional clearance, in an amount bringing the total to more than 50 per cent of the buildings, is necessary to remove specified "blighting influences."⁵¹ Moreover, the justification for clearance treatment of an area does not carry with it *carte blanche* to level every building within the area. For every parcel that it wishes to clear, the LPA carries the burden of persuasion that demolition is necessary, and HUD will not permit such treatment unless the property is incompatible with the plan objectives or is incapable of being improved and successfully integrated into the project. Furthermore, the LPA must demonstrate that it has given full consideration to alternative proposals which would result in retention of a greater number of buildings which are structurally sound or capable of rehabilitation.⁵²

2. *The Reuse Proposal*

The constraints on reuse do not give complete assurance to site occupants that they will be provided for within the project area,

49. *Id.* at 2. See also MANUAL § 10-1, at 1.

50. 42 U.S.C. § 1460(c) (Supp. II, 1966).

51. MANUAL § 10-1, at 2-4. See also MANUAL § 10-4-2.

52. *Id.* Not since *Berman v. Parker*, 348 U.S. 26 (1954) and many similar state court decisions has there been a *constitutional* barrier to the clearance of basically sound properties where area considerations mandate demolition. But a resident's appreciation of the need for area renewal often excludes a willingness to see his own dwelling place (or business) torn down, especially if he is required because of the reuse plan, to leave the neighborhood.

but in some instances deficiencies in the reuse proposal may prevent a plan from gaining approval. The Manual requires submission of a marketability study indicating that the land can be disposed and developed for the planned reuse within a reasonable time⁵³ so that an LPA's misguided optimism over the demand for cleared acreage will not result in large inventories of unsold land. Notwithstanding a gradual rise in the statutory non-residential "exception," we believe that the difficulties of persuading HUD to underwrite a commercial redevelopment are greater now than at any time in the recent past.

The Widnall Amendment, which was enacted in 1966,⁵⁴ challenges the use of Title I as a vehicle for higher cost housing to the exclusion of housing that site occupants can afford. In a residential redevelopment project the LPA must now provide "a *substantial* number of units of standard housing of low *and* moderate cost" (emphasis by authors) and must demonstrate "that the project will result in marked progress in serving the poor and disadvantaged people." Although HUD has issued regulations which would seem to emasculate this requirement,⁵⁵ there have been indications that the statute will be taken at face value.⁵⁶

Finally, if the reuse plan causes a substantial net reduction in the supply of housing in the project area available to minority group families, the "minority group considerations"⁵⁷ become operable.

3. *Citizen Participation*

Given our goal—to achieve responsiveness in planning—no constraints are more vital than are those prescribing citizen participation. They operate at two levels. One is the requirement—in HUD's words, the "keystone" requirement—of the workable program. The other appears in the so-called "minority group considerations;" ap-

53. MANUAL § 14-2-2, at 3-4. The Land Disposal Report must include many other items, such as evidence that mortgage financing will be available, a preliminary plot plan showing tentative disposal parcels, the names of proposed redevelopers, *etc.*

54. Pub. L. No. 89-754, § 703(a) (Nov. 3, 1966).

55. HUD has established "a minimum of 20 percent" as the administrative standard for the "substantial number" test, has substituted "or" for "and" so that apparently none of the housing need be low-cost, and seems to have dropped entirely the additional requirement of "marked progress." LPA LETTER NO. 409 (March 1, 1967).

56. The New York Times, July 9, 1967, § 1, at 46, col. 3.

57. See text beginning at pages 90, 93. Although we deal with the minority group considerations as aspects both of citizen participation and relocation, the URBAN RENEWAL MANUAL does not make this division. MANUAL § 10-1.

parently largely untested, this may prove a powerful catalyst for meaningful interaction between the LPA and site occupants.

The workable program requires that each community designate a citizens advisory committee—"community-wide and representative in scope"⁵⁸—which will be kept informed of the LPA's activity and which can advise the LPA on plan objectives. In its early years, however, the workable program did not insure, and perhaps was not meant to insure, grass roots participation in the plan. Public acceptance of urban renewal seemed a more urgent goal, and, understandably, communities were encouraged to staff their advisory panels from traditional leadership groups, men whose good-will and active support would help to settle public opinion.⁵⁹ While this goal remains, HUD has recognized that the banker, the union official, or the head of the League of Women Voters, however well-meaning, can seldom speak for the occupants of a project neighborhood; and as a consequence, HUD now demands as part of the workable program requirement that the neighborhood voice also be sounded. This demand takes several forms. The advisory committee shall include "persons from all the principal neighborhoods" and "where neighborhood organizations exist, they (shall) be included."⁶⁰ One of the committee's stated roles is "to foster citizen participation on a neighborhood basis."⁶¹ Finally, the advisory committee must have a subcommittee on "Minority Group Housing," to study and recommend means for securing better housing for all ethnic and minority groups.⁶² In its request for annual recertification of the workable program, the LPA must identify committee and subcommittee members who represent the principal minority groups⁶³ and must describe citizen participation programs carried out or planned for neighborhoods affected by urban renewal activities.⁶⁴

In a further attempt to amplify the neighborhood voice, HUD introduced the so-called "minority group considerations" in a 1965

58. HUD, ANSWERS ON CITIZEN PARTICIPATION, PROGRAM GUIDE NO. 7, at 1 (Feb. 1966) [hereinafter cited as PROGRAM GUIDE NO. 7].

59. See, e.g., Note, *Citizen Participation in Urban Renewal*, 66 COLUM. L. REV. 485, 522-24 (1966); R. DAHL, WHO GOVERNS? DEMOCRACY AND POWER IN AN AMERICAN CITY, 122-26, 130-37 (1961).

60. PROGRAM GUIDE NO. 7, *supra* note 58, at 1.

61. PROGRAM GUIDE NO. 3, *supra* note 24, at 3.

62. PROGRAM GUIDE NO. 7, *supra* note 58, at 3.

63. A Review of Progress under the Workable Program for Community Improvement 23, 25 (HUD Form 1082 [12/65]).

64. *Id.* at 25.

revision of the regulations.⁶⁵ These are relevant whenever a contemplated project will result in a "substantial net reduction in the supply of housing in the project area *available* to minority group families." (Emphasis by authors.) Should this reduction occur, HUD will approve the plan only if standard housing not previously available to the minority group is provided outside the project area to replace the loss and, of immediate relevance, the LPA has "afforded representative leadership of the minority group adequate opportunity for consultation during the planning stage." The regulation defines "representative leadership" as "persons accepted as such by the minority community itself, such as persons holding office in civic or other responsible organizations of minority citizens."

Loosely-drafted, this regulation leaves much to speculation. To begin with, when does it apply? The Manual, in one section, refers to *racial* minority families, although elsewhere (in a discussion of the workable program)⁶⁶ HUD defines a minority group "as any group that because of race, color, religion, or national origin, including but not limited to Negroes, Oriental Americans, Spanish-speaking or Latin Americans, Puerto Ricans, Jews and American Indians, (is) subject to discrimination in gaining equal access to the local housing supply." Given the dual objectives of this regulation—to wit, adequacy of housing *and* consultative planning—we would argue for the broader construction, which would even include the concentrations of European subcultures which abound in our central cities, despite their relatively freer access to the housing market. As to what HUD means by a "*substantial* net reduction in the supply of available project area housing," (emphasis by authors) no published guidelines exist; however, in another context—the "Widnall" regulation, *supra*—the percentage of twenty has been used to quantify "substantial." We believe the regulation should be extended to include the instances of *any* net reduction in the supply of available project area housing. Finally, the test of housing availability within the project area should also have to include the economic considerations—although this is not specifically indicated—since housing is not "available" to a person who cannot afford it.

Crossing the threshold of applicability, HUD must then decide upon a standard of performance. To be "adequate" the "oppor-

65. MANUAL § 10-1.

66. HUD, A GUIDE FOR CITIZENS' ADVISORY COMMITTEES FOR THE WORKABLE PROGRAM FOR COMMUNITY IMPROVEMENT 2 (Nov. 1966).

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tunity for consultation" must go far beyond the casual submission of well-advanced project plans to a group leadership for the purpose of eliciting a reaction. The LPA, we believe, should be required to involve the neighborhood at the very outset of the planning stage and to work with its leadership—responsive to its desires—in shaping the plan's detail. Moreover, to the extent that the leadership exists and is truly representative, it must, according to regulatory prescription, be "accepted as such by the minority group itself." This may even argue for giving site occupants some kind of selection role, rather than relying entirely on the LPA's judgment as to who the leadership is. At the very least, where viable organizations—neighborhood or block associations or committees, church groups, P.T.A.s, businessmen's associations, etc.—function within the neighborhood, the LPA must meet with them frequently; and where such organizations do not exist, or are not broadly representative, the LPA must take the initiative to construct a community sounding board.

4. *The Relocation Plan*

The relocation duties of the municipality operate at two levels. One is macrocosmic and is set forth in the Workable Program. This requires an on-going relocation service for families who are displaced by *any* form of governmental activity.⁶⁷ Each Workable Program submission must report the number of families displaced during the preceding twelve months and the circumstances of their rehousing, and, in addition, must estimate the relocation needs and resources for the next two years. Where a deficit is indicated, the community must enumerate how it will provide additional housing. The second level of duty is project-oriented, and stems from the statutory requirement that "within a reasonable time prior to actual displacement (by urban renewal, the LPA must give satisfactory assurance) that decent, safe, and sanitary dwellings . . . are available for the relocation of each (displaced) individual or family."⁶⁸ Congress further amplified this

67. HUD, ANSWERS ON HOUSING FOR DISPLACED FAMILIES, PROGRAM GUIDE No. 6, at 1 (March 1966).

68. 42 U.S.C. § 1455(c)(2) (Supp. II, 1966). This statutory requirement has existed since original enactment of the Housing Act of 1949. It is ironic that the urban renewal program, with such a requirement, has attracted so much more criticism than have private entrepreneurial activity and other public improvement programs (such as new highways and schools) which have no such requirement and which each year displace far more people than does urban renewal. Undoubtedly this is due partly to urban renewal's original, and recently reiterated, orientation toward housing, and partly to critic's resentment to resale of land to private developers at a government-subsidized writedown. Cf. R. STARR, *THE LIVING END; THE CITY AND ITS CRITICS* 78, 261, 270-74 (1966).

duty by requiring that the relocation dwellings be "at rents or prices within the financial means of the individuals and families displaced . . . and reasonably accessible to their places of employment" and, if outside the project area, in locations "not generally less desirable in regard to public utilities and public and commercial facilities."⁶⁹ Finally, the statute provides an elaborate, and continually improving, array of relocation allowances, funded by HUD, and payable to businessmen as well as residents.⁷⁰

Through the years, HUD has tightened the relocation standards and has also refined the reporting techniques that enable it to review LPA proposals and supervise LPA performance. (Discussion of relocation occupies sixty pages in the Urban Renewal Manual.) For example, HUD discovered that relocation estimates often were not borne out by experience because they had ignored the reality of the segregated marketplace; although housing units in the requisite number were theoretically available, non-whites⁷¹ could not buy or rent them. To align estimates with market conditions, HUD now requires a double-entry system on both the demand and supply sides of the relocation account, one set of figures for white persons, a second set for non-whites.⁷²

Relocation data must first be submitted with the application for a survey and planning advance indicating the estimated number of families to be displaced and, generally, the housing situation in the community. A far more detailed submission accompanies the Part I application. This contains the Relocation Report—partly a narrative description of organization, relocation standards, proposals for obtaining housing, relations with site occupants, LPA eviction policy, etc., and partly a documented analysis of relocation needs and resources. Here one finds data relating to need regarding family size, income, eligibility for public housing, housing tenure, and special problem cases (*e.g.*, the handicapped or elderly); and data relating to resources regarding vacant private and public units, grouped according to number of bedrooms, rental or sales price, financing, racial availability, location, nature and volume of competing demands. A program that shows less than a one-to-one correspondence between resources and need would be unacceptable.

69. 42 U.S.C. § 1455(c)(1) (Supp. II, 1966).

70. 42 U.S.C. § 1465 (Supp. II, 1966).

71. HUD's phrase, not ours! It follows U. S. Census Bureau classification.

72. MANUAL § 16-2-2, at 1.

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Because of the emphasis given to relocation, HUD further requires that the local governing body, when it acts on the urban renewal plan, make a separate, distinct finding that proper relocation "is feasible."⁷³ To improve the chance that the finding not be perfunctory, HUD demands that the relocation program be available for inspection by any interested group or individual prior to the public hearing, and that the program be open for discussion at the hearing.⁷⁴

Even after the loan and grant contract is signed, before any substantial displacement can occur, the LPA must give new assurances to HUD that the Relocation Report is currently valid.⁷⁵ Thereafter, the LPA must submit periodic reports of relocation progress.⁷⁶ As in the pre-execution stage, the reports are highly detailed; they must record relocation statistics on every family, individual, and business concern whom the project displaces. Any change in the relocation program must first be approved by HUD.⁷⁷ Failure to fulfill the Relocation Program constitutes a default under the loan and grant contract.

Where the "minority group considerations" apply, *i.e.*, where the housing available to minority group families in the project area is substantially reduced, the Relocation Program faces another somewhat perplexing imperative. Units subtracted from minority group availability within the project area must be replaced "elsewhere in the community in new or existing dwelling units *not previously available* to the minority group." (Emphasis by authors.) In the absence of published guidelines, one must guess as to what HUD will require. Perhaps HUD has done little more than to recast the usual relocation requirement of a minimum one-to-one correspondence within the community between supply and need; given the general tightness of that supply for most racial minorities, any expansion is apt to consist of units that minority group members have not previously occupied. But it is also possible that HUD is expecting more, that in cities where free access does not characterize the community's housing market, relocation must become a means for lessening residential exclusion. Such a duty would coincide with that being formulated in response to Title VI of the Civil Rights Act of 1964, *infra*. The LPA

73. *Id.* at § 4-2-2, Exhibit A.

74. *Id.* at § 4-3, at 2; *id.* at § 16-1, at 2.

75. 42 U.S.C. § 1455(c)(2) (Supp. II, 1966).

76. *See supra* note 42.

77. *MANUAL* § 16-1, at 3.

would then have to prove either that minority group exclusion was absent from the community, or that conditions would improve in the process of relocation. In the absence of actively enforced open housing laws or construction of new units governed by federal proscriptive laws against discrimination, the LPA's difficulties of proof might be considerable. Moreover, if, in the course of relocation, it could be shown that site occupants were not able to obtain housing in areas formerly closed to them, this might violate the provisions of the loan and grant contract, *infra*.

5. *Title VI, Civil Right Act of 1964*

No person . . . shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.⁷⁸

Even before the 1964 Act, discrimination in the sale or leasing of buildings constructed in the project area was barred by a 1962 Executive Order⁷⁹ (and, where applicable, by state or local fair-housing laws).⁸⁰ However, what urban renewal critics usually allude to when they charge discrimination are three other kinds of conduct: the designation of project boundaries, or of buildings for clearance within the project area, so as to force Negro removal; the use of relocation to reinforce patterns of racially segregated neighborhoods; and the adoption of reuse plans that do not provide housing that site occupants can afford (often an indirect form of racial discrimination). Certainly, proof of at least two of these grievances—those dealing with designation and relocation—could bring official conduct within the ambit of Title VI; and perhaps even the more difficult “economic = racial discrimination” contention might come within the terms of Title VI.

For its part, HUD has begun to set guidelines as to what it regards as permissible (or impermissible) activity. The LPA must include in all land disposition contracts a developer's covenant not to discriminate, which, in turn, the LPA must agree to enforce;⁸¹ and,

78. 42 U.S.C. §2000(d) (1964).

79. Exec. Order No. 11,063, 27 Fed. Reg. 11527 (1962).

80. For a recent compilation of state and local fair housing laws, see NAT'L COMM. AGAINST DISCRIMINATION IN HOUSING, TRENDS IN HOUSING (August-September 1967).

81. LPA LETTER No. 318 (Dec. 28, 1964). See also LPA LETTER No. 338 (July 22, 1965); *Smith v. Holiday Inns of America, Inc.*, 336 F.2d 630 (6th

as we have seen, the LPA may fail to comply with the minority group considerations if, in its relocation program, it condones existing patterns of racial exclusion. In related actions, HUD has moved to curb practices of segregation in which many local public housing authorities have deliberately engaged and has warned that new public housing projects will not be approved in a city that does not make a genuine effort to find some housing sites in non-ghetto areas.⁸²

In each of its applications to HUD, and when it signs the Contract for Planning Advance and the Loan and Grant Contract, the LPA gives its assurance that it will fully comply with all regulations effectuating Title VI.⁸³ Thus, any proof of impermissible discrimination would allow HUD to reject the applications or to elect remedial action under the terms of the contract.

6. *Miscellaneous Conditions*

(a) *State and Local Requirements.* As we have indicated, one must look also to state and local law to understand fully the allowable scope of and the strictures on urban renewal. There must first be an enabling statute⁸⁴ authorizing local communities to, among other things, exercise eminent domain, borrow money, accept federal loans and grants, sell or lease land (generally at less than the acquisition cost), and devote municipal revenues to support of an urban renewal program. Such statutes will also specify the characteristics

Cir. 1964) (motel in redevelopment project enjoined from refusing to accept Negroes as guests). On affirmatively using urban renewal to help achieve integration, see A. MAYER, *THE URGENT FUTURE; PEOPLE, HOUSING, CITY, REGION* 66-72 (1967).

82. HOUSING ASSISTANCE ADMINISTRATION, *LOW-RENT HOUSING MANUAL* states the aim of a local Authority in carrying out its responsibility for site selection should be to select from among sites which are acceptable under the other criteria of this Section those which will afford the greatest opportunity for inclusion of eligible applicants of all groups regardless of race, color, creed, or national origin, thereby affording members of minority groups an opportunity to locate outside of areas of concentration of their own minority group. Any proposal to locate housing only in areas of racial concentration will be prima facie unacceptable and will be returned to the local Authority for further consideration and submission of either (1) alternative or additional sites in other areas so as to provide more balanced distribution of the proposed housing or (2) a clear showing, factually substantiated, that no acceptable sites are available outside the areas of racial concentration. *Id.* at § 205.1, at 7, February 1967. See also *id.* at § 102.1, Exhibit 2, July 1967, concerning tenant selection.

83. *MANUAL* § 4-1-1, Exhibit C (Survey and Planning Advance); *id.* at § 4-2-1, Exhibit B (Part I, Application for Loan and Grant); *id.* at § 4-2-2, Exhibit C (Part II, Application for Loan and Grant).

84. See *supra* note 10.

that qualify areas for renewal treatment, although the verbiage used—*viz.*, “slum,” “blight,” etc.—generally matches the federal in its generality. The procedures for public approval of a plan (including the hearing requisites) are also state affairs.⁸⁵ Sometimes these include the submission of the plan directly to the electorate in a special referendum⁸⁶—a technique that militant opponents of urban renewal (and of fair housing laws) champion with unconcealed ardor. State law may also provide additional relocation requirements⁸⁷ and will usually prescribe methods for dealing with redevelopers.⁸⁸ HUD gives a broad election to the LPA in deciding on project sponsors and in deciding whether to utilize negotiation, bid, or some other technique for reaching a land disposal price;⁸⁹ the state requirements can be more confining.⁹⁰

(b) *Opinion of the LPA Counsel.* Counsel for the LPA must prepare an opinion to accompany both the Part I and II submissions.⁹¹ Mostly the opinions deal with the regularity of the plan—its conformity to the applicable state, local, and federal laws—and with the procedures leading to adoption of the plan. But, of special interest to the plan’s critics is the requirement that Counsel indicate whether any pending or threatened litigation concerns the plan. This requirement will alert HUD to neighborhood dissatisfaction. HUD may, and indeed often does, elect to permit the project to proceed where it is satisfied that the litigation does not pose a substantial threat to the project; but under appropriate circumstances, HUD may withhold project approval until resolution of the law suit. During project execution, too, the LPA must apprise HUD of any litigation which arises.

(c) *Public Disclosure by Proposed Redevelopers.* Before the LPA

85. See, e.g., CAL. HEALTH & SAFETY CODE §§ 33322 *et seq.*, 33330 *et seq.* (West 1967); ILL. STAT. ANN. ch. 67½, § 91.12 (Smith-Hurd 1966); N.Y. GEN. MUN. LAW § EJE (McKinney 1965).

86. See, e.g., ALA. CODE tit. 25, § 108 (Supp. 1965); MISS. CODE ANN. § 7342-05 (Supp. 1966).

87. See, e.g., CAL. HEALTH & SAFETY CODE §§ 33411-16 (West 1967); ILL. STAT. ANN. ch. 67½, § 92 (Smith-Hurd 1966); N.Y. GEN. MUN. LAW § 510 (McKinney 1967).

88. See, e.g., CAL. HEALTH & SAFETY CODE §§ 33430-45 (West 1967); ILL. STAT. ANN. ch. 67½, §§ 91.115-118 (Smith-Hurd 1966); N.Y. GEN. MUN. LAW §§ 507, 556 (McKinney Supp. 1967).

89. MANUAL §§ 14-3-1, 14-3-6.

90. See Scheuer *et al.*, *Disposition of Urban Renewal Land—A Fundamental Problem in the Rebuilding of Our Cities*, 62 COLUM. L. REV. 959, 968-72 (1962).

91. MANUAL § 4-2-1, Exhibit E (Part I, Application for Loan and Grant); *id.* § 4-2-2, Exhibit D (Part II, Application for Loan and Grant).

enters into a contract for, or "understanding with respect to," sale or lease of project land,⁹² it must give at least 10 days public notice of its intentions, disclosing essential details of the contemplated transaction.⁹³ Failure to give the prescribed notice not only constitutes non-compliance with the federal statute and regulations (and hence a breach of the loan and grant contract), but it may even render the land disposition contract invalid.⁹⁴ The disclosure must include the names of each redeveloper, its officers, and other principals; and, of special interest here, for residential developments, estimates of the cost, sales prices, and rentals. This information is set forth in a prescribed form of Redeveloper's Statement for Public Disclosure,⁹⁵ which the public may examine at the LPA's office for at least 10 days before the LPA enters into the contract or understanding.⁹⁶ Notice of the Statement's availability must be published in a general circulation newspaper, except that, where the transaction concerns redevelopment or rehabilitation of 25 or fewer dwellings by one redeveloper, "the notice may be published by posting it in the office of the LPA." While the form of publication is hardly conducive to widespread knowledge, the information which must actually be available in the Statement is quite extensive. Lest the information pass unnoticed, a neighborhood organization should ask the LPA—and if need be, HUD—that it be notified directly whenever a Statement becomes available.⁹⁷ Some state or local laws prescribe a public hearing on each proposed land disposition, providing an opportunity for even fuller disclosure of a transaction's detail.

II. NEIGHBORHOOD ORGANIZATION: AN ACTIVE ROLE IN RENEWAL PLANNING

The goal is an urban renewal project that recognizes and serves legitimate interests and aspirations of the neighborhood. The principal rules for an active neighborhood role in urban renewal are simply stated: though, in their simplicity, they mask the difficulties one can expect in following them. These rules number five: the community

92. 42 U.S.C. § 1455(e) (1964).

93. *MANUAL* § 14-4-1, at 3-5.

94. *Cf.* *Town of Brookline v. Brookline Redevelopment Auth.*, 344 Mass. 562, 183 N.E.2d 484 (1962).

95. HUD Form H-6004.

96. *MANUAL* § 14-4-1, at 4.

97. This request might be in the form of a blanket demand for the opportunity to examine each Redeveloper's Statement as it becomes available.

should organize early; it must be informed; it must establish its objectives; it must carefully prepare its proposals; it must be persistent. The most difficult tasks are establishing achievable and broadly accepted objectives, and becoming and remaining informed.

The problem of objectives flows directly from the diversity of most neighborhoods of any size. Even ethnic identity does not assure compatibility of aims. Indeed, ethnically homogeneous neighborhoods frequently contain the full spectrum of the conflicting interests which make a plan of action so difficult to achieve democratically: owner vs. tenant, long-time resident vs. newcomer, non-resident business owner vs. resident tenant, moderate-income vs. low-income family—any list is merely suggestive of the range. Yet the task of the LPA and the neighborhood organization (or the organizations working together) is to achieve a synthesis or balancing so that a single plan can—imperfectly, probably, but still sensitively—maximize the goals of all.

To be informed, the neighborhood must be knowledgeable about the process of urban renewal, the relationship between the local and federal agencies, and the constraints that limit agency discretion—matters we have already discussed. Within this general framework, the neighborhood must also be informed about itself—its problems, its needs, and its opportunities. Finally, the neighborhood must be informed about what the LPA is doing.

In municipalities where the LPA regards the neighborhood as a co-venturer in producing the plan, the LPA will itself take the initiative in letting the neighborhood know—sometimes even before the planning actually begins. This has not always happened, however. Often, the LPA has preferred not to reveal the emerging plan until after HUD's approval of the Part I application.⁹⁸ Where this is the case, the neighborhood organization must learn how to gather its

98. Although HUD requires that informational material concerning the boundaries and the general nature, scope and objectives of the proposed project be distributed to all occupants and/or owners of property in the area "as early as practicable during survey and planning," LPA LETTER No. 426, such distribution permissibly may take place as late as the approval of the Urban Renewal Plan by the local governing body, thus mitigating its usefulness as a planning aid to the citizenry. Its primary purpose is to give guidance on relocation assistance, and this dictates its format, which is not adapted to early distribution.

The current severe shortage of Federal funds for urban renewal makes it impossible to rely upon their availability until Part I approval, no matter how reasonable or necessary the plan. Therefore, it is hazardous for a city to excite a community's expectations by premature disclosure of a proposed plan. Thus the funds shortage militates against planning with people.

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own intelligence. It can never be too early to begin. It can sometimes be too late.

Basic data on the proposed project—its boundaries, how it purports to meet HUD's eligibility requirements, how minority families will be rehoused (if they face a substantial net reduction in the supply of housing available to them in the project area), etc.—are obtainable in the early stages from the Survey and Planning Application. Where the LPA does not plan with the people, this information, all publicly available,⁹⁹ will be sufficient to begin to prepare an independent case for, against, or partly for and partly against, the project. Once Part I of the Loan and Grant Application has been approved locally and submitted to HUD, this becomes the primary source of data on the proposed project. The Part I application must contain the LPA's case, and thus it will be invaluable in preparing an independent case where the LPA has eschewed participatory planning.

There is heightening discussion of the differences between participatory planning and advocacy planning. We believe that each has its place. Ideally, project planning is participatory, a joint venture of the LPA and neighborhood representatives. But where a neighborhood organization feels that the LPA is not sufficiently responsive, advocacy planning (the preparation and presentation of the neighborhood group's *own* plan, assisted by a planner of its own) may be in order. If a plan cannot evolve in the give-and-take among joint venturers, perhaps it can be forged by adversaries.¹⁰⁰

99. Copies of the Survey and Planning Application and of Part I, Loan and Grant Application, will be on file in the LPA's office and in the HUD Regional Office. As public documents, having been formally approved by the LPA, their disclosure to interested groups should be gainsaid, with the exception of financial details such as property appraisals, which, if released, could cause detriment to the public interest. The authors know of no instance where groups have actually asked HUD for the opportunity to examine a community's applications (or, perforce, where HUD has denied such a request). Should HUD refuse to give access, relief could be sought under 5 U.S.C. § 552 (Supp. II, 1966). HUD implementary regulations are 32 F.R. 9660 (1967). Similar statutes in many states might give a remedy if the LPA were to bar examination of these documents.

100. Without a doubt, active and frequent give and take on all aspects and at many levels—formal and informal, in large meetings and in small, neighborhood-wide and block-by-block, by businessmen and by residents, etc.—is essential to achieve the best plan. *See, e.g.,* M. HOMMANN, *WOOSTER SQUARE DESIGN* (1965). *STUDY GROUP OF THE INSTITUTE OF PUBLIC ADMINISTRATION TO MAYOR JOHN V. LINDSAY, LET THERE BE COMMITMENT; A HOUSING, PLANNING AND DEVELOPMENT PROGRAM FOR NEW YORK CITY 16* (1966).

The larger and more complex a neighborhood, of course, the less able is each interested individual, and indeed, each interested group, to take an extensively active role. Where this becomes a problem—that is, where there are too many

A major task for the neighborhood is to identify the instances at which the LPA is most susceptible to guidance, suggestion, and pressure—the points at which the administrative and political processes are most amenable. These occur frequently. They are the target points for the neighborhood organization that is not admitted to the planning process.

The local legislature must approve (1) the Workable Program prior to its initial submission to HUD and annually thereafter; (2) the submission to HUD of the Survey and Planning application, including a declaration that the area is appropriate for an urban renewal project; (3) the Urban Renewal Plan and submission to HUD of Part II of the Application for Loan and Grant; and (4) any amendment of the Urban Renewal Plan or of the Loan and Grant Application. The LPA must formally approve the above-mentioned items at (2), (3), and (4), as well as Part I of the Loan and Grant Application. Interested neighborhood organizations that feel left out of the planning process should learn when and how to obtain notice of meetings of the municipal legislature and of the LPA at which the various approvals are considered; and they should attend, or be represented at, every meeting that is likely to take significant action regarding their neighborhood. Few, if any, legislative bodies afford the opportunity for direct citizen participation in their meetings; some, but probably relatively few, LPA's offer such an opportunity. But attendance at such meetings evinces an interest, permits informal kinds of suasion, and provides convenient access to important information.

The most significant opportunity for effective citizen participation in the *formal* deliberations concerning an urban renewal project arises at the public hearing on the project, *supra*.¹⁰¹ Although the

groups so that not all can participate directly—more indirect forms of representation should be explored such as federation, coalition, etc. In any event, neighborhood groups and citizens should not be shy and wait to be invited to the planning table. The best intentioned LPA might overlook the opportunity of planning with people in any given situation. The better the LPA's intentions, the more it will welcome initiatives by neighborhood groups to become actively involved in the project.

One caveat, however: participation does not mean pre-emption. Just as the LPA cannot successfully develop and execute an urban renewal plan without effective neighborhood participation, so a neighborhood cannot successfully develop and execute an urban renewal plan without an effective LPA. Each has a role, and the effectiveness of each can in large part be measured by its understanding of their respective roles and their relationship.

101. Notice must be given at least two weeks prior to the hearing. Neighborhood organizations should make it their business to obtain such notice. The

public hearing affords an excellent chance for well-organized citizens to present their cases, the opportunity is rarely seized—often because it is not perceived and often, too, because effectively utilizing it requires hard work.

The neighborhood organization's representatives should bear in mind the four primary purposes of the public hearing: to convince the hearing body; to achieve political effect, *e.g.* to win community support or to influence another local body or official; to help provide a factual basis for the necessary local and federal determinations; and to make a record in case of an appeal.

One can state some basic generic rules on how best to utilize the public hearing to promote, modify, or obstruct an urban renewal project. Details, often important ones, will vary from case to case, depending upon such factors as state and local law concerning conduct of the hearing and related matters, the attitude of the LPA toward citizen participation and toward the particular citizen organization making the presentation, the care with which the LPA's staff or consultants have prepared the plan, the degree of preparation for the hearing by the LPA staff or consultants, the formality of the proceedings, etc. But the essentials are the same.

At the head of the list is good preparation—informed, thorough, meticulous, to-the-point. In cities where the LPA plans as it should, the interested neighborhood organizations will already be familiar with Plan details. In other cities these will have to be ferreted out. It can be done. The areas of pertinent inquiry have been discussed above. The notice of public hearing will provide a convenient check-point and a basis for the final preparation.¹⁰² Preferably, for a group that has not been admitted to the official planning process and that desires to make an independent case at the public hearing, the two

LPA should make it *its* business to assure that neighborhood organizations, as well as residents and business concerns in the area, receive actual notice of the hearing as soon as it is scheduled.

102. The purpose of the hearing and the boundaries of the project area must be spelled out in the notice. The notice must also state where the relocation program may be examined. There is no federal requirement that the urban renewal plan be available prior to the public hearing. There should be. Many LPA's do it anyway. Where the LPA does not make copies of the proposed plan available as soon as the public hearing is announced, neighborhood representatives should ask for copies, or at least ask to examine a master copy in the LPA office. If an oral request is not quickly answered in the affirmative, the request should be put in writing. Failure of the LPA to make the plan available on request should be read into the record at the public hearing, as it will mitigate inadequate testimony by opponents or questioners of the plan.

weeks between publication of notice and the hearing will be a time for brushing up. However, if such a group has neglected earlier opportunities to prepare, this last two weeks will offer enough time for rudimentary preparation.

Preparation for the public hearing should not range too far afield. As early as possible, decisions should be made on the strengths and weaknesses of the proposed plan. Proponents should concentrate on the strengths. Opponents should concentrate on the weaknesses. Partial critics should concentrate on the aspects they wish to change. In each instance, the case should concentrate on the basic requirements which, as the elements in a cause of action, must be satisfied for the plan to be approved.

Facts are the best evidence at a public hearing. They are harder to garner than exhortations. They also are harder to present. Careful selection of witnesses, *i.e.*, those who will testify at the public hearing to support or oppose the plan or some of its aspects, is important. So, too, is the preparation of their testimony. Nothing should be left to chance or to memory. The testimony of all the witnesses, taken as a whole, should encompass every element of the "cause of action." The only way to assure this is with written statements prepared and reviewed in advance. Some important witnesses will not be comfortable, or will be less effective oratorically, reading from a prepared text. For that reason, and also to guard against omissions in the record, each important witness should submit a written statement for the record. To achieve maximum effect locally, the key statements should be reproduced, distributed at the hearing, and given to the press either at or before the hearing. To illustrate difficult points and to underscore vivid ones, graphic exhibits should be employed: photographs, large maps, charts, etc. All should be large enough to be seen by those in attendance at the hearing, and all should be introduced into the record and actually submitted to the hearing body. To assure a proper record, a verbatim transcript should be made of the entire hearing. A careful LPA will do this on its own initiative whether or not there is controversy. Where the LPA does not, or where citizens doubt that they will be able to get a complete copy of the official transcript within a reasonably short time, they should arrange to have a transcript made for them by a court stenographer. (HUD only requires minutes of the hearing, not an actual verbatim transcript.) Nowhere is it prescribed that citizens and representatives of organizations may question other witnesses, including local officials, who testify in sup-

port of the plan; it is only provided that they should be afforded a reasonable opportunity to appear at the hearing and to present their views with respect to the project.¹⁰³ However, we believe that a reasonable opportunity to present one's views must include the opportunity to question the factual allegations and conclusions of other witnesses,¹⁰⁴ particularly where the hearing body itself has such an opportunity.

If a neighborhood organization fails to achieve satisfactory results after the public hearing, and a plan is approved with which it cannot live, its task, of course, is to prepare for the next round of battle. This we discuss in the next section of the article.

But even where the neighborhood is satisfied with the plan as approved, the effort still is not ended. Planning does not cease with commencement of execution. Indeed, it enters a more critical stage. Given the complexity of an urban renewal plan, the execution often takes unexpected turns: relocation sources eventuate more slowly than expected; the real estate market or the mortgage market shifts, necessitating a change in reuse plans; buildings, originally marked for conservation, are found to be structurally or economically infeasible of rehabilitation; other buildings are earmarked for rehabilitation after first having been slated for clearance. The plan must be altered; or within the bounds of the plan, decisions must be made on important details—the design of a school or housing project, the type of retail store, the exact proportions of low- and moderate-rent housing in a particular location, to name but three examples. The LPA and the neighborhood therefore should continue their dialogue throughout the execution stage; both can perfect the plan, guide its changes, contribute to achieving mutual objectives, and ease or eliminate potential misunderstanding, dissatisfaction, and friction. Where the LPA acts irresponsibly, however, HUD has a powerful sanction—the power to suspend payment under the loan and grant contract.

Some idea of the breadth of this power is a partial listing of LPA actions that can trigger a default:¹⁰⁵

- (a) material misrepresentation in the loan and grant application;
- (b) material misrepresentation in the relocation plan;

103. MANUAL § 4-3, at 1.

104. See *Graham v. Houlihan*, 147 Conn. 321, 330-31, 160 A.2d 745, 750-51, cert. denied, 364 U.S. 833 (1960). The executive director or other staff member of the LPA, or the consultant or any other person who presents the plan to the hearing body is, after all, only a witness.

105. Loan and Capital Grant Contract, art. II (Form H-3155b), as amended.

- (c) changes in any of the "basic elements" of the urban renewal plan, including the relocation plan, without HUD's prior written approval;
- (d) failure to present satisfactory assurance that "decent, safe, and sanitary dwellings," as required by the urban renewal statute, are available for relocation of families and individuals;
- (e) failure to satisfy HUD—with respect to a residential development—that the LPA has provided a substantial number of units of standard housing of low and moderate cost;
- (f) acquisition of any land without first holding a public hearing and obtaining HUD's concurrence;
- (g) failure to remove discriminatory restrictive covenants from land acquired in the project or to impose prescribed covenants against discrimination in agreements for the sale of project land.

III. THE FORMAL CHALLENGE TO THE PLAN—A CASE STUDY: PULASKI, TENNESSEE

Political effort can not always succeed in persuading the LPA and local governing body to adopt a plan that people in a neighborhood prefer or to modify a plan that some (perhaps many) in a neighborhood find distasteful. The opposition may not have expressed itself convincingly as the plan emerged, or, as sometimes happens, the LPA and power elite would not be moved. Alternatively, the plan may be sound, sensitive to the neighborhood's wants, yet unable to meet everyone's aspiration with the same degree of fulfillment. No plan ever can. In either event, once the plan has been locally adopted, there may be those who would challenge, and they are entitled to a forum where their challenge will receive whatever attention it deserves.

We believe that the appropriate procedure is a challenge before HUD of the LPA's Part II application.¹⁰⁶ The timing is critical, for

106. In appropriate circumstances, site occupants might press a challenge at a much earlier stage. During HUD review of the Survey and Planning application, *supra* note 24, a neighborhood group might question the project boundaries or extent of clearance (based upon the workable program neighborhood analyses); the adequacy of the relocation program for the project (based upon the workable program section on housing for displaced families); and the sufficiency of compliance with the requirement of a minority group subcommittee (based upon the workable program section on citizen participation). Furthermore, during the planning stage, failure of the LPA to fulfill the minority group considerations

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if the challenge is delayed until after the loan and grant contract is signed,¹⁰⁷ the plan's opponents must initiate their cause in the courts where they face insurmountable difficulties, as we have indicated.¹⁰⁸ While the plan's opponents would hope that their timely objections, *if legitimate*, would persuade HUD to reject the Part II application, even if HUD disappoints them, the crystallizing of the issues and the building of an administrative record may somewhat improve the odds on successful judicial review, and short of that, alert HUD to the need for a close watch over execution. What follows is a copybook example of the possibilities of informed and timely attack against a basically unsound, and perhaps malicious, urban renewal scheme.

Pulaski is the seat of Giles County in south-central Tennessee.¹⁰⁹ In the 1960 census, the county population of 22,410 included 6,616 residents of Pulaski. Of the city's residents, approximately 40 per cent are Negro. Their homes all are located in four discrete neighborhoods, one very extensive area in the city's north-east, three smaller pockets elsewhere. One of the pockets was the site of the proposed Westside Urban Renewal Project (Tenn. R-63), a 17.5 acre parcel in the west-central part of town.

As of 1966, the Pulaski Housing Authority had already completed execution of two small-scale projects, which had resulted in the clearance of two areas of Negro settlements and the movement of site residents, mostly into the aforesaid north-east quarter. It appears that these efforts had met little active opposition. Tenn. R-63 was to

relating to neighborhood participation may constitute a default in its contract with HUD for the survey and planning advance.

Indeed, if site occupants' primary goal is to influence the urban renewal plan rather than to kill the project, the earlier challenge should be encouraged.

HUD expects that the Neighborhood Analyses be readily available for study by interested groups. PROGRAM GUIDE No. 3, *supra* note 24, at 4.

107. Here, we distinguish between a challenge to the plan and a challenge to the execution of the plan. If the LPA does not adhere to the plan, or if it is discovered during execution that HUD has been deceived, procedures to enforce the loan and grant contract would be in order.

108. *See* text, pages 76-79 *supra*. Indeed, failure to press for an airing before HUD of the Part II Application easily allows a court to dismiss a *de novo* challenge summarily for not exhausting an administrative remedy. *Cf.* Johnson v. Redevelopment Agency, 317 F.2d 872 (9th Cir. 1963), *cert. denied*, 375 U.S. 915 (1963).

109. Copies of the pleadings, supporting affidavits, and correspondence with HUD, which relate to the challenge of the Pulaski Westside Urban Renewal Project (Tenn. R-63), have been furnished to the authors by Sheila Rush Jones, Esq., formerly of the NAACP Legal Defense and Educational Fund, Inc., which supplied the attorneys for the site residents. The facts and allegations that follow are taken from these papers.

be Pulaski's third urban renewal venture and the most ambitious to date. Like its predecessors, this, too, was scheduled for total clearance and would involve 52 structures, including 46 one-family homes, and 46 Negro families, 24 owner-occupants and 22 tenants. The area was to be redeveloped for commercial and industrial uses.

Opposition to the plan erupted after HUD had approved the Part I application for the loan and grant contract. The causes for discontent were much like those in Central Englewood: the site occupants' dissatisfaction with relocation facilities and their reluctance, in any event, to leave the neighborhood; and the belief of site residents that the scheme was being foisted upon them. To these must be added the suspicion that the Pulaski Housing Authority wanted to drive Negroes from the central area and was using urban renewal as a pretext to achieve this end.

The site residents rallied their forces sufficiently to appear in opposition to the plan at the public hearing before the Mayor and the City Council. Two weeks later the plan was adopted unchanged, and the Housing Authority prepared to file its Part II application with the (Atlanta) Regional Office of HUD. At this juncture, local residents turned for help to the NAACP's Legal Defense and Educational Fund.

As a first step, facts were needed—about the project site, the relocation facilities, and the reuse potential. These were the very categories that supported the Pulaski plan which had already received HUD's preliminary approval. Although HUD may make its own investigation, it relies heavily upon the statement of facts included in the LPA's submission. When the facts are uncontradicted, and indicate a *prima facie* compliance with HUD requirements, approval is likely to follow. What the site residents hoped to establish was a discrepancy between the conditions as they actually were and as the Housing Authority had reported them.

To make this inquiry, the Legal Defense Fund hired a city planner, Yale Rabin. In two visits, Rabin spent five days in Pulaski inspecting the project site and every building on it, interviewing the area residents, examining the maps, land records, and other documents in the Housing Authority's office, and looking at the proposed relocation facilities. During much of his stay, Rabin was accompanied by a life-long resident of Pulaski who interpreted and gave perspective to the things Rabin saw. On the basis of Rabin's first report, the Legal Defense Fund decided that it had ample reason to attempt to block the plan.

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A. The Complaint

The form of attack was a challenge to the Part II submission which was just reaching HUD. Twenty persons, property-owners living on the project site, filed a "complaint"¹¹⁰ with the Secretary of HUD alleging that the Pulaski plan violated statute and regulation, and, additionally, deprived them of constitutionally protected rights. To support their charges, complainants asked to submit further documentation (one affidavit by Rabin was annexed to the complaint) and requested an administrative hearing. Admittedly, the procedure was chosen by a seat-of-the-pants decision, for the complainants had found no precedent for cutting into the administrative pipeline in quite this way. Moreover, they had gone directly to the Secretary of the Department, instead of lodging their grievances with the Regional Office. One might speculate that the lawyers expected a more sympathetic (or a less constricted) reaction from Washington than would be forthcoming from Atlanta.¹¹¹ Also, if the Regional Office were to refuse a hearing or reject the allegations, an appeal to Washington would then place the Department in the uncomfortable position of being asked to countermand its subordinate's rulings—an eventuality the Legal Defense Fund might have wanted to avoid. But the Legal Defense Fund was not bent on relieving HUD from all extra-legal influences, for duplicate copies of the complaint were mailed to the United States Senators from Tennessee and to the Congressman from the Pulaski district. And, somehow, word of the lawsuit made its way to the New York Times and from there to several million readers.¹¹²

Before we describe the outcome, let us examine the complaint more closely. Altogether, the site residents charged that the plan did not satisfy HUD requirements in at least five respects, and, in addition, charged that the plan violated their constitutional rights. Listed below is a summary of the charges and the complainants' version of the vital facts.

110. The term "complaint" did not denote the beginning of a lawsuit in the usual sense.

111. Even a joint investigation, by officials from both the regional and Washington office, might have been preferred to an investigation conducted by the regional office alone.

112. N.Y. Times, Dec. 23, 1966, at 13, col. 6.

1. *The project area did not qualify for Title I assistance*

Complainants asserted that the area did not contain two or more "environmental deficiencies," a prerequisite for Title I. On this issue, the Rabin affidavit reads:

Environmental deficiencies are insufficient to qualify the project area as a blighted, deteriorated, deteriorating, or slum area. Structures cover approximately 4% of the project area. Of the . . . residential structures, only one . . . does not front on a street. Dwelling unit density is 2.8 dwelling units per acre. There are no conversion[s] to incompatible uses; there are no rooming houses or multi-family uses within the area. There are no detrimental land uses and the older building types do not have a blighting effect on the area. Except for two commercial structures, all other structures are occupied residentially. The streets are safe, uncongested, and satisfactorily designed.

Unsanitary environmental conditions do not exist in the project area. Except for a cul-de-sac west of 8th Street which does not accommodate through traffic, all streets in the project area are improved. The entire area is served by city water, street lights, fire hydrants and sanitary sewers. All buildings have electricity and gas is available for those who desire it.

In this succinct, partly conclusionary, fashion, the affidavit disposed of all but one of the eight environmental deficiencies listed in the Urban Renewal Manual. (The eighth is the catch-all "other equally significant environmental deficiencies.") The complainants did not, however, make a serious effort to refute the presence of building deficiencies—the other component of the Title I eligibility requirement—other than to indicate that the substandard housing was located almost entirely at the southern and western fringes of the neighborhood.¹¹³ Nor did the complaint distinguish between eligibility of the area for urban renewal and the far more stringent criteria of eligibility for total clearance.

2. *The reuse proposal was unacceptable*

The Housing Authority had to sustain its proposal for commercial and industrial reuse by evidence of marketability—data supporting the conclusion that the land could be disposed within a reasonable time in accordance with the plan. Complainants insisted that this was impossible.

113. See text at note 49, *supra*.

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Commercial re-use appears unfeasible [sic]. Pulaski is the county seat and retail trade center of Giles County in south central Tennessee. Between 1948 and 1963, the number of business establishments in the shopping center category . . . declined . . . in Pulaski (as did the city's share of the county's dollar volume of retail trade). The completion of U. S. Interstate Route 65 will direct traffic away from Route 31 which leads into the Pulaski central business district. . . .

. . . 3 shopping centers exist within $\frac{1}{2}$ mile of the project area. (The) last center opened for business on November 12, 1966. At that time, posted signs advertised space for additional tenants. The elimination of housing from the project area will reduce the volume of sales in the adjacent shopping center.

Across College Street, from the project area, is a large tract (15-18 acres) of vacant undeveloped land. This land is zoned industrial and would be suitable for the industrial re-use proposed for the project area if such a demand existed.

3. *The minority group considerations were ignored*

Because the site residents were all Negro for whom no housing in the project area would remain, the minority group considerations definitely applied. As noted before, these require that "representative leadership of the minority group" shall have participated in the planning process and that standard housing, "not previously available to the minority group," be provided elsewhere. As for the requirement of housing elsewhere, complainants simply restated the alleged deficiencies in the relocation plan, *infra*, and did not press the possibility that HUD has set a different, more demanding relocation standard when minority group families must leave a project area.¹¹⁴ But the complainants did challenge, as a separate count, the city's failure to involve representative leadership during the planning stages. Although two Negroes served on the Citizens Advisory Committee (the Workable Program body), the complaint alleged that neither lived in the urban renewal area nor was representative of his "constituents," (one was even a Pulaski non-resident), and that both owned land that had been designated for relocation—a none-too-gentle aspersion on their ability to champion the interests of site residents.

4. *A feasible method for relocation did not exist*

Approximately 46 families would need rehousing if the project were approved. At the time, vacancies in private housing (at least

114. See text at pages 93-96 *supra*.

in the Negro areas) were too few even to be considered. But Pulaski was building nearly 50 units of new public housing (all in the northeast Negro ghetto) and proposed to use them for eligible site families. According to the city, thirty-five of these families had incomes entitling them to public housing. For the others, the city listed 80 privately owned vacant lots in the Negro area, which it said would cost from \$1500 to \$3000 each and could be built upon by families wishing to do so. The city did not propose to use eminent domain to acquire the lots, nor to give financial aid to families desiring to build homes.

The "vacant lots" scheme seemed to complainants an evasion of the LPA's relocation duty in at least two respects. Even if all site families had the equity and the will to build new homes—a doubtful premise—should they also be obliged to buy a lot and hire a contractor? The statute speaks of the availability of "dwellings," not of land that might serve as a dwelling site. Yet, even if an adequate supply of residential lots were all that Congress intended, the complainants claimed that the location of the available lots did not meet the statute's minimum standards. In Rabin's words:

I examined approximately 80 vacant lots which have been designated for relocation purposes. The majority of these lots are located in Negro ghetto areas which are clearly inferior to the project area in environmental amenities and are not convenient to shopping centers, schools, and churches. Over half of the lots are located in unimproved areas in the northern part of the city which lack paved streets, sewage, lights, and utilities. Many of the lots are located on such steeply sloping ground that construction is unfeasible [sic]. Vehicular access to the lots located in the northeast and northwest sections of Pulaski is via steep single-lane unpaved roads.

Complainants also disputed the city's figures on public housing. In a broadside refutation, the complaint recited that the city did not make allowance for competing demands upon the public housing supply, which error is a frequent one, but no indication appeared as to what, if any, these competing demands might have been.¹¹⁵ Questioned, too, were the city's statistics on income eligibility. The Housing Authority had stated that only twelve site families would not qualify for publicly-aided units. After his interviews, Rabin con-

115. Families and individuals displaced from an urban renewal area do receive, however, one of the statutory priorities for admission to public housing. 42 U.S.C. §§ 1402(2), 1410(g) (Supp. II, 1966).

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cluded that nearly twice as many families earned more than the maximum allowed for admission. If the Rabin statistics were accurate, the vacant lots aspect of the relocation scheme would be even more objectionable.

5. *The boundaries of the project area were illegally drawn because they were racially drawn*

As noted, before, site residents were convinced they would not be facing the demolition of their homes if the site was not surrounded by all-white neighborhoods. But suppositions in this vein are tough to prove; circumstantial evidence is usually all that is available. In the Pulaski case, however, the evidence was fairly convincing. The project site had the best Negro housing in town. Moreover,

the boundary of the project area exclude[d] a group of white occupied houses on the east side of Seventh Street between Cotton and College Streets, which remain as non-conforming uses in an industrial zone. Some of these houses are in a more deteriorated condition than many of the houses within the project site.

6. *The plan deprived site occupants of due process and equal protection*

Constitutional objections were also voiced, the complainants alleging a denial of due process and equal protection. It was not expected that HUD would rule on the constitutional issues, but complainants wanted to preserve their Fourteenth Amendment objections for judicial review. If HUD approved the Pulaski plan, a court might limit its review to an examination of the record. Furthermore, the presence of an unresolved constitutional objection might strengthen the prospects that a court would agree to review HUD's action.

The equal protection argument was double-barreled: that the project boundaries had been drawn to include only Negroes and that relocation would intensify segregated housing. One of the due process theories was more novel. In Pulaski as in many other cities, some of the site residents who had been long-time homeowners no longer had the income, or could realize enough from the forced sale of their homes, to buy and operate a costlier dwelling in a different neighborhood; they would almost certainly become public housing tenants. When this is the case, has there been a denial of due process? May government, when engaging in urban renewal (or other dis-

locating) activity, permanently deprive persons of their home ownership status, and, in some cases, give them no feasible alternative to a periodic tenancy in a public project?¹¹⁶

B. HUD decision

The complaint was delivered to HUD in late December 1966, the very day, coincidentally, that Pulaski filed its Part II application.¹¹⁷ In March 1967, HUD terminated the Pulaski project, cancelling the city's capital grant reservation. This action was taken without the formal hearing requested by complainants, although they were permitted to file additional exhibits (a second affidavit by Rabin). HUD acted unilaterally, as an investigator, rather than as an arbiter of conflicting claims. A team of federal fact-finders was sent from Washington into Pulaski where they interviewed local officials and prospective redevelopers.

In a letter to the Legal Defense Fund the Secretary of HUD gave two reasons for his Department's decision. They concern, first, the proposed reuse and, second, the relocation plan. HUD agreed with the complainants' claim that the commercial prospects for the site were doubtful in view of "the construction of a shopping center in an area contiguous to the project, and a lack of interest on the part of potential developers for commercial uses who have been consulted." And without ruling on the claim that vacant, undeveloped lots could never in themselves serve as a relocation resource, HUD simply rejected the proffered lots as not meeting "statutory standards." Why they were deemed substandard does not appear.

Temporarily, at least, the purposes of the site residents were served. The Westside Urban Renewal Project (Tenn. R-63) was dead. Permanent surcease from the threat of removal, however, could not be assured. If it wishes to, the Pulaski Housing Authority can formulate a new plan for the Westside area hoping that the plan as revised would meet HUD's stated objections. The Authority might be able to demonstrate a market for new housing priced beyond the reach of many site residents or for a business-governmental-recreational complex that would be devoid of housing. Dislocation of the neigh-

116. We do not wish, however, to imply any criticism of the quality of public housing facilities or of their desirability.

117. Speed counts! If the challenge can be filed before HUD has begun to consider the Part II Application, HUD is more likely to give the protest and the application equal attention. This adds to the imperative of preparing the neighborhood's case in advance of the public hearing.

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borhood would be the result, although, necessarily, adequate relocation facilities would be demanded of the city. Whether HUD would then be satisfied remains unclear, for the HUD rejection of Tenn. R-63 left unresolved many of the issues raised in the complaint. Is the Westside area blighted sufficiently to be eligible for Title I aid, and especially, for clearance? May the city plan without direct (and representative) participation of site residents? Does the drawing of project boundaries so as to exclude adjoining pockets of blighted white settlement violate Title VI or HUD's own regulations implementing Title VI? Is relocation of Negroes into predominantly Negro areas acceptable? In any event, the usefulness of urban renewal as an instrument for Negro ghettoization in Pulaski has become uncertain. On their side, the site residents have gained time, organization, education in the ways of urban renewal, an alerted HUD, and the sweet taste of victory in their skirmish with the power structure.

CONCLUSION

Despite the complainant's success, the demise of Tenn. R-63 should not occasion premature rejoicing among those elsewhere who are seeking to reform or resist an unpopular project. They can expect hard legal battles. Authoritative decisions on the myriad issues raised but unanswered in the Pulaski action, and inherent in other similar conflicts, have yet to be obtained. Even the procedures for challenging a plan remain unclarified. HUD did not respond to the Pulaski residents' request for an administrative hearing and did not give an indication how it would respond if the demand had been insistent. The right to a hearing before HUD on the Part II application, or the lesser right that HUD will, at least, accept and consider written documentation against the plan, has yet to be firmly established, although language in a Second Circuit opinion, *Gart v. Cole*,¹¹⁸ seems to support the claim for a written submission.

If HUD permits treatment of the Part II application as an adversary proceeding, what are the prospects for judicial review? We began this article with a pessimistic account of the current judicial attitude and attempted to explain it. If we were correct in believing that courts have not wanted to venture into urban renewal waters for fear of their uncertain depth, will they be less timid if asked to

118. *Gart v. Cole*, 263 F.2d 244 (2d Cir. 1959), *cert. denied*, 359 U.S. 978 (1959). *See also*, *Johnson v. Redevelopment Agency*, 317 F.2d 872, 875 (9th Cir.), *cert. denied*, 375 U.S. 915 (1963).

intervene only after HUD has already given the contested plan a full airing? Perhaps they might be. To be sure, site residents still would be appealing from three adverse determinations—by an LPA, a local governing body, and a federal agency—but unlike the appeal in the *Englewood* case, which lacked an administrative record, the reviewing court would have a well-defined controversy around which to form its judgment. As in *Pulaski*, had that challenge resulted in a hearing, the disputed issues would have been sharply focused, and the conflicting evidence would have been readily accessible. Courts might find it far easier to grapple with an administrative transcript than to try *de novo* the factual disputes that separate the supporters and opponents of a plan. We believe that section 10 of the Administrative Procedure Act will someday offer the vehicle for judicial review, notwithstanding the restrictive ideas of earlier courts as to who has standing.¹¹⁹ How astounding for courts to assert that site residents, faced with evacuation to clearly unsuitable relocation quarters, have no greater interest in the details of an urban renewal plan than has the public at large! But to establish their legal basis to call upon the courts for succor, the citizen dissidents must first reduce the conflict to dimensions that a judge feels manageable. How this can be accomplished, we believe, is one of the lessons of *Pulaski*.

But even this lesson must be put in perspective. In a sense the triumph over *Tenn. R-63* was cheap and predictable. As urban renewal ventures go, the *Westside* project was mini-scale—fewer than 60 structures and 200 persons. At once, this greatly simplified the factual inquiry needed to confront the plan, and equally important,

119. See, e.g., *Harrison-Halstead Community Group v. Housing & Home Finance Agency*, 310 F.2d 99 (7th Cir. 1962), *cert. denied*, 373 U.S. 914 (1963); *Kansas City Power & Light Co. v. McKay*, 225 F.2d 924 (D.C. Cir. 1955), *cert. denied*, 350 U.S. 884 (1955). But see *American President Lines, Ltd. v. Federal Maritime Board*, 112 F. Supp. 346 (D.D.C. 1953); 3 K. DAVIS, *ADMINISTRATIVE LAW* § 22.02 (1958).

What may emerge is a middle-ground construction of the Administrative Procedure Act which would confer limited standing on site occupants—one that would allow a challenge to some but not all aspects of the project. As to the relocation program, compliance with Title VI or with the “minority group considerations,” site occupants have a stake far more immediate and compelling than that held by the public generally, and one deserving of the most rigorous protection our legal system can afford. By contrast, matters of procedural regularity or of area eligibility for Title I treatment might conceivably be regarded as matters of community-wide concern and as falling outside the legitimate ambit of section 10 review.

Congress itself could, of course, deal with the reviewability of HUD decisions by creating an explicit statutory right, or, alternatively, by denying that right.

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kept the costs of the investigation down to where they were not too burdensome. Despite the "nominal" costs, the site residents, unaided by the Legal Defense Fund, could not have afforded them. Moreover, the blunders of the Pulaski Housing Authority were of the grossest sort, making the plan more than usually vulnerable to open-minded review. Elsewhere, where the urban renewal plan affects thousands of people and covers acres, the difficulties of building a factual defense to the plan can be enormous—for example, consider the cost and effort needed to discredit an LPA's listing of relocation facilities in a large city. And if the LPA has acted with any sophistication, chances are that the regularity of the finished plan will be, at least, debatable, thereby raising the odds against eventual rejection either by HUD or the courts.

Thus, we return to our thesis: if urban planning is to be responsive to the needs and aspirations of site occupants, they must play an active role through all of the planning stages. To stand in the wings, hoping to upset the plan by redress to the courts, is a forlorn strategy; and although a timely, well-executed appeal to HUD can sometimes be successful, far better still would be the kind of participation, or political activism, that will deliver a plan that can bring to the neighborhood the genuine *benefits* which urban renewal uniquely can offer.¹²⁰

120. See, e.g., P. ROSSI AND R. DENTLER, *THE POLITICS OF URBAN RENEWAL: THE CHICAGO FINDINGS* 258-62 (1961).

STATUTORY COMMENTS

