Some Problems on Urban Renewal Law

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The persistent spread of urban renewal projects from their original concept of slum clearance to attempts prevailing in a large number of California cities to use urban renewal as a means of taking private property from existing owners and reselling it to new owners who are expected to erect modern buildings has greatly compounded and increased the problems of the average attorney in giving competent advice to property owners. The purpose then of the present discussion is to summarize some of the more important features of the law as it relates to urban renewal. By way of further limitation it should be noted that while both state and federal law enter into the question of urban renewal, this article is confined to an examination of the state law as it exists in California. The reason for thus narrowing the discussion is obvious. The federal law vests in the Federal Housing Administration the right to make grants-in-aid where state laws permit, and therefore as far as property owners and the average citizen are concerned these projects must derive their validity and force from state laws.

CALIFORNIA URBAN RENEWAL STATUTES

The pertinent code sections are found in the Health and Safety Code and are entitled Community Redevelopment Law. The Community Redevelopment Law—which uses the words “urban redevelopment” and “urban renewal” interchangeably—is a long and complicated statute. It covers sections 33000 to 35237 inclusive of the Health and Safety Code. Section 33040 contains a finding by the legislature in the following language:

It is found and declared that there exist in many communities blighted areas which constitute either social or economic liabilities, or both, requiring redevelopment in the interest of the health, safety, and general welfare of the people of such communities and of the State.1

It will be noted that this section does not find that these areas exist in all communities. Of particular importance are the subsequent sections which define the conditions that characterize a blighted area. Characteristic among such conditions are: (1) Buildings and structures which are unfit and unsafe for the use for which they were constructed and are now conducive to ill health, transmission of disease, infant mortality, juvenile delinquency

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and crime because of defective design, over-crowding, inadequate facilities, and deterioration.\(^2\) (2) Economic dislocation, deterioration, and disuse caused by faulty planning; subdividing without regard for proper development, the physical characteristics of the land and the adequacy of streets and utilities.\(^3\) (3) Depreciating values and social maladjustments to such an extent that tax receipts are inadequate to meet the cost of public services rendered.\(^4\) (4) And where, in some parts of the blighted area, there is a growing or total lack of proper utilization of land potentially useful or a loss of population and reduction of proper utilization, resulting in further deterioration and added cost to the taxpayer.\(^5\)

The statute also contains a declaration that areas exist in which the conditions characteristic of a blighted area are present to a lesser degree but threaten to become blighted if not remedied, and that these deteriorating areas are also a menace to public health, safety and welfare.\(^6\) Such conditions of blight can be remedied by rehabilitation and conservation, which may, however, require public acquisition at a fair price of certain parcels of land to remove or prevent the spread of blight or deterioration, or to provide land for proper facilities.\(^7\)

While it is necessary for an area to be blighted before a project can be undertaken, the word “characterized” is not defined by the legislature. The Supreme Court of the United States, however, has held that an area must be looked at as a whole in order to “characterize” its condition.\(^8\) In Babcock v. Community Redevelopment Agency\(^9\) a plaintiff sought an injunction to prevent the carrying into effect of an urban renewal project in Los Angeles on the ground that his property had a good building on it and that it was not blighted. The California District Court of Appeals pointed out that “even if the condition of his own property is not characteristic of the condition of property in a blighted area, that fact is not determinative that the area as a unit is not a blighted area . . . The test is the area as a unit not two dwellings located in the area.”\(^10\) It seems apparent, therefore, that whatever “characterized” means, it refers to looking at the area as a whole.

The Community Redevelopment Law also contains a recognition that blighted areas present difficulties and handicaps which are beyond remedy

\(^2\) CAL. HEALTH & SAF. CODE § 33041.
\(^3\) CAL. HEALTH & SAF. CODE § 33042.
\(^4\) CAL. HEALTH & SAF. CODE § 33043.
\(^5\) CAL. HEALTH & SAF. CODE § 33044.
\(^6\) CAL. HEALTH & SAF. CODE § 33977(a) (b).
\(^7\) CAL. HEALTH & SAF. CODE § 33977 (c) (d).
\(^10\) Id. at 48, 306 P.2d at 519.
and control solely by regulatory processes of the exercise of the police power.\textsuperscript{11} It encourages the use of private enterprise in curing blighted conditions, and provides public assistance when appropriate. This latter consideration may be significant for the statute expressly provides:

That whenever the redevelopment of blighted areas cannot be accomplished by private enterprise alone, without public participation and assistance in the acquisition of land, in planning and in the financing of land assembly, in the work of clearance, and in the making of improvements necessary therefor, it is in the public interest to employ the power of eminent domain, to advance or to extend public funds for these purposes, and to provide a means by which blighted areas may be redeveloped or rehabilitated.\textsuperscript{12}

This provision has not yet been construed by an appellate court, but it would seem to require, in addition to the requirement that an area must be characterized as blighted, a showing that redevelopment cannot be accomplished by private enterprise alone before the government is authorized to step in with an urban renewal project.

\textbf{Constitutionality of the Redevelopment Law}

The case of \textit{Redevelopment Agency v. Hayes}\textsuperscript{13} was the first test of the constitutionality and validity of the Community Redevelopment Law. That case was an original proceeding in mandamus commenced in the District Court of Appeals for the First District by the Redevelopment Agency of the City and County of San Francisco for a determination of the constitutionality of the Community Redevelopment Law. The case was determined on a verified petition which was controverted by a demurrer. Thus, the facts stated in the petition were deemed to be true. It involved two areas in San Francisco, the Western Addition and Diamond Heights.

Western Addition was shown to be a true slum consisting of twenty-eight blocks with more than two thousand substandard dwellings and hundreds of rooms in dilapidated rooming houses and skid-row buildings. More than sixty per cent of the dwelling units were dilapidated or lacked private baths; over forty per cent had more than twice as many families than originally planned for; and more than fifty per cent had inadequate toilet facilities and lacked installed heating. Storage of inflammable materials and inadequate fire escapes and exits added to the hazard of the inhabitants. Extreme overcrowding was shown to be three and one-half times more

\textsuperscript{11} \textit{Cal. Health & Saf. Code} § 33045.
\textsuperscript{12} \textit{Cal. Health & Saf. Code} § 33047 (b).
\textsuperscript{13} 122 Cal.App.2d 777, 266 P.2d 105 (1954).
prevalent in the area than for the city as a whole. The court found that the correction of these blighted conditions could not be accomplished without redevelopment of the area as a whole, nor by private enterprise alone without public participation.

Justice Bray in speaking for the court called Western Addition "a blighted area of the type usually referred to as a 'slum.'" He further defined a slum area as "one, which because of lack of adequate open spaces and community facilities, and because of a preponderance of substandard buildings, does not provide an environment in accordance with the accepted standard of urban neighborhood life." He held that the redevelopment act was constitutional as it applied to the Western Addition.

The Diamond Heights area was also ruled on. It was admitted that Diamond Heights did not constitute a slum. Rather, it was claimed that Diamond Heights came under the definition of blight as defined by section 33042 of the Health and Safety Code.

Diamond Heights is on a mountain in San Francisco, south of Twin Peaks. It was subdivided in the early days into twenty-five foot lots. The blocks were set out in checker-board pattern. A very small portion of the property was put into use. The hills were so steep that they were never opened. A large portion of the area that had been originally sold had reverted to the state for nonpayment of taxes. Further, the privately owned lots were isolated from one another. There was, however, a dire shortage of space for new housing in the City of San Francisco. It was held that the act was also constitutional as far as Diamond Heights was concerned.

It should be emphasized that it is the combination in Diamond Heights of practically all the blight conditions mentioned in section 33042, subdivisions (a) to (d), showing a definitely compelling economic need, which permits the use of the act. Public agencies and courts both should be chary of the use of the act unless, as here, there is a situation where the blight is such that it constitutes a real hindrance to the development of the city and cannot be eliminated or improved without public assistance. It never can be used just because the public agency considers that it can make a better use or planning of an area than its present use or plan. As said in Schneider v. District of Columbia, supra, 117 F.Supp. 705 "... it behooves the courts to be alert, lest currently attractive projects impinge upon fundamental rights."

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14 Id. at 786, 266 P.2d at 112.
15 Ibid.
16 See text accompanying note 3 supra.
THE REDEVELOPMENT AGENCY

The Health and Safety Code provides for the creation of a redevelopment agency, which is a public body, corporate and politic, in each community. It provides that an agency shall not transact any business or exercise any powers unless, by resolution, the legislative body declares that there is need for an agency to function in the community. There are also provisions dealing with how members of the agency are appointed, their terms of office and so forth. The agency may hire assistants, invest money, exercise eminent domain and let contracts. The code further provides that a redevelopment area may be designated by resolution of the legislative body, or the legislative body may, by resolution, authorize the designation of redevelopment areas by resolution of the planning commission or by resolution of the members of the agency.

The agency is also authorized to formulate plans of redevelopment. In that regard a 1959 amendment directs that each agency shall prepare or cause to be prepared, or adopt, a redevelopment plan for each project area. It also provides that before the adoption of a redevelopment plan by the agency, the agency shall conduct a public hearing on it after notice. After adoption by the agency the plan then goes to the legislative body, which is required to give notice of a hearing. Protests may be filed and the legislative body is required to hear and pass upon all written and oral objections at a public hearing.

It is mandatory that the legislative body determine whether the plan would redevelop the area in conformity with the Community Redevelopment Law and in the interests of the public peace, health, safety and welfare, and whether the adoption and carrying out of the redevelopment plan is economically sound and feasible. There is further provision that when temporary or permanent displacement of any occupant of the project area results, the legislative body must not approve the plan unless (a) adequate permanent housing is or will be available in the same county, (b) such housing is reasonably convenient for their needs as determined by the

18 CAL. HEALTH & SAF. CODE §§ 33200-37.
19 CAL. HEALTH & SAF. CODE § 33201. (In this section and others of the redevelopment law, the 1961 session substituted "ordinance" for "resolution." See Stats. 1961, c. 2149.-Ed.)
20 CAL. HEALTH & SAF. CODE §§ 33230-37.
21 CAL. HEALTH & SAF. CODE §§ 33260-305.
22 CAL. HEALTH & SAF. CODE § 33480.
23 CAL. HEALTH & SAF. CODE §§ 33700-49.
24 CAL. HEALTH & SAF. CODE § 33700.
25 Ibid.
26 CAL. HEALTH & SAF. CODE § 33730.5.
27 CAL. HEALTH & SAF. CODE § 33732.
28 CAL. HEALTH & SAF. CODE § 33731.
agency, and, (c) the rents are comparable to those in the project area at the time of displacement. This permanent housing can, if necessary, be outside the county wherein the agency is located, subject to the approval of the governing body of such county or city in which the housing is made available.  

Attention is invited to the fact that two public hearings are required before a plan may be adopted; first, a public hearing by the redevelopment agency, and, secondly, a public hearing before the legislative body.

DELEGATION OF AUTHORITY TO MUNICIPAL BODIES

In acting on urban renewal matters a city is not acting in matters of municipal concern, but as an agent of the state, and the only authority of the legislative body is that delegated by the state.  

The annexation of territory to a city has always been a matter of state law rather than merely one of municipal concern. In *The American Distilling Co. v. City Council*, a case in which the validity of an annexation of territory to the City of Sausalito was questioned, the city council raised a preliminary question as to the power of a court to enter any judgment at all in the proceeding. The council contended that the judgment operated as an unlawful interference with the exercise of legislative power. The court held that the statute constituted the measure of the power to be exercised by the city council, citing *Kleiber v. City and County of San Francisco*.  

Therefore one may conclude that the agency and the city have only the powers that are granted by the Community Redevelopment Law and must proceed in accordance therewith, including the two public hearings referred to above.  

In *Morin v. City Council*, the District Court of Appeals for the First District held, in an annexation matter, that public hearings contemplate fair and impartial hearings at which competent evidence may be presented.  

There is a long line of cases in California which hold that in public hearings before administrative bodies, hearsay evidence alone is not sufficient to justify a finding, and that the denial of cross-examination is a violation of constitutional due process. In *Scannel v. Wolf* it was held that evi-

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29 CAL. HEALTH & SAF. CODE § 33738.  
30 Kleiber v. City and County of San Francisco, 18 Cal.2d 718, 724; 117 P.2d 657, 660 (1941).  
31 34 Cal.2d 660, 213 P.2d 704 (1950).  
dence before an administrative body must be under oath. In Steen v. Board of Civil Service Commissioners it was also held that evidence before a local board on a public hearing must be under oath with right of cross-examination.

In most of the hearings before agencies and legislative bodies convened to adopt redevelopment plans, the agency engages the service of a court reporter. The practitioner who is representing protestants should ascertain in advance of the hearings whether or not a reporter is to be engaged and whether or not he can purchase a copy of the transcript. If there is no arrangement made by the public authorities for a reporter, one should be arranged for by the practitioner and he should also insist that the testimony be under oath and upon the right of cross-examination. For if he intends to take the matter to the courts, the lawyer must make every effort to exhaust his administrative remedies, a condition precedent to the successful prosecution of a court action.

Theoretically the members of the redevelopment agency and the legislative body, such as a city council, are supposed to act fairly, impartially and without bias. That rule was established in Saks & Co. v. City of Beverly Hills. The fact remains, however, that members of these agencies and members of city councils are not judges and in most cases they are not even lawyers. There is little, if any, judicial temperament among them. Very few of these plans go to the hearing stage without some sort of commitment that they are going to be approved and adopted. Consequently the hearings before the agency and the council in most cases will accomplish little more than making a record to be used in a subsequent court action.

**ATTACKING A PROJECT IN COURT**

There are several cases in California where the constitutionality of the statute has been attacked. The constitutionality of the Community Redevelopment Law has been upheld in every attack that has been made against it as of the date of this printing. The method of attack has been either intervening against a petition for an original writ of mandate in the district court of appeals or a complaint for an injunction.

In Redevelopment Agency v. Hayes the court stated, "our decision is
limited to questions of law, based upon the assumption that the findings of
the administrative agencies involved in the redevelopment program are true.
This decision in no wise bars a determination in a trial court of such issues
of fact as may be properly raised in an attack upon an administrative
proceeding."

In the Babcock case an injunction was sought. In seeking this form of
relief, however, the plaintiff is immediately confronted with the provision
of section 526 of the Code of Civil Procedure, which provides that an injunc-
tion cannot be granted to prevent the execution of a public statute by offi-
cers of the law for the public benefit.

Several cases in California hold that an injunction cannot control an
abuse of discretion, and that the only instance in which an injunction can be
granted to enjoin the execution of a public statute is where that statute is
unconstitutional. Therefore injunction is not an available remedy unless it is
also contended that the statute is unconstitutional.

It is possible, of course, to have a statute which is generally constitutional
held unconstitutional as to a particular person or a particular set of facts. Furthermore, in no case that has gone to the appellate courts has the Com-

The better remedy is to proceed either by a petition for a writ of
mandamus, or by combining an application for a writ of mandamus with an
application for a writ of certiorari and an action for declaratory relief.

The advantage of combining a petition for the writ of mandamus with a
petition for a writ of certiorari is that if the court issues an alternative writ
of certiorari that writ will command the legislative body and the redevelop-
ment agency to certify fully to the court the transcript of the record and
proceedings. If the writ of mandamus is applied for alone, the petitioner
must make up the record.

The advantage of adding an action for declaratory relief is that this is a
civil action which requires a pre-trial conference if desired. The statute
requiring pre-trial conferences does not apply to special proceedings such as
proceedings in mandamus and certiorari.

10 Shalko v. City of Sunnyvale, 14 Cal.2d 213, 93 P.2d 93 (1939).
11 CAL. CODE CIV. PROC. § 1071.
12 CAL. SUPER. CT. R. 8-8.12.
refers to the combination as "certiorarified mandamus." 3 WITKIN, CALIFORNIA PROCEDURE
2577 (1954).
JUDICIAL REVIEW OF MUNICIPAL AGENCY ACTIONS

A very interesting and as yet undetermined question is the power of the court on review. The Health and Safety Code as amended in 1959 provides:

The findings and determinations of an agency and of a legislative body or of either of them, in the adoption and approval of any redevelopment plan may be judicially reviewed by a court of competent jurisdiction. Such action must be brought within 60 days after the date of adoption of the ordinance approving the plan.\(^{44}\)

There is further provision made that "no action shall be brought prior to the adoption of the final redevelopment plan."\(^{45}\) These provisions are unique in that very few statutes providing for decision by administrative agencies specifically grant a right of judicial review.

The code was also amended in 1959 to provide that the decision of the legislative body on a plan shall be final and conclusive, and it shall thereafter be conclusively presumed that the project area is a blighted area, and that all prior proceedings have been duly and regularly taken.\(^ {46}\)

In an action pending in the Superior Court for the County of Santa Clara attacking a redevelopment plan in the City of Santa Clara, the point was directly made on demurrer and on motion to strike that this section prevented the court from reviewing the question as to whether the area was blighted and reviewing the question as to whether prior proceedings had been duly and regularly taken.

At the 1959 session of the legislature, section 33955 of the Health and Safety Code was added to the Community Redevelopment Law.\(^ {47}\) That section authorized a redevelopment agency which proposes to issue bonds to commence a special proceeding in the superior court to determine the validity of a redevelopment plan. Section 33959, which was also added in 1959,\(^ {48}\) provides that if such special proceeding is commenced after the expiration of sixty days from the date of adoption of the ordinance approving the redevelopment plan, the restrictions of section 33746 shall apply and no person shall be permitted to contest the legality or validity of the find-

\(^{44}\) CAL. HEATH & SAF. CODE § 33746; Stats. 1959, c. 1102. (In 1961 § 33746 was amended to read: "No action attacking or otherwise questioning the validity of any redevelopment plan, or the adoption or approval of such plan, or any of the findings or determinations of the agency or the legislative body in connection with such plan shall be brought prior to the adoption of the redevelopment plan nor at any time after the elapse of 60 days from and after the date of adoption of the ordinance approving the plan." Stats. 1961, c. 1557.—Ed.)

\(^{45}\) Ibid.

\(^{46}\) CAL. HEATH & SAF. CODE § 33732.

\(^{47}\) Stats. 1959, c. 1542.

\(^{48}\) Stats. 1959, c. 1542.
ings and determinations of the agency or of the legislative body or of either of them, unless such issue has been raised in an action or proceeding commenced before the expiration of said sixty day period, and that such action or proceeding was consolidated for trial with the special proceeding commenced under this section.

The answer to the position taken by the City of Santa Clara in the superior court was twofold: First, that the authority of the court to issue a writ of mandamus and a writ of certiorari came directly from the constitution and it could not be enlarged or diminished by an action of the legislature. Thus, if section 33732 meant that these findings were conclusive provided a proceeding was filed within sixty days, that section would be unconstitutional. Secondly, that a court should construe each of these sections on its face and try to give each a meaning that would make it constitutional, if possible. The fair intention implied on the face of all three sections as amended or added at the same session of the legislature was that these findings became conclusive only if they were not directly attacked by a proceeding commenced within sixty days after the enactment of the ordinance.  

The trial judge took the matter under submission for several days, then overruled the demurrer and denied the motions to strike without assigning reasons therefor.

In judicial review of city council actions the rule is that in passing on the finding of a city council or other municipal body acting in a municipal affair, the court should sustain the action of the municipal body if there is substantial evidence to sustain the determination of such body. Supporting this rule in California is a long line of cases dating from the early case of People v. Provines. At that time there were three justices on the California Supreme Court and in that case there were three separate concurring opinions which collect the earlier cases on the scope of review. People v. Provines promulgated the substantial evidence rule based on the theory that in conducting municipal affairs, a municipal body could combine legislative, administrative and judicial functions. Therefore, the review of an action of a city body in a municipal affair was analogous to the review of an action of an inferior court and the decision could not be overturned if there was substantial evidence to support it.

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40 Former Article 5 of the Community Redevelopment Law which included §§ 33955-61, added by legislation in 1959 (supra notes 47, 48) was repealed by the 1961 legislative session. Stats. 1961, c. 1557. The subject matter is now covered by §§ 33955-57, with some changes. Stats. 1961, c. 1557.—Ed.

50 34 Cal. 520 (1868).
With respect to state-wide agencies created by legislative enactment, it had long been the practice to use the writ of certiorari to test the validity of those actions. But in *Standard Oil v. State Board of Equalization*, the California Supreme Court held that the writ of certiorari could only be used to review judicial and quasi-judicial acts of inferior judicial and quasi-judicial tribunals. And since the creation of judicial tribunals is specifically provided for in the California constitution, the legislature could not delegate judicial power to an administrative agency. Consequently, the writ of certiorari could not be used to review an action of a state-wide body created by statute because that body was purely administrative.

The case further held that the right of the court to issue a writ of certiorari was granted by the constitution and the legislature could not trench upon, enlarge or diminish the constitutional jurisdiction of the supreme court, or any other state court.

This decision left a vacuum in this area until the case of *Drummey v. State Board of Funeral Directors* was decided by the supreme court in 1939. In that case it was held that the writ of mandamus was the proper writ to enable a court to review the action of a state-wide statutory agency, and that such an agency, created by statute, had no judicial powers, being purely administrative. Thus the court could weigh the evidence and try the matter de novo.

The procedure which has eventually evolved in review of the actions of state-wide administrative agencies created by statute, is one called a quasi trial de novo, where the transcript of the proceeding before the administrative agency is introduced into evidence along with such additional evidence as in the discretion of the court should be admitted. The court makes an independent judgment on the facts. On appeal the question is, was there substantial evidence to sustain the judgment of the trial court? Substantial evidence to sustain the agency's finding is not a factor.

In the *Standard Oil* case, the court held that if a tribunal created by the legislature was local in territorial jurisdiction, the substantial evidence rule applied, by virtue of the last sentence of section 1, article VI of the constitution which vested judicial power in such inferior courts as the legislature.

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61 6 Cal.2d 557, 59 P.2d 89 (1936).
62 Cal. Const. art. VI, § 1.
63 13 Cal.2d 75, 87 P.2d 848 (1939).
may establish in any town or township, city, county, or city and county.

In 1950 section 1, article VI was amended to read:

The judicial power of the State shall be vested in the Senate sitting as a Court of impeachment in the Supreme Court, district courts of appeal, superior courts, municipal courts and justice courts.\textsuperscript{55}

It thus appears the right formerly given to the legislature to establish inferior courts within local territorial limits was stricken from the constitution.

Another section in article VI requires the legislature to divide the state into judicial districts, and that those districts having more than forty thousand people shall have a municipal court and those having less than forty thousand people shall have a justice court.\textsuperscript{56}

In summary then, if the rationale of the \textit{Standard Oil} case applies, in view of the amendment to the constitution of 1950, and in view of the holdings that the Community Redevelopment Law is a state matter and not a matter of municipal concern, and that these local agencies are exercising merely delegated powers, the supreme court should hold that, in the judicial review of a redevelopment plan, the court can exercise an independent discretion, can weigh the evidence and make an independent finding. It should not be limited to determining whether or not substantial evidence exists to support the conclusion of a redevelopment agency or a city council in connection with a redevelopment plan.

\textsuperscript{55} November 7, 1950.

\textsuperscript{56} \textsc{Cal. Const.} art. VI, § 11.