

NOTES

TOWARD SUCCESSFUL URBAN REVITALIZATION: WHY NEW JERSEY SHOULD RELINQUISH SOME OF ITS *BERMAN* POWER TO BULLDOZE FOR “REDEVELOPMENT”

Brian N. Biglin*

FOREWORD

The rise and fall of American cities was one of the most definitive trends of the twentieth century. As the century began, the American landscape was dotted with thriving cities large and small. By the Roaring Twenties, each was crowned by dramatic limestone skyscrapers and could boast of art museums, universities, and cathedrals to rival the European capitals. New York, Philadelphia, Detroit, and Chicago were the largest and most renowned, but places of smaller stature—Boston, Newark, Pittsburgh, Baltimore, and Cincinnati—also inspired their denizens with pride and optimism.¹ These cities had sophisticated transit systems² and a distinctive fabric of densely populated neighborhoods; urban living was for everyone, and central cities contained the vast majority of

* Senior Articles Editor, *Rutgers Law Review*. Candidate for J.D., 2011, Rutgers School of Law—Newark. A.B., Economics, University of Michigan. Many thanks to my parents and grandparents for their support of my educational endeavors from an early age, and for teaching me about why cities are important. Additional thanks to my professors and my friends at the law school who either took an interest in this Note or simply provided the motivation and support to complete this and other work while always enjoying myself.

1. Newark, a special focus of this Note, was heralded as a center of commerce and culture with seemingly endless potential. Upon its 250th anniversary in 1915, a poetry contest celebrating the city was held, and its organizers proclaimed that Newark had “beautiful homes, fine parks, admirable schools . . . a good government, churches in plenty and many worthy clubs and societies.” THE COMMITTEE OF ONE HUNDRED, THE NEWARK ANNIVERSARY POEMS: WINNERS IN THE POETRY COMPETITION 163-64 (Laurence Tamme ed., 1917), available at <http://www.archive.org/stream/newarkannivers00commrich/djvu.txt>. In 1925, Newark’s merchants boasted: “Broad Street today is the Mecca of visitors as it has been through all its long history. They come in hundreds of thousands now when once they came in hundreds.” KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 174 (1987) (internal quotation marks omitted). In 1927, the Chamber of Commerce proclaimed, “[g]reat is Newark’s vitality” and predicted that the city might become “perhaps the greatest industrial center in the world.” *Id.* at 275.

2. See generally JACKSON, *supra* note 1, at 87-116.

each region's population.³ American cities reached a crescendo in the first half of the twentieth century, but would soon hit rock bottom.

The second half of the century witnessed perhaps the most rapid, systematic change in population patterns the world has ever seen.⁴ A fundamental paradigm shift occurred, ushering in an era of ill regard for cities that continues today in many places. The American people, at the urging of their government and the home construction industry, pursued a suburban dream that was suddenly brought into reach.⁵ Thanks to superhighways⁶ and subsidies for new home construction,⁷ suburbs became accessible to more than just ambitious speculators and capitalists looking for a comfortable retreat.⁸ Ironically, the stately "garden cities" that the earliest suburbanites had built—Bronxville, The Oranges, Evanston, and Grosse Pointe—were not retained as models for development during this era of mass suburbanization.⁹ Quaint settlements of sturdily built colonials and Tudors, complete with town centers and train stations, would never be built again. The new design was mass-produced and planned with the automobile in mind—it was sprawl.¹⁰ And in one of history's inexplicable twists, Americans ate it up.¹¹ Regional population shifted heavily to modern suburbs,

3. See, e.g., THOMAS J. SUGRUE, *THE ORIGINS OF THE URBAN CRISIS: RACE AND INEQUALITY IN POSTWAR DETROIT* 21-24 (2005) (explaining that there were neighborhoods for everyone in Detroit, though racial divides between districts were sharp).

4. See, e.g., *id.* at 3; JACKSON, *supra* note 1, at 217 (mentioning the halving of St. Louis' population over four decades).

5. See, e.g., JACKSON, *supra* note 1, at 190-219. See generally ANDRES DUANY, ELIZABETH PLATER-ZYBERK & JEFF SPECK, *SUBURBAN NATION: THE RISE OF SPRAWL AND THE DECLINE OF THE AMERICAN DREAM* 7-12 (2001); Casey Walker, *Clear and Hold*, BOSTON REVIEW, July/August 2010, available at <http://bostonreview.net/BR35.4/walker/php> ("[F]ederal and state governments effectively subsidized mass migration away from troubled cities and out to the suburbs.").

6. JACKSON, *supra* note 1, at 249-50.

7. *Id.* at 196-218. Jackson, however, warns against blaming the government entirely. Consistent with his overall belief that an impulse to develop frontiers had long been part of the American psyche, he found the mid-century Federal Housing Administration programs to be "in accord with the preference of [the] majority." *Id.* at 216.

8. See *id.* at 87-102 (describing the early suburbs, developed around the turn of the twentieth century, which existed in symbiosis with center cities by housing mostly wealthy families that remained intimately tied to the city) and 231-45 (explaining how post-war suburban development was geared towards a wide swath of the middle class).

9. Compare *id.* at 73-102 with JAMES HOWARD KUNSLER, *THE GEOGRAPHY OF NOWHERE* 117-21 (1994) (lamenting the modernist, automobile-focused designs of post-war development).

10. See generally JACKSON, *supra* note 1, at 231-71.

11. See KUNSLER, *supra* note 9, at 104-05; see generally ANTHONY FLINT, *THIS LAND: THE BATTLE OVER SPRAWL AND THE FUTURE OF AMERICA* 24-39 (2006).

*leaving cities in crises.*¹²

Ever since, almost every major city has been put in the difficult position of having to revive itself. Their battles have been particularly uphill due to dwindling resources and an egregious lack of regional cooperation in most areas, not to mention the fearful perceptions that plagued cities (even prominent sections of Manhattan) during their low periods (and, in many cases, still today).¹³ Tax bases were eviscerated, transit systems decayed or folded,¹⁴ schools lost funding and were mismanaged, and poverty caused rampant crime and gang domination.¹⁵ With their backs to the wall, city governments often decided to “renew” their cities by starting from scratch—demolishing what was there and building a new, and different-looking, physical realm.¹⁶ In most cases, their efforts were blessed with enthusiastic approval and generous funding from the federal government.¹⁷ Though these bulldozing projects purported to target “blight,” much good was obliterated along with the bad; this Note argues against the legal powers that have permitted so many irreplaceable aspects of cities to be turned to waste.

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12. See, e.g., SUGRUE, *supra* note 3, at 149 (noting that Detroit, like many cities, “began an unbroken downward fall in the 1950s,” when even city-based employers began to relocate in suburbs). Indeed, one crisis begat more crises; after the flight of the 1950s, many remaining inner city residents left because of rampant crime, falling property values, and race riots. See *id.* at 259-71.

13. On the lack of regional cooperation, see GERALD FRUG, CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS 17-25 (1999) and MYRON ORFIELD, AMERICAN METROPOLITICS: NEW SUBURBAN REALITY 23-48 (2002).

14. This was hastened by the conspiratorial dismantling of street rail systems in several major cities. JACKSON, *supra* note 1, at 170-71.

15. *E.g., id.* at 285-86.

16. *E.g.,* JANE JACOBS, THE DEATH AND LIFE OF GREAT AMERICAN CITIES 270 (1961); JACK HORNUNG & ALFRED P. VAN HUYCK, THE CITIZEN’S GUIDE TO URBAN RENEWAL 17-23 (1962); CARLA T. MAIN, BULLDOZED: “KELO,” EMINENT DOMAIN, AND THE AMERICAN LUST FOR LAND 130 (2007). Importantly, the first decisions to pursue renewal came after suburban flight began, but before the true depths of the urban crisis set in; this Note will show that the first wave of renewal contributed to the severity of the crisis. See text accompanying notes 113-19.

17. MARTIN ANDERSON, THE FEDERAL BULLDOZER 1-38 (McGraw-Hill 1964); MAIN, *supra* note 16, at 129-33.

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INTRODUCTION

Urban renewal is the replacement of extant cityscapes with new development, effectuated through a process of acquisition, demolition, and redevelopment, generally making use of the power of eminent domain.¹⁸ The first push for urban renewal occurred in the 1930s as a response to concerns of overcrowding in certain sections of large cities like New York, Chicago, and Detroit.¹⁹ In the 1950s and 1960s, cities destroyed many of their older neighborhoods in pursuit of two concomitant goals: removing “slums” and rebuilding the city in a manner more appealing to modern tastes.²⁰ With the exodus to suburbia underway, municipal leaders believed they could make their neighborhoods desirable again by emulating the green space, modernist housing, and highways of the suburbs.²¹

In more recent decades, urban renewal projects, while sometimes being premised on the eradication of blighted areas, have more often been predicated on hopes of improving the economic prospects of a

18. ANDERSON, *supra* note 17, at 3; HORNUNG & VAN HUYCK, *supra* note 16, at 12.

19. See JACKSON, *supra* note 1, at 221-24 (noting how the first slum clearances of the 1930s also marked the beginning of the public housing experiment, and were largely spurred by Congress’s desire to create jobs through public works); see also *Great Depression (1930s)*, LOWER EAST SIDE TENEMENT MUSEUM (2005), http://www.tenement.org/encyclopedia/ecodepress_greatdepression.htm (last visited Nov. 12, 2010). A series of powerful images depicting First Lady Eleanor Roosevelt christening the first demolitions, which made way for high-rise public housing in Detroit, has been preserved by Wayne State University. See Appendix, Photo Exhibit A. An equally chilling array of widely available photography and films capture the present day abandonment of the same modernist housing. *E.g.*, *id.*

20. HORNUNG & VAN HUYCK, *supra* note 16, at 11-22. Generally, these massive renewal projects created civic centers, large freeways, and “tower in the park” residential districts which departed from traditional urban design. See MAIN, *supra* note 16, at 134 (“Eminent domain would become the great forklift with which idealistic urban planners would pick up millions of pounds of American earth and mold our cities to their modernist vision.”).

21. See, e.g., HORNUNG & VAN HUYCK, *supra* note 16, at 11-22; Walker, *supra* note 5 (providing an example of a renewal’s misguided view in describing how “[Famed New York highway and renewal planner Robert] Moses is perhaps most famous for the fervor with which he loved his roads. He saw vehicular traffic as the key to New York’s long-term success.”).

city²² by assembling land for signature developments like casinos,²³ sports arenas,²⁴ office parks,²⁵ or factories.²⁶ The difference between eradicating blight and simply enabling economic development takes on legal significance in many states, including New Jersey.²⁷

Municipalities in New Jersey have engaged in extensive urban renewal. The State's numerous downtrodden cities have frequently presented circumstances for which leaders thought it rational to "re-make" that city.²⁸ Though New Jersey is unique due to its multitude

22. Author Carla T. Main described the thought process that occurred over time after governments became accustomed to using their legal ability to remove blighted areas: "If you can fight blight, why not create beauty? If beauty, why not bounty?" MAIN, *supra* note 16, at 135.

23. *E.g.*, Robert Ankeny & Laura Bailey, *Deal Could Free Riverfront Land; But Mayor, Council Must Deal with Casinos First*, CRAIN'S DETROIT BUSINESS, Mar. 25, 2002, at 3 (reporting Detroit's efforts to make use of land turned vacant due to failed efforts of the previous mayoral administration to develop casinos on land it condemned in the historic riverfront district).

24. *E.g.*, Charles V. Bagli, *Atlantic Yards Wins Appeal To Seize Land*, N.Y. TIMES, Nov. 25, 2009, at A1 (reporting the New York high court's approval of the state's condemnation of a neighborhood adjacent to the Atlantic Yards in Brooklyn for a private developer's construction of a basketball arena and new housing); Walker, *supra* note 5, at 3-4 (commenting, with reference to the long-awaited Atlantic Yards development, that "[w]ell-functioning but unlovely places are under the gun of newly expanded powers of eminent domain and private developers who want to demolish and start over," and that developments like that at Atlantic Yards "indulge[] our desires for magisterial urban dreamscapes, for a city of the future, like an exhibit at some bygone World's Fair").

25. *E.g.*, Patrick McGeehan, *Pfizer to Leave City that Won Land-Use Suit*, N.Y. TIMES, Nov. 13, 2009, at A1 (reporting that the corporation whose offices anchored the only completed development on land assembled and cleared by New London, Connecticut's development authority—with the notorious approval of the Supreme Court—was vacating the site, and that the remainder of the large condemned area remained empty).

26. Jenny Nolan, *Auto Plant vs. Neighborhood: The Poletown Battle*, THE DETROIT NEWS (Jan. 27, 2000), <http://apps.detnews.com/apps/history/index.php?id=18> (looking back on the early 1980s demolition of a Detroit neighborhood which displaced a closely knit neighborhood of 4,200 in favor of a new General Motors plant which would employ thousands and provide much needed tax revenue to the declining city).

27. New Jersey bars municipalities from condemning without the presence of blight. This is explored extensively *infra*, Part I.B.

28. *E.g.*, HAROLD KAPLAN, URBAN RENEWAL POLITICS: SLUM CLEARANCE IN NEWARK 10-23 (1963). The practices are ongoing, with large cities like Newark and smaller cities like Long Branch attempting to push the outer limits of their powers to acquire land. *See, e.g.*, Rudy Larini, *Long Branch Residents Win Battle to Keep Homes; Eminent Domain Settlement Ends Dispute over Beachfront Sites*, THE STAR-LEDGER, Sept. 16, 2009, at 1. *But see* MaryAnn Spoto, *Court Rebuffs Long Branch in Longtime Eminent Domain Dispute; City Failed to Meet Today's Tougher Rules*, THE STAR-LEDGER, Apr. 17, 2010, at 9 (reporting that the New Jersey Appellate Division found one of the city's redevelopment areas invalid because the city failed to prove the existence of blight, to which the city's mayor and longtime eminent domain supporter, Adam Schneider, responded, "We'll figure it out and will do it without any takings[.]

of historic cities of small and medium size, this Note's focus on New Jersey does not limit its applicability. New Jersey simply provides a deep well of urban renewal history that is either mirrored or applicable elsewhere.²⁹ Likewise, this Note's arguments for specific reforms to New Jersey's redevelopment statute can be raised almost anywhere.

STATEMENT OF PURPOSE

This appraisal and critique of the law and policy of "slum clearance" and comprehensive urban redevelopment plans effectuated by eminent domain will argue that states and localities, particularly New Jersey and its many cities, would be well served to act on Justice Stevens' proposal in *Kelo v. City of New London*³⁰ by limiting their own powers to take property for the purpose of promoting redevelopment or remedying blight. In particular, this Note will argue strenuously against the power to take non-blighted, fully productive homes and businesses due to their location within "areas in need of redevelopment" or their supposed integral role in effectuating comprehensive "redevelopment plans." In addition to being perhaps the most unfair governmental takings imaginable, these takings are founded on an egregious misunderstanding of how cities thrive, which has persisted in spite of decades of failed "renewal" and vociferous objections from urbanists, economists, and inner city residents. At the core of these misunderstandings are two prominent non sequiturs: that bulldozing non-blighted property can stop blight, and that wrecking productive properties in an urban setting can help to revitalize the same urban setting. Although the requirements for declaring redevelopment areas in New Jersey have been tightened in crucial ways by judicial interpretation of the state constitution, further limitations, best accomplished through statutory reform, are necessary to curb the disturbingly broad powers of New Jersey municipalities to "redevelop" themselves with the bluntest of tools. Such reform would make New Jersey, and any other state that follows suit, a model for reviving historic cities through fair and rational legal techniques.

Part I of this Note will introduce the current legal landscape underlying redevelopment condemnations. It will first describe the broad powers permitted by the expansive Supreme Court jurisprudence on eminent domain. It will then contrast this with the narrower—but still potent and problematic—condemnation powers

It's going to be the only way to proceed.").

29. *Infra*, Part II.A.iv; see THE CASTLE COALITION, REDEVELOPMENT WRECKS: 20 FAILED PROJECTS INVOLVING EMINENT DOMAIN ABUSE (2006) (documenting examples of failed redevelopment projects that used eminent domain).

30. 545 U.S. 469, 489 (2005).

provided through New Jersey's redevelopment statute (as interpreted by case law). Part II will engage in a broad, multidisciplinary attack on urban redevelopment effectuated through the "*Berman-LRHL*" power to condemn entire *areas*, including non-blighted parcels therein. These arguments will give credence to the theory and observations of urbanists, as well as economic studies. Additionally, current and historical case studies will uncover the counterproductive nature of the redevelopment powers in action to demonstrate that greater government restraint would promote more positive urban outcomes.

I. LEGAL AND HISTORICAL LANDSCAPE OF EMINENT DOMAIN FOR REDEVELOPMENT

A. *Eminent Domain for Redevelopment in Constitutional Law*

A government's ability to take property by eminent domain is both authorized and limited by the Takings Clause of the Constitution, which states that private property can be taken by the government if: (a) it is put to public use, and (b) just compensation is paid to the owner.³¹ The Supreme Court's interpretations of this Fifth Amendment clause generously define the outer limit of any state exercise of eminent domain.³²

As to the crucial question of what is public use, Supreme Court jurisprudence developed rapidly in the twentieth century.³³ The Court held that eminent domain seizures do not lack a public purpose solely because the government transfers property to private hands for development.³⁴ Then, in decisions that are indispensable to local governments' practices of urban renewal, the Court determined that the following fulfilled the public use requirement: (a) removing blight,³⁵ (b) pursuing redevelopment *plans* in blighted *areas* by seizing both blighted and non-blighted, productive parcels,³⁶ and (c)

31. U.S. CONST. amend. V.

32. The Takings Clause was incorporated against the states through the Fourteenth Amendment. *Green v. Frazier*, 253 U.S. 233, 239 (1920).

33. See generally *Kelo v. City of New London*, 545 U.S. 469, 478-83 (2005) (discussing the rejection of a highly literal definition of "public use" and the development of an array of purposes which satisfy the test).

34. *Berman v. Parker*, 348 U.S. 26, 34 (1954) ("We cannot say that public ownership is the sole method of promoting the public purposes of community redevelopment projects.").

35. *Id.* at 32 (reasoning that blight removal is a public use because it is clearly within the municipal police power; "disreputable housing conditions" can "spread disease and crime and immorality," and can cause "a blight on the community which robs it of charm").

36. *Id.* at 34-35 (holding that "redevelopment programs need not, by force of the Constitution, be on a piecemeal basis—lot by lot, building by building," if the local

paving the way for potential economic development under a comprehensive redevelopment plan, even if some economically useful, non-blighted properties are taken under the locality's plan.³⁷

The Supreme Court, chiefly through *Berman v. Parker* and *Kelo v. City of New London*, has forged an expansive definition of public purpose and called for deference in cases challenging the constitutionality of local governing bodies' decisions to take property.³⁸ These holdings made amply clear that the Constitution does not bar the many slum clearances³⁹ and, more recently, urban redevelopment plans, that city governments have executed.⁴⁰

Berman, which ruled against the owner of a non-blighted department store,⁴¹ validated the widespread practice of leveling urban neighborhoods for implementation of entirely new designs, which occurred particularly from the 1950s onward.⁴² These leveled districts were sometimes redeveloped as public housing projects,⁴³ but were just as often rebuilt with upscale housing in place of the slum.⁴⁴ *Kelo*, in which the Court ruled against long-term homeowners of non-blighted historic homes,⁴⁵ stands for the more recent trend of making room for proposed developments that are desirable to a

government's finds that in order to prevent a neighborhood from reverting to blighted status—"as though possessed of a congenital disease"—the area must be completely rebuilt). The court reasoned:

It was not enough, [the local agency] believed, to remove existing buildings that were insanitary or unsightly. It was important to redesign the whole area so as to eliminate the conditions that cause slums—the overcrowding of dwellings, the lack of parks, the lack of adequate streets and alleys, the absence of recreational areas, the lack of light and air, the presence of outmoded street patterns. It was believed that the piecemeal approach, the removal of individual structures that were offensive, would be only a palliative.

Id. at 34.

37. See *Kelo*, 545 U.S. at 483-90 ("Promoting economic development is a traditional and long-accepted function of government.").

38. See *id.* at 482-83.

39. See ANDERSON, *supra* note 17, at 42-53 (explaining the rapid growth of federally funded urban renewal projects in the 1950s and 1960s). The remaking of American cities through the renewal programs which received blessing in *Berman* was strongly supported by President John F. Kennedy, among others, and was praised by the popular media. *Id.* at 12-13.

40. See *Kelo*, 545 U.S. at 488-89 (explaining the Court's non-scrutiny of locally-made redevelopment plans effectuated by eminent domain).

41. *Berman*, 348 U.S. at 31.

42. See MAIN, *supra* note 16, at 129-36.

43. See KAPLAN, *supra* note 28, at 17-19; see also SUGRUE, *supra* note 3, at 57-63 (discussing grandiose plans for public housing creation in Detroit that only partially came to fruition because of public opposition).

44. See MAIN, *supra* note 16, at 132-34.

45. *Kelo*, 545 U.S. at 475, 490.

municipality because of promised jobs and tax revenue.⁴⁶

In sum, constitutional case law confers no basis for federal courts to scrutinize the details of urban renewal plans, even plans predicated solely on hopes of economic development, as long as the local government has made basic findings showing the legitimate, rational public purpose in its plan.⁴⁷ The courts do not ask whether better alternatives exist or whether the redevelopment plan could be better tailored to avoid taking non-blighted properties.⁴⁸ Nor do they require demonstrating the likelihood that the proposed redevelopments will come to fruition.⁴⁹

Importantly, the states are free to circumscribe the definition of public use that will apply to condemnations by their political subdivisions.⁵⁰ As Justice Stevens, the author of the *Kelo* opinion, points out: "many States already impose 'public use' requirements that are stricter than the federal baseline. Some of these requirements have been established as a matter of state constitutional law, while others are expressed in state eminent domain statutes that carefully limit the grounds upon which takings may be exercised."⁵¹ Therefore, *Berman* and *Kelo* identify the extent of the powers that may be made available to local governments for

46. The most prominent and controversial precursor to the fact-pattern in *Kelo* was the Poletown-GM fiasco in Detroit, where the City decided to seize dozens of blocks in one of its few remaining centrally-located, middle class neighborhoods for the assembly of land which it would then convey to General Motors for a new factory. While contested under Michigan law, the Supreme Court of Michigan approved the condemnations, finding sufficient public purpose. *Poletown Neighborhood Council v. City of Detroit*, 304 N.W.2d 455, 459-60 (Mich. 1981). Michigan reversed course two decades after the neighborhood was razed for a Cadillac plant (and copious parking lots), deciding that economic redevelopment alone was not a public purpose under its state constitution. *See County of Wayne v. Hathcock*, 684 N.W.2d 765, 788 (Mich. 2004). *See* MAIN, *supra* note 16, at 135-45 (explaining the evolution of urban renewal from slum clearance to economic development projects and pointing out the common rationales linking both types of redevelopment).

47. *Kelo*, 545 U.S. at 488 ("When the legislature's purpose is legitimate and its means are not irrational, our cases make clear that empirical debates over the wisdom of takings . . . are not to be carried out in the federal courts." (quoting *Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, 242-43 (1984))).

48. *Id.* at 489 ("It is not for the courts to oversee the choice of the boundary line nor to sit in review on the size of a particular project area. Once the question of the public purpose has been decided, the amount and character of land to be taken for the project and the need for a particular tract to complete the integrated plan rests in the discretion of the legislative branch." (quoting *Berman v. Parker*, 348 U.S. 26, 35-36 (1954))).

49. *Id.* at 488 ("[W]e decline to second-guess the City's considered judgments about the efficacy of its development plan . . .").

50. *Id.* at 489 ("[N]othing in our opinion precludes any State from placing further restrictions on its exercise of the takings power.").

51. *Id.*

urban redevelopment projects, as opposed to a right that all governments can exercise.⁵² As this Note will discuss, many states, such as New Jersey, do not authorize their municipalities to access the economic redevelopment powers held constitutional in *Kelo*. The power to remove blight, however, has not been limited or questioned; it has effectively been transformed into a right belonging to local governments.⁵³

In this landscape, critical issues of fairness and policy lurk in the margins. What should constitute “blight?” And, critically, should a municipality be allowed to demonstrate the presence of blight on a regional basis, such that non-blighted parcels within a blighted area can be taken (as in *Berman*)?⁵⁴

B. New Jersey’s Limitations on Eminent Domain for Redevelopment, as Found in the Local Redevelopment and Housing Law and the State Constitution’s Definition of “Public Use”

New Jersey defines when and how eminent domain can be used for redevelopment in its Local Redevelopment and Housing Law (“LRHL”),⁵⁵ a statute at once authorized and limited by the Blighted Areas Clause of the New Jersey Constitution.⁵⁶

i. Powers Granted by Statute and Consistent with *Berman*

When a property is determined by its municipal governing body to be in an area “in need of redevelopment,”⁵⁷ it may be included in a redevelopment plan⁵⁸ and acquired through the power of eminent domain.⁵⁹

The statute identifies eight circumstances which, if found by resolution of the municipal governing body to exist in a “delineated area,” justify the creation of a redevelopment district in which the municipality may condemn properties.⁶⁰ Here, the subsections describe the typical indicia of blight, such as “substandard,” “dilapidated, or obsolescent” buildings, buildings that “are so lacking in light, air, or space[] as to be conducive to unwholesome living or

52. *See id.*

53. Through enabling statutes such as New Jersey’s. *See infra* Part I.B.

54. This Note proposes an answer to this. *See infra* Part II.

55. N.J. STAT. ANN. §§ 40A:12A-1 to -73 (West 2009).

56. *See Gallenthin Realty Dev. v. Borough of Paulsboro*, 924 A.2d 447, 456 (N.J. 2007).

57. N.J. STAT. ANN. § 40A:12A-5. To make this determination, the municipality must follow the procedures outlined at N.J. STAT. ANN. § 40A:12A-6.

58. *Id.* § 40A:12A-7.

59. *Id.* § 40A:12A-8(c).

60. *Id.* § 40A:12A-5(a)-(h).

working conditions,”⁶¹ abandoned or “untenantable” commercial and industrial buildings,⁶² and areas that are unsanitary or overcrowded in a manner which is “detrimental to the safety, health, morals, or welfare of the community.”⁶³ Overall, this section of the statute is inclusive, often subjective, and could capture many urban neighborhoods.⁶⁴ Eradicating any of these conditions is well within *Berman* as well as the state constitutional limitations explored below.

Importantly, section 40A:12A-5 describes conclusions that can be made about an *area*; therefore, the critical determinations which yield the ability to take any property within a “delineated area”⁶⁵ are made based on the “generality” of conditions in an area.⁶⁶ This idea transcends the entire statutory scheme, which provides that governing bodies are empowered to determine “that an *area* is in need of redevelopment,”⁶⁷ and that “a redevelopment *area* may include lands, buildings, or improvements which of themselves are *not* detrimental to the public health, safety, or welfare, but the inclusion of which is found necessary . . . for the effective redevelopment of the area of which they are part.”⁶⁸ Anything within such an area may later be condemned, cleared, re-planned, sold, and redeveloped in accordance with a redevelopment plan.⁶⁹ Thus, by affording the ability to condemn non-blighted properties in blighted *areas* and allowing private transfers, New Jersey governments may fully exercise the powers identified in *Berman*.⁷⁰

61. *Id.* § 40A:12A-5(a).

62. *Id.* § 40A:12A-5(b).

63. *Id.* § 40A:12A-5(d).

64. *See, e.g., id.* § 40A:12A-5(a), (d). “[D]ilapidated[] or obsolescent” could theoretically include any older structure that needs simple repairs; “lacking in light, air, or space” could capture many row houses; “faulty arrangement or design . . . excessive land coverage . . . or obsolete layout” are all open to subjective assessments and the usual biases against traditional urban living patterns.

65. *Id.* § 40A:12A-8.

66. *E.g., id.* § 40A:12A-5(a), (d), (e).

67. *Id.* § 40A:12A-3, -4.

68. *Id.* § 40A:12A-3 (emphasis added).

69. *Id.* § 40A:12A-8.

70. *But cf. Gallenthin Realty Dev. v. Borough of Paulsboro*, 924 A.2d 447, 459-60 (N.J. 2007) (clarifying that “blight,” as a matter of New Jersey constitutional law, is a condition which “negatively affects surrounding properties,” such that each indicia listed in the statute at § 40A:12A-5 is understood to cause “decadent effect[s] on surrounding property.”). Thus, while providing a more detailed definition of blight, *Gallenthin* does not restrict New Jersey’s access to the *Berman* powers. *See id.*

ii. Powers Withheld Under New Jersey Constitutional Law, as Announced in the *Gallenthin* Decision.

By contrast, New Jersey law does not permit full exertion of the powers found Constitutional in *Kelo*.⁷¹ The Blighted Areas Clause of the New Jersey Constitution has been read in conjunction with section 5 to require findings of blight, which as matter of constitutional law has the “essential characteristic” of “deterioration or stagnation that negatively affects surrounding properties” in an area, in order for an area to be considered “in need of redevelopment” under LRHL.⁷²

As written, subsection 5(e) was formerly interpreted by cities as providing an avenue to condemn through the mere desire to redevelop, as opposed to the need to remedy blight. It states that a municipality may pass a resolution declaring an area “in need of redevelopment” where there is

[a] growing lack or total lack of proper utilization of areas caused by the condition of the title, diverse ownership of the real property therein or other conditions, resulting in a stagnant or *not fully productive condition of land* potentially useful and valuable for contributing to and serving the public health, safety and welfare.⁷³

In 2007, however, the New Jersey Supreme Court invalidated a municipality’s designation of a parcel as an area “in need of redevelopment” under this subsection because the borough failed to show any indicia of blight.⁷⁴ The court held that government redevelopment can occur in blighted areas only, and that, despite the desire to read section 5(e) as not requiring blight, the “[c]onstitution does not permit government redevelopment of private property solely because the property is not used in an optimal manner.”⁷⁵

The unanimous court interpreted the contested section of the LRHL in light of the state constitution’s provision that “[t]he clearance, replanning, development or redevelopment of blighted areas shall be a public purpose and public use, for which private property may be taken or acquired,”⁷⁶ and held that the terms of subsection (e) could not be read in literal isolation.⁷⁷ Reasoning that the statutory scheme envisaged a blight requirement, especially since it was originally drafted around the same time as the Blighted Areas

71. *See id.*

72. *Id.*

73. N.J. STAT. ANN. § 40A:12A-5(e) (emphasis added).

74. *Gallenthin*, 924 A.2d at 465.

75. *Id.*

76. N.J. CONST., art. VIII, § III, para. 1.

77. *See Gallenthin*, 924 A.2d at 463.

Clause of the state constitution,⁷⁸ the Court interpreted subsection (e) as requiring proof of a stagnation that harms the community at large and thus is a form of blight.⁷⁹ Thus, the Borough's redevelopment designation against a single parcel used for various low-intensity, semi-industrial purposes, based solely on a finding that the parcel could be improved and used in a manner which provided more jobs and tax revenue,⁸⁰ was invalid.⁸¹

iii. Cause for Concern: Municipal Powers that Are Explicit in Statute and not Limited by the Judiciary

Gallenthin was heralded as a landmark in New Jersey law.⁸² Indeed, the opinion identified the inability of municipalities to affect *Kelo*-style condemnations in New Jersey. While this speaks volumes as a matter of principle—putting New Jersey in a growing class of states that reject the “economic redevelopment as public purpose” premise⁸³—and certainly imposes practical limitations on municipalities⁸⁴ in many situations,⁸⁵ New Jersey governments

78. See *id.* at 457-58, 463.

79. *Id.* at 460.

80. *Id.* at 449, 452.

81. *Id.* at 465.

82. The decision spurred much new literature on redevelopment law in New Jersey. See, e.g., Constance DeSena, Note, *What the Legislature Giveth the Judiciary Taketh Away: The Power to Take Private Property for Redevelopment in New Jersey* and *Gallenthin Realty Development, Inc. v. Borough of Paulsboro*, 33 SETON HALL LEGIS. J. 289, 312 (2008); see also Ronald K. Chen, Brian Weeks & Catherine Weiss, *Compensation and Relocation Assistance for New Jersey Residents Displaced by Redevelopment: Reform Recommendations of the State Department of the Public Advocate*, 36 RUTGERS L. REC. 300, 301 (2009) (arguing that the *Gallenthin* opinion, by announcing the constitutional definition of blight, made strides in protecting property owners).

83. California and Michigan, notably, are in this camp, while New York is not. Compare *Sweetwater Valley Civic Ass'n. v. Nat'l City*, 555 P.2d 1099, 1103 (Cal. 1976), and *County of Wayne v. Hathcock*, 684 N.W.2d 765, 783 (Mich. 2004), with *Goldstein v. New York State Urban Dev. Corp.*, 921 N.E.2d 164, 171-73 (N.Y. 2009).

84. By requiring governments to prove that an area is blighted, and to do so with specific findings and not just conclusory “net” opinions. *Gallenthin*, 924 A.2d at 465. This provided a reality check for municipalities that had believed they could use section 5(e) as an avenue for redevelopment free from the requirement of showing an area's blight. E.g., *Mulberry St. Area Prop. Owner's Grp. v. City of Newark*, No. ESX-L-9916-04 (N.J. Super. Ct. Law Div. July 19, 2007) (overturning a 2004 redevelopment designation by the city since the city could not show that the area was generally blighted and instead faultily relied on section 5(e) in its plan to transfer the land to developers promising market rate condominiums); *City of Long Branch v. Anzalone*, No. A-0067-06T2 (N.J. Super. Ct. App. Div. Aug. 7, 2008); see DeSena, *supra* note 82, at 315-18.

85. Including contexts where the *Kelo* power might be more widely accepted, such as to promote development on parking lots. This might hasten redevelopment in areas like downtown Newark, where parking lots sit on sites that would be ideal for

retain impressive power.⁸⁶ In particular, municipalities can still use the LRHL's inclusive definition of blight, in conjunction with its permission to take non-blighted properties within a generally blighted area, to seize and level vast areas of property.⁸⁷

There is, thus, reason to be concerned about the harm that can be done to responsible property owners and their neighborhoods. New Jersey's cities, though barred from premising condemnations on the pure economic development grounds of *Kelo*, retain the keys to the *Berman* bulldozer, which, as Part II of this Note will explain, permit overzealous redevelopment practices that hurt the cities that the law intends to help.

This concern should be heightened by a political culture, established by decades of large-scale urban renewal, which holds firm in New Jersey. The perceived need for eminent domain to achieve redevelopment,⁸⁸ and the temptation for politicians to bite off more than they can chew in envisioning ambitious redevelopment,⁸⁹ make retention of the *Berman*-LRHL powers a risky thing for New Jersey's urban fabric and the property owners who comprise it.

substantial developments. Parking lots are not considered blight, but they are certainly among the least desirable uses for prime urban real estate. Nevertheless, acquiring them through eminent domain would only be possible if *Gallenthin* had been decided differently.

86. Despite the profound new understanding of the requirements of section 5(e), the court in *Gallenthin* affirmed that "non-blighted parcels may be included in a redevelopment plan if necessary for rehabilitation of a larger blighted area." *Gallenthin*, 924 A.2d at 464 (citing *Levin v. Twp. Comm. of Bridgewater*, 274 A.2d 1, 19-20 (N.J. 1971)).

87. See N.J. STAT. ANN. § 40A:12A-3 to -5; *Gallenthin*, 924 A.2d at 464 (citing *Levin v. Twp. Comm. of Bridgewater*, 274 A.2d 1, 19-20 (N.J. 1971)).

88. *E.g.*, Jonathan V. Last, *Razing New Jersey*, THE WEEKLY STANDARD, Feb. 13, 2006 (explaining the reliance on eminent domain by Long Branch, New Jersey mayor Adam Schneider, who said, "You can't do [massive redevelopment] on a patchwork basis."); see also Ali T. Winston, *A Better Way for Newark*, THE STAR-LEDGER, July 23, 2007, at 10 (applauding the New Jersey Superior Court for blocking the attempts of the former Newark Mayor Sharpe James's administration to condemn a neighborhood near downtown Newark); MAIN, *supra* note 16, at 141.

89. The City of Newark, for example, developed admirable plans for several now-empty blocks in a redevelopment area between its Prudential Center sports arena and Penn Station, but very little of what was drawn up has been pursued by actual developers yet. Compare CITY OF NEWARK, NEWARK DOWNTOWN CORE DISTRICT REDEVELOPMENT PLAN AND AMENDMENT TO THE NEWARK PLAZA URBAN RENEWAL PLAN 79-96, available at http://www.ci.newark.nj.us/government/city_departments/economic_housing_development/proposed_west_market_neighborhood_redevelopment_plan.php (detailing an ambitious redevelopment plan for cleared, city-owned downtown land commissioned by the previous administration and still in effect today since the land remains undeveloped), with discussion in note 149, *infra*. Cf. generally Walker, *supra* note 5 (describing the ambitiousness of New York City leaders during both the era of highway designer Robert Moses and the present day Atlantic Yards debacle).

Colorful drawings of potential development are not guarantors of actual investment.⁹⁰ One need only visit some of the most infamous redevelopment sites, whether from the mid-century renewal period or from the more recent redevelopment era, to see how much municipally condemned land lies fallow or poorly used in spite of even the best redevelopment plans having once been proffered.⁹¹

The LRHL, like the current state constitution, reflects the renewal-gearred culture of the mid-twentieth century era in which it was drafted. As Part II will demonstrate, the assumptions made then about the need for these municipal powers are now outmoded. Further, government planning has failed to yield successful and enduring urban districts in place of the so-called slums that were targeted. Local governments have not demonstrated why they should have the power to re-make neighborhoods that *Berman* ceded them; thus, the keys to their bulldozer should be revoked.

II. NEW JERSEY SHOULD ABOLISH ITS STATUTES AUTHORIZING CONDEMNATION OF NON-BLIGHTED PROPERTIES THAT ARE PART OF GENERALLY “BLIGHTED” REDEVELOPMENT AREAS.

The power to take large sections of urban property—identified in *Berman* and enabled through the LRHL and New Jersey Constitution—was granted at a time when land-intensive urban redesign was thought desirable. Due to the poor outcomes of the urban renewal era, the paradigmatic urban redevelopment projects that required use of the aforementioned powers are now spurned. The *power* to bulldoze entire neighborhoods should likewise be spurned.

Indeed, the policies that supported the leveling of entire neighborhoods rather than “piecemeal” improvement are outmoded, unproven, and highly controversial. Further, it has become clear that: (1) intact urban neighborhoods provide a better canvas for successful and efficient renewal than empty lots, and (2) plans that depart significantly from the traditional urban form fail to revitalize a place. The component parts of these arguments will be described in detail in Section A, *infra*, as part of Part II’s attack on the state’s right to take productive, non-blighted properties in order to

90. See CITY OF NEWARK, *supra* note 89 (containing several artistic diagrams of heretofore unbuilt structures); McGeehan, *supra* note 25 (reporting that the New London, Connecticut urban renewal site at issue in *Kelo* was, by late 2009, largely a “swath of barren land that was cleared of dozens of homes to make room for a hotel, stores and condominiums that were never built.”); see also MARC HOLZER ET AL., REINVENTING NEWARK: VISIONS OF THE CITY FROM THE TWENTIETH CENTURY (2005) (a catalog of planned but undeveloped buildings and cityscapes in Newark).

91. See McGeehan, *supra* note 25, at A1; Appendix, Photo Exhibit C; see also *supra* notes 89-90; *infra* Part II.A.iv.2.

"effectuate" remediation of a generally blighted area. That section will culminate with case studies of prominent urban renewal projects. This examination of literature and history, taken together, will manifest the counterproductive notions—founded on misunderstandings of what makes cities work—that have wrongly justified the creation and retention of the right to total clearance for governments executing redevelopment plans.

Then, Section B will briefly show how these arguments overlap with larger policy concerns, especially those rooted in environmentalism, sustainable development, smart growth, and fair treatment of property owners.

A. Support for Clearance Rather than Organic, "Piecemeal" Redevelopment is Lacking, While Strong Policy in Favor of Preserving Old Urban Spaces Exists.

The "right to a blank slate" or "the right to bulldoze the whole area"—the very right provided, by statute, to any government engaged in the lawful redevelopment of a "blighted area" in New Jersey⁹²—was granted to municipalities to effect a type of total neighborhood reformatting which is now understood to be undesirable and inefficacious.⁹³ In fact, this understanding is hardly fledgling; observers at the peak of mid-century urban renewal provided comprehensive arguments against the clear-cutting tactics of city governments almost as soon as such redevelopment projects were underway.⁹⁴

There have been three basic types of rallying cries against the clear-cutting renewals which the "right to a blank slate," allowed by *Berman* and authorized by statute ever since, sought and enabled: (i) that the new designs imposed over the totally-condemned neighborhoods were fundamentally flawed and inconsistent with

92. See N.J. STAT. ANN. § 40A:12A-3 (defining "redevelopment area"); 40A:12A-5(a) (requiring that the "generality of buildings" be blighted for an area to be termed "in need of redevelopment").

93. Compare KAPLAN, *supra* note 28, at 16-19 (describing plans for Newark's north and central wards, saying "[t]he ideal solution . . . was to tear down the entire ghetto and build a 'city within a city,' as '[o]nly a full-scale demolition of the ghetto, or total neighborhood redevelopment, would succeed in that area'), and 1 STATE OF NEW JERSEY CONSTITUTIONAL CONVENTION OF 1947 at 743 (including the introduction of the Blighted Areas Clause by delegate Jane Barus, who stated the widely held belief that "the only way in which [a blighted] section can be rehabilitated is by a complete rebuilding of a whole neighborhood," effectuated through the use of eminent domain so that a "large enough parcel of land can be assembled"), with, e.g., JACOBS, *supra* note 16, at 445-46 (speaking with reference to urban areas like Northern New Jersey and correctly predicting that, in spite of "semisuburbanized" renewal projects, the post-renewal future would hold even more severe "problems of blight and decay").

94. E.g., JACOBS, *supra* note 16, at 272; ANDERSON, *supra* note 17, at 4-5.

quality urbanism (the functional-aesthetic argument); (ii) that the renewal projects did not revitalize urban neighborhoods, and never provided such a hope, because their designs actually inhibit urban economies (the economic failure argument); and (iii) that dubious motives, particularly those stemming from racial and ethnic tensions, were a component in many cities' use of the blank slate power. These arguments will now be analyzed in turn.

i. The Functional-Aesthetic Argument

Prolific urbanist Jane Jacobs articulated this argument clearly and famously; she inspired a large following that continues to validate her approach today. In her seminal work on the strengths of great cities, *The Death and Life of Great American Cities*, Jacobs built on simple observations about how cities work in mounting a defense for traditional urbanism at a time when it was under siege.⁹⁵ Written at the peak of the urban renewal era, her book took account of the attributes of successful streets, districts, and cities, contrasting those observations with the agendas of government officials and the modernist planners that were designing renewal.⁹⁶

While good urban design alone cannot ensure that a city will be safe and prosperous, poor design practically guarantees poor outcomes: unsafe streets, economic stagnation, and poorly used urban space.⁹⁷ Jacobs promoted her vision of proper urban design as a necessary component for enabling successful urban outcomes.⁹⁸ She attributed the growing urban crisis to renewal projects, which erased both traditional neighborhoods and all of their positive emanations, and thus undercut any hope for positive urban outcomes.⁹⁹

Four basic conditions are "indispensable" for successful streets and districts, according to Jacobs.¹⁰⁰ First, there must be multiple primary uses in a district, to create social and economic activity—using the street as a conduit—throughout the day and into the night.¹⁰¹ Next, blocks must be short, because the vitality of an urban

95. JACOBS, *supra* note 16, at 3-25 (introducing her arguments, explaining her methodology, and commenting on the context in which she was writing).

96. For example, Jacobs spends a chapter explaining the merits of short city blocks and describing how their absence inhibits the vitality that is required for decent, safe neighborhoods; she concludes that modernist planners provide the worst possible outcomes by creating superblocks in their renewal projects. *Id.* at 178-86.

97. Jacobs identified the conditions that needed to be created through urban planning; together they would "generate [the] exuberant diversity" which makes cities great, but without them, a city would languish. *Id.* at 143-51.

98. *See id.* at 150-51.

99. *See, e.g., id.* at 270-71.

100. *Id.* at 150-51.

101. *Id.* at 152-77.

economy depends on the presence of ample street frontage, achieved through frequent corners and bisecting cross-streets.¹⁰² Third, the buildings comprising a streetscape must be diverse in age: there must be old buildings, not just for aesthetic, but also for economic reasons.¹⁰³ Finally, “[t]here must be a sufficiently dense concentration of people.”¹⁰⁴ If any of these elements lack, a street or district fails to generate the diversity, and thus vitality, that would go far in ensuring its success as a safe and high-functioning place for its inhabitants.¹⁰⁵

The archetypal urban renewal project of the middle twentieth century, the kind that both inspired and relied on the total clearance power, lacked all of these attributes. First, its design segregated uses by grouping residential complexes around one another, and provided only a token amount of poorly-located commercial and community uses, if any at all.¹⁰⁶ In addition, copious amounts of open space—grass, pedestrian malls, and parking lots—interrupted the residential complexes, making any fine-grained mixing of uses and creation of vitality impossible.¹⁰⁷ To make matters worse, these projects often replaced neighborhoods that had excellent mixing of uses.¹⁰⁸

Renewal projects yielded exactly the opposite of Jacobs’s second prescription.¹⁰⁹ Generally, they scattered buildings across “super-block” amalgamations of several former city blocks.¹¹⁰ Further, they rarely provided buildings with street frontage, instead setting the component buildings back from the street and facing inward toward

102. *Id.* at 178-86.

103. Jacobs theorized that a mix of building vintages created economic diversity; if all of the available space in a neighborhood was brand new, rents would be uniformly high and small businesses—crucial engines of diversity—would be priced out. *Id.* at 187-99.

104. *Id.* at 151; *see also id.* at 200-21.

105. *Id.* at 151; *see also* Walker, *supra* note 5 (noting that Jacobs’s basic criteria for success were functional and not aesthetic, and that “redevelopers” have routinely demolished or threatened highly functional neighborhoods).

106. *See* JACOBS, *supra* note 16, at 177, 191; *see also* ARTHUR SIMON, STUYVESANT TOWN, U.S.A.: PATTERN FOR TWO AMERICAS 26-31 (1970) (describing how the first large-scale modernist housing project in the country replaced a large district of lower-class tenements and spurred criticism for its lack of community uses such as schools and instead creating a walled-off “suburb” within the city).

107. *See* JACOBS, *supra* note 16, at 260-61.

108. *See id.* at 177 (“[C]onventional planners seem to see in just such popular and attractive places only an irresistible invitation to employ the destructive and simple-minded purposes of orthodox [modernist] city planning.”).

109. *See, e.g., id.* at 186.

110. *See, e.g.,* VAN HUYCK & HORNING, *supra* note 16, at 88-92 (depicting plans of a sample renewal project located on a super-block).

the center of the block.¹¹¹ The only way a government could acquire so many blocks on which to build these enormous complexes was through the *Berman* power to condemn *everything* within a generally blighted area.¹¹²

Since renewal projects usually erased whatever buildings previously existed and created a basically uniform landscape, they offended Jacobs's third condition.¹¹³ Jacobs's wise requirement of buildings of diverse vintages cuts directly against the *Berman* power to take non-blighted buildings located in generally blighted areas; if productive, old buildings were allowed to remain on a renewal site, at least one factor that might promote healthy urban diversity would have existed at the conclusion of project.¹¹⁴ Unfortunately, renewal planners saw only ugliness when they viewed their canvas, and decided that the remedy had to be the creation of an entirely new neighborhood.¹¹⁵

Finally, renewal projects scattered buildings containing housing units and interrupted the buildings with open space, thus ruining the necessary density that usually existed before the attempt at renewal.¹¹⁶ As Jacobs vociferously points out, planners mistook housing unit density for overcrowding, ruining the benefits of the former while not addressing the real issues of the latter.¹¹⁷

Overall, urban renewal's rejection of the traditional urban form contributed to the disastrous results that followed most projects.¹¹⁸ Renewal was unsuccessful, in large part, because the new physical environments did not encourage the positive vitality and human interactions that are the urban life-blood.¹¹⁹ Instead, renewal yielded lifeless, unsafe space—and therefore crime—due to the planners' disregard of the need for sidewalk life and eyes on the street;¹²⁰ high

111. See JACOBS, *supra* note 16, at 260 (making particular reference to housing projects).

112. See, e.g., SIMON, *supra* note 106, at 22-27. Stuyvesant Town, built with the specific intent of cutting off traffic and leaving large areas of green space between buildings, was assembled using a New York law enabling slum clearance, passed before such powers were eventually affirmed in *Berman*. See *id.*

113. See JACOBS, *supra* note 16, at 190-99.

114. See *id.* at 187-99.

115. See VAN HUYCK & HORNUNG, *supra* note 16, at 21.

116. E.g., SIMON, *supra* note 106, at 28.

117. See JACOBS, *supra* note 16, at 206-13 (noting that renewal designs kept people packed together within individual buildings, merely providing more space between the large buildings themselves).

118. See *id.* at 4-6.

119. See *id.* at 144-51.

120. See, e.g., *id.* at 31 (after describing how streetscapes constructed with the sidewalk as a focal point provide stabilizing benefits such as safety, Jacobs commented that "build[ing] city districts that are custom made for easy crime is idiotic. Yet that is

rates of commercial vacancy due to nonexistent street life caused by barriers and monolithic superblocks;¹²¹ and other perversities caused by purposeless open spaces.¹²² The *Berman* powers¹²³ thus enabled a type of urban re-planning that dragged cities further into the sort of trouble that the Court, in its generous deference, assumed that local governments would end through ameliorative planning. Unsurprisingly, calling it renewal did not make it renewal. The process of condemning, leveling, and re-planning did not build on the natural assets of cities by respecting the “behavior of cities,” but rather “act[ed] at cross-purposes to them.”¹²⁴

ii. The Economic Failure Arguments

Urban renewal generally failed to revitalize urban economies, a fact which should make the laws enabling renewal even more undesirable. First, the indiscriminate clearing of neighborhoods through direct application of the *Berman* power to take productive, non-blighted properties dislocated, and often wiped out, thousands of mostly small businesses.¹²⁵ Further, the design and implementation of the new urban plans inherently inhibited economic activity. Studies by economists and urbanists have buttressed these arguments. Mere observation generally confirms them.

1. The assault on small urban businesses

By the late 1960s, after a decade or so of intense slum clearance funded in part by the federal government, “over 60,000 small businesses [had] been dislocated by over 1,000 urban renewal projects in more than 500 cities.”¹²⁶ Roughly one-third of dislocated

what we do.”). Jacobs also believed strongly about the role of traditional sidewalk space in promoting childhood development. *See id.* at 87-88.

121. *See id.* at 191, 260.

122. *See id.* at 110-11. For an outstanding general overview of how poor urban renewal design has facilitated crime and decay in a manner that traditional design could have prevented, see OSCAR NEWMAN, DEFENSIBLE SPACE: CRIME PREVENTION THROUGH URBAN DESIGN (1973).

123. Incorporated and affirmed, for New Jersey’s purposes, in the LRHL and *Gallenthin*. *See supra* Part I.

124. *See* JACOBS, *supra* note 16, at 140.

125. The facts in *Berman* itself illustrated such a scenario, with the District of Columbia seeking to remove the plaintiffs’ department store and hardware store so that it could impose an all-new design on the neighborhood. *Schneider v. District of Columbia*, 117 F. Supp. 705, 708-09 (D.D.C. 1953), *aff’d*, *Berman v. Parker*, 348 U.S. 26 (1954).

126. BRIAN J.L. BERRY, SANDRA J. PARSONS & RUTHERFORD H. PLATT, THE IMPACT OF URBAN RENEWAL ON SMALL BUSINESS: THE HYDE PARK-KENWOOD CASE 1 (1968); *see also* Alan K. Campbell & Jesse Burkhead, *Public Policy for Urban America*, in ISSUES IN URBAN ECONOMICS 577, 593 (Harvey S. Perloff & Lowdon Wingo, Jr. eds., 1968).

businesses folded upon being condemned.¹²⁷

One notable study focused on the effects on business in the Hyde Park-Kenwood district in southeast Chicago.¹²⁸ Three projects within that district alone “displaced 641 businesses, 207 of which liquidated.”¹²⁹ The wreckage along one street was likened to tornado damage in one community leader’s comments.¹³⁰ The condemnations were made to effectuate a total clearance, after which commercial activity would be limited to new shopping centers with parking lots; the planners believed that changing the physical landscape in this manner would stop the growing crime and vacancies which frightened many in the University of Chicago neighborhood.¹³¹ And so the neighborhood was redesigned.¹³²

Business owners in the Hyde Park case were initially supportive of the redevelopment, believing that they would have access to the modern new spaces in the shopping centers.¹³³ Their enthusiasm was doused when they learned that such space would be highly limited: the new neighborhood was almost entirely residential (with parking lots, of course).¹³⁴ Further, the private redeveloper would select tenants for its new shopping center, contracting freely with non-local businesses and determining what types of services would be provided in the neighborhood.¹³⁵ Lastly, the process of condemnation and demolition was, predictably, “irregular” and “spasmodic[],” meaning that the three-year transition and reconstruction period itself likely killed off or weakened many extant businesses.¹³⁶

Even those businesses healthy enough to remain operational were driven out by the new reality of limited commercial space in the neighborhood; they vied, during the reconstruction period, for the few “safe’ commercial structures” that were allowed to stay standing, and then had to wait for the delayed construction of new shopping centers.¹³⁷ As a result, for a business to stay operational and have at least a chance of moving into the new spaces in Hyde Park, the

127. BERRY ET AL., *supra* note 126, at 1.

128. *See id.* at 5-8.

129. *Id.* at 5.

130. *Id.*

131. *Id.* at 24-25. Avenues “lined solidly with street-level commercial space, usually with cheap walk-up flats or offices above,” generally built in traditional pre-1905 styles, were apparently blamed for the neighborhood’s changing characteristics, the most notable of which was increasing numbers of black residents. *See id.* at 15-21.

132. *See id.* at 27.

133. *See id.* at 29.

134. *See id.* at 32.

135. *See id.* at 31.

136. *See id.* at 33.

137. *Id.* at 27-28.

merchant was faced with "the necessity of making two moves."¹³⁸

Importantly, the Hyde Park study, even amid the height of the Corbusian¹³⁹ renewal fad, countenanced that:

alternatives might be found to the "classical" [modernist] planning concepts currently in vogue (separation of land uses, complete clearance of ribbons [avenues], and provision of new business opportunities only in new shopping centers). Such alternatives might reduce some of the current inequity of displacement and provide opportunity for new small business enterprise.¹⁴⁰

2. Structural flaws: the shortcomings of both modern designs and clean slate redevelopment processes for developing strong urban economies

The super-block renewal projects, which could only be implemented through the power to take non-blighted parcels and totally clear a neighborhood, were not built in a manner conducive to urban economic activity in any respect. Indeed, Jane Jacobs and others have provided ample further explanation for why places like the "renewed" Hyde Park were not conducive for economic activity and thus failed to improve urban economies. Such widely applicable observations further underscore the pointlessness of the *Berman-LRHL* right to bulldoze.

"It may be that we have become so feckless as a people that we no longer care *how things do work*, but only what kind of quick, easy outer impression they give," wrote Jacobs.¹⁴¹ Superficiality and wishful thinking have indeed caused urban leaders to be myopic as to the actual economic consequences of renewal tactics that, after all, have been purported to be for the *redevelopment* of cities.

Urban redevelopment plans and implementation strategies that erode a city's factors of diversity¹⁴² commensurately harm the functioning of that city's economy.¹⁴³ For example, designs that

138. *Id.*

139. This term can be used interchangeably with "architectural modernism" or "tower in the park development." It refers to Le Corbusier, an architect whose designs and writings on the "contemporary city" inspired many an urban renewal planner and agitated the likes of Jane Jacobs. See JACOBS, *supra* note 16, at 342-44. Le Corbusier designed only one United States building himself, but inspired thousands more. See EDUARD F. SEKLER & WILLIAM CURTIS, *LE CORBUSIER AT WORK: THE GENESIS OF THE CARPENTER CENTER FOR THE VISUAL ARTS* 2-3 (1978).

140. BERRY ET AL., *supra* note 126, at 215; see also Campbell & Burkhead, *supra* note 126, at 596-98 (noting the growing support for alternative means of urban renewal and the basic argument that even the most massive renewal plans are superficial and do not address a city's underlying causes of poor housing conditions).

141. JACOBS, *supra* note 16, at 7-8 (emphasis added).

142. See discussion *supra* accompanying notes 95-115.

143. See JACOBS, *supra* note 16, at 144-51.

provide for dark, lifeless sidewalks without adjacent windows for surveillance, or for amorphous green space between buildings, create a "fear of the streets after dark" (something which is justified considering the ease with which a crime can be perpetrated in such a setting).¹⁴⁴ This inhibits the neighborhood's after-dark economy, and automatically makes the neighborhood a less desirable place to live for anyone that regularly comes home from work, school, or social events at night by forcing them to confront unsafe conditions and deal with general inconveniences.¹⁴⁵

By simple extension, the redevelopment process per se (buyouts and condemnations) can cause and perpetuate these conditions as homes and businesses are taken and demolished according to plan.¹⁴⁶ Neighborhoods are commonly turned into urban prairie by condemnations that precede the actual appearance of willing redevelopers.¹⁴⁷ Unsurprisingly, the destabilizing effect of removing people and activity from a neighborhood often makes the redevelopment site *less* appealing to an investor (who would want to have to start from scratch in an "economic desert?"),¹⁴⁸ and cause grave danger for holdouts that remain in the neighborhood or anyone who has to pass through the urban prairie.¹⁴⁹

That redevelopment plans and/or implementation strategies can by nature destroy an urban economy is a point well made by Jacobs's examples illustrating her principles for generating diversity.¹⁵⁰ The idea is further demonstrated by observations of ongoing redevelopment, or lack thereof, in various cities that have used the total clearance power (the subject of discussion in Part II.A.iv.2).

144. See *id.* at 144-45; see also NEWMAN, *supra* note 122, at 22-50.

145. See JACOBS, *supra* note 16, at 144-45. (showing how a street abutted by mostly dark, useless space suffered from "missing diversity, convenience, interest, and vitality," such that "anybody who started a retail enterprise here . . . would be stupid. He could not make a living . . . The place is an economic desert.").

146. Cf. *id.* See also *infra* Part II.A.iv.2.

147. Overzealous clearance under unrealistic redevelopment plans often causes this; it is exactly what is now occurring in New London, Connecticut and parts of downtown Newark. See *infra* Part II.A.iv.2.

148. See JACOBS, *supra* note 16, at 144-45.

149. See *id.* at 259-60 (citing the rise in crime around the Cross-Bronx Expressway construction site in 1960 as part of a general point about how "border vacuums" of poorly used urban space cause lifelessness and danger). Walking along Lafayette Street in Newark from the Prudential Center to the entrance of the Ironbound district at McCarter Highway provides a paradigmatic example of such an urban dead-zone: huge parking lots and piles of rubble fill over four large blocks for which major plans are drawn up, see *supra* note 89, but are not being executed. Immediately after crossing McCarter, one crosses from the urban prairie back into the safety of a dense, traditional neighborhood. See Appendix, Photo Exhibit C.

150. See generally JACOBS, *supra* note 16, at 29-73 (expounding on traditional sidewalk space as a glue for urban vitality, safety, and thus economic success).

iii. The Dubious Motives Surrounding the Creation and Use of the Berman Power to Clear

The *Berman*-LRHL powers to effectuate urban renewal plans were, in many cases, born out of desire to separate or rearrange groups of people in addition to land uses. The extensive proof of race- and ethnicity-based motivations for large-scale clearance and redevelopment further highlights the outmoded and undesirable underpinnings of the power to totally clear “blighted” areas.¹⁵¹ While a comprehensive application of critical race theory may be plausible on this matter, this Note will leave that discussion aside and instead simply underscore how the slum clearance powers have been thoroughly susceptible to race- and ethnicity-based approaches to city replanning. The following is but a terse overview derived from prominent literature.

The infamous slum clearances of the 1950s and 1960s, largely federally funded, were unofficially generalized as a “Negro clearance program.”¹⁵² Nearly seventy percent of those displaced through 1961 were black or Puerto Rican, according to government statistics.¹⁵³ Use of the *Berman* clearance power by local authorities generally proceeded with the goal of “creati[ng] or preserv[ing] . . . a white, middle-class neighborhood.”¹⁵⁴ The perceived exigency of neighborhood clearance often arose with changing demographics in an area.¹⁵⁵ Renewal was often a reaction to the increasing diversity of a neighborhood, and it sought to replace low-rent housing and shunt the minority poor to public housing high-rises on certain renewal

151. Though this section describes the history of racially-motivated redevelopment decisions, it is worth pointing out that, even if actual discrimination in the targeting of redevelopment areas no longer persists, redevelopment in practice still results in a disparate impact on the poor and on minority groups. See, e.g., DICK M. CARPENTER & JOHN K. ROSS, VICTIMIZING THE VULNERABLE: THE DEMOGRAPHICS OF EMINENT DOMAIN ABUSE 2-7 (2007), available at http://www.ij.org/images/pdf_folder/other_pubs/Victimizing_the_Vulnerable.pdf (reporting the results of an extensive study which found that fully one quarter of those displaced or threatened by eminent domain for urban redevelopment live in poverty; further, 58 percent of those targeted by eminent domain since 2003 are minorities, and the results tended to show that, even within cities of high minority populations, the areas with the most minorities therein are targeted, as 45 percent of the surrounding neighborhoods in the 112 studied cities were comprised of minorities, giving unfortunate significance to the aforementioned 58 percent proportion). Justice Clarence Thomas properly acknowledged this past and present truth of discrimination in his *Kelo* dissents. See *Kelo*, 545 U.S. 469 at 522 (Thomas, J., dissenting).

152. ANDERSON, *supra* note 17, at 65.

153. *Id.* at 64-65.

154. *Id.* at 65; see also SIMON, *supra* note 106, at 10-11.

155. See BERRY ET AL., *supra* note 126, at 20-22 (noting that the Hyde Park renewal push corresponded with its increase in black residents).

sites (the ones for which market rate developers could not be found); many therefore contend that urban renewal "actually made housing conditions worse for the poorer residents of cities."¹⁵⁶

In Detroit, each of the city's largest redevelopment projects was "premised on the destruction of some of the most densely populated black neighborhoods in the city."¹⁵⁷ Most notably, the city's culturally rich lower east side was leveled for freeways and privately operated modernist housing (using federal funding); this "demonstrated the commonplace wisdom of the streets that 'slum removal equals Negro removal.'"¹⁵⁸ The city condemned thousands of structures for freeway construction alone, targeting minority neighborhoods.¹⁵⁹ Mayor Albert Cobo riposted: "Sure there have been some inconveniences in building our expressways and in our slum clearance program, but in the long run more people benefit. That's the price of progress."¹⁶⁰ One wonders, however, given the events that followed—the halving of the population, the creation of an "island" downtown lacking any adjacent traditional neighborhoods, race riots, and unabated economic erosion—just where the costs ended and the progress began.

Back east in Newark, the city's extensive slum clearance projects sought, in several cases, to break up black ghettos and redistribute the population therein to various places, particularly to the renewal sites at which public housing was built.¹⁶¹ Although the avowed intent in this, and most other cases, was to ameliorate poor living conditions (in the belief that new high rises might solve that problem), accounts of the political forces influencing Newark's midcentury renewal projects expose the obvious intent—in a context of rapid growth of minority population and leakage of white population¹⁶²—to contain the spread of slums and provide designated places for poor minorities to live.¹⁶³

156. See ANDERSON, *supra* note 17, at 65.

157. SUGRUE, *supra* note 3, at 49-50.

158. *Id.*

159. *Id.* at 47-49 (internal quotation marks omitted).

160. *Id.* at 48. See also Walker, *supra* note 5 (describing the "ruthless" and "racist" vigor that moved New York road planner Robert Moses, who entirely changed the face of the South Bronx, among other neighborhoods, and who also hoped to remove the majority of SoHo for a new superhighway).

161. See KAPLAN, *supra* note 28, at 14-19.

162. See *id.* at 147-50.

163. Newark planners and politicians were savvy: they knew that the places containing the harshest slums would be more fit for new public housing than for middle-income private developments; that it was ideal to build developments resembling a "city within a city" so that middle-income residents would not fear the nearby slums which were not yet bulldozed; and that boundaries like railroads, parks, and highways could be used as beneficial barriers. See *id.* at 15-20. They also

Interestingly, the Newark Housing Authority's first official renewal project was the controversial clearing of the Italian enclave at the bottom end of the city's old First Ward; though the black slums of the Central Ward were more desperate, the local authorities wanted to successfully execute a paradigmatic slum clearance plan by developing new buildings that would attract the middle class.¹⁶⁴ They believed that a project in this neighborhood, situated at some distance from the black, Central Ward slums, would do the trick and thereby create a mandate for continued renewal.¹⁶⁵

Some observers have also written about redevelopment condemnations that intentionally targeted ethnic enclaves.¹⁶⁶ Where such targeting is proven, further suspicion can be cast on both the origins of the slum clearance power and on its potential to be abused.

iv. Instructive Examples From New Jersey and Beyond:
Notable Examples of Failed Redevelopment in Contrast
to Successful Urban Districts

Perhaps unsurprisingly, many of the neighborhoods that were destroyed and rebuilt during the main wave of *Berman*-premised renewal continue to pose problems. In many cases, those districts have been rebuilt all over again. This process of renewal upon renewal, aside from being costly and consumptive of resources, has been surprisingly circular, with the newest developments rejecting the attributes of the initial renewal and ironically offering more of the qualities of the neighborhood that was originally in place. This is part of the indictment of the dangers of the *Berman* bulldozing power, as are the many observations that can be made about the non-success of "renewed" sections of cities compared to intact areas, or about the ugly consequences of overzealous condemnations in recent

considered ways, short of clearance, that they might build a "wall' around the slums . . . to protect the surrounding neighborhoods." *Id.* at 76-77.

164. See *id.* at 17-18; *infra* Part II.A.iv.1. This strange sequence of events has been further discussed in a recent book by author Brad Tuttle, who states that "the First Ward . . . was hardly the city's worst neighborhood," a fact that the Newark Housing Authority's Executive Director, Louis Danzig (a villain for many who resent Newark's poor record of renewal and public housing provision), understood, but overlooked in the hopes of creating a positive perception of renewal. BRAD R. TUTTLE, *HOW NEWARK BECAME NEWARK* 123, 129-30 (2009).

165. See KAPLAN, *supra* note 28, at 17-18; TUTTLE, *supra* note 164, at 129-30. The attempt to renew Newark's Little Italy utterly failed to accomplish the planner's goals; this will be discussed further. See *infra* Part II.A.iv.1.

166. See generally E. MICHAEL JONES, *THE SLAUGHTER OF CITIES: URBAN RENEWAL AS ETHNIC CLEANSING* (2004). Jones's frustrated account of the loss of ethnic neighborhoods to slum clearance describes, among other incidents, the assault on a Jewish neighborhood in Roxbury-Boston and the famous demolition of a multiethnic, Polish-Catholic majority neighborhood in Detroit. *Id.* at 549-604.

years.

1. Renewal of Newark's Old First Ward: A story of
wasted resources and lost opportunities

Newark, New Jersey, from which this Note originates, is a city of great contrast. Almost any short walk through this compact city provides physical evidence of the outcomes of past renewal attempts in relation to intact parts of the city. This subsection will now compare two neighborhoods that typify this contrast—the former Old First Ward and the Ironbound (East Ward). Both are adjacent to Newark's downtown core, and both have housed dense, mostly ethnic populations in similar urban landscapes. Their paths, however, diverged rapidly after the 1950s urban renewal craze ravaged the former but spared the latter.

The heart of the old First Ward was obliterated by a 1953 urban renewal project.¹⁶⁷ The First Ward was, until the time of the project, Newark's Little Italy, the heart of what was once the nation's fourth or fifth largest concentration of Italian Americans.¹⁶⁸ A long-planned renewal project¹⁶⁹ targeted the most prominent section of the First Ward, a 46-acre portion that anchored the roughly 250-acre ward.¹⁷⁰ The condemned portion ran from Broad Street to Clifton Avenue, along and below 7th Avenue; 8th Avenue, the most important street in the neighborhood, was destroyed and, in fact, completely wiped off the map.¹⁷¹

The prose and photographs contained in the old First Ward's main epitaph—a book written by Michael Immerso and published by the Newark Public Library and Rutgers University¹⁷²—sorrowfully underscore just how much was lost. Immerso's portrayal of the neighborhood in action is unavoidably romantic.¹⁷³ By all accounts, the First Ward was a thriving, high-functioning inner city neighborhood.¹⁷⁴ It was crowded, no doubt, and many of the

167. MICHAEL IMMERSO, NEWARK'S LITTLE ITALY: THE VANISHED FIRST WARD 139-42 (1998). See generally TUTTLE, *supra* note 164, at 119-38.

168. IMMERSO, *supra* note 167, at 1-3.

169. See *id.* at 139-40.

170. *Id.* at 150-51. The old First Ward was a compact section of today's North Ward, demarcated by the Lackawanna Railroad on the south (roughly Interstate 280), Branch Brook Park on the west, the Passaic River on the east, and 4th Avenue and Bloomfield Avenue on the north. *Id.* at 151.

171. *Id.* at 140, 151.

172. *Id.* at ix.

173. See, e.g., *id.* at 15-63.

174. This was true when the neighborhood initially peaked before World War I, *id.* at 15-18, and in the run-up to the renewal during the Depression and post-War period. *Id.* at 117-50.

nineteenth century buildings needed significant upgrades.¹⁷⁵

What was blight to the empowered modernist planners was, however, the perfect home to thousands.¹⁷⁶ The preserved photographs of rows of tidy storefronts, distinctive cafes, and families and communities spending time together seem to explain why this was the case.¹⁷⁷ Newark's Little Italy, furthermore, was as prominent as any Italian neighborhood on this continent, becoming a place for celebrities and dignitaries to rub shoulders with Newarkers on any given Saturday evening.¹⁷⁸ Its prosperity continued and its prospects looked as strong as ever as the Depression and World War II ended.¹⁷⁹

The neighborhood's abundant culture, commerce, and prominence notwithstanding, the planners believed it was best off bulldozed and replaced with various types of modern high rises on super-blocks.¹⁸⁰ And thus it happened. In July 1953 the destruction began, and by 1955 the landscape was transformed from 470 structures in a traditional arrangement to "eight twelve-story, low-income apartment buildings—the Columbus Homes—at the center of the tract, [and] three privately funded middle-income high-rise apartment buildings at the Clifton Avenue and Broad Street ends."¹⁸¹ Because of the density of the bulldozed 46 acres, a staggering 4,600 people, or 1,300 families, were displaced.¹⁸² Few returned to live in the new structures.¹⁸³ The new neighborhood bore no resemblance to the neighborhood they had called home, and the adjacent portions of the ward—a few blocks of which remain in their original state today—could not make up for the loss of "Little Italy's" prominent center.¹⁸⁴

175. *Id.* at 139 (despite the vigor of the district's commerce and culture, its tenements "lacked central heating, private baths, and other amenities").

176. *See id.* at 140-41, 156; TUTTLE, *supra* note 164, at 131-34.

177. *See, e.g.,* IMMERSO, *supra* note 167, at 46-63, 120-49.

178. *Id.* at 119. Neighbors were particularly thrilled when Joe DiMaggio and his Yankee teammates visited. *Id.* at 130; *see also* TUTTLE, *supra* note 164, at 112, 131.

179. *See* IMMERSO, *supra* note 167, at 117-39.

180. *Id.* at 139-41; *see also* KAPLAN, *supra* note 28, at 15-18.

181. IMMERSO, *supra* note 167, at 140.

182. *Id.* The numerous family-owned business establishments, such as those lining 8th Avenue, were also removed and generally put out of business. *Id.* at 141.

183. *Id.* at 141. In fact, "15 percent of First Ward residents left" Newark completely upon displacement by the project. TUTTLE, *supra* note 164, at 134.

184. *See* IMMERSO, *supra* note 167, at 141. Why the entire neighborhood had to be bulldozed was just as baffling in 1953 as it is in retrospect today; while the notorious Aqueduct Alley was worth rebuilding, nobody understood why "Sheffield Street's tiny markets, mom-and-pop candy shops, and pastry, butcher, and pork stores" were considered a "cancer" by Danzig and his renewal-crazed lackeys. *See* TUTTLE, *supra* note 164, at 131. First Warders unsuccessfully attempted to organize against the

Among a tiny handful of remnant, preserved buildings in the renewal district is St. Lucy's Church,¹⁸⁵ which was built through much labor and financial sacrifice only twenty-five years before the renewal.¹⁸⁶ As in the cities of southern Italy, the parish church was the true focal point and heart of the neighborhood.¹⁸⁷ In an ethnic community where proximity to the physical church was a top priority,¹⁸⁸ the removal of all homes and businesses adjacent to that spiritual and community center was particularly egregious.¹⁸⁹ Though much of the "First Ward diaspora" still returns to St. Lucy's for Mass and various festivals, it has to come from other sections of Newark, Belleville, Bloomfield, and beyond.¹⁹⁰

The physical landscape that replaced Little Italy—high-rises interrupted by awkward green space and parking lots—was inhospitable and rapidly became a paradigmatic example of the failure of urban renewal plans.¹⁹¹ No attempt to replace the retail

planners in this respect; the Save Our Homes Council proposed to "[t]ear down only buildings that are 'really slums' . . . and then provide 'liberal loans to property owners' to install or improve heating systems, bathrooms, and plumbing." *Id.* at 133. The SOHC "presented a petition . . . submitted photos of dozens of beautiful homes slated for destruction, as well as statistics demonstrating that crime and disease in the First Ward were far lower than the city average," to which, over boos, the Planning Board Chairman responded, "[p]rogress tears down something good sometimes to bring something better," and Danzig added, "[p]rogress cannot be stopped." *Id.* at 133-34 (internal quotation marks omitted).

185. IMMERSO, *supra* note 167, at 140.

186. *See id.* at 65-80.

187. *Id.* at 3, 65.

188. *Id.* at 65. The church was the center of a multi-layered society which "creat[ed] a kind of supra-family that promoted respect for neighbors and reinforced the underlying feeling of connection." *Id.* at 155. Surely this social fabric, reinforced by the physical layout of the neighborhood, is what made the First Ward thrive until the bulldozers arrived.

189. *See id.* at 140-42. Ironically, the pastor of St. Lucy's, Gaetano Ruggiero, supported the renewal during its planning stages, especially since Italian-American Mayor Ralph Villani and Congressman Peter Rodino, a First Ward native, championed it. *See id.* at 140. His successor, the third pastor (1966-2009) of the parish, Joseph Granato, "believes Ruggiero did not grasp the scale of the project until it was too late, [saying that] '[w]hen he [Ruggiero] saw that people were thrown out against their will, unable to return, he couldn't sleep for three years.'" *Id.* Tuttle confirms this, reporting that at the opening ceremony of the Columbus Homes Father Ruggiero followed the glowing speeches of the politicians "by objecting to his neighborhood being slandered as 'the worst slum,'" and to the fact that "many 'good, honest people . . . on a false pretense were unjustly ousted from their homes.'" TUTTLE, *supra* note 164, at 122. "And here I stand this afternoon before you to voice the indignation of my people, indignation that is my own, one thousand percent," said Ruggiero, by then grasping the disaster that the renewal project embodied. *Id.* at 123 (internal quotation marks omitted).

190. *See IMMERSO, supra* note 167, at 156-58.

191. *See, e.g., id.* at 141-42 ("[T]he scale of the buildings overwhelmed what was left

offerings and institutions that lined the now-erased 8th Avenue was made.¹⁹² The neighborhood, ever since, has been basically dominated by a single land use: apartment residential.

The most prominent section of the renewal district, directly adjacent to St. Lucy's, became the Columbus Homes public housing project. By the 1970s, less than two decades after the Columbus Homes were built, calls for their removal mounted.¹⁹³ Their decommissioning began in 1972; by 1994, they were gone, and the better part of the old First Ward renewal district was being re-renewed.¹⁹⁴

Today, a suburban-feeling townhouse development comprises the Columbus Homes site, between Martin Luther King Jr. Boulevard and St. Lucy Church. The environment is less forbidding than it was during the reign of the former red brick high rises, and this replacement renewal is a typical post-modern attempt at a human-scale neighborhood. It nonetheless remains a superblock interrupted by parking lagoons.

A walk from Broad Street Station (a crucial transit point servicing downtown Newark and the North Ward with connections to Manhattan, Hoboken, Montclair, the Oranges, and beyond)¹⁹⁵ to St. Lucy's Church, and then on to Clifton Avenue near the towering Cathedral Basilica of the Sacred Heart (built in large part by the hands of First Warders) reveals a fairly lifeless urban environment. Two high-rises on a superblock near Broad Street, and a third on a superblock near Clifton Avenue, contribute little but shadows to the neighborhood, as their residents generally move about by car despite being footsteps from the station (the apartments are abutted by surface parking lots rather than by other types of practical land uses such as stores and institutions). The townhouse re-renewal site is

of the old neighborhood. Rather than stabilize the community, urban renewal hastened its deterioration. As one First Warder put it, "Those projects killed the ward. It was over after that."").

192. *See id.* at 150 (containing an excerpt from a local publication detailing the change in the area's residential-business landscape).

193. *Id.* at 142, 157-58. Indeed, a critical Newark Central Planning Board member, Joseph Zeller, correctly foresaw that the Newark Housing Authority's 1950s renewal projects were "creating the slums of ten years from now." TUTTLE, *supra* note 164, at 135. The Columbus Homes were not as easy to sell to Newarkers as Danzig had hoped. *Id.* at 136. After opening, Columbus Homes quickly became unsafe. *Id.* at 137. The planner's Corbusian fantasy that "orderly architecture would result in an orderly, law-abiding, and sophisticated citizenry," were crushed almost as soon as the Columbus Homes opened. *See id.* at 126.

194. IMMERSO, *supra* note 167, at 142, 157-58.

195. *Newark Broad Street*, NEW JERSEY TRANSIT, <http://www.njtransit.com> (follow "Station & Parking Info" hyperlink under "Rider Guide"; then select "Newark Broad Street" from the "Select a Rail Station" menu).

similarly lacking in vitality; it provides modern, attractive housing to its residents, but was not built as a high-functioning urban neighborhood with mixed uses. Thus, the distinctive fabric of the old First Ward's 8th Avenue-St. Lucy's district is long gone and not replaced, in any sense, by the new developments which were created through multiple phases of destruction, resource expenditure, controversy, and heartbreak.

In comparison, Newark's East Ward, or "Ironbound," is the high-functioning urban neighborhood that the old First Ward was and should still be.¹⁹⁶ The similarities between the old First Ward and the Ironbound are striking. Superficially—from street layout to building style and housing density to their proximity to rail service and downtown amenities—they are similar.¹⁹⁷ Particular ethnic groups have similarly distinguished the Ironbound: Germans, Italians, and Jews early on, and then the Portuguese for the better part of the twentieth century through today. Ferry Street is Little Portugal in much the same way that Eighth Avenue was Little Italy, containing restaurants, retail shops, and community institutions in dense proximity.¹⁹⁸ The Ironbound, basically untouched by urban renewal tactics, has developed organically and been able to take, in stride, the pressures put on it by aging housing and infrastructure, new immigrant inflows, and having to survive the City of Newark's darkest days.¹⁹⁹ With few exceptions, the Ironbound is an intact, traditional urban neighborhood; its historical assets were never turned to waste, and urban renewal resources were never forced

196. Tuttle, in his book on Newark, interestingly makes the same argument-by-comparison as this subsection, but strangely overlooks the Ironbound while pointing to the equally applicable example of Boston's North End. TUTTLE, *supra* note 164, at 138-39. That traditional neighborhood, once labeled a slum, was documented by Jane Jacobs; it organically revitalized itself over the last several decades, "because people living and working there cared enough about the area to improve it. Newark's First Ward residents never had the chance to do the same." *Id.* at 138-39; *see also* JACOBS, *supra* note 16, at 8-11. For the purposes of this subsection, the Newark Ironbound is quite comparable to Boston's North End.

197. See Appendix, Photo Exhibit B, for images of the physical neighborhoods.

198. See Lizette Alvarez, *Importing a Slice of Portugal*, N.Y. TIMES, Dec. 24, 2009; Marian Burros, *Little Portugal: A Page of History in Newark*, N.Y. TIMES, Oct. 7, 1987.

199. See Newark Preservation and Landmark Committee, *Let's Take a Tour of the Ironbound*, GOIRONBOUND.COM, http://www.goironbound.com/portal/index.php?view=article&catid=39%3Aabout-the-bid&id=114%3Aironbound-history&tmpl=component&print=1&layout=default&page=&option=com_content&Itemid=50 [hereinafter Newark Preservation] (last visited Oct. 8, 2010) ("While some areas of Newark which once boasted wealthier residents . . . have declined in recent years, the Ironbound has been carefully preserved—and even improved."). The Ironbound took large steps in its reinvigoration at a time when Newark success stories were at their rarest. TUTTLE, *supra* note 164, at 215.

upon it in any notable fashion.²⁰⁰ It is Newark's most attractive neighborhood,²⁰¹ a top destination for visitors,²⁰² a valuable tax base, and the safest ward in which residents can live.²⁰³

There is good reason to believe that the old First Ward would look and function like the Ironbound does today had it not been ravaged by urban renewal. Newark, a city striving to create a positive reputation and to accelerate its economic development,²⁰⁴ would be better off with another well-kept, traditional neighborhood. But at least those who lament the waste of the old First Ward as a blow to Newark's stature can take solace in the fact that the government's bulldozers left the East Ward's "Little Portugal" alone.²⁰⁵ Considering the veritable high that civic leaders got from

200. See Newark Preservation, *supra* note 199 ("The Ironbound has changed very slowly through the years, and residential, industrial and commercial buildings are intermingled throughout the area. The neat, compact homes are among the best kept in the city. . . . [T]he Ironbound has maintained considerable charm as a neighborhood of one and two-story houses built tightly together along narrow, clean streets, many of them lined with mature sycamore trees. . . . Family and community ties are strong, numerous restaurants and small businesses thrive and the crime rate is one of the lowest in the city. The area's success is often attributed to fierce neighborhood spirit, hard work, pride in home ownership, and mutual respect for the traditions of each group. By holding fast to these traits, Ironbound people have kept their community both attractive and distinctive.").

201. See *id.*; see also David B. Cole, *Artists and Urban Redevelopment*, 77 GEOGRAPHICAL REV. 391, 400-06 (1987) (discussing the attraction of the Newark Ironbound for the artist community). The Ironbound continues to attract investors and new residents. *E.g.*, Karen Angel, *It's a Wonderful Loft: Downtown Newark Making Space for Lots of Conversions*, N.Y. DAILY NEWS, Mar. 4, 2010 (reporting on real estate and business investment in the district and the early signs of it spreading into downtown Newark, and quoting a Ferry Street business owner as saying "this neighborhood is sort of like the West Village before the Bed Bath & Beyonds opened.").

202. Vince Baglivo, *Newark's Ironbound Aims to be State's Hottest Neighborhood*, NJ.COM COMMUNITY BLOG (June 10, 2010 5:00 AM), http://www.nj.com/newark/community/index.ssf/2010/06/post_4.html ("For many years, Newark's Ironbound District has been a favorite for great restaurants, entertainment and international shopping. Its distinctive ambiance, combining traditional old world charm with the pulsing energy of one of America's most enduring immigrant neighborhoods, has drawn visitors from far and wide.").

203. According to Newark Police Department Statistics for the 2010 calendar year, as of October 31, 2010, the Ironbound's Third Precinct reported 15 of the city's 234 shootings and 195 of its 1,339 robberies. *Crime Statistics*, NEWARK POLICE DEPARTMENT, http://www.newarkpd.org/crime_stats.htm (last visited Nov. 10, 2010); *3rd Precinct Crime Statistics*, NEWARK POLICE DEPARTMENT, http://www.newarkpd.org/crime_stats3.htm (last visited Nov. 10, 2010). The comparably sized Fourth Precinct reported over six times as many shootings (92) and nearly twice as many robberies (361). *4th Precinct Crime Statistics*, NEWARK POLICE DEPARTMENT, http://www.newarkpd.org/crime_stats4.htm (last visited Nov. 10, 2010).

204. See, *e.g.*, NEWARK IN THE 21ST CENTURY TASK FORCE, THE FINAL REPORT OF THE NEWARK IN THE 21ST CENTURY TASK FORCE (2000).

205. See Burros, *supra* note 198.

the perceived merits of modernist redevelopment in the 1940s and 50s and their outright disdain for aging neighborhoods that would be treasured as historic assets today,²⁰⁶ it is a gift that something like the Ironbound still remains.²⁰⁷

2. Overzealous clear-cutting for inchoate
redevelopment plans: the creation of urban prairies
in New London and elsewhere

The previous subsection showed the danger of the clearance power as it was used several decades ago for a type of urban renewal that is now largely rejected. Today, cities instead draw up blueprints for redevelopment that, quite frequently, are consistent with good urbanism and the Jacobian principles discussed above.²⁰⁸ Even though cities have great ends in mind, their ability to use the same processes that were used in the 1950s means that today's redevelopment projects can still defeat themselves. Since the power to bulldoze is available, cities have utilized it to their own detriment. Several ongoing redevelopment sites prove that piecemeal redevelopment would suit cities better than continuing to use the same tactics that were at hand in the *Berman* case.²⁰⁹

Because the *Berman*-LRHL power to clear a generally blighted area remains, many cities do not even consider the possibility that they would be better off if they simply left alone the homes and businesses that are productive and contributing to their commerce, street life, and tax base. Six decades after the Washington, D.C. department store made famous in *Berman* was condemned for being a presumed obstruction to renewal, homes and businesses (many of which are historic or have other special significance) continue to be condemned so that cities can pursue their efforts to accommodate major developers.²¹⁰ Municipal leaders seem to fear that redevelopment plans will somehow fall apart if even the smallest component of their "plan" (really just a book of artists' renderings) fails to materialize due to a holdout's home or business being allowed to stay; in fact, the redevelopment plan would be better and would

206. See TUTTLE, *supra* note 164, at 121, 124-26.

207. In fact, in 1947, looking forward to the arrival of federal money for renewal, the Newark Central Planning Board reported that "[vast] areas of slums in the Ironbound and the North and Central wards needed to be completely razed." *Id.* at 125.

208. See, e.g., CITY OF NEWARK, *supra* note 89.

209. Today's outcomes continue to confirm Jacobs's belief that "[t]he means to planned city rebuilding are as deplorable as the ends." JACOBS, *supra* note 16, at 5.

210. See Last, *supra* note 88 (explaining how the City of Long Branch replaced historic Victorian homes with sterile condominium developments falling short of the goals envisioned in early renderings, and then sought to acquire additional non-blighted bungalows for more similar development); MAIN, *supra* note 16, at 137, 151.

come to fruition faster if those who wanted to stay were allowed to stay.²¹¹ New London, Connecticut provides an excellent example of this fact, and the general idea that large-scale clearance is a good way for a city to *prevent* its redevelopment ends from ever being achieved.

The New London tract made notorious by the *Kelo* decision is largely vacant, and its utilized portion—controversial in design, no less²¹²—is expected to be abandoned by tenant Pfizer Incorporated in 2011.²¹³ The attempted redevelopment of the Fort Trumbull district of New London has been underway since at least 1998, and the infamous condemnations to effectuate the tract's clearance began in 2000.²¹⁴ More than a decade later, "the city's biggest office complex" is about to be emptied, further deadening the "adjacent swath of barren land that was cleared of dozens of homes to make room for a hotel, stores and condominiums that were never built."²¹⁵ In February 2010, the New London Development Corporation took the first step towards negotiating with a developer of 80 townhouses, "the *only* developer to respond [to] a 'request for qualifications'" issued in December 2009.²¹⁶ On 6.5 acres of a former Navy facility,²¹⁷ the small development would not even use any of the 115 lots taken amid the *Kelo* litigation.²¹⁸

The Supreme Court in *Kelo* praised the redevelopment agency

211. See, e.g., Last, *supra* note 88; *Berman v. Parker*, 348 U.S. 26, 34 (U.S. 1954) ("The experts concluded that if the community were to be healthy, if it were not to revert again to a blighted or slum area, as though possessed of a congenital disease, the area must be planned as a whole. It was not enough, they believed, to remove [only] existing buildings that were insanitary or unsightly.").

212. Peter O'Connor, *NL's Doomed Romance*, THE DAY (New London), Dec. 13, 2009 ("A gigantic, single-purpose complex, of not just poor but openly hostile design, surrounded by a fence and intimidating security, severing public access to the water and views, it [Pfizer's facility] is nothing less than a travesty of urban planning."). Similar complaints are made about the "drab monoliths that look uncomfortably like Yuppie versions of Soviet-era housing projects" that were the outcome of Long Branch, New Jersey's eminent domain-effectuated redevelopment. Last, *supra* note 88.

213. Ted Mann, *A 'Wrong Turn': From Giddy Optimism to Stunning Disappointment*, THE DAY (New London), Nov. 11, 2009 (noting that Pfizer's planned departure from the sole development site on the "Kelo tract" corresponds with "the time its tax abatements from the state and city expire"); McGeehan, *supra* note 25.

214. *Kelo v. City of New London*, 545 U.S. 469, 473-76 (2005).

215. McGeehan, *supra* note 25.

216. Stephen Chupaska & Kathleen Edgecomb, *NLDC Votes to Negotiate with Potential Developer for Fort Trumbull*, THE DAY (New London), Feb. 19, 2010 (emphasis added) (reporting the City Council still had to vote to approve negotiations in the coming month).

217. *Id.*

218. See *id.*; *Kelo*, 545 U.S. at 474. Those lots remain an urban prairie. See Appendix, Photo Exhibit C.

for its “comprehensive” and “thorough[ly] deliberat[ed]” plan²¹⁹ and premised its holding on the need for deference to “the City’s considered judgments about the efficacy of its development plan.”²²⁰ The Court viewed the redevelopment plan and its renderings as more certainty than potentiality: it spoke of mere architect’s renderings, for which the redevelopment agency still had to find developers and money, as if they foretold the actual outcome of the city’s effort.²²¹

The Court’s trust was misplaced. Even if the principle of deference is jurisprudentially defensible, a legal realist would properly call the Court naive. Deference to a city’s judgment and ability to provide urban “revitalization” and “economic redevelopment” via eminent domain is laughable, when, as in New London, that power is exercised to demolish historic homes and oust their dedicated residents²²² only to yield an urban prairie—“[a] deep gully . . . with . . . insect calls . . . wind rustled tall reeds, cattails and young trees,” a ditch with “an oil tank lay[ing] on its side, rusting,”²²³ a truly “desolate plot of ground.”²²⁴ Even the completed portion of the redevelopment plan—Pfizer’s waterfront office park—did not achieve the goal of real economic revitalization:

[T]he owner of a Bank Street cafe told [a prominent official with ties to New London] that she distributed coupons for free coffee to Pfizer’s New London work force, an invitation for them to come in and get acquainted with her business and downtown New London, and not a single one was redeemed. The Pfizer facility was like an alien space ship that landed in New London.²²⁵

As argumentatively convenient as it may be that the land at issue in the lightning rod *Kelo* case is bearing witness to the results of overzealous clear-cutting of urban neighborhoods, New London’s

219. *Kelo*, 545 U.S. at 484.

220. *Id.* at 488-89.

221. *See id.* at 474 (“Parcel 4B will include a renovated marina, as well as the final stretch of the riverwalk. Parcels 5, 6, and 7 will provide land for office and retail space, parking, and water-dependent commercial uses.” (emphasis added)).

222. *Id.* at 475; MAIN, *supra* note 16, at 148-52.

223. Mann, *supra* note 213.

224. Thomas Merrill, *Localize Eminent Domain*, in *A Turning Point for Eminent Domain?*, N.Y. TIMES.COM ROOM FOR DEBATE BLOG (Nov. 12, 2009, 6:36 PM), <http://roomfordebate.blogs.nytimes.com/2009/11/12/a-turning-point-for-eminent-domain/?scp=2&sq=new%20london%20pfizer%20kelo&st=cse>. *See also* Appendix, Photo Exhibit C.

225. O’Connor, *supra* note 212. The author added:

Pfizer’s facility . . . has no connection to its site, no connection to the city, no connection to the community. And that is what makes it so easy to abandon. How many people who work there live in New London, how many shop in New London, how many send their children to New London public schools?

Id.

misfortune is, sadly, mirrored in many other cities.²²⁶

Nearby New Haven, Connecticut, a place of much greater actual and potential investment thanks to the Yale University campus, has nonetheless been a poster child for aggressive urban renewal,²²⁷ and it, among other things, also contains a swath of urban prairie precipitated by much earlier condemnations in the *Kelo* fashion.²²⁸

Newark, of course, continued to use eminent domain long after the 1950s renewal craze, particularly during the now-disgraced Sharpe James mayoral administration.²²⁹ Today, some of the best-

226. See generally *Redevelopment Wrecks*, *supra* note 29; ROBERT G. DREHER & JOHN D. ECHEVERRIA, DREHER AND ECHEVERRIA: DISINFORMATION & ERRORS ON EMINENT DOMAIN 3-4 (2007), available at http://www.castlecoalition.org/index.php?option=com_content&task=view&id=188&Itemid=113 (challenging the Supreme Court's conclusion in *Kelo*—predicated on willful ignorance of the history of urban renewal—that government-sponsored projects are generally successful). Indeed, that “eminent domain is a valuable tool for cities,” *id.* at 5, particularly when applied to the clear-cutting of extant urban fabrics, is an assumption that should by now be dispelled based on results; yet it is still promoted by all too many politicians, self-serving developers, and their redevelopment attorneys. Even when the use of eminent domain yields a success story, such developers and lawyers have no cause to account for the costs of displacing households and of the lost opportunity to organically redevelop and make the most out of the oft-historic resources that were already in place. Yet since such organic redevelopment does not garner headlines, or large attorneys fees, it is not the preferred method of redevelopment.

227. See generally The New Haven Oral History Project, *Life in the Model City: Stories of Urban Renewal in New Haven*, YALE, <http://www.yale.edu/nhohp/modelcity/#> (last visited Nov. 12, 2010) (replete with interviews with residents and statistics); A Tale of Urban Renewal—New Haven, YOUTUBE (Aug. 16, 2009), <http://www.youtube.com/watch?v=6UqarPIVXXQ>.

228. Paul Bass, *Clarence Thomas Was Right, in A Turning Point for Eminent Domain?*, N.Y. TIMES.COM ROOM FOR DEBATE BLOG (Nov. 12, 2009 6:36 PM), <http://roomfordebate.blogs.nytimes.com/2009/11/12/a-turning-point-for-eminent-domain/> (“[L]and just west of downtown New Haven used to be the site of a vibrant, multiethnic working-class neighborhood along Legion Avenue and Oak Street. Liberal Democrats seized it all—and much more in New Haven—through eminent domain . . . The neighborhood never got built. Four decades later, the 26-acre stretch of land remains largely abandoned or used for surface parking.”). New Haven was the only city to receive more per capita federal renewal funding than Newark, and is among the few cities with stories of drama and heartbreak to rival those surrounding Newark’s Little Italy. See, e.g., The New Haven Oral History Project, *Life in the Model City: Stories of Urban Renewal in New Haven: Theresa Argento*, YALE, <http://www.yale.edu/nhohp/modelcity/argento.html> (last visited Nov. 12, 2010) (recording of interview with resident who endured the renewal and stated “I think the answer would have been preservation more than just demolishing”).

229. See, e.g., Jeffrey Rowes, *No Work in Newark: City Must Free Entrepreneurs*, 2010 INSTITUTE FOR JUSTICE 20 (“Newark, with its culture of top-down central planning, has become a poster child for eminent domain abuse, with vast swaths of the city subject to blight designations and pie-in-the-sky redevelopment plans This approach of mass bulldozing became the prevalent model through the late 1990s and 2000s as private developers and their allies in municipal government used redevelopment law and eminent domain to cash in on the real-estate bubble. Indeed,

located downtown land on the east coast is either unused or reduced to surface parking lots while the city retains ownership and seeks developers pursuant to the redevelopment plans that are in effect.²³⁰

The premature, overzealous, and indiscriminate clearance of the Fort Trumbull neighborhood and others similarly situated, therefore, demonstrates the danger of any law (whether conferred via *Kelo* or *Berman* logic) that gives a municipality or its redevelopment agency the power to ravage the landscape so completely as in the above examples. Whether a state requires proof of blight or just the promise of economic development as a prerequisite to the use of eminent domain, it should require a city to sift the good from the bad—to truly proceed in the dreaded piecemeal fashion—because doing so will allow the best hope of redevelopment that actually results in *redevelopment*, rather than an even greater need for redevelopment.²³¹ Allowing indiscriminate clearance of a neighborhood forever changes a place—displacing residents and erasing history and resources—without any guarantee that the “comprehensive” and “thorough[ly] deliberat[ed]” plan will materialize; such bulldozing also increases the likelihood that any development will come up far short with respect to creating the economic vitality and sustainability that every city wants.²³²

Having demonstrated the illogic of conferring broad condemnation powers—particularly the power to take non-blighted property in order to effectuate the clearance of a generally “blighted”

redevelopment was the context in which former mayor Sharpe James broke federal law in concocting fraudulent land transfers of municipal property to his girlfriend so she could flip the property for windfall profits.”).

230. See *supra* notes 89, 149; see also Appendix, Photo Exhibit C.

231. Rather, rigid clearance “plans” represent an absurd, obstinate and inflexible approach where cities and developers are “unwilling to adapt their plans for the available land.” DREHER & ECHEVERRIA, *supra* note 226, at 7. As a consequence, even successfully executed redevelopment plans lack the all-important fine-grained diversity that Jacobs identifies as crucial to urban vitality. See *supra* Part II.A.i. In this sense, the alleged problem of “holdouts” is actually highly beneficial to the neighborhood being redeveloped.

232. See REDEVELOPMENT WRECKS, *supra* note 29, at 1-2; see also O'Connor, *supra* note 212. O'Connor concluded his op-ed about the *Kelo* site with a logical appeal to organic redevelopment that embodies the argument underlying this section:

All of what we cherish about New London was created incrementally, and not as a result of some big idea. New London will, eventually, be redeveloped in the same way that it was originally created - through the implementation of countless small ideas, interacting synergistically, over a period of time, constantly adjusting to changing circumstances. Pfizer [and similar] “big ideas” will now always be a part of New London’s history but, alas it seems, not a part of its eventual success.

O'Connor, *supra* note 212.

area—by reference to urban theory and actual case studies demonstrating that redevelopment projects that rely on such powers are either (1) inherently unable to produce good outcomes or (2) self-defeating when implemented by indiscriminate bulldozing, this Note will conclude by pointing out additional reasons to end the power to clear entire neighborhoods, a power which excuses a city from having to address its core issues and to create policies encouraging organic redevelopment. This will appeal to various tangential policy priorities that similarly prioritize (1) the importance of preserving useful resources and (2) the importance of achieving the best possible outcomes for inner cities. A final appeal to notions of fairness for property owners will cap this section.

*B. Limiting the Ability to Effectuate Clearance-Based
Redevelopment via Condemnation of Sound and Productive
Properties is Consonant with New Jersey's Policy Goals of
Smart Growth and Urban Revitalization*

This section will show that New Jersey has explicitly adopted the principles of Smart Growth, along with other policies such as transit oriented urban development and historic preservation, all of which are inapposite if a law promoting destruction of productive property in urban areas continues to exist. It will also expand on the tenets of these well-known policies to further underscore the benefits of protecting the urban fabric by abolishing the municipal power to totally clear “areas in need of redevelopment.”

*i. Smart Growth is a Clear, Overarching Goal in New
Jersey Law, Which the Current LRHL Undercuts by
Conferring the Power to Take Non-Blighted Property*

Smart Growth is a broad-based set of principles supporting wiser, less land-consumptive patterns of development. Its aims are basically (1) that new suburban development should be compact, not sprawling²³³ and (2) that the demand for such development should be reduced by improving existing urban centers.²³⁴ The second main prong is most directly relevant to this argument, especially due to the fact that it is enshrined prominently in the law governing the land use functions of New Jersey governments.²³⁵

233. *E.g., Principles of Smart Growth: Create Walkable Neighborhoods*, SMART GROWTH NETWORK, <http://www.smartgrowth.org/about/principles/principles.asp?prin=4> (last visited Nov. 12, 2010). *See generally* DUANY, PLATER-ZYBERK & SPECK, *supra* note 5.

234. *E.g., Principles of Smart Growth: Strengthen and Direct Development Towards Existing Communities*, SMART GROWTH NETWORK <http://www.smartgrowth.org/about/principles/principles.asp?prin=7> (last visited Nov. 12, 2010).

235. *See* Municipal Land Use Law: Purposes of the Act, N.J. STAT. ANN. § 40:55D-2

New Jersey law calls for such smart, sustainable growth in various statutes. First, several of the “intent[s] and purpose[s]” of the Municipal Land Use Law (“MLUL”),²³⁶ which are critical in determining the acceptability of municipal zoning²³⁷ and variance decisions,²³⁸ reflect smart growth principles.²³⁹ Under the MLUL, land use decisions should promote “appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment;”²⁴⁰ they should also “promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land,”²⁴¹ and strive to create “a desirable visual environment through creative development techniques and good civic design and arrangement.”²⁴²

New Jersey addressed the need for smart, sustainable growth and center city redevelopment more directly in its State Planning Act of 1985. That law directed a newly formed planning commission, together with counties and municipalities,²⁴³ to develop policies and practices that “conserve . . . natural resources, revitalize . . . urban centers, [and] protect the quality of [the] environment.”²⁴⁴ The New Jersey Planning Commission²⁴⁵ and the Office of Smart Growth have promoted and overseen implementation of the Planning Act.²⁴⁶ They are charged to develop and uphold a State Plan that promotes,

(West 2009); State Planning Act, N.J. STAT. ANN. § 52:18A-196 (West 2009); *see also* DUANY, PLATER-ZYBERK & SPECK, *supra* note 5, at 230 (“New Jersey’s visionary law establishes a clear ideal for the full range of models, from rural conservation to urban redevelopment.”).

236. N.J. STAT. ANN. § 40:55D-2.

237. *See, e.g.*, N.J. Shore Builders Ass’n v. Twp. of Jackson, 949 A.2d 312, 316 (N.J. Super Ct. App. Div. 2008) (“Zoning ordinances enacted pursuant to the MLUL must advance the statute’s underlying goals, which are enumerated in N.J.S.A. 40:55D-2.”), *aff’d*, 972 A.2d 1151 (N.J. 2009).

238. *E.g.*, N.J. STAT. ANN. § 40:55D-70(c)(2) (the better zoning alternative form of variance is acceptable where “the purposes of the act . . . would be advanced by a deviation from the zoning ordinance”).

239. *See, e.g.*, N.J. STAT. ANN. § 40:55D-2.

240. *Id.* § 40:55D-2(e).

241. *Id.* § 40:55D-2(j).

242. *Id.* § 40:55D-2(i).

243. *Id.* § 52:18A-196(e), (f), (i).

244. *Id.* § 52:18A-196(a).

245. *Id.* § 52:18A-196(i); *State Planning Commission*, STATE OF N.J. DEPT OF COMMUNITY AFFAIRS, <http://www.state.nj.us/dca/divisions/osg/commissions/spc.html> (last visited Nov. 12, 2010).

246. Created by legislation providing for a “Smart Growth Ombudsman.” N.J. STAT. ANN. § 52:27D-10.2 (West 2009); *Office of Smart Growth*, STATE OF N.J. DEPT OF COMMUNITY AFFAIRS, <http://www.nj.gov/dca/divisions/osg/> (last visited Nov. 12, 2010).

among other things, “natural resource conservation,” “urban and suburban redevelopment, [and] historic preservation.”²⁴⁷

Taken as a whole, this longstanding mandate to achieve efficient living patterns capitalizing on existing resources, with restoration of central city neighborhoods as one overarching goal, make the State of New Jersey’s policy aims very clear. It is erroneous to believe that urban redevelopment tactics that turn useful resources to waste, that threaten traditional urban fabrics, that create unappealing urban prairies in the middle of downtowns, and that more often than not retard or even preclude economic redevelopment,²⁴⁸ could possibly

247. N.J. STAT. ANN. § 52:18A-200(f); NEW JERSEY STATE PLANNING COMMISSION, NEW JERSEY STATE DEVELOPMENT AND REDEVELOPMENT PLAN (March 1, 2001), available at <http://www.nj.gov/dca/divisions/osg/docs/stateplan030101.pdf> (the progressive result of the Commission’s work pursuant to the statutory goals); see generally GREGORY K. INGRAM ET AL., SMART GROWTH POLICIES: AN EVALUATION OF PROGRAMS AND OUTCOMES 177-87 (2009). A recent study of smart growth outcomes in New Jersey, which noted that a top goal of the state’s policy has been to “revitalize the state’s urban centers” by redeveloping vibrant, transit-connected “nodes,” reported a substantial upswing in building activity in center cities, and a reduction in the pace of suburban development. *Id.* at 179-83.

248. See *supra* Part II.A.iv. Once again, the current state of downtown Newark confirms this point. Just around the corner from where the downtown urban redevelopment area lays empty (having been bulldozed), see Appendix photograph, the historic, mostly abandoned buildings of Market Street are now being rehabilitated and swiftly rented out to new tenants by ambitious owners. See Philip Read, *Taking Back Downtown: Riding on Arena’s Coattails, Newark Developers Hope for Success*, THE STAR-LEDGER, Sept. 19, 2010, at 37 (documenting the historically-sensitive rehabilitation of a Market Street building which was followed by the successful renting of all eight units within 45 days, and the same developers’ plan to restore at least 40 more units in three nearby buildings). Many attribute the success of these rehabilitation projects to the presence of the new Prudential Center arena, which was built within the downtown redevelopment area. Even if this disputable view is true, the fact that large, aging structures nearby are being restored and utilized while the bulldozed blocks continue to sit vacant (except for the cars that park there) demonstrates that historic preservation is a more practical and rewarding approach than clean-slate, ground-up attempts at redevelopment, and underscores that the city took and cleared too much downtown land. The city decided that it wanted a vibrant urban village to spring up around its new arena, but it did not realize that this could be achieved by reusing the resources that were already in place, and by promoting infill where there were gaps. The current piecemeal redevelopment of Market Street, see *id.*, and of Halsey Street near the Rutgers downtown campus—both districts that were spared the bulldozers—verify this argument. See David Lippman, *Newark Launches 2010 Halsey Street Block Parties*, NJ.COM COMMUNITY BLOG (June 5, 2010, 8:13 AM), http://www.nj.com/newark/community/index.ssf/2010/06/newark_launches_2010_halsey_street_block_parties.html (documenting the energy created in a district where redevelopment is proceeding building-by-building, with new tenants slowly buying into empty spaces along Halsey Street); Evelyn Lee, *Partnership Helps Open Restaurant and Catering Business in Brick City*, NJ BIZ, October 29, 2010, <http://www.njbiz.com/article-multiple/84334-partnership-helps-open-restaurant-and-catering-business-in-brick-city> (covering the opening of a new business in a historic storefront on Halsey Street).

advance the wise goals that New Jersey has sought for more than two decades.²⁴⁹ Condemnation and destruction of productive, non-blighted property in urban areas offend these Smart Growth principles on a small scale (by failing to preserve resources, many of which are historic) and on a large scale (by generally failing to make central cities a better place to live). Abolishing the power²⁵⁰ that enables these problematic redevelopment practices thus advances New Jersey's Smart Growth law and policy.

ii. Sustainability and Environmentalism: The Merits of Urban Preservation and Development that Increases Transit Usage.

1. Preservation

Preservation of existing structures in an urban setting, aside from being a wise choice for the promotion of quality urbanism,²⁵¹ also promotes resource conservation and thus merits the support of many who approach urban redevelopment from an environmentalist point of view.²⁵² To the extent that redevelopment tactics under the LRHL wipe out buildings that are non-blighted and productive, and many more that are blighted but reusable, redevelopment practices are offensive to the interconnected goals of preservation and sustainable development, and downright silly in light of the many merits of those goals.²⁵³

249. The direct opposite has been argued. See Margo Hirsch, Note, "Smart Growth" Benefits All New Jersey Residents—Tighter Restrictions on Eminent Domain are Undesirable, 32 SETON HALL LEGIS. J. 401 (2008). In that Note, the author failed to challenge the assumption that urban redevelopment actually results in *redevelopment*, as this Note has done. The author, further, tended to focus on the potential merits of redevelopment condemnations in making way for "New Suburbanism," though improving the design of suburban centers constitutes one prong of Smart Growth, one cannot give short shrift to the prong of smart growth that argues for restoration of center cities. See *id.*

250. N.J. STAT. ANN. § 40A:12A-3 to -5; Gallenthin Realty Dev. v. Borough of Paulsboro 924 A.2d 447, 464 (*citing* Levin v. Twp. Comm. of Bridgewater, 274 A.2d 1, 19-20 (N.J. 1971)); see discussion *supra* Part I.B.iii.

251. See *supra* Part II.A.i.

252. While it is tempting to raze old structures and build new buildings featuring "green technology," preservationists point out that "it is often forgotten that 'the greenest building is the one already built.'" *Statement on Sustainability*, PRESERVATION NEW JERSEY, <http://www.preservationnj.org/site/ExpEng/index.php?/PNJSite/sustainability> (last visited on Nov. 12, 2010).

253. This case has been well made by PlaceEconomics founder Donovan Rypkema, who stated:

Razing historic buildings results in a triple hit on scarce resources. First, we are throwing away thousands of dollars of embodied energy. Second, we are replacing it with materials vastly more consumptive of energy. [The author explains that the "brick plaster, concrete and timber" of old structures are

Much of the benefit of preservation as it relates to sustainability is explained by the notion of embodied energy. It represents “the total expenditure of energy involved in the creation of the building and its constituent material. Each brick has embodied energy. So the demolition of a building . . . throws out all of the embodied energy incorporated into that building.”²⁵⁴ Tremendous resource consumption and waste piles up in urban renewal projects: the demolition process itself (consuming fuel and causing pollution), the loss of buildings that required energy to assemble from materials that took energy to create, and the construction of new structures using materials made from increasingly scarce and undesirable resources like fossil fuels (plastic and steel).²⁵⁵ In a world of scarce resources, wasting useful structures in urban redevelopment does not make sense.

Finally, historic preservation is a priority for many New Jerseyans. It matters, in many cases, as a matter of cultural identity; many live in New Jersey because of the distinctive downtowns and neighborhoods of its countless historic cities. The “power of place” is very much at hand in the Garden State.²⁵⁶ Redevelopment laws should not put any state’s treasured historic assets under constant threat of destruction, nor should they undermine the noble goals of good stewardship to historic places and scarce resources.

2. Transit use and environmentalism

Successful urban revitalization and the creation of density have massive implication on transit usage, which in turn has implications on the well-being of the environment. Though some regions struggle with a classic “chicken or egg” debate—asking if providing transit creates density or if density creates demand for transit—this is a non-issue in urban New Jersey, which is well serviced by

preferable to the “plastic, steel, vinyl and aluminum” of new construction.] Third, recurring embodied energy savings increase dramatically as a building life stretches over fifty years. You’re a fool or a fraud if you say you are an environmentally conscious builder and yet are throwing away historic buildings, and their components.

Donovan D. Rypkema, Keynote Address at the Historic Districts Council Annual Conference in New York City (March 10, 2007).

254. Not to mention the “energy expended in the tearing down and hauling [it] to [a] landfill.” Rebecca Binno Savage, *Post 1: In the Heat of Historic Preservation*, METROMODE (Feb. 18, 2010), <http://www.metrodemedmedia.com/blogs/posts/rebecca-binnosavage1151.aspx>. See generally Ken Sandler, *Analyzing What’s Recyclable in C&D Debris*, BIOCYCLE 51, Nov. 2003.

255. See Rypkema, *supra* note 253.

256. New Jersey has copious listings on the National Register of Historic Places, for example. See *New Jersey*, NAT’L REG. OF HISTORIC PLACES, <http://www.nationalregisterofhistoricplaces.com/NJ/state.html> (last visited Nov. 12, 2010).

comprehensive rail, light rail, and subway transit.²⁵⁷ Simply put, an increase in urban population via *successful* redevelopment of urban areas in New Jersey will increase the rate of New Jerseyans that move about using clean, efficient transit rather than personal vehicles.

Yet, due to faulty redevelopment approaches, land within walking distance of some of the most major hubs remains fallow or unattractive,²⁵⁸ in spite of state subsidies for transit oriented development.²⁵⁹ That such redevelopment areas lay unused underscores the importance of using redevelopment powers carefully, and restricting cities from being able to prematurely bulldoze neighborhoods, especially those that would offer advantages to citizens seeking quality transportation options in an era of increasing fuel costs.

New Jersey's transit system has endured massive cuts in a new conservative governor's administration.²⁶⁰ These cuts might not have been contemplated if a larger swath of the electorate lived in urban areas and relied on transit; instead, leaders bend over backwards to avoid gas taxes and higher tolls, as New Jersey's transit use rate, though high for the United States, is not high enough to make it a decisive political issue.²⁶¹ If cities attracted more people by offering more residences and businesses near train stations, rather than urban prairie and (ironically) parking lots near those stations, New Jersey and other states could more readily achieve its goal of a cleaner environment. A more rational and reserved set of

257. *E.g.*, *Passenger Rail System 2009*, N.J. TRANSIT, http://www.njtransit.com/pdf/rail/Rail_System_Map.pdf (last visited Nov. 12, 2010).

258. *See supra* note 89 and text accompanying note 195.

259. *See* Vincent J. Mangini, *Smart Growth It Takes a Transit Village*, RAILWAY AGE (Sept. 2005), available at http://findarticles.com/p/articles/mi_m1215/is_9_206/ai_n15786935/.

260. *See* Lawrence Ragonese, *Feeling Pain of NJ Transit Cuts; Disabled Vet Among Riders of Buses Facing Budget Ax*, THE STAR-LEDGER, March 21, 2010, at A25 (documenting the concerns of New Jerseyans when NJ Transit, having been directed to cut its budget by the governor, considered the service cuts and fare increases that soon became reality); Paul Krugman, *The End of the Tunnel*, N.Y. TIMES, Oct. 8, 2010, at A27 (criticizing Governor Chris Christie's politically motivated cancellation of a highly anticipated new trans-Hudson tunnel, arguing that the project offered great utility for New Jerseyans but little gain for a governor looking to be politically rewarded for "penny pinching" and avoiding gas tax increases).

261. *See generally* Fran Wood, *Christie Sacrifices Responsibility for Image* (Oct. 10, 2010, 6:30 AM), NJ.COM, http://blog.nj.com/njv_fran_wood/2010/10/post.html ("Christie has not raised the gas tax for the same reason he is bonding the Transportation Trust Fund: 'No tax increases' is his ticket, his brand, his image. He's been our governor for less than a year and already he's taking this image on national tours, getting a hero's welcome in states like Iowa where they don't care that New Jersey no longer funds, say, family planning services.").

redevelopment laws would promote this, since they would bar cities from killing off entire neighborhoods and delaying redevelopment in all the ways addressed above.

Overall, the merits of successfully completed redevelopment that succeeds in attracting diverse individuals to New Jersey cities can be easily tied to the promotion of the state's environmental goals.

*C. Eliminating the Power to Take Non-Blighted Properties
Helps to Remedy Unfair Practices Against Property Owners
and Their Tenants*

Before concluding, this Note must briefly review the implications that the *Berman-LRHL* power to bulldoze has on property owners, to put the arguments of this paper in perspective. Redevelopment making use of the *Berman-LRHL* power of total clearance: (1) moves people's residences and businesses against their will;²⁶² (2) treats people with disrespect by deeming them and their property unwanted by their own city, and by prioritizing a potential development²⁶³ that is more taxable or eye-catching than a dwelling or business to which the resident has an emotional attachment (this is particularly egregious when the owner of a non-blighted, well-kept building is told that their efforts to maintain the building and contribute to the neighborhood have been in vain because it is more *convenient* for the city to have it gone, which is exactly what the statute assailed in this Note allows); (3) endangers people's personal and financial safety by destabilizing their neighborhoods, causing a rise in unsafe conditions and rapidly diminishing the value of the property;²⁶⁴ (4) denies responsible property owners who have done nothing but contribute to a neighborhood, and who have remained loyal to the city in spite of the decline of the neighborhood around them, the ability to share in the profits of the planned revitalization; and, finally, (5) offends the dignity of urban property owners by elevating the plans of bureaucrats, corporations, and planners over the individual's property rights, particularly when those plans call for a generic office building, a purposeless lawn, or a parking lot as a replacement for the individual's home or business, and when the uncertain nature of those plans means that the property may simply turn into an empty, weed-strewn lot.²⁶⁵

262. *E.g.*, Rows, *supra* note 229, at 20-21 (documenting the local opposition to a proposal to clear a swath of struggling blocks in downtown Newark even larger than that already bulldozed and described in footnote 150).

263. *See supra* notes 89-90.

264. *See supra* notes 144-49 and accompanying text; *see also* Chen et al., *supra* note 82, at 305.

265. These indignities seem to accompany most urban renewal attempts. To review those discussed in this Note: in Detroit, the government took more land than it needed

CONCLUSION

This note has argued strenuously against certain eminent domain powers for urban redevelopment, and has done so in an unusual manner. Appreciation of cities, and city living in particular, is not a particularly American trait. Addressing the urban crisis in its various manifestations is, sadly, not a discussion in American politics, and this is partially explained by the previous assertion. Thankfully, in New Jersey and a handful of other places, there is a notable reorientation towards large cities. People are moving to cities and becoming more interested in cities. To capture this interest, investors and civic leaders, such as those in Newark, have planned major redevelopments. Unfortunately, redevelopment has been synonymous in too many cases with major, headline-grabbing projects coordinated by the government. This Note has posited that the government has powers that are risky to use; in particular, its ability to acquire large areas of property and destroy productive or reusable structures is generally the worst possible way to achieve redevelopment.

That cities should pursue their own redevelopment via a host of legal mechanisms makes sense, generally speaking. Tax incentives, master planning and rezoning, micro-lending and small business initiatives, partnerships with universities, institutions and nonprofits, reform in education and public safety, infrastructure upgrades, and good marketing all make sense.²⁶⁶ Taking ownership

to accommodate General Motors' Poletown factory, thus swapping several close-knit blocks for lawns and parking lots; in New London, the government ousted residents for a project that never got past the planning stages, leaving weeds and rubble where residents once lived in historic homes; in Newark, the government dispersed a vibrant ethnic community to build experimental Corbusian high-rises, which would be abandoned and destroyed within a few short decades. As Justice O'Connor correctly argued in her *Kelo* dissent:

The beneficiaries [of the *Kelo* powers] are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms. As for the victims, the government now has license to transfer property from those with fewer resources to those with more. The Founders cannot have intended this perverse result. "[T]hat alone is a just government," wrote James Madison, "which impartially secures to every man, whatever is his own."

Kelo v. City of New London, 545 U.S. 469, 505 (2005) (O'Connor, J., dissenting).

266. See Lippman, *supra* note 248 (documenting the various ways that the City of Newark has subtly promoted the organic redevelopment of Halsey Street through expenditures and partnerships that facilitate investment in extant resources); Lee, *supra* note 248 (describing the opening of a business that was the product of support from community investment organizations). The City of Newark, and many similarly situated cities, are clearly capable of using these sophisticated tactics. See Lippman, *supra* note 248; see also Rowes, *supra* note 229 (pleading for Newark to use such sophisticated measures instead of the heavy hand of eminent domain for

of land and ousting residents and businesses that were perfectly happy to stay does not make sense. Doing so in the mere *hope* that developers may step up and bid on an inflexible plan offered by the city makes even less sense.

The redevelopment attitude that looks to government acquisition and packaging of land needs to be retired. In particular, municipalities should not be able to rely on eminent domain to take non-blighted property in generally-defined blighted areas. The surest and best way to accomplish this is to abolish the statutory provision²⁶⁷ that enables this practice.²⁶⁸ Doing so would force cities to be creative, to understand how meaningful, organic growth can be accomplished, to come to terms with the actual causes of the urban crisis rather than applying superficial remedies, and to eventually reap the benefits of this good planning and governance. Doing so promises to create a new paradigm for urban revitalization, and will make New Jersey, and all who follow her, the model for a future that will be increasingly experienced *in cities*.

redevelopment).

267. N.J. STAT. ANN. §§ 40A:12A-3 to -5 (West 2009).

268. Another option is for an individual municipality to simply reject this power and abstain from the use of eminent domain for non-piecemeal urban redevelopment projects. The Institute for Justice, which represented the plaintiffs in *Kelo*, recommended that the City of Newark “declare eminent domain for private economic development unacceptable,” because of the history of failed redevelopment efforts within and beyond Newark, and because “[a]ll the evidence . . . [shows] that stable property rights attract investment and grow the local economy more than eminent domain abuse, particularly when redevelopment projects using eminent domain have a tendency to become dramatic and costly failures.” Rowes, *supra* note 229, at 21-22. The Author of this Note, though critical of certain broad characterizations of Newark in the Institute’s report, and though skeptical of some of the Institute’s politics outside of its work on eminent domain, wholeheartedly supports the recommendation that the City of Newark abolish the practice of declaring “redevelopment areas.” Newark, one of the most quickly progressing and rapidly improving cities in the United States, has a chance to set an example for the rest of its state and the entire nation by committing to only those governmental practices that enable organic, fine-grained development.

APPENDIX MATERIALS

Photo Exhibit A

Urban Renewal Begins in Detroit. Eleanor Roosevelt celebrating slum clearance in Detroit, 1935. Credit: Walter P. Reuther Library, Wayne State University. To view this and other historic photos preserved by the University, see *Virtual Motor City*, WAYNE STATE UNIVERSITY, <http://dlxs.lib.wayne.edu/cgi/i/image/imageidx?c=vmc;page=index>.



Total Clearance. The scars of Detroit's first slum clearance after the initial demolition in the mid-1930s. Credit: Walter P. Reuther Library, Wayne State University.



Reconfiguring the City. Photograph of the initial development following the Roosevelt-christened slum clearance in Detroit. At right is the “Paradise Valley” Lower East Side neighborhood that would be cleared for Interstate 75 and more renewal soon after this photo. Credit: Walter P. Reuther Library, Wayne State University.

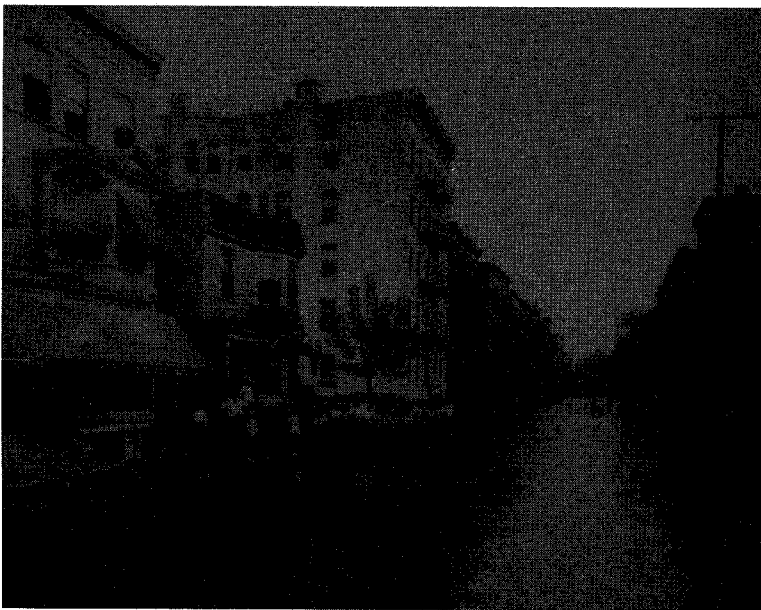


Reconfiguring the City, Again. The more ambitious high rise development (low income projects) that arrived later for the same site in Detroit: the “Brewster Homes.” Credit: Walter P. Reuther Library, Wayne State University.



Unrenewed. The same site in 2011: completely abandoned despite having a prime central city location. Photograph by Author.

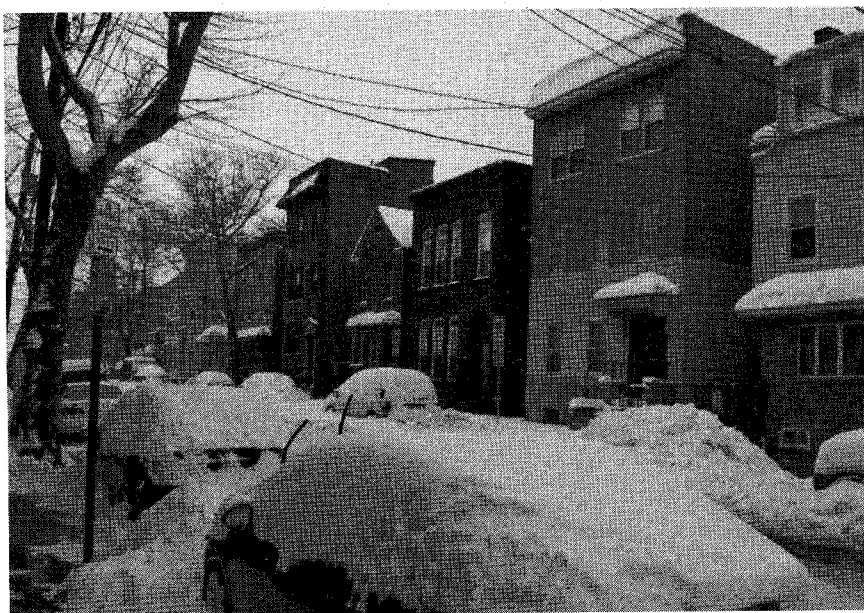
Photo Exhibit B



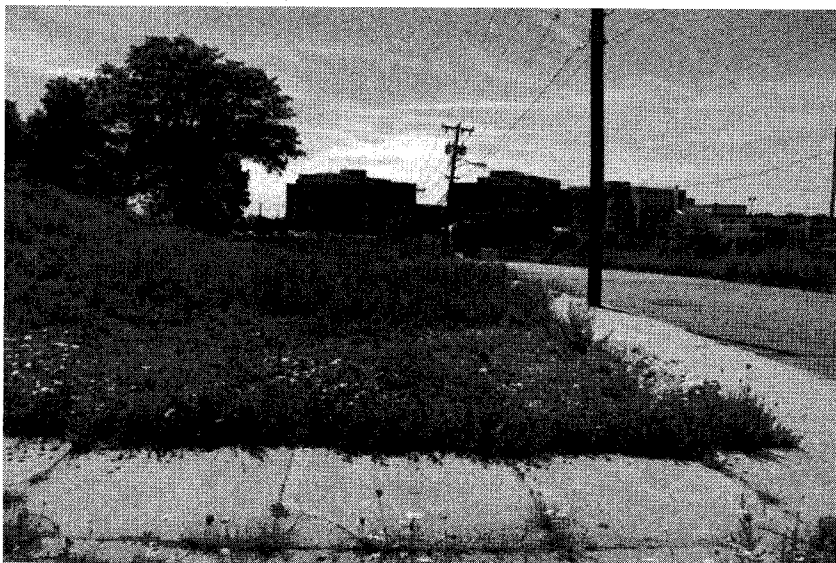
Newark's Former Little Italy. Garside Street in the now-demolished First Ward, 1912. Credit: Newark Public Library. This photograph is attributed to photojournalist Jessie Tarbox Beals. See IMMERSO, *supra* note 165, at 30.



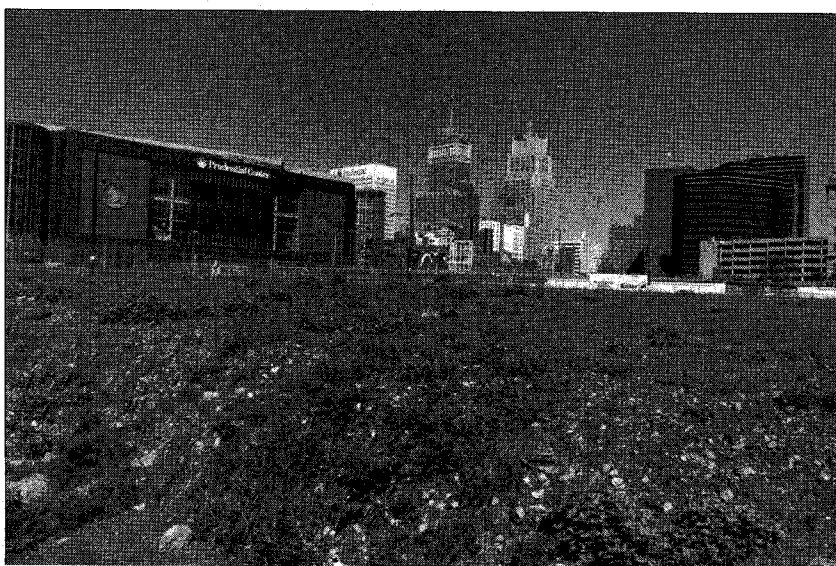
Vibrant Newark. Ferry Street in the Ironbound, 2010. Photograph by Author.



Surviving and Thriving. Jefferson Street in the Newark Ironbound, 2010. Photograph by Author.

Photo Exhibit C

Urban Prairie. The notorious *Kelo* redevelopment parcels in the Fort Trumbull section of New London, Connecticut. The land was still vacant here in late 2010. Pfizer's facility is seen in the background. Photograph by Author.



City-Owned and Unused. Newark's downtown redevelopment site in 2010. Photograph by Author.