Michigan Law Review

Volume 63 | Issue 5

1965

Conservation and Rehabilitation of Housing: An Idea Approaches Adolescence

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COMMENTS

Conservation and Rehabilitation of Housing: An Idea Approaches Adolescence

From the time of construction, buildings are subject to the physical elements, the wear and tear of time, and the constant march of progress which transforms yesterday's luxuries into today's necessities. Left unchecked, these forces tend to produce the slums and blight that traditionally have been the curse of urban areas.[1] Private, charitable, and civic organizations were the first to deal with the problem of improving conditions in slum areas.[2] Later, state and local governments joined the effort, and although they were somewhat more successful than the pioneers in the field, without federal assistance the task proved to be beyond their capabilities.[3] In 1949, the federal government launched its grant-in-aid program known as "redevelopment."[4] This program made federal funds available to municipal agencies for the purchase of slum areas so that the buildings in the project area could be destroyed and the land could be sold to private concerns who would agree to redevelop it. Unfortunately, the success of the federal redevelopment program has been limited because of its high costs[5] and the fact that slums have grown faster than it has been possible to clear them.[6]

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1. See generally Note, 29 IND. L.J. 109 (1953). For various causes of slums, see Blum & Dunham, *Income Tax Law and Slums: Some Further Reflections*, 60 COLUM. L. REV. 447 (1960); Johnstone, *The Federal Urban Renewal Program*, 25 U. CHI. L. REV. 301, 304-05 (1958); Siegel, *Slum Prevention—A Public Purpose*, 35 CHI. B. RECORD 151 (1954). For pictorial examples of deterioration, dilapidation, and slum conditions, see U.S. DEP'T OF COMMERCE, CENSUS OF HOUSING, STATES AND SMALL AREAS (pt. 1), UNITED STATES SUMMARY app. 1-248 to -258 (1960). See also Berman v. Parker, 348 U.S. 26, 30, 32-33 (1954).

2. See AMERICAN COUNCIL TO IMPROVE OUR NEIGHBORHOODS, QUAKER "SELFHELP" REHABILITATION PROGRAM IN PHILADELPHIA (1955); BELL, OCTAVIA HILL (1936) (Hill is usually given credit for being the originator of rehabilitation); MILLSPAUGH & BRECHENFELD, THE HUMAN SIDE OF URBAN RENEWAL 177-221 (1960) (Chicago-Back-of-the-Yards Movement).

3. See HORACK & NOLAN, LAND USE CONTROL 228 (1955); MILLSPAUGH & BRECHENFELD, *op. cit. supra* note 2, at 3-21; SIEGEL & BROOKS, SLUM PREVENTION THROUGH CONSERVATION AND REHABILITATION 1-3 (1953); Siegal, *supra* note 1.

4. Housing Act of 1949, 63 Stat. 413 (1949), as amended, 42 U.S.C. §§ 1441-60 (1958). For a discussion of federal housing legislation prior to 1952, see Robinson & Weinstein, *Federal Government and Housing*, 1952 WIS. L. REV. 581.

5. It has been estimated that it would take 85.5 billion dollars to redevelop existing residential slums and blighted areas in the United States. DEWHURST, AMERICA'S NEEDS AND RESOURCES 511-12 (1955). Federal and local writedowns on redevelopment cost approximately 150 million dollars a square mile. Testimony of Thomas C. Downs, Jr., *Hearings on the Housing Amendments of 1957 Before a Subcommittee of the Senate Committee on Banking and Currency*, 85th Cong., 1st Sess. 923 (1957); Siegel, *supra* note 1.

6. See Leach, *The Federal Urban Renewal Program: A Ten-Year Critique*, 25 LAW & CONTEMP. PROB. 776 (1960); Note, 72 HARV. L. REV. 504, 539 (1959).

In 1954, while retaining its redevelopment program, the federal government initiated a second grant-in-aid program known as "conservation and rehabilitation."[7] Much confusion has been generated by numerous and conflicting definitions of "conservation" and "rehabilitation." Although the definitions adopted by the Federal Urban Renewal Administration have shortcomings, for the purposes of this discussion it is considered best to adopt them rather than to add to the present semantic jungle. The Federal Urban Renewal Administration defines conservation as "the type of renewal treatment which may be appropriate for restoration of the economic and social values of deteriorating residential, and in some cases nonresidential, areas which are basically sound and worth conserving and in which existing buildings, public facilities, and improvements can be economically renewed to a long term sound condition."[8]

Thus, the conservation program covers more than mere conservation. It deals with modernization and improvement as well as the preservation of existing structures and areas. Rehabilitation, on the other hand, is defined as "the repair and renewal of an individual property or properties."[9] Thus, it is merely a tool of the broader conservation program.

The following discussion will consider the operation of and the problems faced by the conservation and rehabilitation program. It will therefore be necessary to examine the local conservation and rehabilitation programs as well as the federal program.

I. Local Conservation and Rehabilitation Programs

State enabling legislation is a necessary prerequisite to a local conservation program if the municipality is to participate in a

7. Housing Act of 1954, 68 Stat. 622, as amended, 42 U.S.C. §§ 1450-60 (Supp. V, 1964). The conservation and rehabilitation program resulted from the President's Advisory Comm. on Gov't Housing Programs, A Report to the President of the United States (1953).

8. Urban Renewal Administration, Urban Renewal Manual 12-1-1 (1962) [hereinafter cited as Manual]. For other definitions of conservation, see People *ex rel.* Gutknecht v. City of Chicago, 3 Ill. 2d 539, 542, 121 N.E.2d 791, 793 (1954); Johnstone, *supra* note 1, at 301; Osgood & Zwerner, *Rehabilitation and Conservation*, 25 Law & Contemp. Prob. 705, 706 (1960); Slayton, *Conservation of Existing Housing*, 20 Law & Contemp. Prob. 436-37 (1955); Note, 72 Harv. L. Rev. 504, 505-06 (1959).

9. Manual 12-1-1. According to William L. Slayton, present Commissioner of the Urban Renewal Administration, this definition was taken from the Housing Act of 1954, 68 Stat. 626 (1954), as amended, 42 U.S.C. § 1460(c)(5) (1958). Slayton, *supra* note 8, at 438.

Redevelopment, rehabilitation, and conservation could more easily be defined if it were assumed that they are merely different approaches to the accomplishment of the same end. Redevelopment is the clearance of areas in which rehabilitation is not feasible; rehabilitation is the renewal and modernization of existing buildings; conservation is the preservation of an area in its present condition. For other definitions of rehabilitation, see Housing Act of 1964, § 312(b)(1), 33 U.S.L. Week 28, 30 (1964); Johnstone, *supra* note 1, at 301; Osgood & Zwerner, *supra* note 8, at 706; Slayton, *supra* note 8, at 438; Note, 72 Harv. L. Rev. 504, 505-06 (1959).

federal program or if it is to have eminent domain powers. Presently forty-three states have such legislation.[10] In general, these statutes either create or provide a procedure for the creation of local urban renewal agencies, which are given the general power to undertake and carry out renewal plans and projects. Once a local agency is created, a conservation and rehabilitation program can be undertaken. According to the Housing and Home Finance Administration, the basic objectives of such a program are the restoration of deteriorating areas to a long-term sound condition, the improvement of individual property so as to justify expenditures on public facilities, and the establishment of a continuing program to maintain individual properties and public facilities in order to prevent the spread or recurrence of blight.[11] Achievement of these objectives requires close cooperation among government agencies, individual property owners, and local businessmen.[12] In attempting to achieve these goals, local urban renewal agencies have a number of tools at their disposal. These include housing codes, zoning ordinances, improving municipal services, demolition, and rehabilitation.

A. *Housing Codes*

As evidenced by the recent amendments to the National Housing Act, the success of any conservation and rehabilitation program is dependent upon adequately drawn and enforced housing codes[13] covering such things as health, fire, electrical, and plumbing standards.[14] Their basic purpose is regulation of the maintenance and

10. Arizona, Idaho, Lousiana, South Carolina, South Dakota, Utah, and Wyoming do not have such enabling legislation. See generally Johnstone, *supra* note 1, at 316; Note, 72 HARV. L. REV. 504 (1959). For discussions of specific enabling acts, see Siegel, *supra* note 1 (Illinois); Sundby, *Elimination and Prevention of Urban Blight*, 1959 WIS. L. REV. 73, 80-83 (Wisconsin).

11. MANUAL 12-1-1.

12. See generally NASH, RESIDENTIAL REHABILITATION—PRIVATE PROFITS & PUBLIC PURPOSES (1959); Comment, 25 U. CHI. L. REV. 355, 358 (1958); Note, 72 HARV. L. REV. 504 (1959).

13. Housing Act of 1964, § 301, 33 U.S.L. WEEK 23, 28 (1964). See generally Guandolo, *Housing Codes in Urban Renewal*, 25 GEO. WASH. L. REV. 1 (1956); Comment, *Building Codes, Housing Codes, and the Conservation of Chicago's Housing Supply*, 31 U. CHI. L. REV. 180 (1963); Comment, *Municipal Housing Codes*, 69 HARV. L. REV. 1115 (1956).

14. On July 27, 1964, a three-page questionnaire was distributed to those cities that as of June 30, 1963, had Title I Projects involving rehabilitation of twenty-five or more dwelling units. Of the 96 questionnaires which were distributed (one questionnaire covered eight Puerto Rican cities), 40 were answered and returned. Although Boston, New York, Pittsburgh, East Chicago, Ind., Cleveland, and Oakland, Calif., did not reply, replies were received from municipalities representing 64.4% of the federally assisted rehabilitation programs in terms of both buildings and dwelling units. These records are on file in the offices of the *Michigan Law Review*.

In response to the questionnaire, before embarking upon a conservation and rehabilitation program 82.5% had fire codes, 82.5% had electrical codes, 90% had plumbing codes, and 75% had health codes. In the summer of 1964, after conservation and

occupancy of existing structures.[15] Unfortunately, only one out of every six cities with a population of over ten thousand people has all these housing codes.[16] However, in answer to a questionnaire recently distributed by the *Michigan Law Review* to municipalities that have embarked on a federally assisted conservation and rehabilitation program,[17] 92.5 per cent of those replying indicated that they had adopted new housing codes, had revised existing codes, or had provided for stricter code enforcement.[18] On the other hand, even among the municipalities polled, 39.8 per cent of those replying felt that their codes were not being strictly enforced. In communities that have not embarked on a federally assisted program, there is likely to be even less strict code enforcement.

If housing codes are to be strictly enforced, they must be realistically drawn. If the code is so rigid that compliance creates a severe economic burden upon property owners, nonenforcement, a general disregard for the codes, or even corruption and bribery will result.[19] Of course, the housing code could be geared to the conditions in the deteriorated sections of the community.[20] This approach would foster code enforcement but it would do little to stimulate progress in any but the most deteriorated areas. A better approach would be the adoption of zoned housing codes. With this type of code, different regulations would be applied to different areas and realistic standards

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rehabilitation had begun, 90% had fire codes, 95% had electrical codes, 92.5% had plumbing codes, and 82.5% had health codes.

The constitutionality of these codes is usually upheld if they are reasonable and not discriminatory. *E.g.*, District of Columbia v. Little, 178 F.2d 13 (D.C. Cir. 1949) (health); Lavender v. City of Tuscaloosa, 29 Ala. App. 502, 198 So. 459 (1940) (plumbing); Len-Lew Realty Co. v. Falsey, 141 Conn. 524, 107 A.2d 403 (1954) (fire); New Castle City v. Withers, 291 Pa. 216, 139 Atl. 860 (1927) (plumbing). See generally McQUILLIN, MUNICIPAL CORPORATIONS § 24.457 (fire codes), § 24.538 (plumbing codes), § 24.537 (electrical codes), § 22.224 (health codes) (1949); Guandolo, *supra* note 13, at 19-35; Comment, 69 HARV. L. REV. 1115 (1956).

15. Occupancy restrictions deal with such things as the number of residents per room or dwelling unit, the minimum size of sleeping rooms, and the activities which are permitted on the premises. In answer to the questionnaire discussed below, 80% of the municipalities replying now have occupancy codes but only 55% had such codes before the adoption of a conservation program.

16. 1960 MUNICIPAL YEAR BOOK 318-28.

17. For details about the questionnaire, see note 14 *supra*.

18. In one city the citizens voted to repeal the housing code. Of the municipalities questioned, 72% felt that once the conservation area was put into a sound condition a program of strict code enforcement would keep the area in that condition indefinitely.

19. See generally NASH, *op. cit. supra* note 12, at xxiv; Comment, 31 U. CHI. L. REV. 180 (1963). Ninty per cent of the municipalities replying to the questionnaire felt that their codes were realistically drawn.

20. See Note, 69 HARV. L. REV. 1115, 1117 (1956); 1960 MUNICIPAL YEAR BOOK 322-28. At least this much is required to meet the Workable Program requirements of the federal program (see notes 82-84 *infra* and accompanying text). 1960 MUNICIPAL YEAR BOOK 322-28; American City, Dec. 1955, p. 161.

could be established for each area.[21] Probably due in part to the political difficulty of enacting zoned housing codes, however, only four of the forty municipalities which replied to the questionnaire have such codes. On the other hand, eleven of the municipalities replying have appointed commissions with power to establish special housing codes for conservation areas.[22] In this way, they have been able to obtain some of the advantages of a system of zoned housing codes.[23]

In addition to establishing realistic codes tailored to the needs and capabilities of a given area, a successful program requires strict enforcement of the code that is adopted. In many instances, strict enforcement has not been possible due to an inability on the part of the municipality to finance regular inspections.[24] This financial problem can be minimized by limiting inspection to specific areas. Those responding to the questionnaire indicated that code enforcement which is limited in this manner does not represent an undue financial burden.[25] A second method that has been adopted in an attempt to achieve strict enforcement is the employment of a system of team inspection.[26] Under this system, all phases of the inspection of a building are performed simultaneously. In this way, corruption is less likely because the inspectors work in each others' presence, and stricter enforcement on the part of the courts is likely because all of the owner's code violations are submitted together.[27] On the other hand, this system entails a certain amount of waste because some inspections take longer than others. Moreover, relative to a system of separate inspections, this method places a heavier burden on homeowners because they are called upon to comply with all parts of the code simultaneously.

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21. See generally Slayton, *Urban Redevelopment Short of Clearance*, in URBAN REDEVELOPMENT—PROBLEMS AND PRACTICES 313, 349-53 (Woodbury ed. 1953); Guandolo, *supra* note 13, at 42-44.

22. See generally NATIONAL ASSOCIATION OF REAL ESTATE BOARDS, BLUEPRINT FOR NEIGHBORHOOD CONSERVATION (1953); Guandolo, *supra* note 13, at 44-48.

23. Both zoned housing codes and code-establishing commissions may be unconstitutional as a denial of equal protection. *Cf.* Brennan v. City of Milwaukee, 265 Wis. 52, 60 N.W.2d 704 (1953). *But see* Wilson v. City of Long Branch, 27 N.J. 360, 377, 142 A.2d 837, 846 (1958), *cert. denied*, 358 U.S. 873 (1959). See generally Note, 72 HARV. L. REV. 504, 544-45 (1959). See Guandolo, *supra* note 13, at 42-48; Osgood & Zwerner, *supra* note 8, at 722, for other approaches to the problem of drawing realistic codes.

24. Note, 69 HARV. L. REV. 1115, 1123 (1956).

25. A number of those reporting indicated that there was little if any increase in cost, but one city did report a 50% increase. It would seem logical, however, that if no additional money is spent and stricter enforcement is provided in the conservation area, other areas will be slighted. See generally Osgood & Zwerner, *supra* note 8, at 718 and material cited therein; Note, 72 HARV. L. REV. 504, 545 (1959). *Cf.* Williamson v. Lee Optical Co., 348 U.S. 483, 489 (1955).

26. See SIEGEL & BROOKS, *op. cit. supra* note 3.

27. See Note, 72 HARV. L. REV. 504, 546 (1959). For a discussion of the courts' lenient attitude toward offenders, see *id.* at 547-50.

B. *Zoning*

Zoning ordinances are a second tool in the conservation and rehabilitation program. A conservation and rehabilitation program usually seeks to create a residential area that is truly residential and relatively free from commercial uses. Wholesale and retail outlets and industrial plants often create an unattractive appearance, thus discouraging new residents from moving into the neighborhood and encouraging present residents to move elsewhere. Nonresidential uses are of two kinds: incompatible uses and nonconforming uses. Incompatible uses are made possible by poorly drafted zoning ordinances and by variances, exceptions, and spot-zoned parcels. Thus, the creation of additional incompatible uses can be prevented by properly drafted and firmly enforced zoning ordinances. A nonconforming use is defined as a use of land or a building that violates the present zoning ordinance but that was legally established before the present zoning law was enacted.[28]

The effective use of zoning ordinances in a conservation area is limited because, unlike housing codes,[29] zoning ordinances are not ordinarily given retrospective effect. In enacting a housing code, the municipality is making a legislative determination by authority of its police power of minimum standards for health, safety, and welfare. Thus, existing buildings must comply with newly enacted housing codes because no citizen can be said to have a vested interest in maintaining dangerous or unhealthful conditions. On the other hand, zoning ordinances cannot usually be given retrospective effect where the new ordinance would require extensive changes by the owner.[30] As a result, the enactment of new zoning ordinances will not solve the problems created by nonconforming uses and existing incompatible uses.

A majority of the municipalities that replied to the questionnaire deal with nonconforming and incompatible use problems by the exercise of their eminent domain power[31] or by negotiating to buy the fee simple.[32] Both of these procedures eliminate the undesirable

28. 58 AM. JUR. *Zoning* § 146 (1948). See generally Johnstone, *supra* note 1, at 308; Sundby, *Elimination and Prevention of Urban Blight*, 1959 WIS. L. REV. 73, 90-92.

29. *E.g.*, City of Chicago v. Miller, 27 Ill. 2d 211, 188 N.E.2d 694 (1963); Kaukas v. City of Chicago, 27 Ill. 2d 197, 188 N.E.2d 700 (1963), *appeal dismissed*, 375 U.S. 8 (1963); Ademec v. Post, 273 N.Y. 250, 7 N.E.2d 120 (1937).

30. *E.g.*, Jones v. City of Los Angeles, 211 Cal. 304, 295 Pac. 14 (1930); People v. Miller, 304 N.Y. 105, 106 N.E.2d 34 (1952); Des Jardin v. Greenfield, 262 Wis. 43, 53 N.W.2d 784 (1952). But nonconforming uses generally cannot be extended or enlarged. County of San Diego v. McClurken, 37 Cal. 2d 683, 234 P.2d 972 (1951); State v. Cain, 40 Wash. 2d 216, 242 P.2d 505 (1952). The distinction between zoning and housing codes appears to be well established, although the rationale is not articulated.

31. 55 per cent.

32. 62 per cent.

use, but both are extremely expensive. Twenty-five of the municipalities questioned employed the less expensive but time-consuming method of amortizing the use by allowing the owner a period of time to comply with the zoning ordinance.[33] Generally, this method has been of limited value because the courts have insisted upon a reasonable time for compliance, often much longer than is required for the completion of most rehabilitation work.[34] However, in some instances buildings can be made compatible easily and the courts have held that amortization over a relatively short period of time is reasonable.[35] Probably the best method of dealing with this problem, however, is buying or condemning by eminent domain the right to continue the nonconforming use without depriving the owner of title to the property.[36] In this way the nonconforming use is eliminated at relatively little cost to the city.

C. *Improving Municipal Services*

The provision of adequate municipal services, such as upkeep of streets, collection of garbage, and maintenance of playgrounds, is another vital tool in the conservation and rehabilitation program. If the city does not provide adequate municipal services, property owners are likely to feel that the neighborhood is deteriorating, and they will be reluctant to invest in modernization and upkeep of their homes.[37] Unfortunately, many municipalities are lax in the provision of municipal services for declining neighborhoods. This is undoubtedly due to the high cost of providing services relative to the revenue derived from these areas.[38] Since the provision of municipal services is so important to the success of a conservation and rehabilitation program, it is not surprising that a majority of the

33. For legality of this method, see, *e.g.*, Los Angeles v. Gage, 127 Cal. App. 2d 442, 274 P.2d 34 (1954); Spurgeon v. Board of Comm'rs, 181 Kan. 1008, 317 P.2d 798 (1957); Harbison v. City of Buffalo, 4 N.Y.2d 553, 152 N.E.2d 42, 176 N.Y.S.2d 598 (1958). Also see Norton, *Elimination of Incompatible Uses and Structures*, 20 LAW & CONTEMP. PROB. 305, 308-11 (1955); Comment, 28 ALBANY L. REV. 90, 94-96 (1964).

34. Standard Oil Co. v. Tallahassee, 183 F.2d 410 (5th Cir. 1950), *cert. denied*, 340 U.S. 892 (1950) (ten years); Los Angeles v. Gage, *supra* note 33 (five years). *But see* Akron v. Chapman, 160 Ohio St. 382, 116 N.E.2d 697 (1953), criticized in 67 HARV. L. REV. 1283 (1954) (amortization over a reasonable period invalidated).

35. *E.g.*, Spurgeon v. Board of Comm'rs, 181 Kan. 1008, 317 P.2d 798 (1957) (two years); People v. Miller, 304 N.Y. 105, 106 N.E.2d 34 (1952) (immediately).

36. Of those responding to the questionnaire, eight municipalities do this by negotiation and three by eminent domain. State *ex rel.* Twin City Bldg. & Inv. Co. v. Houghton, 144 Minn. 1, 176 N.W. 159 (1920). *Cf.* Linggi v. Garovotti, 45 Cal. 2d 20, 286 P.2d 15 (1955) (condemnation of an easement). See Slayton, *Conservation of Existing Housing*, 20 LAW & CONTEMP. PROB. 436, 439 (1955).

37. HORACK & NOLAN, *op. cit. supra* note 3, at 225; NASH, *op. cit. supra* note 12; Siegel, *supra* note 1.

38. "In a typical city, the citizen pays on an average $7.00 each year for services in a blighted area and the area pays back only $4.25. But in a good area, the average cost per citizen is $3.60 and the area pays back $11.30." HHFA, THE WORKABLE PROGRAM—WHAT IS IT? (1957). See CHAPIN, URBAN LAND USE PLANNING 241-50 (1957).

municipalities responding to the questionnaire place special emphasis on streets (75 per cent), parks (72.5 per cent), traffic patterns (67.5 per cent), playgrounds (65 per cent), street lighting (62.5 per cent), sidewalks (62.5 per cent) and schools (57.5 per cent).[39]

D. *Demolition*

Although demolition is the principal tool in the redevelopment program, it is also a useful conservation tool. A successful program of conservation requires the elimination of unsound structures that are beyond repair in order to improve the appearance of the neighborhood.[40] Such a program stimulates cooperation on a voluntary basis by convincing residents that improvements are possible. Coupled with demolition, new construction to replace demolished buildings should be encouraged because gradual replacement of older existing structures is an excellent approach to the permanent prevention of slums.[41] Forty per cent of the municipalities responding to the questionnaire expect this process of demolition coupled with continuous replacement to be carried on in their communities.

E. *Rehabilitation*

At the core of the conservation and rehabilitation program is rehabilitation, the repair and renewal of individual properties.[42] All of the tools previously discussed are designed to stimulate rehabilitation.

In discussing rehabilitation it is difficult to generalize, because problems arising in different contexts must be treated differently. For example, if the increase in value of the rehabilitated building significantly exceeds the cost of rehabilitation, funds may be available to owners from private financial institutions, and private investors may be interested in buying and rehabilitating the buildings. Hopefully, in this situation rehabilitation could be achieved with little or no government assistance. On the other hand, if the appreciation in value is less than the cost of rehabilitation,

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39. Money spent for these municipal services is an eligible cost with respect to the federal grant-in-aid program. See note 85 *infra* and accompanying text; Slayton, *supra* note 36, at 441-42.

40. Soderfelt v. City of Drayton, 79 N.D. 742, 59 N.W.2d 502 (1953), upheld a statute providing that those buildings requiring an investment of fifty per cent of their value in order to bring them up to code standards could be demolished. Where property constitutes a nuisance, the owner may be obligated to bear the cost of demolition. Charlotte, C. & A.R.R. v. Gibbes, 142 U.S. 386 (1892); State v. Laabs, 171 Wis. 557, 177 N.W. 916 (1920).

41. See generally COLEAN, RENEWING OUR CITIES (1953); Slayton, *supra* note 36, at 443, 456-58.

42. See note 9 *supra*. Rehabilitation work includes such activities as the modernization of kitchens and bathrooms, updating of electrical wiring, removal of partitions, installation of new heating plants, and removal of dilapidated porches.

extensive government aid will probably be necessary.[43] Different problems also arise depending upon whether the area's residents will be able to afford the increased rents and housing costs caused by rehabilitation. If they can not, a relocation program will be necessary. Whether the residents can afford rehabilitation work depends upon the amount of work that is to be done, its costs, and the financial status of the present tenants and owners. Thus, the policy decision as to the extent of the rehabilitation work to be done will determine whether the present residents can remain.[44] In addition, owners who are willing, but financially unable, to rehabilitate pose different problems from those who are merely obstinate.

Among the methods employed to achieve rehabilitation, voluntary rehabilitation is the most widely used.[45] The problems encountered by this method are more administrative than legal since the municipality is simply asking the owner to repair his home. The city can help promote voluntary rehabilitation by providing a "clearing house" where a home owner can obtain information on such things as the legal requirements that must be met, what to do, whom to hire, and where to obtain financing.[46] Basic suggestions should be provided by municipal experts,[47] public improvements resulting from conservation should be pointed out, and "demonstrators" (examples of rehabilitated buildings) should be available to show the feasibility and advisability of rehabilitation.[48]

43. Of the thirty-five cities responding to a question in the questionnaire dealing with the increase in value of rehabilitated property, twenty-eight indicated that they had engaged in rehabilitation in which the buildings had increased sufficiently in value to more than cover the cost of rehabilitation. Eleven indicated that they had done rehabilitation work in which the increase in the value of the property did not cover the cost of rehabilitation. See generally Zisook, *Rehabilitation—When Is It Economically Feasible in Renewal*, 15 J. HOUSING 157 (1958); Note, 72 HARV. L. REV. 504, 541 (1959).

44. Of the municipalities answering, 47.4% found that the original residents could afford to live in the rehabilitated area while a like percentage felt that the residents were being forced to move into public housing. See generally Slayton, *supra* note 36, at 456-57; Comment, 25 U. CHI. L. REV. 355 (1958). For a general work on relocation, see Millspaugh, *Problems and Opportunities of Relocation*, 26 LAW & CONTEMP. PROB. 6 (1961).

45. Voluntary rehabilitation was relied upon by 92.5% of the cities answering the questionnaire.

46. Surprisingly, six cities reported having no such clearing house. In most cities in which these clearing houses are available, substantial use is made of their services. However, a few municipalities did report that little or no use was made of their clearing house. See generally *Hearings on Urban Renewal Before the Subcommittee on Housing of the House Committee on Banking and Currency*, 88th Cong., 1st Sess., pt. 2, 390, 416 (1963); Osgood & Zwerner, *Rehabilitation and Conservation*, 25 LAW & CONTEMP. PROB. 685, 730 (1960).

47. See notes 85 and 86 *infra* and accompanying text.

48. The lack of these examples has been cited as one important reason for the fact that there is little cooperation from owners. Senate Comm. on Banking and Currency, *Housing Act of 1960*, S. REP. No. 1575, 86th Cong., 2d Sess. 20 (1960). Other methods for attracting the support of residents include the creation of community conservation councils made up of owners in the area who are given the power to

Voluntary rehabilitation faces a number of problems, however. Most municipalities require full compliance with all building codes before a building permit allowing any modernization or improvement will be issued.[49] In rehabilitation areas where buildings are not likely to meet the requirements of the building codes, requiring full compliance will create problems, increase costs, and generally discourage the entire operation. A possible solution to this problem is the adoption of a special building code for the rehabilitation area that would lower certain standards, thus making it easier to comply with the codes and possible to make needed though limited improvements.[50]

Additional problems are created by the fact that rehabilitation is likely to lead to increased property taxes. Approximately half of those responding to the questionnaire indicated that property taxes in the rehabilitation area did increase.[51] Increased taxes are not detrimental if the rehabilitated area is to support a higher economic class, but if the original residents are to remain, the possibility of an increase in taxes is likely to discourage voluntary rehabilitation. New York State has dealt with this problem by permitting municipalities to promise not to raise assessments for twelve years or to promise to reduce taxes by as much as 8.33 per cent of the cost of rehabilitation for a period of up to twelve years.[52] Although this or any other plan to ease the tax burden results in an immediate loss of revenue to the municipality, over the long run the gain from the elimination of slums will more than compensate for this loss.

In addition to voluntary rehabilitation, several methods for compulsory rehabilitation are available. The most widely used method for compelling rehabilitation is through strict enforcement of housing codes.[53] A more direct, but understandably less frequently used, method is for the municipality to make the repairs and obtain a lien on the property.[54] It is clear that when such liens do not

approve or reject conservation plans [ILL. REV. STAT. ch. 67½, § 91.12 (1957)] and the establishment of neighborhood groups to act as a liaison between local government agencies and the area's residents. Note, 14 J. HOUSING 382-85 (1957).

49. Such a requirement exists in 57.5% of the municipalities replying to the questionnaire. See generally Slayton, *supra* note 36, at 445-55.

50. *Id.* at 454-55.

51. 46.3% answered that taxes had gone up, 31.3% answered that they had not, and 22.4% did not know or did not answer. Of the municipalities reporting an increase, no agency reported that anything substantial was done to help ease this burden. These increases were generally in the neighborhood of ten to forty per cent.

52. N.Y. REAL PROP. TAX LAW § 489. Another way to deal with this problem is to assess the rehabilitated property at a low figure. See Note, 72 HARV. L. REV. 504, 533 n.248 (1959). See generally NASH, *op. cit. supra* note 12, at 112; Slayton, *State and Local Incentives and Techniques for Urban Renewal*, 25 LAW & CONTEMP. PROB. 793 (1960).

53. Of the municipalities answering the questionnaire, 72% reported strict code enforcement.

54. None of the municipalities replying to the questionnaire reported the use of this method. There are often specific statutory provisions permitting this, however.

purport to take priority over valid existing encumbrances they are judicially approved.[55] There are those who feel, however, that in order to be effective these liens must take priority over pre-existing mortgages.[56] In the past, courts expressly rejected this type of priority,[57] but a recent case, *In re Dep't of Bldgs.*,[58] indicated approval of such priority.

Compulsory rehabilitation can also be achieved by having the municipality purchase property and then resell it to private parties who agree to rehabilitate. Sixteen responding communities indicated that they made use of this method.[59] Public acquisition is a particularly valuable supplement to private rehabilitation where the owner is unable or unwilling to rehabilitate or where the cost of rehabilitation exceeds the resulting appreciation in the value of the property. In most instances, the municipality will find it necessary to resell the property to private rehabilitators at a loss. The amount of this loss, known as a "writedown," is an eligible expense in computing the costs to the municipality that will be partially reimbursed by federal grants-in-aid.

A variation of the public acquisition–private rehabilitation method is public acquisition followed by public rehabilitation.[60] Although six communities replying to the questionnaire indicated that they had made some use of this method, it is doubtful that it will be adopted very extensively because the federal government will not provide funds to cover the cost unless the rehabilitated buildings are to be used as "demonstrators."[61]

E.g., ALASKA STAT. § 18.55.840 (1962); ILL. REV. STAT. ch. 67½, § 91.123 (Supp. 1964).

55. See RHYNE, MUNICIPAL LAW §§ 26-36 (1957).

56. See Osgood & Zwerner, *supra* note 46, at 719 n.47 (1960); Note, 72 HARV. L. REV. 504, 549 (1959).

57. Central Sav. Bank v. City of New York, 279 N.Y. 266, 18 N.E.2d 151 (1938), *cert. denied*, 306 U.S. 661 (1939). See generally RHYNE, *op cit. supra* note 55. But such liens will be upheld as against the owner. Adamec v. Post, 273 N.Y. 250, 7 N.E.2d 120 (1937).

58. 14 N.Y.2d 291, 200 N.E.2d 432 (1964) (receiver can be appointed to make repairs and collect rents until the cost is recovered). *Accord*, Thornton v. Chase, 175 Misc. 748, 23 N.Y.S.2d 735 (Sup. Ct. 1940). Note, 72 HARV. L. REV. 504, 549 (1959). *Cf.* N.Y. MULT. DWELL. LAW § 309.

59. See ILL. REV. STAT. ch. 67½, §§ 91.12-.13 (1959); Lammer, *Rehabilitation Has Taken Three Forms in Philadelphia*, 12 J. HOUSING 47, 49-59 (1955). *Compare* Adams v. Housing Authority, 60 So. 2d 663 (Fla. 1952), *with* Randolph v. Wilmington Housing Authority, 37 Del. Ch. 202, 139 A.2d 476 (1958).

Public acquisitions are to be contrasted with code enforcement and municipal liens. The methods involving public acquisitions are examples of the use of eminent domain or negotiation, whereby the owner receives cash for his substandard structure. The municipal lien and code enforcement methods are examples of the use of the police power, whereby the owner must spend money to modernize his substandard building. See Slayton, *Conservation of Existing Housing*, 20 LAW & CONTEMP. PROB. 436, 448 (1955).

60. ILL. REV. STAT. ch. 67½, § 91.13 (1959).

61. 68 Stat. 629 (1954), as amended, 42 U.S.C. § 1452(a) (Supp. V, 1964). Other prob-

The constitutionality of public acquisition for rehabilitation is likely to be questioned in the courts in the near future because of the limitation it places upon individual property rights.[62] Leading legal writers seem to feel that the rationale used to justify acquisitions in redevelopment cases will be applied to cases in which a taking pursuant to a rehabilitation program is in issue.[63] In order for the exercise of the power of eminent domain to be constitutional, a public use must be involved.[64] There are two views as to what constitutes a public use. The stricter view maintains that public use means use by the general public or by the government in fulfillment of some governmental function.[65] The more liberal view equates public use with public benefit, public advantage, or even general welfare.[66] In recent redevelopment cases the courts have fairly consistently held that the public use requirement is satisfied by the elimination of slums, and it has made little difference that private parties will acquire ownership of the property after the "public purpose" of slum elimination has been served.[67] Redevelopment has even been upheld

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lems of rehabilitation include its tendency to decrease the supply of housing, particularly where occupancy restrictions are enforced, its weak popular appeal compared with the more drastic redevelopment program, and its constitutionality when different standards are applied in different areas.

62. See also Rabinoff v. District Court, 145 Colo. 225, 360 P.2d 114 (1961); Allen v. City Council, 215 Ga. 778, 113 S.E.2d 621 (1960); People *ex rel.* Gutknecht v. City of Chicago, 3 Ill. 2d 539, 121 N.E.2d 791 (1954); Zisook v. Maryland-Drexel Neighborhood Redevelopment Corp., 3 Ill. 2d 570, 121 N.E.2d 804 (1954); Boro Hall Corp. v. Impellitteri, 128 N.Y.S.2d 804, 806 (Sup. Ct.), *aff'd mem.*, 283 App. Div. 889, 130 N.Y.S.2d 6 (1954).

Conservation and rehabilitation are results of a changing concept of individual property rights. Historically, as society became more urbanized, more duties and limits were placed upon the rights of ownership to avoid health, safety, economic, social, and aesthetic hazards. See generally HORACK & NOLAN, LAND USE CONTROLS 227-28 (1955); Slayton, *supra* note 59, at 446-47, 449 (1955); Note, 10 S.C.L.Q. 485 (1958). See Note 3 J. PUB. L. 267 (1954) for one writer's views on why this trend should be opposed.

63. *E.g.*, Osgood & Zwerner, *supra* note 46, at 711-17.

64. U.S. CONST. amend. V; ILL. CONST. art. 2, § 13; Siegel, *Slum Prevention—A Public Purpose*, 35 CHI. B. RECORD 151 (1954).

The same public use requirement must be fulfilled when there is an expenditure of public funds, *e.g.*, Zisook v. Maryland-Drexel Neighborhood Redevelopment Corp., 3 Ill. 2d 570, 121 N.E.2d 804 (1954); Crommett v. City of Portland, 150 Me. 217, 107 A.2d 841 (1954); Martin v. Richter, 161 Tex. 323, 342 S.W.2d 1 (1961), or where the municipality issues bonds, Annot., 44 A.L.R.2d 1414 (1955); Alanel Corp. v. Indianapolis Redevelopment Co., 239 Ind. 453, 154 N.E.2d 515 (1958). *Compare* Papadinis v. City of Sommerville, 331 Mass. 627, 732, 121 N.E.2d 714, 717 (1954), *with* Hunter v. Norfolk Redevelopment & Housing Authority, 195 Va. 326, 337, 78 S.E.2d 893, 900 (1953).

65. *E.g.*, Reed v. Seattle, 124 Wash. 185, 213 Pac. 923 (1923); Neitzel v. Spokane Int'l Ry., 65 Wash. 100, 117 Pac. 864 (1911); 2 NICHOLS, EMINENT DOMAIN § 7.2(1) (3d ed. 1963).

66. 2 NICHOLS, *op. cit. supra* note 65, § 7.2(2); Robinson & Weinstein, *Federal Government and Housing*, 1952 WIS. L. REV. 581, 583 n.8.

67. 42 AM. JUR. *Public Housing Laws* § 2 (Supp. 1964). *E.g.*, Berman v. Parker, 348 U.S. 26 (1954); Schenck v. City of Pittsburgh, 364 Pa. 31, 70 A.2d 612 (1950); Miller v. City of Tacoma, 61 Wash. 2d 374, 378 P.2d 464 (1963) (See app. 5-6 for list of re-

occasionally on the theory that resale subject to deed restrictions limiting future utilization of the land to publicly authorized purposes is an acceptable public use because it constitutes continuing proprietorship by the city.[68] Acquisition of property pursuant to redevelopment in that in the former case the municipality may resell the property to individuals who will carry out the slum prevention work rather than do the work itself. Courts that hold redevelopment of slums constitutional will probably also hold acquisition of property pursuant to a rehabilitation program constitutional because the end effect, the elimination of slums, is the same in both cases.

Arguably, it could be maintained that although a public purpose is served by the elimination of slums, no such purpose is served by rehabilitation in an area that is not sufficiently run down to be classified as a slum. Most courts, however, do not require an area to be an actual slum before redevelopment will be considered constitutional; rather, redevelopment of a deteriorated area is permitted in order to *prevent* it from *becoming* a slum.[69] Dicta in a number of cases indicate that redevelopment will even be permitted in areas that are merely unesthetic and uneconomic.[70] Speaking through Mr. Justice Douglas, the United States Supreme Court has said:

> "It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. . . . If those who govern the District of Columbia decide that the Nation's Capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way. . . . Once the object is within the authority of Congress, the means by which it will be attained is also for Congress to determine."[71]

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development cases). *Accord,* People *ex rel.* Gutknecht v. City of Chicago, 3 Ill. 2d 539, 121 N.E.2d 791 (1954) (conservation). See also Note, 72 HARV. L. REV. 504, 523-28 (1959) for problems of condemnation litigation and *id.* at 519-23 for limits of the power to acquire by eminent domain.

68. Redevelopment Agency v. Hayes, 122 Cal. App. 2d 777, 266 P.2d 105 (1954), *cert. denied,* 348 U.S. 897 (1954); Welishka v. Nashua, 99 N.H. 161, 106 A.2d 571 (1954).

69. Annot., 44 A.L.R.2d 1414, 1433-37 (1955). *E.g.,* Berman v. Parker, 348 U.S. 26 (1954); People *ex rel.* Gutknecht v. City of Chicago, 3 Ill. 2d 539, 121 N.E.2d 791 (1954) (conservation).

70. *E.g.,* Berman v. Parker, *supra* note 69; Bowker v. City of Worcester, 334 Mass. 422, 136 N.E.2d 208 (1956) (dictum); Bilbar Constr. Co. v. Board of Adjustment, 393 Pa. 62, 141 A.2d 851 (1958). *Cf.* State *ex rel.* Saveland Park Holding Corp. v. Wieland, 269 Wis. 262, 69 N.W.2d 217, *cert. denied,* 350 U.S. 841 (1955). See generally Guandolo, *Housing Codes in Urban Renewal,* 25 GEO. WASH. L. REV. 1, 37-42 (1956).

71. Berman v. Parker, *supra* note 70, at 33. See also City & County of San Francisco v. Ross, 44 Cal. 2d 52, 279 P.2d 529 (1955).

A necessary corollary to this liberal view of legislative power is the presumption that the program will actually generate such improvements. Barnes v. City of Gadsden, 174 F. Supp. 64 (N.D. Ala. 1958), *aff'd,* 268 F.2d 593 (5th Cir. 1959); Gohld Realty Co. v. City of Hartford, 141 Conn. 135, 104 A.2d 365 (1954).

Although a few courts still insist upon existence of a slum,[72] the trend appears to be toward the more liberal view expressed by Mr. Justice Douglas.[73]

II. The Federal Program

Although the conservation and rehabilitation concept originated long before the inauguration of a federal program, the 1954 amendments to the Federal Housing Act provide the great impetus today.[74] These amendments were the result of a report by the President's Advisory Committee stressing the need for conservation and rehabilitation because of the inability of the redevelopment program to deal adequately with the slum problem.[75] Due to lack of experience in the field of conservation and rehabilitation on the part of the construction industry and local and federal agencies, the federal conservation and rehabilitation program has been relatively slow in gaining wide acceptance.[76] On December 31, 1956, only twenty urban renewal projects included areas designated for conservation and rehabilitation.[77] By the close of 1959, there were 120 such projects, but of these only 39 were out of the planning stage.[78] Figures available for 1963 indicate that as of July there were 129 such projects out of the planning stage and rehabilitation had been completed or was in process on over fifty-seven per cent of the 45,000 structures involved. Of major significance is the fact that in fiscal 1963 the number of dwelling units on which rehabilitation had been completed rose thirty-seven per cent.[79]

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72. Allen v. City Council, 215 Ga. 778, 113 S.E.2d 621 (1960); Crommett v. Portland, 150 Me. 217, 107 A.2d 841 (1954); Alanel Corp. v. Indianapolis Redevelopment Corp., 239 Ind. 435, 154 N.E.2d 515 (1958) (dissent). Even in these courts some conservation and rehabilitation will be permitted, but it will be justified as coming within the city's normal municipal services.

73. Another significant legal problem in the urban renewal area is the limited judicial review over legislative determinations. Annot., 44 A.L.R.2d 1414, 1419-20 (1955). Berman v. Parker, 348 U.S. 26, 32, 35 (1954); Babcock v. Community Redevelopment Agency, 148 Cal. App. 2d 38, 306 P.2d 513 (Dist. Ct. App. 1957); Worcester Knitting Realty Co. v. Worcester Housing Authority, 335 Mass. 19, 138 N.E.2d 356 (1956). See Weinstein, *Judicial Review in Urban Renewal*, 21 Fed. B.J. 318 (1961); Note, 72 Harv. L. Rev. 504, 515-19 (1959) (discussing ways in which states do provide a review process).

74. Housing Act of 1954, 68 Stat. 622 (1954), as amended, 42 U.S.C. §§ 1450-60 (Supp. V, 1964).

75. President's Advisory Comm. on Gov't Housing Policies Programs, A Report to the President of the United States (1953).

76. *Hearings on Urban Renewal Before the Subcommittee on Housing of the House Committee on Banking and Currency*, 88th Cong., 1st Sess., pt. 2, 390, 416 (1963) (hereinafter cited *1963 Hearings*).

77. Johnstone, *The Federal Urban Renewal Program*, 25 U. Chi. L. Rev. 301, 320 n.102 (1958).

78. Osgood & Zwerner, *supra* note 46, at 706.

79. *1963 Hearings* 415-16. Those replying to the questionnaire made the following forecasts for rehabilitation areas: the area will continue in a sound condition indefinitely as a result of strict code enforcement—72%; the area will remain in a sound condition because owners will continue to repair their own buildings—65%;

In order for a local conservation and rehabilitation program to qualify for federal aid under the Title I program,[80] the Local Public Agency (hereinafter LPA) must choose a conservation area, determine the area's needs, and adopt and actually carry out a program for meeting these needs.[81] The single most important aspect of the qualifying process is the development and adoption of a Workable Program.[82] To fulfill the Workable Program requirement the LPA must indicate that housing and building codes have been enacted,[83] that a comprehensive community plan for future development has been adopted, that the municipality is financially capable of carrying out the parts of the program which will not be financed by federal funds, and that citizen participation and municipal administrative organization are sufficient for fulfillment of the program.[84] In essence, by means of the Workable Program the federal government is attempting to compel municipalities to enact and enforce realistic programs of land use control.

Depending upon the size of the municipality, the federal government will contribute either two-thirds or three-fourths of the eligible costs of the program.[85] The cost of setting up organizations to assist rehabilitation by supplying owners with information is an eligible

further rehabilitation will not be necessary because of the re-education of the residents—30%; the rehabilitation process will have to be repeated in five to twenty years—30%; most of the area will have to be cleared within three to thirty years—15%.

A second questionnaire, prepared by the *Michigan Law Review*, was distributed to the twenty-six cities having a population of over 250,000 which, as of June 30, 1963, had not embarked on a federally assisted program of conservation and rehabilitation. Twenty of these twenty-six cities reported as follows: embarked on the federally assisted program between July 1963 and July 1964—8; did not desire federal aid—4; had initiated their own program with no need for federal assistance—4; had a conservation and rehabilitation program limited to enforcement of housing codes—3; unable to get sufficient local cooperation—3; unable to meet the standards required by the federal program—2; had a non-assisted federal program—1; found the entire program too confusing—1; did not have the necessary enabling legislation—1; did not feel they had sufficient financial resources—1.

80. Housing Act of 1954, 68 Stat. 622 (1954), as amended, 42 U.S.C. §§ 1450-60 (Supp. V, 1964).

81. MANUAL ch. 12; *1963 Hearings* 395-98; Sundby, *Elimination and Prevention of Urban Blight*, 1959 WIS. L. REV. 73, 74-78. See Johnstone, *supra* note 77, at 341 n.233 (1958); Note, 48 KY. L.J. 262 (1960).

82. 63 Stat. 416 (1949), as amended, 42 U.S.C. § 1455(a) (Supp. V, 1964).

83. The recent amendments to the National Housing Act provide that beginning three years after enactment of the amendments no workable program will be certified or recertified unless the locality involved has had an adequate housing code in effect for at least six months and has an effective code enforcement program. Housing Act of 1964, § 301(a), 33 U.S.L. WEEK 23, 28 (1964).

84. HHFA, WORKABLE PROGRAM FOR COMMUNITY IMPROVEMENT 4 (1962). See generally Johnstone, *supra* note 77, at 337-41; Rhyne, *The Workable Program—A Challenge for Community Improvement*, 25 LAW & CONTEMP. PROB. 685 (1960).

85. National Housing Act, 63 Stat. 416 (1949), as amended, 42 U.S.C. § 1453 (Supp. V, 1964); MANUAL 12-1-3.

cost, but the costs of setting up other organizations are ineligible. Acquisition and rehabilitation of property for demonstration purposes is an eligible cost, but other expenses for the actual physical rehabilitation of property by the municipality are ineligible. Additional eligible costs include expenses involved in making various surveys and paying various fees. Additional ineligible costs include expenses incurred in preparation of detailed plans and construction drawings for property owners.[86] Prior to the enactment of the recent amendments to the National Housing Act, expenses for inspection and enforcement of housing codes were ineligible costs.[87] However, the Housing Act of 1964 authorizes a new type of urban renewal project for carrying out code enforcement activities.[88] The cost of a code enforcement program may be included as an eligible to the extent that local expenditures for code enforcement are increased.[89]

III. Financing

A. *Property Owners*

Undoubtedly the greatest single problem facing the rehabilitation program is the serious lack of adequate financing available to property owners.[90] Many local lending institutions have a policy of blacklisting certain neighborhoods by refusing even to consider applications for loans from property owners in those neighborhoods.[91] As a result, even if an owner is willing to rehabilitate his property, he will be unable to do so unless he can finance the project on his own. Difficulty in financing sales of property in declining neighborhoods tends to decrease the demand for such property, thus reducing property values. The result is that property owners are discouraged from making needed repairs and improvements, and an already deteriorating neighborhood continues to deteriorate.

B. *Private Enterprise*

Ideally, rehabilitation should be carried out by private enterprise[92] without government aid.[93] Unfortunately, the lack of ade-

86. *Ibid.*
87. *Ibid.*
88. Housing Act of 1964, § 301(b), 33 U.S.L. Week 23, 28 (1964).
89. Housing Act of 1964, § 301(c), 33 U.S.L. Week 23, 28 (1964).
90. *1963 Hearings* 418; Nash, Residential Rehabilitation—Private Profits & Public Purpose 44 (1959).
91. Dickinson, Urban Renewal Under Fire 617 (1963); Nash, *op. cit. supra* note 90, ch. 6.
92. There would appear to be a market for the services of private rehabilitation firms. Slightly under twenty-six per cent of the buildings in the United States are either in a deteriorated condition or are lacking plumbing facilities or hot water.

quate financing[94] is one among several problems[95] tending to preclude this possibility. Private enterprise, in the form of modernization companies, could do rehabilitation work for property owners at the owner's expense. This type of activity flourishes in well-kept neighborhoods, but in rehabilitation areas owners cannot afford such services. Private enterprise could also be of assistance in the rehabilitation effort by purchasing property, repairing it, and then reselling it at a profit. Unfortunately, in a number of cases, buildings are in such a dilapidated state that this type of activity cannot be conducted on a profitable basis. However, even in cases in which a profit can be made, either because the municipality is willing to contribute to the cost of the property or because the needed repairs are not extensive relative to the increase in the value of the rehabilitated property, difficulties arise. Since it is difficult to borrow to finance this type of work, it will probably not be carried on unless the enterprise doing the rehabilitation work is able and willing to invest almost all of the needed capital. If the enterprise has to supply most of the capital out of its own funds, it will not be likely to go into this type of venture because of the possibility of reaping a greater return on its capital in undertakings in which it can supplement its own capital with borrowed funds.[96]

U.S. DEP'T OF COMMERCE, CENSUS OF HOUSING, STATES AND SMALL AREAS (pt. 1), UNITED STATES SUMMARY, at xxxvi (1960). Forty-seven per cent of all housing units are over thirty years old. *Id.* at xxxvii. In 1962 alone, 11.3 million dollars was spent for non-farm home improvements and upkeep. U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 747 (1963). See generally Osgood & Zwerner, *supra* note 46, at 725-27.

93. Both state and federal legislatures seem to agree with this viewpoint. See, *e.g.*, 68 Stat. 622 (1954), 42 U.S.C. § 1455(a) (Supp. V, 1964); CONN. GEN. STAT. REV. § 8-140 (Supp. 1960); GA. CODE ANN. § 69-1103 (1957). See Berman v. Parker, 348 U.S. 26, 33 (1954); Comment, 21 U. CHI. L. REV. 489 (1954).

94. *1963 Hearings* 391; NASH, *op. cit. supra* note 90, at 44, 146. See also MORTON, URBAN MORTGAGE LENDING (1956); Note, 72 HARV. L. REV. 504, 533-34 (1959). A large majority of the municipalities replying to the questionnaire reported that financing was by far the greatest obstacle to the successful operation of a rehabilitation business.

95. *E.g.*, rent scales tend to be lower in redeveloped areas (Note, 72 HARV. L. REV. 504, 532 (1959)); a large number of restrictions are imposed by local, state, and federal laws (*ibid.*); private companies are not accustomed to performing so many tasks without subcontracting (Osgood & Zwerner, *supra* note 46, at 726); often, municipalities (NASH, *op. cit. supra* note 90, at 20) and residents fail to cooperate (*1963 Hearings* 391; NASH, *supra*, at 111-12); past history indicates a small profit margin (questionnaire); distrust of rehabilitators has developed because of a number of "fly-by-night" concerns (*ibid.*); and problems with labor unions in the construction industry are encountered (*ibid.*).

96. Of the municipalities replying to the questionnaire, 91.8% reported that rehabilitation work had been done by small, independent, specialized segments of the building industry, but 81.8% felt that it would be a good idea to encourage comparatively large integrated business concerns to specialize in rehabilitation. Of this 81.8%, twelve cities felt that federal aid would be required to accomplish this, eight felt that federal aid would not be required, and seven expressed no opinion on the federal aid question.

C. *FHA*

Congress has sought to solve the financing problem by means of a broad program of mortgage insurance.[97] Section 220 of the FHA[98] assists in financing rehabilitation of existing dwellings and construction of new dwellings in urban renewal areas by insuring private lenders against losses on mortgage loans.[99] To qualify for this insurance the property must be located in an urban renewal project area, the locality must have a Workable Program approved by the HHFA,[100] the area must have an approved urban renewal plan, and after rehabilitation the property must meet the minimum standards established by the Commissioner of the FHA.[101]

Unfortunately, the FHA mortgage program for rehabilitation has been a dismal failure. Prior to June 1957 and possibly beyond that date, all section 220 insurance was on new housing.[102] As of December 31, 1963, only 270 existing properties with 476 dwelling units were insured under the home mortgage program of section 220, and the total insurance on these units was only 3,472,300 dollars.[103] These figures are surprisingly low when considered in light of the tremendous needs in this area and the fact that it was estimated that in 1964 the FHA's receipts would exceed its expenditures by 218 million dollars.[104]

There are several reasons for the failure of the FHA program in the rehabilitation area.[105] The tremendous amount of red tape

97. In addition to the § 220 program, there is a limited federal program administrated by the FNMA which purchases § 220 mortgages at par in order to encourage loans by creating a market for such mortgages. 68 Stat. 616 (1954), as amended, 12 U.S.C. § 1720 (Supp. V, 1964).

Section 203k of the National Housing Act creates a program similar to that embodied in § 220, but it is limited to insuring home improvement loans on buildings that are not located in an urban renewal project area. 71 Stat. 294, 297 (1957), as amended, 12 U.S.C. § 1709 (1958). As of December 31, 1963, only 1,277 improvement loans were insured for a total of $7,054,550 under the § 203(k) program. Letter from C. O. Christenson, Director, Urban Renewal Division of the FHA to the *Michigan Law Review*, May 5, 1964.

98. 68 Stat. 596 (1954), as amended, 12 U.S.C. § 1715(k) (Supp. V, 1964).

99. For the anticipated effect of § 220, see *Hearings on S. 2889, 2938 and 2949 Before the Senate Committee on Banking and Currency*, 83d Cong., 2d Sess. 52-60, 71-9, 98-9 (1954); PRESIDENT'S ADVISORY COMMITTEE ON GOV'T HOUSING PROGRAMS, A REPORT TO THE PRESIDENT OF THE UNITED STATES 14, 47 (1953).

100. 68 Stat. 623 (1954), as amended, 45 U.S.C. § 1415 (Supp. V, 1964).

101. FHA, MINIMUM PROPERTY STANDARDS FOR URBAN RENEWAL REHABILITATION (1963).

102. See Johnstone, *supra* note 77, at 329.

103. Letter from C. O. Christenson, Director, Urban Renewal Division of the FHA to the *Michigan Law Review*, May 5, 1964.

104. U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 394 (1963).

105. See generally Johnstone, *supra* note 102, at 329-30; Note, 72 HARV. L. REV. 504, 534-35 (1959).

involved has made FHA financing so slow and cumbersome as to be almost useless.[106] In addition, the high standards for property required by the FHA before it will approve a loan disqualifies most property in rehabilitation areas. In response to the questionnaire, one LPA mentioned the FHA's unrealistic lot coverage and side yard setback requirements. In situations where a building does not meet these requirements, there is little, if anything, that can be done in order to qualify for FHA insurance. On November 21, 1963, Mr. William L. Slayton, Commissioner of the Urban Renewal Administration, agreed that the FHA's minimum property standards for rehabilitation were unrealistic, but he expressed high hope for a new set of standards that had just been enacted.

> "The new standards are designed to correct this situation and to provide a basis for a desirable level for rehabilitation with considerable flexibility to meet local situations and needs. They recognize the vast differences that exist among urban renewal areas and the variation in the quality and condition of houses in different locations. Additionally, the standards reflect the fact that the amount of physical improvement that can be achieved in urban renewal conservation areas is limited by the incomes of the persons in these areas and by the fact that the properties to be rehabilitated, although basically sound, generally were built several decades ago."[107]

Although Mr. Slayton felt that these new standards would solve the problem, according to the questionnaire dated in the early summer of 1964, most agencies still felt that FHA standards were too rigid.

In the questionnaire a number of LPA's reported that the FHA stresses new housing to such an extent that it is difficult to obtain financing on older homes. It has even been suggested by one writer that extensive FHA financing of new homes in outlying urban areas has been one of the main causes of recent urban blight by making it easier to finance a new home than to rehabilitate an old one.[108] It would thus appear that in practice, the Urban Renewal Administration and the FHA, both of which supposedly operate under the control of the HHFA, have been working at cross purposes.[109]

Realizing the inadequacies of the FHA program under section 220,[110] Congress adopted section 312 of the Housing Act of 1964.[111] That section establishes a fund of fifty million dollars from which

106. *Hearings on the Housing Act of 1958 Before a Subcommittee of the Senate Committee on Banking and Currency*, 85th Cong., 2d Sess. 503 (1958).

107. *1963 Hearings* 417.

108. Johnstone, *supra* note 77, at 309.

109. The FHA Commissioner is appointed by the President and therefore is not directly under the control of the HHFA. Reorganization Plan No. 3 of 1947, 61 Stat. 954 (1947), 5 U.S.C. § 133 (1958).

110. H.R. REP. No. 1703, 88th Cong., 2d Sess. 16-17 (1964).

111. Housing Act of 1964, § 312, 33 U.S.L. WEEK 23, 30-31 (1964).

the HHFA Administrator can make low-interest loans[112] to owners or tenants of property in urban renewal areas to finance rehabilitation to comply with the applicable code requirements or to carry out the objectives of the area's urban renewal plan.[113] According to the House Report:

> "The program is designed to provide a source of financing to those persons and businesses in an urban renewal area who are presently unable to undertake necessary rehabilitation of their property because they cannot obtain loans in sufficient amounts or at such terms as they can afford to carry."[114]

At this early date it is, of course, too early to say what effect this new program will have, but if the HHFA Administrator exercises his discretion liberally, this program will reduce the difficulty of financing rehabilitation work in urban renewal areas. Although the program represents an important step in the right direction, it is far from a full solution to the complicated problem of financing.

Conclusion

In actual practice, the conservation and rehabilitation program has not yet fully matured. Although redevelopment is more dramatic, more visually rewarding, and necessary in the core of many urban areas, only through conservation and rehabilitation will a permanent solution to the slum problem be found. Even if presently existing slums could all be eliminated, without conservation and rehabilitation the development of new slums would be inevitable. In enacting the Housing Act of 1964, Congress has recognized that conservation and rehabilitation, including code enforcement, must be stressed if the total urban renewal program is to be a success.[115]

No uniform master plan can be offered for the municipality de-

112. The term of these loans may not exceed twenty years and they may not bear interest in excess of three per cent per year. For residential property, the amount of a loan may not exceed the amount of a loan which could be insured under § 220(h) of the National Housing Act unless the loan is to refinance existing indebtedness. In the case of nonresidential property the loan may not exceed the lowest of the following: fifty thousand dollars; the cost of rehabilitation; an amount which when added to any outstanding indebtedness relating to the property securing the loan creates a total indebtedness that may be reasonably secured by a first mortgage on the property. Housing Act of 1964, § 312(c), 33 U.S.L. Week 23, 30 (1964).

113. Housing Act of 1964, § 312(a), 33 U.S.L. Week 30 (1964).

114. H.R. Rep. No. 1703, 88th Cong., 2d Sess. 16 (1964). In order for an applicant to qualify for a loan he must satisfy the Administrator that he is unable to obtain needed funds from other sources upon reasonable terms and that the loan is an acceptable risk in light of the need for rehabilitation, the security available, and the applicant's ability to repay. Housing Act of 1964, § 312(a), 33 U.S.L. Week 23, 33 (1964).

115. Housing Act of 1964, § 307, 33 U.S.L. Week 23, 29 (1964). Loans and capital grants for projects of demolition, removal of buildings, and improvements will not be made unless the Administrator determines that rehabilitation will not accomplish the objectives of the plan. H.R. Rep. No. 1703, 88th Cong., 2d Sess. 14-15 (1964).

siring to reduce and prevent slums. Many factors and techniques must be explored, and from them each city must choose the particular mix that best suits its needs. Housing codes, zoning ordinances, provision of municipal services, demolition, and rehabilitation, await the imagination and resourcefulness of dedicated administrators. Now these tools may be supplemented by promising, although still adolescent, federal assistance programs. Although the tools of conservation are far from perfected, they have come a long way in this past decade, and one can expect much greater improvements and adjustments in conservation and rehabilitation programs in the years ahead.

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