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THE LAW AND PRACTICE OF MUNICIPAL LAND ASSEMBLY: FIFTY YEARS  
OF URBAN REDEVELOPMENT AND COMMUNITY  
OPPOSITION IN NEWARK, NEW JERSEY

by

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Robert W. Lake

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## ABSTRACT OF THE DISSERTATION

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Dissertation Director:  
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Urban redevelopment involves the renovation of deteriorating city areas through the rehabilitation or replacement of dilapidated buildings and underutilized parcels with new land uses to meet specific economic goals. Municipalities may invoke eminent domain to facilitate land acquisition for redevelopment. However, eminent domain is only one land assembly tool among other processes and strategies - including blight investigation and designation - that municipalities use to assemble land for redevelopment.

This dissertation addresses large scale processes and broader issues that impact how municipalities make land available for redevelopment through formal and informal land assembly processes. It is based on larger questions centering on what land assembly and blight determination strategies municipalities use in their redevelopment efforts, how eminent domain factors into such processes, and how regulations and case law influence municipal redevelopment processes.

Using a three-pronged qualitative methodology based on semi-structured interviews, archival analysis, and site visits, I conducted case studies of four urban redevelopment projects (two in one neighborhood) in Newark, New Jersey spanning a fifty-year period and revealing several overarching themes. I found that land assembly processes and strategies have been aimed at maintaining municipal control over the redevelopment process. City officials have considered Newark a city for sale in which land is a transferrable, deliverable commodity. The need to chase funding streams has heavily influenced redevelopment efforts. Private sector involvement in Newark's earlier urban renewal efforts challenges the conventional view that privatization did not emerge in redevelopment until the neoliberalism of the 1970s. After devolution, as private sector initiatives became increasingly important to Newark's redevelopment efforts, the focus of blight designation shifted from deteriorated outlying neighborhoods to potentially blighted areas downtown where private investment was less risky. Site targeting and land delivery have often preceded blight designation by many months: blight declaration has tended to be a formality. Grass roots opposition has profoundly impacted redevelopment efforts. Finally, much Newark's land assembly process has centered on formal and informal meetings and agreements between public and private actors who target specific sites, suggesting that the public and the media have overemphasized the role of eminent domain in redevelopment efforts.

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## Dedication

I dedicate this dissertation to the memories of Leon Cander, Marc Somoroff, Jean Somoroff, Walter Lazaroff, and Eli Lane.

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## CHAPTER ONE: INTRODUCTION

Eminent domain is the sovereign power of government to condemn and acquire private property for a public use as long as the affected property owner is awarded just compensation for the taking. Throughout the fifty states and territories, just compensation is generally determined as the fair market value of the property at the time of taking or date of condemnation. On June 23, 2005, the United States Supreme Court issued a decision that reaffirmed the right of municipal governments to invoke their sovereign eminent domain powers to facilitate economic development and redevelopment. That now famous, or some would say infamous, decision was Kelo v. City of New London (2005). Kelo struck considerable fear in Americans that their property rights were in potential jeopardy. During the weeks and months that followed the decision newspapers and other media throughout the land ran a multitude of stories about Kelo and eminent domain, which stoked those fears (Sagalyn, 2008).

Briefly, the controversy in Kelo, centered on New London, Connecticut's use of its eminent domain powers to acquire privately owned residential properties and transfer them to another private entity, the New London Development Corporation, to facilitate economic development. The proposed economic development scheme included redevelopment of a portion of the city's waterfront and Fort Trumbull neighborhood with marinas, parks, hotels, and retail and office uses. Fort Trumbull was an older, working class residential neighborhood along New London's Thames River waterfront. Although the Fort Trumbull area was never declared blighted Connecticut's legislature had designated the entire City of New London, which had lost employment as its port-related industries closed down, an economically distressed city. The proposed higher-end reuses

of the Fort Trumbull properties that would be acquired and cleared were designed to catalyze the revitalization of New London in anticipation of Pfizer Pharmaceutical establishing a new headquarters on adjacent lands. The proposed uses were also designed to generate increased tax revenues to supplement New London's declining tax base. Under two prior, precedent-setting cases, Berman v. Parker (1954) and Hawaii Housing Authority v. Midkiff (1984), the Supreme Court had determined that economic development activities constitute a public use for which governmental powers of eminent domain may be invoked. Nonetheless, Suzette Kelo and other residents of the affected Fort Trumbull section of New London sued the city and the lawsuit eventually made its way through the state court system to the United States Supreme Court.

The Court essentially reaffirmed the two prior decisions, upholding that economic development is a public use and determining that eminent domain may be used to transfer private properties to other private entities for that public purpose as long as there is conceivable public use or benefit. In so doing, the Court was also effectively reaffirming the expansion of the concept of public use and, therefore, the reach of eminent domain that had been occurring for over a century. Throughout the nineteenth century and the first half of the twentieth century, eminent domain was used primarily to acquire land for public improvements such as roads, rail lines, parks, dams, and hospitals that directly benefited the citizenry and that they could directly access. In 1954, however, the Supreme Court's Berman decision ruled that urban redevelopment of blighted areas in accord with a comprehensive plan is a valid public use justifying the use of eminent domain. Since Berman, jurisdictions have used eminent domain to facilitate various forms of economic

development in which the benefit to the public is less tangible and direct than was the case with traditional public uses such as roadways and schools.

Responding to the public outrage over the *Kelo* decision and concerns about private property rights, many states adopted regulations amending their redevelopment laws to exclude economic development as a public use or otherwise limit the ability of local governments to undertake redevelopment efforts. Some of these states also adopted regulations limiting the ability of local governments to utilize eminent domain to acquire land for economic development and urban redevelopment. As I discuss below, my review of the relevant literature suggested to me that urban scholars are still attempting to gain a better understanding of large scale processes and local practices associated with municipal economic development and redevelopment projects. In light of our still evolving understanding of these processes and practices, I suggest that some state regulatory changes and referenda regarding redevelopment and the use of eminent domain may have been hastily and prematurely shaped and implemented.

My dissertation research initially focused on the municipal use of eminent domain powers to facilitate redevelopment. However, as I became more engrossed in my research I found that the use of eminent domain did not occur in a vacuum; it was but one tool intertwined within an arsenal of processes and strategies that municipalities may use to facilitate redevelopment. Among these processes and strategies are the targeting of sites for redevelopment, the assembly and acquisition of land for targeted areas, conceptualization of proposed new land uses for those sites, blight investigation and blight declaration, and associated public hearing processes. I came to understand that these processes often involved the efforts of multiple actors representing multiple

agencies and interests and, at times, included varying levels of formal and informal collaboration between the public and private sectors. Furthermore, all of these processes, strategies, and collaborative efforts are to some degree either assisted by, or constrained by, the regulations and case law applicable to the particular jurisdiction in which redevelopment efforts are occurring.

Moreover, I found that there were gaps in the literature on the aforementioned formal and informal processes associated with urban redevelopment and economic development efforts. More specifically, the literature on redevelopment and eminent domain countenances the existence of such processes and collaborative efforts, but on a rather broad, or macro, level. That awareness of these processes – on a broader level – has formed some of the background for a rich literature on urban regime theory and the growth machine model. (I discuss this literature in Chapter Two.) However, there is not an abundance of literature on how these processes occur at the micro, or local level. For example, much of the literature on land assembly that facilitates urban redevelopment still exists on a relatively theoretical level. Similarly, I only came across one scholarly case study on the use of eminent domain to facilitate land assembly in specific locations and jurisdictions (Staley and Blair, 2005). Moreover, there is also not a tremendous amount of literature on how, at the local, micro level, the focus of urban redevelopment efforts and associated processes may have evolved over time and what underlying regulatory or structural factors have been associated with those changes.

These gaps in the relevant literature are significant. They compromise our understanding of urban redevelopment efforts at the local governmental level and the processes I mentioned above that local governments employ to control land for

redevelopment. These processes include, among others, land assembly, blight determination, associated public hearings, and the use of eminent domain. This has become very important because, while scores of states enacted regulations restricting the ability of municipalities to use eminent domain as part of the local redevelopment process this single-minded focus may divert attention from a larger and more pervasive set of practices through which municipalities make land available for redevelopment. Once land use regulations are adopted at the state level they are not so easily rescinded or amended. Before such regulations are adopted the phenomena they are intended to regulate should be well understood and the potential impacts thoroughly considered.

In light of the above, this dissertation seeks to increase understanding of how broader, large-scale processes affect local practices involved in municipal urban economic development and redevelopment, land assembly, blight determination and designation, and the use of eminent domain. My analysis of redevelopment in a single state and a single city should shed light on the role of a codified system of land use regulation in facilitating urban economic development and redevelopment projects. My dissertation research has enabled me to delve into the contextual nature of the relevant laws and legal terminology and their evolution in response to changing conditions and public expectations. More uniquely, it illuminates the tension between the apparent meaning of the applicable statutory language associated with redevelopment and how that language may be constructed and used by municipalities – in this case the City of Newark, New Jersey - to strategize the remaking of contested space to meet socioeconomic goals. In addition, my research has aimed at articulating how states and their municipalities jointly mediate the impact of the land use changes associated with



redevelopment efforts on affected landowners and their property rights. Furthermore, this dissertation has aimed to increase understanding of changes in municipal practices to facilitate redevelopment that reflect large-scale structural events such as devolution. A better understanding of the large-scale and local processes involved in urban economic development practices, including the targeting of sites for redevelopment and the processes and strategies associated with land assembly, blight declaration, and the use of eminent domain in facilitating municipal redevelopment goals and the associated impacts may assist legislators and policymakers to fashion more just, effective changes to applicable laws.

## **RESEARCH QUESTIONS AND APPROACH**

In light of the above, I made it my mission to use this dissertation to better explore, at the local level, the formal and informal processes of municipal land assembly associated with urban redevelopment efforts including, among others, blight determination, associated hearing processes, and eminent domain. I address the following interrelated questions and issues:

1. What land assembly, blight investigation, and blight determination processes and strategies do municipalities use when engaged in economic development and redevelopment? Have those strategies changed over time in response to broader shifts in social, economic or political conditions? If so, how and why have they changed?

2. What role has eminent domain played in urban redevelopment efforts? Has that role changed over time, and if so, in what ways has it changed?
3. What are the implications of changes in the reasons why communities engage in urban economic development and redevelopment, especially in terms of processes, outcomes, and impacts, including the use of eminent domain?
4. What role have the applicable development regulations and case law played in redevelopment strategies and processes over time?

In order to address these questions I focused on one municipality, Newark, New Jersey and conducted qualitative research using an intensive case study approach of four urban redevelopment projects facilitated by the city's agencies. The four projects are the NJ-R-38 and NJ-R-32 urban renewal projects in the Clinton Hill neighborhood of the city's South Ward; the New Jersey College of Medicine and Dentistry (NJCMD, but now commonly referred to as UMDNJ or University Hospital) urban renewal project in the Central Ward; and the Mulberry Street redevelopment effort in downtown Newark. These projects span approximately 50 years of Newark's redevelopment. The process involving the two Clinton Hill projects occurred from the middle and late 1950s through the early 1960s. My discussion of the NJCMD project covers a period running from 1964 through about 1969. The Mulberry Street redevelopment effort spanned the period 2002 through 2007. Figure 1-1 depicts the project locations overlain on a current satellite image of Newark.

I chose Newark because it has one of the nation's longest redevelopment histories and it was possible to obtain significant documentation of its redevelopment efforts.



**Fig.1-1. Corporate Boundaries of the City of Newark and Boundaries of the NJ-R-38, NJ-R-32, and NJCMD Urban Renewal Projects and the designated Mulberry Street Redevelopment Site.**

Note. Source of data is City of Newark. (2011). NEWGIN: The Newark Enterprise Geographic Information Network. The City of Newark did not prepare, review, or endorse this map.

Confining my inquiry to one municipality in one jurisdiction has enabled me to concentrate more time and effort on obtaining rich detail on redevelopment processes for each project, more easily trace changes in how redevelopment has been approached over time, and more easily trace changes in the regulatory climate.

I have taken a political economy approach to understand the urban economic development and redevelopment practices and experiences in Newark through the aforementioned projects. My approach reflects the impact of larger-scale political and economic structural changes, such as devolution and globalization, on local political and economic policies and processes. I explore how those changes have influenced the conceptualization and initiation of economic development and redevelopment projects in Newark and the manner in which land has been appropriated for their construction. Specifically, the case studies explore the processes and strategies employed by successive city administrations to target areas for redevelopment, determine those areas as blighted, and assemble and acquire the necessary properties. I also explore the role of eminent domain in the context of these redevelopment efforts in Newark, how it has or has not evolved, and what factors affected that evolution.

This dissertation has been informed by three underlying propositions. Reflecting the larger-scale context, I anticipated that decentralization, devolution, and the hollowing out of the state during the period of study (1950-2007) impacted the way redevelopment was carried out in Newark. The second proposition has been one of local specificity. I have expected that the decision to undertake economic development and redevelopment of particular sites and neighborhoods in Newark and the strategies used in doing so, were embedded in Newark's political economy and were fashioned to suit the city's unique

economic conditions, goals, and strategies. The third proposition is that national changes in regulation and the regulatory climate associated with redevelopment also played a role in shaping Newark's redevelopment efforts.

### **The Sub-problems and Related Research Questions**

The dissertation research has been directed toward addressing the following sub-problems, each of which generates further research problems, or hypotheses:

#### **1. Public Use**

The first sub-problem was to explore how the municipal economic development process has changed in Newark relative to the degree of public versus private investment and the nature of the public use, or benefit, conferred. This meant exploring how changes such as the desire to be competitive with other cities, and the devolution of federal and state funding and programming for urban redevelopment have impacted Newark's redevelopment processes. Research questions that I explored under this sub-problem include:

- Has there been a shift from more to less public sector involvement and investment in municipal economic development and redevelopment during the period of devolution and decentralization of the state?
- How did this shift impact the conceptualization and initiation of redevelopment projects in Newark and associated processes such as land assembly, blight designation, and eminent domain?

- Reflecting the expansion of the concept of public use, has there been a change in the redevelopment efforts Newark's local government has helped facilitate over the years towards projects with less direct and tangible public use or public benefit?

## **2. Eminent Domain**

What has been the role of eminent domain has played in Newark's redevelopment efforts and has that role changed over time? Did the actors and agencies promoting or facilitating the Newark projects I studied perceive eminent domain as a strategic way of providing greater certainty that the desired economic development and/or redevelopment goals would be achieved, as compared to other methods of land assembly, such as rezoning?

## **3. Case Law and Regulation**

The third sub-problem was to assess the impact of the changing regulatory climate and the case law relative to redevelopment and blight determination.

- Did the actors and agencies promoting or facilitating the Newark projects I studied make specific interpretations or reinterpretations of the legal language and terminology associated with redevelopment and blight determination to facilitate their redevelopment strategizing? If so, what were the most salient regulatory terminologies and clauses?

How was the salient language constructed, reconstructed, reinterpreted, or manipulated, to help achieve desired economic development and redevelopment goals.

## **METHODOLOGY**

In order to address my research questions, I used an intensive case study approach to study four urban redevelopment projects in Newark spanning a 50-year period. All of these projects were facilitated to varying degrees by Newark's local government officials and its agencies. The NJ-R-38, NJ-R-32, and NJCMD projects occurred prior to the devolution of federal and state funding and programs for urban economic development and redevelopment, whereas the Mulberry Street redevelopment effort reflected the post-devolution period. In studying each project, I completed an in-depth, qualitative analysis that included three primary components: 1) archival and document research including extensive media research (primarily newspaper reports); 2) semi-structured in-person interviews; and 3) field visits to the project sites. The qualitative case study approach provided rich data about each project as well as providing a means of triangulating to check the accuracy and validity of the information I obtained. The archival research and interviews were essentially conducted simultaneously. This proved beneficial to the research process because the archival research identified additional persons for potential interviews and the interviews I conducted provided information about additional documents and archives that would be useful for furthering my research, or confirming earlier research data and findings.

The archival and document analysis I conducted provided extensive data and detail on the NJ-R-38, NJ-R-32, and NJCMD urban renewal projects and the Mulberry Street redevelopment effort. This included data on redevelopment concepts, land acquisition costs, proposed land uses, site data, site analysis, and transcripts of the extensive hearings and resolutions associated with these four projects. Additionally, this research included an important regulatory component, including the applicable redevelopment and eminent domain statutes, relevant case law, and law review articles. I conducted most of my archival research for the NJ-R-38 and NJ-R-32 projects at the Newark Public Library and Newark City Hall. Most of my NJCMD project archival research was conducted on-site at the University of Medicine and Dentistry's medical science library and at the Newark Public Library. Much of the archival information for the Mulberry Street redevelopment effort was obtained either at Newark City Hall or from the interview subjects themselves. Among the archives and documents I mined for data on the four projects were the following:

- Redevelopment plans for the NJ-R-38, NJ-R-32, and NJCMD urban renewal projects and the Mulberry Street redevelopment effort,
- Urban renewal records from the 1960s and 1970s of the Newark Division of City Planning and the Newark Housing Authority (NHA),
- Newark master plans dating back to the late 1940s,
- Newark zoning regulations,
- Minutes of meetings and public hearings of the Newark Municipal Council and the Newark Central Planning Board (NCPB),



- Nine volumes of transcripts of the 1967 blight hearing testimony for the NJCMD urban renewal project,
- The transcripts of the hearings from late February 1968 through March 1968 on the NJCMD urban renewal project that culminated in the Newark Agreement,
- The transcripts of the November, 1966 NJCMD Board of Trustees hearing on the potential relocation from Jersey City to Newark,
- New Jersey's redevelopment statutes, including the Blighted Areas Act (BAA) and its successor, the Local Redevelopment and Housing Law,
- New Jersey's eminent domain statute,
- Newspaper articles from the Newark Star-Ledger and the Newark Evening News,
- Land delivery contracts between NJCMD and NHA,
- Consulting planners' reports for the NJ-R-32 urban renewal project and the Mulberry Street redevelopment effort,
- Early twentieth century photographs of the Mulberry Street neighborhood at the Newark Public Library,
- Audio tapes from the Newark Municipal Council and NCPB hearings on the Mulberry Street redevelopment effort,
- White papers on NJCMD's acreage needs prepared by NJCMD officials,
- Script of the planning consultant's presentation on the Mulberry Street redevelopment, which included proposed relocation and reimbursement plans for those residents and businesses facing possible displacement, and
- The New Jersey Superior Court opinion and plaintiff's brief for the lawsuit involved in the Mulberry Street redevelopment effort.

I conducted twenty semi-structured, in-person interviews that each lasted approximately one and one-half hours and audiotaped and transcribed nearly all of them myself. Interview subjects represented a range of stakeholders in Newark's redevelopment process and individuals knowledgeable about and involved in those processes that spanned (like the projects that were the subject of my case study research) a fifty-year period. Among the individuals and groups represented in the interview process were the following: community organizers employed by community development corporations in Newark, housing specialists, consulting planners, Newark's city planning staff, a practitioner of land use law and eminent domain law, a grass roots community organizer, a high level legislative aide who worked on the original legislation that culminated in the enactment of New Jersey's Local Redevelopment and Housing Law (its current redevelopment statute), former Newark governmental employees who worked with the Gibson and James administrations, and prominent members of the Newark's African American and non-African American communities with first-hand knowledge of the NJCMD project, its impacts, and the June 1967 civil disorders. I obtained the names of interview subjects primarily from the subjects themselves through snowball sampling. (I ended each interview by asking for the names of other individuals with whom they recommend I speak.) Additionally, as indicated earlier, archival research provided me with the names of potential interview subjects, particularly planning consultants.

I conducted semi-structured interviews and adjusted my interview protocol to accommodate the differing information and viewpoints I obtained. Too, it was usually necessary to ask respondents to expound upon subjects they brought up, particularly if they were revelatory about redevelopment processes in Newark relative to targeting sites

for redevelopment, assembling and acquiring properties for redevelopment, blight determination and declaration, and eminent domain. I asked every interview subject the following general questions:

- Please describe your current and past involvement with the City of Newark, particularly as that involvement relates to those redevelopment efforts the city facilitated or encouraged.
- If you had knowledge of, or involvement in, the NJ-R-38, NJ-R-32, and NJCMD urban renewal projects or Mulberry Street redevelopment effort, what do you believe motivated the city's involvement in those projects?
- If you were involved in other redevelopment projects, or had knowledge of those projects, what do you believe motivated the city's involvement in those projects?
- How and why were specific areas targeted for redevelopment? In these projects, what did the land assembly and blight declaration processes involve? How did eminent domain fit into the scheme of these redevelopment projects?
- How did these projects impact residents and the surrounding community?
- Do you believe that there have been significant changes in the way Newark facilitates redevelopment? If so, please explain. What do you believe those changes reflect (i.e. what political, legal, or socioeconomic forces have, over time, led to those changes)?
- Do you believe there has been a change in how eminent domain has been applied by Newark officials to facilitate redevelopment? If so, please explain how and why you believe such a change has occurred?

The site visits I conducted enabled me to familiarize myself with the redevelopment neighborhoods and their physical attributes on a direct observational level. During the field visits I walked the sites and surrounding neighborhoods. This helped me develop a visual inventory for analysis of the projects' impacts on those sites and their neighborhoods. It also provided me with visual reference points that enriched my interview process and archival research.

## **NEWARK, NJ: A BRIEF OVERVIEW**

### **Demographic and Economic Trends**

Newark, located only a few miles west of Manhattan in Northeastern New Jersey on the Passaic River, is one of America's oldest cities, founded by New England Puritans who moved southwest from the Connecticut Colony in 1666. Its location on the Passaic River encouraged the development of canals in the 19<sup>th</sup> century and it eventually became an economic dynamo with a large manufacturing and commercial base. Newark factories, foundries, and breweries produced gloves, textiles, leather goods, shoes, jewelry, and beer and later radio equipment and military supplies (Sidney, 2003). By the late 1800s, the city was a center for legal services, banking, and insurance. Around the same time, it received the first of several waves of heavy European immigration, as did other Northeastern cities, and by 1930 its population had risen to more than 440,000 (U.S. Bureau of the Census). Area-wise, a small city of only 24 square miles, Newark's population decreased to 277,070 in 2010 but its population density is over 11,000 persons per square mile, still making it one of the most densely populated cities in the country (U.S. Census Bureau). Despite huge population losses and other significant demographic

changes, Newark remains New Jersey's largest city and is the hub of an affluent metropolitan area of about two million people, attributes that have been a source of hope for city officials.

Indeed, until the recent, severe economic recession took hold, Newark was actively engaged in efforts to revitalize its downtown area. This made sense. From a locational standpoint, Newark and its downtown have tremendous advantages. The city is the transportation hub of New Jersey. Newark Penn Station, which is the city's transit center for New Jersey Transit's Northeast Corridor line, AMTRAK, and PATH, is an easy walk from the downtown core at Broad and Market Streets. Several major roads run through the city or converge within its limits, including the New Jersey Turnpike, I-78, I-280, U.S. Route 1, Route 22, and McCarter Highway, linking it directly with Jersey City, Elizabeth, Port Newark, Newark Liberty Airport, a vast and affluent suburban ring, and New York City. In the fall of 2007 the Prudential Arena, the designated home of the New Jersey Devils National Hockey League team, opened its doors to much fanfare and media publicity in the heart of downtown Newark only two blocks from Newark Penn Station. Arts-oriented residential towers were in the planning stages for a site adjacent to the highly successful New Jersey Performing Arts Center (NJPAC) where an effort was underway to revitalize the Passaic River waterfront. There was optimism about Newark. It was bolstered by the youthful energies of newly elected Mayor Cory Booker and the high levels of expertise in urban planning and economic development that his hand-picked staff reflected. Unfortunately, the recent economic recession has halted or seriously delayed these efforts and reduced some of the optimism.

Despite the earlier optimism, Newark has been deeply troubled for decades, and has had difficulty adjusting to the large-scale socioeconomic transformations that swept through most large American cities during the twentieth century (Sidney, 2003). Three twentieth century transformations were paramount in shaping Newark's demographic and economic circumstances and changed it from a prosperous economic dynamo to a struggling city with poverty levels and other socioeconomic indicators reminiscent of cities in developing countries. One of these was the flight of manufacturing, employment, and the middle class from Newark to its suburban ring. This was catalyzed by several factors. Changes in industrial mass production technologies favored more horizontal plant construction requiring larger sites. Suburban municipalities became favored over Newark for plant expansions or the construction of new facilities because they had more land as well as generally lower tax rates. As manufacturing left Newark the jobs left Newark and that encouraged working class and middle class residents to leave the city for the suburbs. Favorable post-war federal home loan and mortgage policies facilitated large-scale suburban housing construction and made it financially feasible for city residents to leave Newark's crowded housing to move to the suburban ring where the jobs were moving. And, Federal investment in highways facilitated the move of industries and the middle classes to the suburbs.

Secondly, like other Northern and Northeastern cities, Newark was a destination for the mass exodus of African Americans from the rural South after World War II who moved up in search of higher paying manufacturing jobs as they lost gainful employment to the increasing mechanization of agriculture. These rural immigrants settled largely in the city's Central Ward in the rent-cheap but dense and deteriorating wood frame worker

housing left vacant through filtering as older, Eastern and Central European immigrant owners and tenants moved to the suburbs. Unfortunately, their move to Newark corresponded with an acceleration of the flight of the desired manufacturing jobs from Newark to its suburbs and elsewhere. Just as they moved to Newark for its plentiful, low-skilled manufacturing jobs those same jobs were leaving the city in droves. Often poorly educated, lacking the finances to follow those jobs to the suburbs, and facing severe suburban exclusion, Newark's African Americans could not easily break out of the poverty they thought they had left behind. The high cost of housing in the city's other wards and neighborhoods kept them relatively isolated and concentrated in increasingly crowded living conditions.

Moreover, this overcrowding was coupled in Newark with exceptionally high rates of substandard structural housing conditions. Newark, like other American cities, had already been experiencing some post-war residential overcrowding when African Americans from the South moved en masse to the city. However, between 1950 and 1960, overall residential overcrowding in Newark worsened considerably while the percentage of housing units reporting substandard structural conditions, already high in 1950, essentially remained the same (U.S. Bureau of the Census, 1960). In 1950, 4.4 percent of all dwelling units in Newark were overcrowded and 30 percent reported substandard structural conditions relating to plumbing and sanitation. Ten years later, in 1960, the corresponding figures were 13 percent and 29 percent. Newark then, as now, was largely a renter city with low owner occupancy rates which likely translated into less unit upkeep. The percentage of renter occupied units in 1950, 1960, and 1970 were,

respectively: 75.4 percent, 73.3 percent, and 75.4 percent (U.S. Bureau of the Census, 1950, 1960, 1970).

Thirdly, after the 1960s Newark's economy began the shift, which was already occurring in many other American cities, from an industrial to a post-industrial, service-based economy. This was accompanied by tremendous job loss as manufacturing either fled to the suburbs or simply began to phase out as the demand for America's industrial output and products declined. In 1969, there were 196,000 private sector jobs located within Newark's boundaries, but by 1998 that figure had shrunk by 44 percent to only 110,000 (Sidney, 2003, p. 5). By 1998, after decades of decline and the flight of industries to the suburbs, manufacturing represented only 14 percent of Newark's employment base (Sidney, 2003, p.5).

These large scale socioeconomic and structural changes were expressed in Newark in terms of tremendous demographic change. Table 1-1 provides a snapshot of the major demographic changes that occurred from 1950 through 1970. Particularly notable is the enormous change in that twenty-year period in Newark's racial demographic from a predominantly white city to a predominantly African American city. The actual shift occurred rather rapidly during the ten-year period between 1960 and 1970. In 1960, Newark was 65.6 percent white and 34.1 percent African American; by 1970 it was 44.0 percent white and 54.2 percent African American. At the same time, the city was losing population, down 7.6 percent from 1950 to 1960 and down 5.6 percent from 1960 to 1970. The changes in Newark's racial demographic and its overall population loss reflected the white flight that had begun in earnest in the post-war period. The civil disorders in the summer of 1967, which resulted in the deaths of 26 people, the



wounding of 1,200, the arrests of 1,500, and \$47 million in property damage, accelerated white flight and encouraged the further flight of business and industry from Newark (Sidney, 2003, p.2).

**Table 1-1: Demographic Change in Newark 1950-1970**

	<b>1950</b>	<b>1960</b>	<b>1970</b>
Total Population	438,776	405,220	382,417
White Population	363,149	265,889	168,382
African American (Black)	74,965	138,035	207,458
Nonwhite Population	75,627	139,331	214,035
Percent White	82.8	65.6	44.0
Percent African American (Black)	17.1	34.1	54.2
Percent Nonwhite	17.2	34.1	56.0

Source: US. Census Bureau: 1950, 1960, and 1970 Censuses.

Newark's mid-century response to the residential overcrowding associated with the city's perennially high residential densities and the massive migration of African Americans from the South was to build public housing. Especially in the 1950s and 1960s, after the Federal Housing Act of 1949 made federal funding available, the city set about clearing its slums and replacing them with public housing on a massive scale. Interestingly, the first large-scale areas the Newark Housing Authority (NHA) targeted for clearance and replacement with public housing was Newark's Little Italy in the North Ward, which began in 1952 (Kaplan, 1963). Much like the Italian and Jewish West End of Boston, Little Italy was virtually completely razed by 1960, replaced with high rise and mid-rise housing containing a mix of subsidized public housing and market-rate housing. The concept was that the Italian American residents displaced by clearance would relocate to the public housing units. Initially, many of them did relocate to those

units, but it was an experiment that ultimately failed because poor maintenance led to rapidly deteriorating living conditions. Most of the impacted residents eventually left Newark for its nearby suburbs. Today, the only visible remnants of what was once the country's fourth largest Little Italy are a few Italian bakeries in the North Ward and the old, pre-clearance photographs of the neighborhood on the walls of one of the third floor rooms in the Newark Public Library.

As Newark's most deteriorated housing conditions were concentrated in the increasingly African American Central Ward, however, that area became the locus of most of the city's redevelopment efforts in the 1950s. The result was that the heart of Newark's African American community was targeted over and over again for clearance and displacement. At the same time, not enough public housing units were ever built to adequately rehouse those displaced by the clearance activities associated with public housing construction. Strict eligibility requirements made it difficult for many impacted Central Ward households to find replacement housing within those housing projects. As further discussed in Chapter Four, many African American and Hispanic residents displaced from the Central Ward by public housing construction relocated to Newark's nearby Clinton Hill neighborhood.

The impacts of the massive structural economic and demographic changes on Newark during the 1960s, 1970s, and 1980s were complicated by the massive disinvestment on the part of the business and real estate communities associated with white flight. Once devolution of funding and programming for redevelopment reached full pitch in the 1980s the combined effect was devastating for Newark. Large swaths of Newark along Springfield Avenue at the epicenter of the 1967 civil disorders that were

later razed still lie fallow. As federal and state funding for public housing dried up during the 1980s and 1990s, NHA was unable to keep up with the maintenance needs of its massive public housing projects and these projects rapidly deteriorated. Large-scale epidemics of drug use and associated crime waves exacerbated already difficult social conditions in Newark's poorest neighborhoods.

A current 2010 census snapshot of Newark reveals the impacts of the structural economic changes discussed earlier as well as the impact of the flight of the middle class, business, and industry. Whereas manufacturing once dominated Newark's economic base, only 8.7 percent of all employees 16 years old and older were employed in manufacturing in 2010 (U.S. Bureau of the Census, [www.census.gov](http://www.census.gov)). The three sectors in which the largest numbers are employed now are the educational, service, health care, and social assistance sector (22.5 percent); the construction sector (11 percent); and the professional, scientific management and administration, and waste management sectors (10 percent) (U.S. Bureau of the Census, [www.census.gov](http://www.census.gov)).

After years of massive population loss, Newark's population has begun to stabilize and appears to be experiencing a slight upswing. From a 2000 population of 273,546 the city grew to a 2010 population of 277,070 (U.S. Bureau of the Census, [www.census.gov](http://www.census.gov)). Newark remains a majority African American city but it now also contains a large Hispanic population. According to the 2010 Census, Newark is 26.6 percent white, 51.8 percent Black or African American, and 31.8 percent Hispanic or Latino of any race (U.S. Bureau of the Census, [www.census.gov](http://www.census.gov)).

However, additional data reveals that the years of disinvestment and decline have had devastating social impacts. The 2010 Census revealed that Newark's population is

marked by substantial poverty and low educational attainment with a correspondingly negative impact on household income levels (U.S. Bureau of the Census, [www.census.gov](http://www.census.gov)). Fully 24.3 percent of all individuals live below the poverty level, compared to a national average of 13.5 percent. Among residents 25 years or older, only 66.9 percent are high school graduates and only 11.8 percent have a bachelor's degree or higher compared with corresponding national levels of 84.6 percent and 27.5 percent. Over 33 percent of all Newark residents 25 years old and older were high school dropouts. Median household income, at \$35,507, is 31 percent below the national average.

The combination of high housing unit densities, low income levels and high poverty rates has played a large part in keeping Newark a predominantly renter city. Additionally, it has a housing vacancy rate above the national average, likely reflecting over-construction and current difficulties in the real estate market. The 2010 Census revealed that over 74 percent of Newark's 110,792 housing units are renter occupied and 13.9 percent of all housing units in the city are vacant (U.S. Bureau of the Census, [www.census.gov](http://www.census.gov)). Nationally, the corresponding figures are 33.1 percent and 11.8 percent. There are signs of housing reinvestment within Newark's neighborhoods, including the Central Ward, that involve remodeling and new construction. Given the relatively low percentage of owner-occupied units and the fact that 56.8 percent of all housing units are at least 50 years old, however, it is not surprising that much of the housing city's housing shows signs of significant structural deterioration (U.S. Bureau of the Census, [www.census.gov](http://www.census.gov)).

Moreover, the legacy of failed redevelopment efforts and decades of disinvestment are visually evident throughout the city, especially in the Central and South Wards. Most of the public housing in the Central Ward was eventually torn down in the 1990s in the wake of the devolution of federal and state funding for housing programs and urban redevelopment. This has left large cleared areas in the Central Ward that have remained undeveloped like unfilled potholes in a winter-battered road. Similarly, the once-prosperous Clinton Hill neighborhood, which was also the site of large-scale urban renewal efforts, contains abandoned and overgrown lots and there are many residential structures showing signs of deterioration.

### **Newark's Early Urban Renewal Period and Project Protocols**

As Kaplan (1963) has noted, Newark was one of the first cities to take advantage of the federally-subsidized urban redevelopment program, which was initiated through Title I of the Federal Housing Act of 1949. Federally-subsidized urban redevelopment efforts under Title I entailed slum clearance and replacement of cleared areas with public housing. The Newark Housing Authority (NHA) was the key agency for coordinating urban redevelopment in Newark during heyday of urban renewal in the 1950s and 1960s. Louis Danzig, NHA's Executive Director from 1947 to 1969, was aggressively committed to slum clearance to facilitate urban redevelopment and obtaining federal funding for it. Convinced that urban redevelopment that entailed slum clearance offered a better opportunity to cure urban ills than simply providing public housing, Danzig had lobbied hard for passage of the 1949 Federal Housing Act. He aggressively had his staff prepare an ordinance designating NHA as Newark's official redevelopment agency and

persuaded the City Council and then-Mayor Villani to approve the designation even before the Act was adopted (Kaplan, 1963, 11).

The height of Newark's urban renewal era lasted from the mid-1950s until about 1970, the period after new federal housing legislation in 1954 expanded the Title I redevelopment concept. As discussed in Chapter Three, the Federal Housing Act of 1954 expanded the reach and federal subsidization of redevelopment beyond slum clearance to what was termed urban renewal. Urban renewal encompassed non-residential and residential redevelopment efforts as well as rehabilitation and conservation of salvageable structures (Kaplan 1963). Under the expanded urban renewal laws, federal funding subsidized up to two-thirds of the cost of acquiring sites for renewal; local governments paid the remainder. Moreover, as applied to Newark, the 1954 Act permitted NHA to designate entire neighborhoods as urban renewal areas for a combination of clearance, rehabilitation, or conservation – as NHA deemed appropriate - once they had been determined to be blighted (Kaplan 1963). Federal urban renewal laws were further expanded by the Federal Housing Act of 1956 to provide relocation assistance for persons displaced through the renewal process.

Within this regulatory framework, patterns began to emerge in Newark's early renewal efforts from the mid-1950s until about 1960 (Kaplan 1963). During this earlier period, NHA confined most of its redevelopment efforts to the older sections of the Central Ward and nearby areas that were becoming increasingly African-American, increasingly poor, and increasingly ghettoized as white flight intensified. Complete clearance of Newark's entire spreading Central Ward ghetto was deemed infeasible so the Carlin administration, the Municipal Council, and NHA opted for the designation of

relatively large areas as blighted under the New Jersey's Blighted Areas Act so NHA could apply for urban renewal funding through the Philadelphia office of the Urban Renewal Authority (Kaplan 1963). NHA's urban renewal and redevelopment strategy within the city's older, deteriorating residential areas such as the Central Ward and South Ward could thus be categorized as large-scale yet localized. Areas targeted tended to consist of between contiguous areas of between 15 and 100 blocks, some totaling up to 200 acres. Downtown Newark did not become a focus of renewal efforts until the very end of the 1950s. This reflected a growing awareness on the part of NHA, the Carlin and Addonizio administrations, and private developers that large-scale non-residential renewal efforts were sanctioned through the 1954 Act (Kaplan, 1963; Thabit, 1962).

At the project level, certain protocols became the norm in Newark's urban renewal process (Division of City Planning and NHA 1967). They were driven in no small part by federal urban renewal funding and application requirements. After an area received a blight designation and became, in essence, an urban renewal project area, NHA would apply for federal advance funds to undertake the surveying and planning stage for the blighted area proposed for renewal. During this stage NHA would survey and map out the exact structures to be cleared, rehabilitated or conserved and new construction plans would be proposed and sketched out. NHA would then prepare a preliminary application for federal funds which, after the mid-1960s, was sent to the Department of Housing and Urban Development (HUD) rather than the Urban Renewal Administration (URA). Once federal funding was released the execution stage commenced during which time NHA would engage in property acquisition, relocation, demolition activity, and construction – generally in that order. Property acquisition

always carried the potential for the use of eminent domain to combat the potential for holdouts who would refuse to sell or negotiate with NHA or private redevelopers.

According to Kaplan's (1963) detailed analysis of Newark's early urban renewal politics, the key to NHA's success in obtaining federal funding and facilitating urban redevelopment projects was a very flexible approach to project staging and negotiating among key players and decision-makers. These included private redevelopers, URA's Philadelphia office (later HUD), the Federal Housing Authority (FHA), Municipal Council members representing affected neighborhoods, and state officials (Kaplan, 1963). Such negotiations, especially at the preliminary stages before project announcement, were kept informal and hidden from public view to minimize outside influence, neighborhood opposition, and politicizing (Kaplan, 1963). Danzig and his NHA staff found that, even during these early negotiations, local officials, including the mayor's office, tended to accept the proposed projects for fear of losing funding (Kaplan, 1963). NHA thus wielded enormous power over the location, scope, and pace of renewal efforts.

Project staging tended to follow several fairly well-defined steps before formal public announcement (Kaplan, 1963). NHA's first step was to find a redeveloper interested in the project at the selected urban renewal site. Subsequent meetings with the redeveloper to discuss financing and land assembly, as was the case for the preliminary negotiations discussed above, were kept hidden from the public to minimize neighborhood opposition and permit the redeveloper to safely bow out if it appeared unlikely that the project would come to fruition (Kaplan, 1963). The second step could take up to an entire year. This involved NHA entering into negotiations with URA in



Philadelphia (later HUD in Washington, DC) and FHA in New York to secure federal funding and capital grants for land acquisition and assembly and a mortgage for a project plan suitable to all public and private sector parties involved. Kaplan related that NHA viewed the procurement of federal funding as the most crucial step because it virtually guaranteed local official support (Kaplan, 1963). The third and final step before public announcement consisted of NHA clearing the project with the mayor's office and the Municipal Council, which was generally not too difficult once funding had been obtained. As Kaplan (1963) has noted, neither Mayor Villani (1949-1953) nor Mayor Carlin (1953-1962) ever voiced serious objections because both felt intense pressure to approve NHA's arrangements with URA to prevent Newark from losing federal funding.

The three aforementioned steps in this pre-announcement stage generally took about two years to complete (Kaplan, 1963). NHA and city officials would then formally and publicly announce the proposed urban renewal project. The announcement would usually be aided and abetted by newspaper reporters and the media and the accumulation of commitments from URA/HUD, FHA, city hall agencies and the mayor's office, and the redevelopers.

The post-announcement period generally consisted of three steps, or phases. First, Newark's Central Planning Board (NCPB) would conduct an investigation with public hearings to determine whether the selected area was blighted. However, as Kaplan noted, this tended to occur after federal funding had been obtained and after the aforementioned public and private commitments were secured. Therefore, NCPB's blight determination tended to be rather routine (Kaplan, 1963). The second step, which could overlap temporally with the first step, consisted of further negotiations between

NHA, the redevelopers, and URA/HUD about appropriate land uses and densities, or intensities, for the site. Thirdly, the Newark Municipal Council would approve an urban renewal plan for the selected site and a relocation plan for those families and businesses that would be displaced through land acquisition and clearance activities. Once project approval was obtained, Kaplan found that NHA attempted to push to keep construction moving on schedule while keeping the redevelopers, city officials, and URA/HUD flexible and open to the possibility of altering aspects of their commitments as plans might need to be amended to address new problems (Kaplan, 1963).

Kaplan (1963) found that NHA's influence and power in Newark's urban renewal efforts was not to be underestimated. The availability of federal urban renewal funding emboldened NHA to facilitate transfers of private land directly to private developers for redevelopment purposes. Under Danzig, NHA was very aggressive about obtaining federal urban renewal funding and highly successful at getting it. URA ranked Newark sixth in federal urban renewal spending per capita for the years 1949-1960 of the fifteen leading urban renewal cities (Kaplan, 1963, p. 3). Kaplan spoke to one unnamed observer who suggested that NHA's urban renewal efficacy was also directly related to its unofficial role as Newark's chief slum land transfer agent.

They own the slums. They [NHA] can sell any piece of real estate in that area to a redeveloper before it is even acquired. And they don't have to check with anyone [in Newark] before they do it. City Hall has got to back them up. (Kaplan, 1963, p.36)

### **Governance in Newark**

Newark's mayoral history since 1949, when formal urban redevelopment efforts began, has been rather interesting in terms of longevity of the mayors, their race, and

criminal indictments. Indeed, since 1949, the city has had only six mayors: Ralph Villani (1949-1953), Leo P. Carlin (1954-1962), Hugh Addonizio (1962-1970), Kenneth Gibson, who was the city's first African American mayor (1970-1986), Sharpe James (1986-2006), and Cory Booker (2006 to the present). Gibson, Addonizio, and James were indicted on criminal corruption charges but only Addonizio and James actually served prison time. Sharpe James' recent indictment and prison time reflected his involvement with illegal transfers of land between the city and private parties, including a close personal friend. Like Gibson, James and Booker are African Americans, which reflects the sea-change in Newark's racial demographic after 1960. As further detailed in Chapters Four and Five, Addonizio – who had a federal congressional background in public housing - was a particularly aggressive urban renewal advocate. James, as detailed in Chapter Six, was a strong civic booster and applied his tactics to push hard for downtown revitalization.

Carlin became mayor in the wake of a referendum held in 1953 in which Newark adopted a mayor-council form of government under the Faulkner Act (Kaplan, 1963). Since that time, a nine-member Municipal Council, wherein each council member is elected for a four-year term, has functioned as the city's primary legislative body. The Municipal Council reviews and adopts zoning ordinances and master plans and, based on the investigation and recommendation of the Newark Central Planning Board (NCPB), adopts resolutions declaring areas blighted. Five of the Council Members represent each of the five wards into which Newark is divided: North, East (which includes downtown and the Ironbound neighborhood), South (which includes Clinton Hill and the Weequahic neighborhoods, among others), Central (which includes the Rutgers-Newark, UMDNJ,

NJIT, Essex County Community College complex and some of the poorest neighborhoods in the city), and West. The remaining four Council Members are elected to serve at large.

Under Executive Director Louis Danzig, NHA was Newark's designated redevelopment agency from 1949 through 1970 and, therefore, enormously involved in all aspects of that twenty-year urban renewal period. NHA's power base continued into the 1970s but by the 1980s its primary function was to administer the city's low- and moderate-income housing programs and its vast public housing projects. In the wake of the devolution of federal funding and programming, redevelopment initiatives in Newark now tend to reflect a more public/private joint venture effort. NHA is now a much less powerful and influential agency than it was in Danzig's era under Mayors Carlin and Addonizio. Today, the Department of Economic and Housing Development and the Newark Business Administrator tend to be among the more involved city agencies when redevelopment proposals are being considered. The Division of Community Development is also involved in these efforts but tends to play more of a review and comment role in redevelopment efforts.

## **STRUCTURE OF THE DISSERTATION**

This dissertation contains seven chapters. Chapter One is the introductory chapter that you have just finished reading. In Chapter Two, I review the relevant literature on urban redevelopment theories, and theories about inefficiencies and market failures associated with the land assembly process and eminent domain. Chapter Three is the regulatory chapter and covers the relevant statutes and case law. The sagas of the NJ-R-38 and NJ-R-32 urban renewal projects in Clinton Hill are described in Chapter Four.

Chapter Five details the saga of the NJCMD urban renewal project. In Chapter Six, I cover the saga of the Mulberry Street redevelopment effort. Chapter Seven contains my interpretation of the case studies and their relationship to the literature reviewed in Chapter Two.

## **CHAPTER TWO: URBAN REDEVELOPMENT, THE LAND ASSEMBLY PROCESS AND EMINENT DOMAIN: THEORIES, INEFFICIENCIES AND MARKET FAILURES**

### **INTRODUCTION**

As this dissertation focuses on local urban redevelopment efforts and associated land assembly processes, including eminent domain, the political economy literature is relevant in providing a theoretical framework for the research questions discussed in the first chapter. The most salient literature focuses on the following primary areas: 1) the changing role of the state in the social production of urban life; 2) theories that explore what motivates cities to undertake, sponsor, or facilitate local redevelopment; 3) the nature of public and private sector collaboration in urban redevelopment; 4) evolution and expansion of the public use doctrine as it relates to eminent domain; 5) the concept of blight as it relates to urban redevelopment; and 6) the inefficiencies and market failures of redevelopment-oriented land assembly processes, including eminent domain. This chapter briefly surveys the literature in those topical areas. The discussion touches on theories and models that explore what motivates locally-facilitated redevelopment and encourages the involvement of public and private sector interests. The chapter also reviews traditional explanations for the use of eminent domain to facilitate land assembly for urban redevelopment including the holdout problem, and other market failures, which eminent domain is theoretically designed to address.

The chapter also explores recent case studies focused on the use of eminent domain in urban redevelopment and alternatives to its use. This is a still nascent literature. One case study discussed below focused on the role of eminent domain in

locally-facilitated urban redevelopment efforts in suburban Cleveland, Ohio. Another study attempted to discern patterns in the municipal use of eminent domain in Massachusetts. This subsection concludes with a discussion of methods other than eminent domain and condemnation for facilitating land assembly and redevelopment. The last subsection of the chapter provides a brief synthesis of what the literature suggests about what motivates locally-facilitated redevelopment efforts and what factors influence the associated land assembly processes, including the use of eminent domain. A primary aim of this chapter is to provide a framework for researching how and why communities redevelop certain areas and how and why they choose certain land assembly strategies to facilitate those redevelopment efforts.

## **GLOBALIZATION, THE CHANGING ROLE OF THE STATE, AND MUNICIPAL REDEVELOPMENT STRATEGIES**

A current theme in the literature suggests that globalization and the post-Fordist hyper-mobilization of capital have been associated with a rescaling of the state's intervention in the economy (Cox, 1997). Under Fordism and the era of Keynesian welfare, the state was responsible for the wellbeing of labor in an economy dominated by mass production, especially in the western world and in the United States. Labor's general welfare was considered essential to the consumption and, therefore, the production of both goods and capital. In the post-World War United States of the 1950s and 1960s, plentiful tax revenue and political will extended this interventionist stance to the nation's cities (Weber, 2002). Through the Housing Acts of 1949 and 1954 and the urban renewal program, cities received streams of federal monies to purchase inner city property for slum clearance and redevelopment, using powers of eminent domain

delegated to public and quasi-public agencies pursuant to approved comprehensive plans (Weber, 2002; Fainstein, 2001). Much of this funding during these earlier urban renewal years and into the early 1970s was directed toward improvements that directly benefited the public, such as public infrastructure (especially road and highway construction), housing, hospitals, and recreational facilities (Fainstein, 2001). Federal funding of such infrastructure improvements was tantamount to subsidizing developers (Weber, 2002). Massive displacement of largely poor, minority communities and re-concentration of the poor and disenfranchised in drab and eventually dangerous public housing was a serious negative consequence of these urban renewal policies. Nevertheless, cities were more in control of their own redevelopment progress during these earlier decades, actively strategizing to attract developers with federally funded improvements in infrastructure and public works, bolstered by the use of eminent domain (Fainstein, 2001).

The 1970s witnessed the onset of an economic restructuring that had a profound impact on the way urban economic development and redevelopment were carried out. In the United States, the early 1970s were a time of significant economic recession and high inflation and the beginning of the shift away from a Fordist manufacturing economy toward a service and information oriented economy. Many older cities began to suffer from eroded tax bases and declining services as the middle classes fled from core urban areas to the suburban periphery along with the flight of manufacturing and jobs. Municipal revenues plummeted, Cleveland declared bankruptcy, and New York tottered on the abyss of default. Raising property taxes was no answer for cities with already eroded tax bases.



Moreover, the needs of the labor force and the welfare of cities became increasingly secondary concerns with the shift toward supply-side economics, the rise of the information and networking society, and the associated hyper-mobilization of capital that was less dependent on place. National spending was cut and federal expenditures on health care, housing, community development and job training and various social welfare programs were radically curtailed, terminated, decentralized to states and cities, or privatized. The various presidential administrations throughout the 1970s and 1980s, from Ford through Bush I, actively encouraged the devolution of the state's role in promoting social welfare and urban vitality. Federal urban renewal programs such as Model Cities and Urban Development Action Grants (UDAGs) withered, died a slow death, or were simply terminated (Sagalyn, 2007). Urban theorists and urban geographers have referred to this rescaling of the social welfare relationship between the nation-state and local governments as the "hollowing out" of the state (Cox, 1997; Lake, 2002).

In response to the drying up of federal and state spending, American cities began to partner with the private sector in market-driven redevelopment strategies that could provide them with ratables and higher bond ratings to increase municipal revenue and make borrowing easier and less costly (Fainstein, 2001; Weber, 2002; Sagalyn, 2007). Although redevelopment after the 1970s was still often large-scale, there was an increasing emphasis on economic development through redeveloping existing core areas with a mix of higher-end commercial and residential uses. Whereas cities had used federally-funded infrastructure to attract developers from the 1950s through the early 1970s to build housing and create jobs, they now engaged directly with developers in public private partnerships to redevelop older areas to attract capital and investment.

Thus, by the late 1970s and early 1980s, a mere fifteen years after the height of the urban renewal era, Baltimore was redeveloping its inner harbor and New York City was turning Times Square into a high end, mixed-use theme park-like district with out-scaled towers that catered to tourists and suburbanites, little resembling its former theater-oriented, tawdry, yet still-vibrant self.

## **THEORIES ABOUT WHAT MOTIVATES URBAN REDEVELOPMENT EFFORTS**

### **Neo-Liberalism and Creative Destruction**

A growing body of literature argues that although the state may have been hollowed out, it is not dead and some urban theorists suggest that the state can still make urban areas flexible sites for real estate investment and capital accumulation in a process of “creative destruction” (Weber, 2002; MacLeod and Goodwin, 1999; Fraser, Lepovsky, Kick, and Williams, 2003). The term creative destruction was coined by Schumpeter and, as applied to urban areas, it describes the way in which states and municipalities have been “strategically stigmatizing those properties that are targeted for demolition and redevelopment” (Weber, 2002, p. 520). Theorist Rachel Weber argues that cities and states use legal regulation and science to “stabilize inherently ambiguous concepts like blight and obsolescence and create the appearance of certitude out of a cacophony or claims about value” (Weber, 2002, p. 520). The underlying implication is that the state adopts legal mechanisms to create a system of planned obsolescence of deteriorated or underutilized areas until the value of the buildings sinks below the value of the land and the area becomes ripe for redevelopment. As a corollary, it is posited that local states and

municipalities may correspondingly decide to disinvest in certain areas and effectively let them lie fallow until obsolescence and underutilization reduce values enough to generate redevelopment potential.

In practice, what this suggests is that, in accordance with neo-liberal constructs that favor the free market over government intervention in local redevelopment initiatives, local states adopt redevelopment statutes with language that makes it quite easy for cities to declare areas blighted, underutilized or obsolete. Indeed, the municipal declaration of a specific site of contiguous properties as obsolete, blighted or underutilized, particularly if the area is close to downtown, mass transit, and other public services, effectively advertises the area to rentiers and redevelopers as a prime site for redevelopment and reinvestment. Real estate investors and redevelopers then approach the city with redevelopment proposals for the site with financial projections that predict intensive revalorization of the site and increased tax revenue generation: the supposed antidote to so many municipal fiscal woes. Positive economic development forecasts arm municipalities with the data for meeting the public use requirement and, assuming the proposed redevelopment is couched in terms of an approved master plan, the result is a legally defensible window for using eminent domain to relatively quickly acquire the properties for transfer to redevelopers.

### **Rent Gaps, Uneven Development, and Revanchist Gentrification**

Relevant literature suggests that rent gaps and uneven development may encourage or enable creative destruction and the use of eminent domain to facilitate urban redevelopment. Rent gap theory asserts that “rent gaps” occur when falling ground

rents on the periphery of business districts catalyze the movement of capital and residential and non-residential growth and development from the inner cities to the suburbs (Slater, 2002). Land values and rents in these peripheral areas decline severely, poorer residents move in, the ranks of absentee landlords increase, upkeep and maintenance falter and buildings deteriorate or become economically or functionally obsolete (Smith, 1996). Once disinvestment takes hold in these peripheral areas they represent low points of land rent, or “rent gaps”, relative to the much higher land rents found in the central business districts and suburbs. This disparity in rent values in the periphery compared to rent values downtown and in the suburbs is referred to as the rent gap and is a hallmark of uneven development (Smith, 1996).

However, the crucial element is that at some critical point, land values fall low enough in these disinvested rent gap areas that investors, rentiers, and redevelopers recognize that these areas can be profitably redeveloped with high end residential and non-residential uses (Slater 2002). At this point, according to theory, there tends to be a corresponding push from upper middle-class households, recognizing the financial gain through rising property values that can be realized from moving into these redeveloping areas. Urban theorist Neil Smith equates the decision to move back into the cities as a sort of revenge of the middle class that he terms “revanchism” (Smith, 1996). He argues that they are gentrifiers, affluent residents – generally coming from elsewhere within city limits, but also from the suburbs – willing to trade the greater spaciousness of more distant city neighborhoods and nearby suburbs for the amenities and cultural opportunities of the city to live in housing in redeveloped districts likely to appreciate in value.

Some cities may experience an iterative cycle of rent gaps, revanchism, and gentrification. These cycles may reach into immediately surrounding areas not yet undergoing gentrification. At some point, the rise in land values and building values associated with the process of rent gap formation, revanchism, and gentrification may begin to spill over into still deteriorated neighborhoods just enough to raise expectations that these areas are ripe for redevelopment but still cheap enough to easily acquire. City officials may have been watching the rent gap process take hold, observing the gentrification, and knowing full well that letting these nearby areas lie fallow would best serve redevelopment interests. Then, at just the right moment, as the redevelopment potential advertises itself and as redevelopers begin approaching them with revitalization proposals, city officials move to use eminent domain to acquire large contiguous areas to transfer to willing developers.

### **GROWTH MACHINE AND URBAN REGIME MODELS: COLLABORATION FOR REDEVELOPMENT**

As Harding (2009) notes, there is a branch of urban political economy theory positing that cities are governed through coalitions formed between public and private sector agencies, interests, and actors to carry forth distinct agendas. Urban redevelopment and growth-oriented activities may be viewed as products of the coalition building involved in growth oriented governance. These governance coalitions can form from within different private sector interests, from within different public sector interests, or between the public and private sectors. Harding (2009) views the growth machine and urban regime models as two strands of this larger attempt to explain urban governance and suggests that urban economic development strategizing and decision-making are

products of coalition-building in growth-oriented governance. The growth machine and urban regime models are discussed here as a potential theoretical basis for understanding how the various public and private sector actors involved in the urban redevelopment process, including land assembly and eminent domain, make decisions and strategize.

Peterson (1981) has described a series of interrelated factors that limit urban governing agendas and can help explain the tendency for these coalitions, whether conceived of as growth machines or urban regimes, to favor development strategies over redistributive strategies. First, as Harding (2009) notes, Peterson emphasizes that cities effectively die if enough middle class and affluent residents and businesses desert them for the suburbs. In a world of increasingly mobile capital this death is hastened unless cities can compete nationally and globally to retain and attract enough higher-end, revenue-generating businesses and affluent residents. Since the 1970s, severe, sustained retrenchments in federal and state funding for social welfare programming, service provision, and urban revitalization have limited cities' resources. Peterson (1981) stresses that there are strict limits to cities' capacities to use resources gathered from the affluent for redistribution to the poor. Cities must focus on the assets and factors of production they already possess to attract capital, labor, affluence, and consumerism and remain competitive (Harding, 2009). The primary factor of production that cities actually control is land, but it is also the factor to which they are spatially bound (Thompson, 2009). Cities must concentrate on strategizing to utilize their land resources to attract capital – national, international, and increasingly mobile - which generally occurs at the expense of social welfare policies and programs for the poor. Given such limitations, development politics trumps redistributive politics.

Cox and Mair (1988) suggest that what they term “local dependence” is another factor to consider in the formation of coalitions and their tendency to concentrate on urban redevelopment and economic development. These theorists define local dependence as signifying “the dependence of various actors – capitalist firms, politicians, people – on the reproduction of certain social relations within a particular territory” (Cox and Mair, 1988, 307). The core of their argument is that, despite the increasing mobility of capital in a de-industrializing economy, some firms, politicians, local government, and labor remain geographically limited by, and spatially dependent upon, the urban built environment and its relatively well-delineated boundaries. The economic vitality of firms and labor and their ability to accumulate capital, even in the midst of a spreading cyber-network, is still intimately tied to the health of the local economy. Therefore, argue Cox and Mair (1988), locally dependent businesses form coalitions to encourage local growth and accumulation strategies and, by shared consensus, to ward off opposition to their efforts to keep the local economy globally competitive.

Cox and Mair (1988) note, moreover, that there is a relatively long history of such coalitions harnessing the power of the local state to facilitate a competitive local economy and encourage capital accumulation. Specifically, spatially-bound urban business coalitions have encouraged the local state to assist with infrastructure improvements to make localities more attractive to investors through highway construction, large-scale rezoning, water and sewer extensions, and urban renewal (Cox and Mair, 1988). The coercive power of the state in officially designating areas as blighted to make them available for federal funding, stress Cox and Mair (1988), was a necessary ingredient in successful urban redevelopment efforts of the 1960s and 1970s.

They note that the power of eminent domain has played a critical role in the land assembly process by enabling local renewal agencies to receive federal write-down subsidies and loans for acquisition of areas declared blighted. Business coalitions pushing urban redevelopment as a strategy for capital accumulation learned to view the involvement of local officials, politicians, public agencies with power over land use, and redevelopment authorities, as indispensable. Business courted local government and local government courted business.

The growth machine model suggests that the desire for capital accumulation and the need to make localities more globally competitive encourages business-based coalitions to make land-based economic development decisions. Indeed, the growth machine model, which was first articulated in the mid-1970s (Molotch, 1976), suggests that local economic development decision-making is essentially property-value based (Harding, 2009). Relative to economic development decision-making, the model focuses on the desires of property owners, termed rentiers, who seek to add value to their holdings by intensifying their use and development. Rentiers' desires to add value to their properties set the growth machine in motion by piquing the interest and activism of real estate entrepreneurs and land-based financiers and investors (Harding, 1999). That, in turn, piques the interest of other land-based, private sector entities that may profit from rentiers' desires. This includes developers, members of the building and construction industry, labor unions, architects, and planning and engineering consultants. Together, these rentier-entrepreneurs, financiers, and construction-based businesses and consultants form growth-oriented coalitions that value urban space for its exchange value over its use value. These coalitions seek to reconfigure and revalorize urban space with more



intensified uses to attract capital accumulation. They are primarily motivated by profit. Reflecting what Davies and Imbroscio (2009) and John (2009) refer to as the propinquity of urban space, coalition membership may also include entities that benefit more tangentially, including the media, utilities, universities, cultural institutions, sports franchises, small businesses, and labor unions (Harding, 2009).

Harding (1999) has noted that the growth machine model argues that the direction of influence for governance, and therefore local economic development decisions, proceeds from the private sector to the public sector. As part of this activist current, growth coalitions may approach elected officials, governing bodies, and line agencies associated with land assembly and propose the redevelopment of certain areas targeted for reconfiguration and revalorization. Municipal officials and other public sector entities, concerned with augmenting urban fiscal resources, have a somewhat different motivation for engaging these coalitions. The urban public sector views proposals for the redevelopment of targeted areas as a potential means of altering markets by reconfiguring and revalorizing urban space to attract higher end businesses, more high-income jobs, more affluent residents, and more consumerism, which it is hoped will generate more tax revenue than previous uses (Logan and Molotch, 1987). Municipal officials view such activities as indicators of competitiveness and greater fiscal health, which can help raise bond ratings for easier municipal borrowing. Given the fiscal limitations of the early years of the twenty-first century, governing bodies are generally less interested in targeting areas for rehabilitation to re-house low and moderate income residents and existing small businesses.

Critically, the growth machine model suggests that the social and political dynamics of redevelopment-related land use decision-making creates tension between those individuals and groups that value land for its use value as homes and small businesses and rentiers, who view their holdings as commodities with future exchange values (Molotch, 1976). Indeed, once municipal officials, working in conjunction with growth coalitions, target specific locations for spatial reconfiguration and revalorization to promote redevelopment, those spaces may become especially contested. Conflicts may arise between exchange-value-seeking rentiers and property owners who seek to maintain their properties at their current uses for reasons ranging from livelihood preservation to generational sentiment and a desire to remain where they can maintain strong social and business networks. In the face of negotiated purchase, or compulsory purchase associated with condemnation and eminent domain, these use-value property owners may become holdouts. As discussed later in this chapter, this can create market failures and inefficiencies that eminent domain and other land assembly strategies may not adequately address. Thus, the decision to redevelop land areas from several parcels to entire neighborhoods, even with the threat of eminent domain, does not necessarily amount to a victory by rentiers or the local state over use value-oriented homeowners and small businesses.

Indeed, as Cox and Mair (1988) point out, the local state – or city - often becomes a battleground as redevelopment projects are conceived, approved, and carried out. When redevelopment is in the offing local government has divided loyalties. It must answer to the business community and the economic development interests it upholds and the electorate and small business owners who frequently oppose redevelopment.

Residents and business owners directly in the path of local state-sponsored redevelopment tend to feel an acute sense of loss as their formerly traditional urban space becomes a commodity to be reconfigured for capital accumulation (Cox and Mair, 1988). Cox and Mair (1988) argue that growth machine business coalitions try to exploit this sense of loss by helping the local state to create a sense of pseudo-community based around the new development opportunities, becoming civic boosters to create consent for their economic development strategies.

Urban regime theory, as noted above, also attempts to explain urban governance, and by extension, decision-making for social and economic production as coalition-based. The theory countenances the formation of formal and informal collaborative arrangements between public and private sector interests to form the capacity to govern to addresses problems and achieve agendas, such as redevelopment, that promote global competitiveness (Mossberger and Stoker, 2001). It has become the dominant paradigm of urban politics and policy formation (Mossberger and Stoker, 2001). Regime theorists understand the formation of these collaborative governing arrangements as a response to the fact that power and resources for social production are fragmented between the public sector and the business community (Ward, 1996; Mossberger and Stoker, 2001). The business community and other private sector interests can provide capital for generating employment as well as financing for projects and tax revenues and the public sector can lend legitimacy to projects and provides officially sanctioned policy-making authority. However, regime theory suggests that the motivations for the private sector's participation in activities such as redevelopment and economic revitalization are not evenly distributed (Ward, 1996). At the same time, as Ward (1996) has noted, the

decreased involvement of the American local state in urban fortunes has created more institutional and political space for business-led organizations and public/private partnerships to dominate the policy arena. Regime formation is viewed as an intentional and consensus-based, but non-coercive, response to the need to create strategies for allocating fragmented resources and incentives for more even participation towards common social production goals (Mossberger and Stoker, 2001).

In addition to addressing the basis for regime formation, regime theorists have focused on the internal dynamics of urban regime-type coalition building. Stone (2005) has suggested that regime-type governing arrangements are based on a strategic set of four connections, or elements: 1) an agenda for addressing a set of problems; 2) a governing coalition, usually including both governmental and nongovernmental members, formed around that agenda; 3) resources, brought by the members, for pursuing the agenda; and 4) a scheme of cooperation between the members for governing. Mossberger and Stoker (2001) have stressed that regimes generally require the participation of the business community. They have also noted a tendency within regimes, borne out by years of case study research on American cities, toward relatively stability (Mossberger and Stoker, 2001). Regimes are not temporary phenomena; they reflect long-standing patterns of cooperation and may last through several city administrations.

However, what seems to distinguish the regime model most from the growth machine model is the possibility of variation in agendas. The growth machine model posits only a singular agenda, which is growth. In contrast, the empirical, case study-based research conducted by political economists suggests that a number of different

regime types have been operative in American urban governance and policy-making.

As Mossberger (2009) has clarified, Stone identified four basic regime types:

maintenance regimes, development regimes, middle-class progressive regimes, and lower class opportunity expansion regimes. Maintenance regimes focus on public infrastructure issues and are most apt to appear in smaller cities and towns. Development regimes concentrate on activist, pro-growth agendas and garner support from politically and economically powerful interests and the business community. Middle-class progressive regimes tend to concentrate on neighborhood quality-of-life issues such as historic preservation and environmental protection. Lower class opportunity expansion regimes concentrate on improving conditions for the poor in terms of educational attainment levels, employment, and social capital formation.

Mossberger and Stoker (2001), taking their cue from Stone's typologies, have attempted to create a somewhat simpler, broader classification system. They have identified three regime types. Organic regimes focus on policy-making, even if it involves growth, designed to maintain local cohesion and the status quo. Instrumental regimes are most similar in scope to Stone's development regimes and are primarily concerned with garnering the support of powerful public and private players to promote capital accumulation. Symbolic regimes, while similar to instrumental regimes in their focus on growth, are more interested in facilitating collaboration between public and private interests to change a particular locality's image. As such, their goal is to facilitate revitalization which, in turn, will promote growth.

Other political economists have suggested that regime types and changes in regime types may closely reflect historical, large-scale political and policy trends

operative at the federal level. Susan and Norman Fainstein have posited that regime typologies during the 1960s and 1970s reflected changes in the availability of federal funding and programming for social welfare and urban renewal and the emergence of organized urban social movements (Mossberger, 2009). As Mossberger (2009) has clarified, they argue that the emergence of more entrepreneurial, business-dominated regimes since the 1980s is the logical outcome of the devolution of federal funding and programming and the hollowing out of the state. Ward (1996) has synthesized an understanding of regime typologies including, among others, the Fainsteins' entrepreneurial regimes and Stone's development regimes, the latter of which he terms business-centered activist regimes. His characterization of entrepreneurial and business-centered activist regimes suggests that urban land is valued as a commodity to be marketed and subsidized to encouraging growth wherein success is measured in terms of physical regeneration (Ward, 1996).

Some of the regime concept's chief theorists and chroniclers, while facilitating its prominence in explaining the dynamics of growth-oriented, urban political decision-making, have also begun delineating its pitfalls and shortcomings. Mossberger and Stoker (2001), for example, have noted that the concept is plagued by problems of reliability and validity stemming from the lack of a common language of measurement. They have identified four common pitfalls. First, the concept suffers from parochialism because different cities use different terminologies for their coalition-building efforts, making cross-national and international comparisons difficult. Secondly, because theorists sometimes ignore such differences, coalitions that lack one or more of the classic regime qualities, such as participation of the business community, are sometimes

misclassified as urban regimes. Thirdly, even when all of the classic regime components are present, it is often difficult to work with hard-to-measure variables such as the degree of cooperation or stability. Finally, the fact that the regime concept has been used to describe partnerships with no private sector role points to a tendency toward what Mossberger and Stoker (2001) call concept stretching.

In light of the above, a literature has begun to emerge that focuses on regime change and collaborations that do not quite meet the qualifications of full-blown urban regimes (Mossberger and Stoker, 2001). Thus, political economists have begun to discuss the existence of policy networks that may lack full public-private collaborative efforts, rather than regimes, as more appropriate models of urban politics in some cities. Similarly, others have posited the existence of mixed regimes, including those that may facilitate social reforms while promoting growth.

Nonetheless, some urban theorists and political economists believe that the growth machine and urban regime concepts are still overly simplistic models of governance that can be applied to the decision-making that underlies redevelopment and other forms of urban social production. Gotham (2001), for example, argues that despite the fact that both models countenance public-private collaborative efforts, neither one gives sufficient attention to the role of the local state in facilitating redevelopment decisions, paving the way for blight declarations, and creating mechanisms of land acquisition (Gotham, 2001). Other theorists suggest that neither model takes adequate account of the important role of agenda setting and discursive strategies for achieving public consensus and legitimacy for redevelopment initiatives (Crowley, 2001).

Moreover, the writing of other political economists and theorists suggests that collaborative models, such as the growth machine and urban regime concepts, can obscure the importance of the mayor's leadership and his or her personal ambitions and agendas in redevelopment decision-making. Lawler (2002) notes that a mayor can play a crucial role in redevelopment efforts by counteracting the institutional weaknesses inherent in public agencies with overlapping missions by providing a context and narrative that drive change and by pulling strings for federal and state funding. This was a fundamental finding of his work on regime politics in Detroit and Jersey City. In a somewhat more negative light, Greasley and Stoker (2009) have noted that, due to personal ambitions, mayors often select easier, faster redevelopment agendas and attempt to limit citizen input in the push for quick political successes.

### **EVOLUTION AND EXPANSION OF THE PUBLIC USE DOCTRINE AND EMINENT DOMAIN**

Eminent domain is a sovereign power that was nearly limitless as it was part of the crown's prerogative under English common law (Kulick, 2000). The takings clause of the Fifth Amendment of the United States Constitution permits municipalities and local governments, as creatures of the state, to acquire private property for public use, or a use that confers some benefit on the public, as long as the affected owner is paid just compensation for the taking. As Juergensmeyer and Roberts (2007) note, the Fifth Amendment does not explicitly state that property can only be taken for public use, but the courts have interpreted the takings clause to mean that private property cannot be taken for private use. Scholars suggest that inclusion in the United States Constitution of a public use requirement in the Fifth Amendment takings clause and the inclusion of a



just compensation requirement were essentially attempts to place some limits on the ability of the government to exercise its powers of eminent domain (Kulick, 2000).

Therefore, when a federal, state or local government or governmental agency exercises its sovereign power to acquire private property for a public use, it must pay the affected party just compensation for the taking. Just compensation generally equates with the property's fair market value at the time of condemnation, taking or transfer of the property.

What is meant by a public use, as applied to eminent domain takings, has never been precisely defined by the Constitution. To the degree that they provide lists of valid governmental activities for purposes of eminent domain takings, state eminent domain and redevelopment statutes come closest to defining what is, or is not, a public use. These definitions vary considerably from state to state. Consequently, and in the absence of a single unifying definition of public use at the federal level, legal scholars argue that the so-called "public use doctrine" should be viewed as an evolutionary one (Pritchett, 2003).

In fact, the literature indicates that there has been an expansion of the public use doctrine and concomitant broadening of the power of eminent domain by state legislatures that dates back for nearly a century and a half (Brnovich, 2004; Broussard, 2000; Klemetsrud, 1999; Kulick, 2000; Malamut, 2000; Posey, 2000; Pritchett, 2000; Staley, 2003). Arguably, the expansion of the public use doctrine has specifically encouraged the use of eminent domain to facilitate urban redevelopment dating back at least to the late 1940s when the federal urban renewal era began in earnest. The literature indicates that the public use requirement was more narrowly drawn in the eighteenth and

nineteenth centuries to encompass only those activities for which the public had actual physical access (Werner, 2001). As such, eminent domain was primarily invoked to facilitate land acquisition for projects that the public could physically utilize such as mill dams, public parks, roads, sewer systems, and hospitals. By the late nineteenth century, however, the concept of public use was beginning to expand to include a general concept of economic development in which some type of public benefit was conferred, even though public access was not always immediate or tangible. Eminent domain began to be used to acquire rights of way for railroads and utilities to enable more economical exploitation of the mineral and timber resources of the American west (Werner 2001). State legislatures broadened statutory definitions of public use to encompass economic development and urban redevelopment and, as reflected in the developing case law, the courts supported this state legislation (Werner, 2001).

It was the Supreme Court's decision in Berman v. Parker (1954), however, that truly crystallized this broadening of the public use doctrine - on a national level – to include urban redevelopment (Broussard, 2000; Klemetsrud, 1999; Kulick, 2000; Malamut, 2000; Posey, 2000; Pritchett, 2000; Werner 2001). In Berman, the Supreme Court determined that the concepts of public welfare and, by association, the concept of public use are “broad and inclusive.” Accordingly, the Court validated a District of Columbia urban renewal statute as meeting the public use requirement even though it permitted non-blighted private dwellings and businesses to be condemned and transferred to private developers because said properties were in the midst of a larger blighted area earmarked for redevelopment through a rational and comprehensive plan (Werner, 2001). The Court did not consider the psycho-social and economic impacts of the ensuing

displacement because the displaced residents and businesses were, in the minds of the justices, justly compensated. The fact that the most immediate beneficiaries in *Berman* were private developers was also not a factor in the Court's decision because the justices were satisfied that the statute's ultimate aim was to accomplish urban renewal for the benefit of the larger public.

Subsequently, in Hawaii Housing Authority v. Midkiff (1984), the Supreme Court further expanded the public use doctrine and the reach of eminent domain to include the dismantling of land oligopolies. In Midkiff, Hawaii had enacted legislation that enabled a few lessors holding large agricultural lands to transfer title to a larger number of agricultural lessees. The legislation's public purpose was to reduce the concentration of these lands in the hands of a few wealthy families and prevent an agricultural oligarchy. In validating Hawaii's applicable statute, the Court determined that as long as the exercise of eminent domain is "rationally related to a conceivable public purpose" justly compensated takings are not proscribed by the public use clause (Werner, 2001).

At the state level, one of the most dramatic case that scholars often cite as a watershed sanctioning of the use of eminent domain to promote urban redevelopment over the last two decades is Poletown Neighborhood Council v. Detroit (1981) (Broussard, 2000; Klemetsrud, 1999; Kulick, 2000; Malamut, 2000; Posey, 2000; Pritchett, 2000; Werner, 2001). In Poletown, the Michigan Supreme Court validated the City of Detroit's use of eminent domain to clear a Detroit neighborhood with a population of 3,000 so that General Motors Corporation could build a new plant. In its decision, the Michigan Supreme Court cited the anticipated job creation and increased tax revenues as the public use justification for the eminent domain action even though the

most immediate beneficiary of the action was General Motors, a private entity. Once again, displacement issues were essentially ignored because the court validated the declared public use and the affected property owners had been justly compensated for the eminent domain taking.

Most recently, the United States Supreme Court upheld urban redevelopment as a valid public purpose justifying the use of eminent domain in Kelo v. City of New London (2005), a ruling not surprising in light of the high court's prior rulings in Berman and Midkiff. In Kelo, the Connecticut Supreme Court had authorized the City of New London to acquire admittedly non-blighted private properties in an older neighborhood and transfer them to the New London Economic Development Corporation for redevelopment with higher end, tax revenue-generating uses, including a hotel, conference center, health club and marina to complement a new research facility for the Pfizer Pharmaceutical Company. There were essentially two primary questions before the United States Supreme Court in Kelo. One question was whether a public purpose constitutes, or is essentially synonymous with, a public use under the Fifth Amendment takings clause. The other question was whether the economic redevelopment of a non-blighted area pursuant to an approved redevelopment plan constituted a public purpose justifying the taking of private properties by eminent domain or whether it was simply a way to confer a private benefit on a particular party, specifically Pfizer and the redevelopers. On the first question the Court held, citing Berman and Midkiff, that it had long since rejected the narrow interpretation that the public use doctrine required literal public use and access; it was enough that a conceivable public purpose would be served. As to the second question, the Court determined that economic development constitutes a

public purpose justifying the use of eminent domain. The Court also concluded that economic development takings that may benefit private parties and only incidentally benefit the public are still constitutionally valid. Furthermore, the Court held that New London's plan to acquire non-blighted private property by eminent domain for economic development purposes according to an approved plan violated neither the public use doctrine nor the takings clause despite the lack of certainty as to when any benefits would accrue to the public. The Kelo ruling is thus a manifestation of the expansion of the public use doctrine and the broadening reach of eminent domain as an economic development tool.

The public backlash from Kelo has been intense and has led to swift state legislative actions to limit the power of eminent domain. The United States Government Accountability Office (2006) reported that between late June 2005 and late July 2006, 29 states enacted changes to their eminent domain laws. Specifically, 23 of the 29 states placed restrictions on the use of eminent domain by amending their eminent domain statutes. Prohibited uses have included using eminent domain to increase property tax revenues, to assemble land for projects where the sole aim is economic development, or to transfer condemned property to a private entity. Fully 24 of the 29 states amended their eminent domain statutes to require higher levels of prior notice to affected property owners. The United States Government Accountability Office (2006) also reported that 21 of the 29 states redefined blight, public use, economic development, or redevelopment to limit the reach of eminent domain and protect property rights.

## **THE LAND ASSEMBLY PROBLEM: MARKET FAILURES, HOLDOUTS AND EMINENT DOMAIN**

Urban redevelopment is a land-based form of social production that generally requires land assembly and, quite likely acquisition. Whether land assemblage and acquisition occurs solely through the agency of government or whether it represents a collaborative effort of public and private interests, those responsible invariably run into what political economists collectively refer to as the land assembly problem. Broadly, the land assembly problem describes the tendency of market failures to lead to inefficient assemblages of land for redevelopment. It generally signifies that too little land has been assembled for effective redevelopment but, as further explained below, it can also connote over-assemblage. Heller and Hills (2008) have referred to the land assembly problem as a critical issue in urban political economy that they, along with other theorists, including Gillette (2005) and O’Flaherty (1994, 2007) view as multifaceted. The land assembly problem has physical, political, and economic roots, the latter referring to common transaction inefficiencies as further detailed below.

At the physical level the problem is a relatively straightforward but still thorny problem of inefficient fragmentation. Especially in older cities, like Newark, urban land tends to be broken up into unusually small parcels, a single owner may own several parcels and they may not be contiguous, and title may be clouded. In response, private contractors will attempt to negotiate with landowners for purchase of their properties in order to consolidate this fragmented land to create a contiguous area for targeted redevelopment. That response, however, almost invariably leads to the so-called holdout problem which is at the core of the transaction inefficiencies that lead local governments

to consider condemning the subject areas and using - or threatening to use – eminent domain. The use of eminent domain, in turn, to address the holdout problem usually exacerbates the political and economic problems of land assembly.

Heller and Hills (2008) have explained the holdout problem as a collective action problem that occurs when landowners in the targeted redevelopment area realize that once a developer has begun to purchase parcels for consolidation that signals that their properties may suddenly be worth much more. The developer in a redevelopment situation must decide which lots to acquire and what to pay for them so that she can still turn a profit. Once the developer has actually purchased parcels to begin the land assembly process she is effectively locked in purchasing as much of the targeted area as she can. She does not want to duplicate such heavy, site-specific investments at another site (Heller and Hills, 2008). As a result, Heller and Hills (2008) have noted, the existing owners effectively become monopoly-suppliers of the land that the developer is trying to assemble. Aware that she needs the land, they may delay – or hold out – selling to her so that they can realize as much of the extra value represented by the anticipated redevelopment as possible. Thus, the expectation of increased value associated with anticipated redevelopment creates an altered environment with altered perceptions about the worth of affected properties and their values actually do begin to rise. As O’Flaherty (1994) has noted, this externality is the essential core of the land assembly problem. The developer in a holdout situation can no longer simply pay the holdout landowner the value of the parcel in its original environment but must pay that landowner its increased value, or surplus, in this now altered environment (O’Flaherty, 1994). Several or more holdout landowners can cause her negotiated purchase efforts and land assembly efforts

to collapse because she cannot possibly pay them the desired surplus (Heller and Hills, 2008).

Moreover, as Goodin (2007) has noted, the developer may be faced not only with holdouts but also holdins. These are landowners who may refuse to sell to the developer because of a desire not to leave. They may place a high premium on their homes and their ties to the community that may be deep and generational or they may be business owners who fear that if they left the neighborhood they would lose their customers – loss of goodwill - and their employees. For them, these properties may have a subjective value independent of market values and surpluses in anticipation of redevelopment.

Regardless of whether the problem facing a developer consists of holdouts or holdins, or a combination of the two, the result may be an under-assembly of parcels after she has already substantially invested in the redevelopment project. Under-assembly, which essentially connotes the acquisition of too few parcels to create a sufficient contiguous land area for redevelopment purposes, threatens the life of a redevelopment project. On a theoretical level, O’Flaherty (1994) has noted that efficiency dictates that a redevelopment project is preferred over the status quo as long as the benefits produced would, if monetized, be higher than the sum of the pre-redevelopment values of all of the parcels assembled. However, in the holdout situation, the project is only going to go forward if the benefits outweigh the sum of the values of all the parcels plus the holdout surpluses. O’Flaherty (1994) theorizes, therefore, that because of the land assembly problem it may be nearly impossible to achieve efficient, adequately-sized redevelopment projects; most will be too small.



Political economists view eminent domain as a form of governmental intervention to address the land assembly problem and the nearly inevitable, aforementioned market failures. Scenarios for the use of eminent domain to address the land assembly problem may differ from locality to locality and from project to project. Local governments might initiate the use of eminent domain to acquire the needed parcels in the face of holdouts and holdins or the redeveloper may approach the local government and pressure it to condemn the land on her behalf. The literature suggests that the use of eminent domain can result in certain transaction efficiencies (Malamut, 2000). Specifically, eminent domain can enable the acquisition of several properties at the same time and obviate the need for time-consuming, individualized negotiations with each private owner. This suggests that eminent domain can not only reduce the amount of time associated with the acquisition and assembly of parcels needed for urban redevelopment and economic development but also increase the certainty that such acquisitions will actually occur. However, as legal theorists and political economists have noted, the use of eminent domain creates its own political and economic transaction deficiencies and inefficiencies.

A recurring theme associated with the use of eminent domain to facilitate redevelopment is the under-compensation of affected property owners as well as insufficient relocation assistance for displaced residents and businesses. In New Jersey, as in most other jurisdictions, just compensation is generally determined at the time of condemnation and is assessed at fair market value. Fair market valuations tend to be relatively crudely determined in New Jersey, and most jurisdictions, by courts and court-appointed tribunals (Heller and Hills, 2008). Courts and tribunals determining just compensation for the property subject to eminent domain generally base it on what a

willing buyer would pay to a willing seller at that parcel's highest and best use on the open market (Heller and Hills, 2008). However, as Heller and Hills (2008) have noted, that invariably does not provide the affected property owner with as much compensation as they could have demanded at a full voluntary sale.

There are perhaps even greater moral ambiguities associated with just compensation packages. Certainly, it is well-settled public policy that affected landowners in the midst of redevelopment and subject to eminent domain should not be permitted to reap full redevelopment windfalls (Heller and Hills, 2008). However, just compensation based on fair market values does not even compensate affected landowners with the surpluses, discussed above, that are associated with the land assembly process. Some legal theorists have problems with this because it deprives those landowners of increased value they would otherwise receive if the entire transaction and land transfer were purely private (Heller and Hills, 2008). Ironically, those landowners adjacent to targeted redevelopment areas, who are in no danger of displacement, will be able to reap the benefits of the land assembly-associated surpluses. This amounts to a "morally arbitrary redistribution of wealth from condemnees to abutting landowners" (Heller and Hills, 2008, p. 1478). Moreover, fair market value-based just compensation packages necessarily will not adequately compensate holdins the full subjective values that they understandably attach to their properties.

Secondary rent-seeking on the part of developers is another problem associated with condemnation and the use of eminent domain to facilitate redevelopment. As Heller and Hills (2008) have noted, private developers assembling land for redevelopment have incentives to lobby local governments for eminent domain because just compensation

packages tend to result in a low-balling of property values, which lowers the cost of land acquisition. The write-downs associated with eminent domain, then, effectively help subsidize redevelopment.

Moreover, the inherent efficiencies and inefficiencies associated with the use of eminent domain to facilitate redevelopment on contested lands tend to be closely associated with, and even exacerbate, struggles between the powerful and the relatively powerless. In theory, as Gillette (2005) suggests, holdouts and holdins delaying or contesting redevelopment create a political problem that interferes with future public uses and municipal officials will only resort to condemnation to resolve this land assembly problem. The intervention of these officials, at least theoretically, will smooth the way for the intended public benefits of the proposed redevelopment to be bequeathed unto the citizenry. In reality, however, there is a risk that local officials will exploit eminent domain power and over-condemn in less politically powerful neighborhoods, especially if they are beholden to a small but politically and economically powerful minority that offers the promise of more jobs and tax revenues (Gillete, 2005).

## **THE CONCEPT OF BLIGHT**

Throughout American jurisdictions, the existence of blight and, specifically, blighted areas has become an important condition precedent for redevelopment-oriented condemnation, land assembly and acquisition, and the use of eminent domain. As further detailed in Chapter Three of this dissertation (the regulatory chapter) the existence of blight has become particularly important to municipally-facilitated redevelopment efforts in New Jersey. Indeed, the New Jersey Constitution contains a blighted areas clause that

expressly authorizes the government to seize blighted property for redevelopment purposes. The legislative intent for the enactment of this clause in 1947 was to facilitate the rehabilitation of New Jersey's older cities and address the deterioration that had been having a negative domino effect on properties surrounding blighted areas (Ostrowski, 2009). From the beginning, New Jersey had been very liberal in authorizing the use of eminent domain to facilitate the redevelopment of blighted areas, and the New Jersey Constitution expressly authorizes the use of eminent domain for redevelopment by private entities (Ostrowski, 2009; Zazzali, 2009).

Nonetheless, legal theorists and legal historians have noted that what constitutes blight and blighted areas, even within state statutes, has rarely been defined with any precision (Colin, 2004). As Gordon (2004) and Weber (2002) have noted, blight was less in terms of the existence of actual slums than as a set of disease-like conditions that could lead to slum formation and metastasize to adjacent properties and neighborhoods. Weber (2002) has identified that definitions of blight were, at the start, vaguely fashioned by the national and local state as part of a strategic calculus for preparing devalued and deteriorated properties for revalorization, reinvestment, and capital accumulation. Especially after the passage of the federal urban renewal legislation of the 1940s and 1950s, "the national state collaborated with the local state to create quasiscientific methods for identifying 'blight' " (Weber, 2002, p. 526). Indeed, in the late 1940s and through the early 1950s, states sometimes referred to such indicators as the associations between specific morbidity and mortality statistics and slums in their statutory blight criteria (Weber, 2002). Despite the fact that these indicators were often conflated with race and ethnicity, which led to the disproportionate targeting of minority areas as

blighted, the overall result was that state statutory blight definitions gained more legitimacy. Earlier redevelopment legislation, reflecting the fact that local states were bent on eradicating slums for replacement with new low-income housing as the primary purpose of redevelopment, tended to target areas that met broadly drafted blight criteria designed to more literally increase the overall health and welfare of cities and their residents (Weber, 2002).

However, as Weber (2002) and Gordon (2004) have noted, the passage of the Federal Housing Act of 1954 shifted the focus of redevelopment efforts, which led to a change in the language and calculus of blight. When the 1954 Act shifted the redevelopment emphasis from eradicating slums and supplanting them with low-income public housing to eradicating them and supplanting them with non-residential, employment-generating and tax revenue-generating uses, attention shifted away from actually blighted to potentially blighted areas (Weber, 2002). Gordon (2004) has noted that as the focus of redevelopment shifted from housing to economic development, growth areas began to be targeted more by the willingness of private interests to invest in them rather than by how deteriorated they had become. These tectonic shifts and perceptions of the mobility of blight, in turn, led local states to focus more on the obsolescence of existing land uses and buildings as a primary blight indicator, rather than simply their deterioration (Gordon, 2004). However, as the original blight criteria focused on deterioration tended to remain in state statutes, the end result was an even further broadening, or expansion, of the blight concept. This, in turn, created even greater statutorily sanctioned opportunities for the assemblage of land and the use of eminent domain in targeted blighted, obsolete, or underdeveloped areas to facilitate

redevelopment. Too, the expanded concept of blight made it that much easier, in the era of federal subsidization of redevelopment and renewal activities, to obtain federal monies.

In the aftermath of devolution and the drastic slowdown in federal funding of urban redevelopment, the need for local states and local governments to define blight as broadly as possible has only intensified. As Gordon (2004) has argued, local governments hoping that redevelopers will approach them with proposals will generally look for the least restrictive statutory basis they can find to declare areas blighted. This is aided by state statutes that generally include a non-quantified laundry list of blight and obsolescence criteria (Gordon, 2004). There is rarely any statutory language about household income levels, property values, or actual percentage of vacant buildings, numeric factors that might actually provide a more scientifically defensible basis for a blight determination (Gordon, 2004). Often, as in New Jersey (further detailed in Chapter Three), the statutory language is so constructed that local officials and developers need only identify one criterion from these laundry lists to serve as the basis for a blight determination.

The aforementioned shifts and statutory realities affecting the calculus of blight determinations and the tendency toward municipally-facilitated, but developer-initiated, redevelopment efforts have had significant ramifications in terms of which areas are actually targeted for redevelopment. These combined factors have resulted in private investment being steered away from areas and neighborhoods that are in the most deteriorated shape and toward what has been termed the “blight that’s right” (Gordon, 2004, p. 322). Such targeted areas have at least some of the conditions necessary to fit

the statutory requirements but they are not in such poor shape that they represent too great a risk for private investment (Gordon, 2004). This phenomenon has often been coupled with what Gordon (2004, p. 324) has termed an “edifice complex” characterized by a bias on the part of state legislatures and public officials in favor of large-scale, often symbolic, redevelopment efforts. Gordon (2004) relates all of these tendencies to a desire on the part of urban regimes or urban growth machines to exert a large measure of control over redevelopment efforts.

Although local redevelopment powers flow from local police powers to protect public safety and morals, they have increasingly come to rely on an expansive definition of the ‘general public welfare’ in which the goal is not simply to eradicate blight and stimulate development, but to control the pace and quality of development as well. (Gordon, 2004. p. 324)

In addition to writing about which types of areas tend to be targeted, Gordon (2004) also addressed the size and configuration of areas targeted for redevelopment. Specifically, he has noted that larger sized areas are favored over smaller areas because theoretically it is easier, within a larger area with more acreage and parcels, to find conditions that meet the applicable statutory blight requirements. Indeed, Gordon’s (2004) research suggested that the boundaries of redevelopment areas are often purposefully gerrymandered to include sufficiently deteriorated areas to meet statutory blight requirements. As well, larger areas – precisely because they literally cover more ground - are perceived as more easily meeting the presumption that they are fulfilling the public use requirement (Gordon, 2004). Gordon (2004) argues that this perception about the size of redevelopment areas, in turn, creates in the minds of public officials a greater justification for the use of eminent domain.

Echoing Weber's (2002) neoliberal creative destruction thesis, Gordon (2004) noted that the intense competition for tax revenues has also distorted the blight determination process. It is precisely this competition, he suggested, that has led municipalities to declare areas blighted in which tax revenue collection is allegedly insufficient to cover the cost of supplying them with municipal services. His research suggests that neighborhoods in which land values exceed the value of existing improvements would tend to fall under this rubric, creating an incentive for local governments to target them and declare them blighted to prepare them for redevelopment.

## **EMINENT DOMAIN: REPORTS AND CASE STUDIES ON ITS USE AND ALTERNATIVES TO ITS USE**

### **Attempts to Quantify Municipal Eminent Domain Use and Establish Patterns**

There is virtually no reliable and consistent empirical data on the use of eminent domain to facilitate urban redevelopment or any other statutorily permitted public uses at the federal, state, or local levels. A primary reason, noted earlier and substantiated by the United States Government Accountability Office (2006), is the lack of reliable, centralized aggregate databases at the federal, state, or local level. As well, there is a tendency toward lack of transparency in county and municipal condemnation records. In fact, there is no extensive, reliable, easily accessible record of condemnations and the use of eminent domain at the state, county or municipal level in New Jersey which, with the possible exception of Connecticut, is almost invariably the case elsewhere. Other than for transportation improvements, there is little data in New Jersey or elsewhere on the public purposes for local governmental and municipal condemnation and eminent domain proceedings.



Despite problems of access and transparency, there have been recent attempts to create data sets and quantify the use of eminent domain – and the threatened use of eminent domain – on a state-by-state basis. The Institute for Justice (IJ), a libertarian property-rights law firm based in Northern Virginia, has compiled perhaps the most extensive state-by-state eminent domain data set. IJ obtained its data set by surveying newspapers and state court records between 1998 and 2002 and determined that, nationwide, states and their municipalities had filed 3,722 eminent domain condemnation actions in court for the benefit of private parties and another 6,560 properties were threatened with condemnation for the benefit of private parties, for a total of 10,282 properties (Berliner, 2003). IJ found that eminent domain is prevalent throughout the majority of states but found no clear pattern in its use, even among highly urbanized states. Florida, New Jersey, Pennsylvania, and Ohio, all of which are highly urbanized, appeared to invoke eminent domain condemnations with the greatest frequency. On the other hand, New York, California, Texas, and North Carolina, all of which have large urbanized areas, appeared to use it much less frequently. The seeming lack of any clear pattern suggests the need to explore potential relationships between eminent domain and state regulations, including eminent domain statutes and redevelopment laws, and the political economies of particular cities and urbanized areas.

In addition, the results of IJ's analysis, published in 2003 and made available online as "Public Power, Private Gain: A Five Year, State-by-State Report Examining the Abuse of Eminent Domain", must be viewed cautiously because of caveats in IJ's information-gathering methods. As the author notes, the numbers on filed and threatened eminent domain condemnations were compiled from news sources and the state

judiciaries but many cases are never reported and news reports often do not specify the number of properties involved (Berliner, 2003). This may have introduced an element of bias in that periods of heavier eminent domain reporting by newspapers may reflect increased levels of reader and/or editorial interest in eminent domain topics rather than any actual increase in its use.

A review of the literature uncovered only one published study that involved an attempt to quantify patterns in the municipal use of eminent domain. This study was a white paper sponsored by the Pioneer Institute for Public Policy Research in 2000 and entitled “The Power to Take: The Use of Eminent Domain in Massachusetts”. In the study, the author analyzed data from a total of 501 separate eminent domain takings that occurred between 1987 and 1999 in ten demographically diverse municipalities in eastern Massachusetts, including the City of Boston (Malamut, 2000). These ten separate municipalities were the units of analysis. Regression and correlation analyses were performed to determine associations between demographic, economic, and political characteristics of municipalities, such as the degree of centralization of government decision-making, and the number and total area of takings in these municipalities. The author indicated that because of the small size of the data set no firm conclusions could be drawn regarding such associations. Nonetheless, he found positive correlations between the number and total area of eminent domain takings and the following factors: population, municipal area, total municipal assessed value, total municipal revenue, total state revenue, state tax revenue, total state expenditures, and the degree of centralization of governmental decision-making. However, the study did not consider whether municipal decisions to use alternatives to eminent domain, such as negotiated purchase,

land swaps, receivership, and land banking to secure areas for redevelopment are associated with various demographic, economic, and political factors. This represents an opportunity for further exploration.

### **Recent Case Studies on the Use of Eminent Domain to Facilitate Redevelopment**

The case study research on the use of eminent domain to facilitate urban redevelopment is still nascent and it is not voluminous, but studies do suggest that eminent domain sometimes plays a significant role in collaborative public-private urban redevelopment efforts. A review of the literature turned up only one scholarly article reporting findings from two eminent domain case studies. This article, written in 2005 by Samuel R. Staley and John P. Blair and entitled “Eminent Domain, Private Property, and Redevelopment: An Economic Development Analysis”, describes their findings from case studies they conducted on the use of eminent domain to facilitate redevelopment in Mesa, Arizona and Lakewood, Ohio. Mesa is one of the core cities of the Phoenix metropolitan area and Lakewood is an older, inner-ring suburb of Cleveland.

Staley’s and Blair’s results suggested to that localities view eminent domain as a necessary tool that helps them remain competitive in a globalizing economy by facilitating redevelopment efforts (Staley and Blair, 2005). More specifically, their experience suggested to them that cities may be conceiving of eminent domain – and utilizing it - as a means of subsidizing redevelopment by effectively writing down certain costs (Staley and Blair, 2005). Eminent domain has become, in their view, an alternative to the more classic redevelopment subsidies and financial incentives, such as tax abatements, grants, and loans.

Eminent domain is not seen as a constitutionally limited power of government. Rather, it is another tool needed to ensure a city revitalizes its economy and can position itself to be competitive in the global economy. In some ways, eminent domain takes on a more important role than industry-targeted subsidies of the past such as loans, grants, and tax abatement. (Staley and Blair, 2005, p. 5)

Furthermore, the authors' case study research suggested that municipal decisions to use of eminent domain are not only more arbitrary than conventionally assumed but also more profoundly political.

Eminent domain decisions are in actuality more arbitrary than this discussion suggests. As the cases of Mesa and Lakewood demonstrate, even when the city commissions or engages in fiscal impact analysis, ultimately the decision to move forward is political and not grounded in objective analysis of the data or any principle of considerable caution. (Staley and Blair, 2005, p. 9)

Specifically, the authors found that eminent domain catalyzed, or facilitated, redevelopment in Mesa and Lakewood in multiple ways, their findings lending credence to some of the hypotheses advanced earlier in this dissertation. They found, for example, that eminent domain effectively subsidized land assembly for private developers partnering with cities by lowering the transaction costs associated with acquisition and demolition of parcels (Staley and Blair, 2005). In addition, eminent domain assisted in the creation of visual and physical gateways into the redevelopment areas by enabling the targeted acquisition and assembly of parcels adjacent to the redevelopment area. Another of their findings was that eminent domain provided large-scale developers with a competitive edge by effectively disenfranchising the small businesses whose properties were acquired. Furthermore, eminent domain reduced the uncertainty of acquisition for the future clients Lakewood and Mesa were trying to lure into their respective redevelopment areas (Staley and Blair, 2005).

### **Alternatives to Eminent Domain to Facilitate Land Assembly and Encourage Redevelopment**

As noted earlier, the use of eminent domain to facilitate land assembly for urban redevelopment is fraught with actual and potential negative impacts. Among these are displacement of residents and businesses, under-compensation of the displaced, over-assembly of parcels, and the concomitant, wholesale destruction of entire neighborhoods, communities, and social networks. However, municipalities also engage in non-condemnation-based economic incentives and fiscal policies designed to facilitate, or encourage, redevelopment. Two of the more common ones are tax abatements, and below-market-rate land sales (O’Flaherty, 2007). They are discussed here because the City of Newark has a well-documented history of extensively utilizing both of these alternatives. In fact, misdeeds and fraud committed by former Newark Mayor Sharpe James in his handling of below-market-rate land sales led to his 2008 conviction and imprisonment.

In the context of redevelopment, tax abatements involve a municipality, such as the City of Newark, issuing a resolution or ordinance that permits a lowering of the net property taxes owed on a parcel slated for redevelopment, generally for a period of years. In New Jersey, and other jurisdictions, the municipal power to issue tax abatements is governed by state enabling statutes, as briefly discussed in a subsequent chapter of this dissertation. Newark generally permits tax abatements designed to encourage redevelopment for terms of at least five years. The underlying theory is that high property taxes, which are especially high in cities like Newark because of their

chronically eroded tax bases and concomitant high tax rates, would otherwise preclude developers and landowners from undertaking redevelopment projects.

As O'Flaherty (2007) has noted, the more favorable tax treatment associated with tax abatement generally increases the value of the parcels to which it is applied. The increment to the land value of the affected parcels occurs because, in practice, developers are more willing to pay more per square foot if taxes are no longer an immediate factor (O'Flaherty, 2007). Exactly who benefits from tax abatements and in what fashion, whether it is the landowner, the redeveloper or the municipality, tends to depend on timing and politics (O'Flaherty, 2007). O'Flaherty (2007) suggests that perhaps the most important factor, from the municipal standpoint, is whether the city has adequate knowledge about parcel values on the free market. Ignorance about parcel values and poor timing may lead to tax abatements that do not catalyze the intended redevelopment efforts and only end up costing the city tax revenues it would otherwise have realized.

As noted above, Newark has a history of trying to encourage redevelopment through below-market-rate land sales to developers under the theory that these sales are effectively subsidizing land assembly. In Newark, such land sales are coupled with developers' agreements to the effect that the parcels must be used for specific redevelopment purposes. That becomes a condition precedent of the below-market-rate land sale.

However, as O'Flaherty (2007) has noted, below-market sales in Newark have led to unintended consequences. First, because land assembly costs are rendered so low, this tends to lead to inefficiently intensive use of the land, meaning that the developer uses more land than is actually needed for the proposed redevelopment. Secondly, the true

cost of the subsidy – which amounts to a loss of tax revenue that will ultimately be borne by the public – is essentially hidden from the public. In Newark, the existence of these sales has not been made transparent to the public. Finally, below-market-rate sales tend to result in either what O’Flaherty (2007) terms gifts or conflicts. If the use tied to the land sale, as drawn up in the developer’s agreement, is truly the highest and best use for the property, then the below-market-rate sale is essentially an unnecessary gift because the resulting use would have occurred anyway. If the use tied to the sale is not the highest and best use, then there is disincentive for the redeveloper to follow through with the terms of the agreement. This results in a conflict because either what the city wants built will never be built or what is built will reflect concessions made for the redeveloper who will now tend to delay the project until she gets the changes in use she wants. She may also tend to delay the project, as O’Flaherty has noted (2007), because under a below-market-rate land sale, the longer she can delay the project and the installation of improvements the fewer taxes she will have to pay.

Additionally, a small number of communities throughout the United States are attempting to redevelop neighborhoods and facilitate economic development through other land assembly methods that are more free market-based and do not involve condemnation or displacement (Brnovich, 2004). Among the commonly discussed free market-based alternatives are negotiated purchases, land swaps, and joint ventures (Brnovich, 2004). For the most part, as these alternatives involve private sector agreements, municipal and governmental officials are not participants. At this point, the literature is rather sparse, but researchers have begun to report on these market-based

alternatives to eminent domain for the acquisition and assembly of contiguous properties for economic development and neighborhood redevelopment.

A negotiated purchase entails an agreed-upon transfer in fee simple of the owner's property directly to the developer that is designed to provide both parties with time to adjust to their changing circumstances and complete due diligence efforts. Negotiated purchases are relatively simple, occur rather quickly, and involve conveyance of title and cash at the time of closing. They often include flexible financing techniques to comply with the cash flow needs of both buyer and seller (Brnovich, 2004).

Land swaps permit private small business and retail owners and developers in areas slated for redevelopment to trade locations through purchase and swap agreements that enable the small business owners to remain in the redevelopment area. However, they are most applicable and feasible if the property owner is a retailer seeking a new location or is a real estate professional (Brnovich, 2004).

In a joint venture, the developer and private property owner essentially become co-developers of the property as a redevelopment project (Brnovich, 2004). The major asset that the property owner brings to the arrangement is the land itself but he or she may also be required to bring cash and loan guarantees. Often, however, the developer controls the construction and leasing process. Joint ventures carry significant risk for the property owner but this is theoretically balanced by the potential for remuneration and profit.

Significantly, the literature review uncovered no quantitatively- or qualitatively-based comparative or cost-benefit analyses of these market-driven, non-condemnation methods of land assembly versus eminent domain. On the surface, however, these land



assembly alternatives would seem to offer a number of advantages over eminent domain. In the first place, displacement of residences and businesses is minimized and there is the potential for much less disruption of the socio-spatial integrity of the community and its longstanding web of social networks. Secondly, these alternative methods provide greater opportunities for property owners to participate as co-developers or shareholders with greater buy-in and acceptance of the redevelopment process. Instead of becoming victims of eminent domain affected property owners, through these alternatives, could become stakeholders and profit-sharers with some measure of control over the redevelopment and spatial evolution of their communities.

On the other hand, these market-based alternatives have serious caveats (Brnovich, 2004). They require separate, detailed negotiations between developers or redevelopers and each affected and participating property owner. Effective neighborhood redevelopment may require the acquisition of large contiguous areas of land. Therefore, using these market-driven methods of land assembly over extensive areas might require a large number of highly inefficient, time-consuming negotiations with uncertain outcomes. Eminent domain, at least in theory, can enable local governments to acquire large contiguous areas of land with greater certainty and transaction efficiency by minimizing the need for many separate negotiations with each land owner (Malamut, 2000). Perhaps the most glaring caveat associated with these market-driven alternatives, however, is that they require a combination of financial liquidity, negotiating skills, and risk acceptance that few affected property owners in the often lower income areas slated for redevelopment tend to possess.

## **SYNTHESIS**

This chapter has taken a predominantly national and historical approach to the literature on the larger issues and research questions upon which this dissertation is based. Among these larger concerns and issues are the following: 1) the motivations for local governments to undertake, or facilitate, urban redevelopment efforts; 2) whether those motivations have changed over time and, if so, what has motivated those changes; 3) local land assembly processes and strategies, including the use of eminent domain, and the factors that have motivated those strategies; and 4) whether those factors have changed over time and, if so, the impacts on local land assembly processes and strategies, including the use of eminent domain. This dissertation addresses these issues through specific case studies from Newark's six-decade-long redevelopment history.

The salient literature suggests that large-scale structural changes that have shaped the relationship between states, localities, and markets have impacted the way American cities have approached redevelopment since the 1950s and 1960s heyday of federally subsidized urban renewal. Theorists of large-scale structural changes such as globalization and the hollowing-out of the state suggest that, in response to decentralization and devolution of federal and state funding for urban areas, municipalities have become more reliant on public-private partnerships to help finance and even initiate economic development and redevelopment. This private sector influence has become coupled with an increasing tendency, in line with arguments propounded by the growth machine theorists, for financially strapped municipalities to view their older neighborhoods and core areas as urban spaces that can be revalorized and reconfigured for capital accumulation.

These tendencies reflect historically significant changes that directly impacted urban redevelopment initiatives. With the adoption of the Federal Housing Act of 1954, the federal urban renewal program shifted from assembling and clearing deteriorating areas to re-house low income, inner-city populations to assemble and clear such areas for reconstruction with non-residential uses for capital accumulation. The concept of public use, which had been expanding since the late 19<sup>th</sup> century, further expanded to embrace urban redevelopment. This was sanctioned by the state and federal courts.

Concomitantly, the conceptualization and statutory construction of urban blight had been expanding and shifting from a more traditional stance informed by disease metaphors and a desire to eradicate outright residential slums to one that concentrated on the economic obsolescence of urban areas. In response, the earlier redevelopment agendas of the 1950s that supported the creation of such public goods as affordable housing and parks were replaced by agendas encouraging high-end residential and non-residential development designed to attract affluence and employment and increase tax revenues. These shifts and their impacts have carried forward into the present. However, in the face of devolution and the drying up of federal funding it has increasingly become the case that redevelopment initiatives are municipally-facilitated but privately-initiated. The literature suggests that the seeming fascination of public officials with large-scale redevelopment efforts reflects the need to attract private initiative and investment by creating areas with enough deteriorated parcels to ensure that statutory blight definitions are met. It also appears to provide both municipal officials and private investors with more control over the pace and direction of redevelopment which, in turn, provides more certainty that the project will actually come to fruition in the desired form.

Moreover, the applicable literature suggests that land assembly processes associated with redevelopment and, by implication the use of eminent domain, are highly embedded within each redeveloping municipality's particular political economy. Neil Smith suggests that neighborhoods with apparent rent gaps provide the large-scale locations for the capital accumulation-oriented "reshaping" opportunities of post-1980 redevelopment. These areas tend to contain large areas of contiguous properties labeled as obsolete or underutilized by municipalities who strategically deploy state laws and legal terminology to prepare the subject lands for "creative destruction." Logan and Molotch would argue that the creative destruction process is facilitated by urban regimes - coalitions of business interests, politicians, landowners, and increasingly, outside international corporate interests. Indeed, as noted a few paragraphs earlier, it may be that the language and terminology associated with blight and, by association eminent domain, is strategically constructed, reinterpreted, or perhaps even manipulated by redeveloping municipalities to make it easier to target and declare areas available for redevelopment. The literature suggests that these municipalities are, in no small part, motivated by a desire to gain a competitive advantage in the globalizing economy.

Interestingly, it appears that although the literature has discussed this last assertion very little detailed case study research has been conducted on land assembly processes to test or further explore it. Few, if any, case studies or other research have begun to address the ways in which specific municipalities may be constructing or reinterpreting the language of blight and the applicable redevelopment laws, eminent domain statutes, and statutorily-sanctioned public uses. Yet, the overarching logic of neoliberalism and creative destruction, urban regime theory, the growth machine model,

and rent gap theory and the history of the evolution of public use and the re-scaling of state-local relationships suggests that such reinterpretations of codified land use systems and regulations are occurring as municipalities compete with each other on a global basis. The resulting tension between the extant legal terminology and the reinterpretation of that language as it is played out in redevelopment efforts to reshape contested space remains and its implications for just processes and outcomes remains relatively unexplored.

Furthermore, there are issues and questions that the literature and recent case study research on local redevelopment experiences have not adequately addressed. Chief among this is why land assembly processes and strategies involving eminent domain seem to be favored over non-condemnatory methods of land assembly such as tax abatements, negotiated purchase, and land swaps. Nonetheless, the literature suggests that when a city like Newark targets an area for redevelopment it may be using a combination of these methods. In their case studies of Mesa, Arizona and Lakewood, Ohio, Staley and Blair asserted that there was a political component to the decision to use eminent domain and that eminent domain functioned as a subsidy that reduced the uncertainty of land assembly and helped attract desired future higher end residents and businesses. Those assertions seem in keeping with traditional explanations of the land assembly transaction inefficiencies eminent domain theoretically addresses as well as reflecting the consensus, borne out in the literature, that the use of eminent domain to facilitate redevelopment is inherently political.

Staley's and Blair's case study approach, however, may not have enabled them to access rich enough data on the land assembly process itself, especially relative to the interactions between municipal and private actors. Indeed, it was largely quantitative and

it compared two municipalities in two completely different jurisdictions from very different parts of the country with different state laws, urban growth patterns, resource issues, and economic pressures. A more qualitative approach that would have required more extensive interviewing may have revealed rich data that would have been informative about how and why these municipalities approached the land assembly process, including the use of eminent domain, as they did.

Importantly, then, a review of the salient literature suggests that a missing component in the exploration of redevelopment and land assembly processes associated with it – in this era of public-private collaboration - is a richly detailed account of the interactions between these various public and private actors. Additionally, the gaps and insufficiently explored areas of the literature suggest that an attempt needs to be made to address how municipal officials and collaborating private development interests may be constructing, using, reinterpreting, or perhaps even manipulating statutory language to target areas for redevelopment and declare them blighted. Exploring the above would seem to require an intensely qualitative approach of the sort provided in this dissertation, which is based on intensive interviewing coupled with detailed field and archival research.

## **CHAPTER THREE: RELEVANT LAWS AND CASE LAW**

### **INTRODUCTION**

This chapter describes the regulations and analyzes the court cases most directly applicable to the case studies on redevelopment-associated land acquisition and land assembly in Newark, New Jersey conducted for this dissertation. The case studies cover roughly fifty years of Newark's redevelopment history and there were significant changes to the applicable laws over those several decades. They reflect the evolution, at the national level, of the public use concept as it relates to the local state's use of eminent domain to acquire private land and transfer it to other private entities for redevelopment purposes. Additionally, they reflect the evolution of the New Jersey statutory criteria for determining whether specific areas within municipalities are blighted. Determination that an area is blighted generally has been, and remains, a condition precedent in New Jersey for the use of eminent domain to acquire and assemble private properties and transfer them to other private entities for redevelopment purposes. These changes are detailed in this chapter. More specifically, reflecting the fifty –year period covered by the case studies, the regulatory framework for land acquisition and assembly for redevelopment includes Title I of the Federal Housing Act of 1949, the Federal Housing Act of 1954, the Federal Housing Act of 1956, the New Jersey Blighted Areas Act of 1951, the Model Cities Act, and New Jersey's 1992 Local Redevelopment and Housing Law. A few salient companion state statutes are discussed, including New Jersey's Five-Year Tax Exemption and Abatement Law and New Jersey's Eminent Domain Law of 1971.

Accordingly, this chapter consists of several sections and subsections, following this introduction, that reflect the above concerns. The first section discusses, relatively briefly, three landmark United States Supreme Court cases that reflect the evolution of the public use doctrine as it applies to eminent-domain based land acquisition and assembly designed to facilitate redevelopment and economic development. Federal laws governing the case studies of Newark's land assembly processes, including the use of eminent domain, to facilitate redevelopment are covered in the second section. The third section covers New Jersey statutes from the 1950s through the present related to blight designation and land acquisition and assembly for redevelopment. A fourth section covers the major New Jersey cases dispositive on judicial review of those statutes. The fifth section briefly covers the salient aspects of the more important companion statutes, including New Jersey's Five-Year Tax Exemption and Abatement Law and the New Jersey Eminent Domain Law of 1971. The sixth and final section consists of a summary conclusion.

As the case law on the redevelopment-related state statutes evolved it provided standards of judicial review of municipally facilitated land assembly and redevelopment activities framed by those statutes. Case law evolved to reflect and, following the Kelo decision, eventually react against the broadening of the public purposes and redevelopment goals that were used to justify and permit the municipal acquisition of private property and its transfer to other private entities through condemnation and eminent domain. The main thrusts of the earlier case law, from the 1950s through the 1990s, were interpretation of applicable state statutes and development of standards of judicial review for assessing the legality, fairness, and validity of municipal



redevelopment efforts and land assembly strategies. Later cases, especially those following Kelo, reflect an attempt by the New Jersey courts to tighten those standards of review.

The statutes and cases establish the legal framework within which the case study process unfolded. Specifically, the statutes and cases are extremely important for understanding the phenomena of land acquisitions and land assembly to facilitate redevelopment. Judicial interpretations of the statutes and the redevelopment criteria help define legally defensible land acquisition and assembly strategies and the public purposes for which eminent domain can be invoked to effectuate those strategies. However, beyond this framework of statutes and cases, it is crucial to understand the playing out of land assembly and acquisition processes at the local, municipal level, including the use of eminent domain. A focus of the case study descriptions will be to see how, in actual practice, these processes actually unfolded and worked.

## **EMINENT DOMAIN, THE PUBLIC USE CLAUSE, REDEVELOPMENT AND THE SUPREME COURT**

### **Overview**

Eminent domain is a sovereign power – part of the crown’s prerogative under English common law – that, in the United States, permits the federal, state, and local governments, and private entities authorized by government to exercise public functions, to acquire private property for public uses (Kulick, 2000). It is intended to function as a measure of last resort when all good faith, or bona fide, attempts at negotiated purchase to acquire the desired private properties have failed. Private owners who refuse to sell,

despite such good faith efforts, are termed holdouts. Holdouts may refuse to sell for a variety of reasons including, but not limited to, deep sentimental or multi-generational attachment to their homes, economic dependence on their businesses and the good will of their client base, or a desire to reap windfalls from the anticipated rise in real estate values associated with impending redevelopment.

Together, the due process, takings, and public use clauses of the Fifth Amendment of the United States Constitution operate to create limits on the taking of private property by the government and limitations on the power of eminent domain. Specifically, the due process clause states that no person shall “be deprived of life, liberty, or due process of law” and the takings and public use clauses state that “private property [shall not] be taken for public use, without just compensation” (U.S. Constitution, Amendment V). Thus, when private property is acquired by the federal, state, or local government two qualifications must be met: 1) the taking must be for a public use, or a use that confers some public benefit; and 2) the affected owner must receive just compensation for the taking. The requirement that a governmental taking of private property must be for a public use, or confer a public benefit, remains undefined in the United States Constitution, but it is commonly referred to as the public use doctrine. Generally, just compensation is based on the appraised fair market value of the property at the time of the taking and in some jurisdictions, including New Jersey, may include reimbursement for relocation expenses. Through the Fourteenth Amendment, the takings and public use clauses and limitations have been made applicable to the 50 states and, therefore, to their counties and municipalities.

From the late nineteenth century onward, there was an expansion and evolution of the public use doctrine and a concomitant broadening of the power and reach of eminent domain by state legislatures (Brnovich, 2004; Broussard, 2000; Klemetsrud, 1999; Kulick, 2000; Malamut, 2000; Posey, 2000; Pritchett, 2000; Staley, 2003). Indeed, the public use concept was more narrowly drawn through much of the nineteenth centuries to encompass only those activities that directly benefited the public and for which the public had actual physical access (Werner, 2001). Eminent domain, during this period, was primarily invoked to facilitate land acquisition for public works and institutional projects such as mills, dams, public parks, roads, sewer systems, and hospitals. Arguably, this evolution encouraged the use of eminent domain at the federal, state, and local levels to facilitate urban redevelopment and economic development. By the late nineteenth century, however, eminent domain began to be used to acquire rights of way for railroads and utilities to enable more economical exploitation of the mineral resources of the American west (Werner, 2001). This reflected the beginning of an evolution and expansion of the public use concept to include economic development activities in which some type of public benefit was conferred albeit the public access was not always direct or tangible. State legislatures broadened statutory definitions of public use to encompass economic development and the courts supported these efforts, as reflected in case law. Economic development and urban redevelopment, in fact, were the primary public uses that enabled the municipal use of eminent domain to acquire private property for urban renewal in the 1950s federal legislation.

The United States Supreme Court has addressed the governmental taking of private property for redevelopment and economic development purposes primarily

through three landmark cases: Berman v. Parker (1954), Hawaii Housing Authority v. Midkiff (1984), and Kelo v. City of New London (2005). These cases are especially significant in establishing federal standards of judicial review of governmental land acquisition and assembly processes, including the use of eminent domain, for urban redevelopment purposes. As detailed later in this chapter, these standards formed the basis for the major New Jersey Supreme Court and the New Jersey Superior Court decisions from the 1950s onward on municipal acquisition of private property, including the use of eminent domain, to facilitate urban redevelopment and economic development efforts. Berman, Midkiff, and Kelo are summarized in the subsequent subsections with attention to their influential judicial review standards. As noted at the beginning of this dissertation, a national effort has ensued in reaction to the Kelo decision to limit municipalities' ability to use eminent domain in urban redevelopment and economic development efforts and to limit their power to declare areas blighted. As further detailed later in this chapter, recent New Jersey redevelopment case law has begun to reflect these concerns.

### **Berman v. Parker, 348 U.S. 26 (1954)**

Berman v. Parker (1954) was the first time the United States Supreme Court addressed a dispute involving economic development and urban redevelopment initiatives and the use of eminent domain to facilitate land acquisition and assembly to effectuate those initiatives. The next few paragraphs contain a brief summary of the salient facts of the case. This is followed by an explanation of the Supreme Court's holding and the basis for its decision.

By the 1940s, Congress was poised to address the fact that much of the housing in Washington, DC was substandard or deteriorating and the city contained extensive slums and blighted areas. Congress had to enact the enabling legislation for Washington's redevelopment because the city is a federal district separate and autonomous from any state. In 1945, the federal government enacted the District of Columbia Redevelopment Act to address these conditions and facilitate redevelopment of severely blighted and deteriorating areas. The Act did not actually define blight. However, it provided sections that: 1) defined substandard housing conditions; 2) created an agency - the District of Columbia Redevelopment Land Agency (Agency) - to acquire and assemble blighted areas by eminent domain; and 3) created another agency – the National Capital Planning Commission (Commission) - to adopt a citywide comprehensive plan upon which targeted redevelopment initiatives would be based (Berman v. Parker, 1954). Section 6 of the Act specifically provided that once the Commission adopted a redevelopment plan for a targeted area and assembled the real estate for the project area the Agency was authorized to transfer those lands to public agencies and lease or sell properties to private redevelopment companies, partnerships, and individuals (Berman v. Parker, 1954). The Commission prepared and adopted a comprehensive plan for the District in 1950 and targeted Southwest Washington, DC, which contained mostly substandard housing, for redevelopment. In accordance with the Act, a public hearing was held, the redevelopment plan was approved, and the Commission certified the redevelopment plan to the Agency for execution, which enabled the Agency to use eminent domain for land acquisition and assembly.

Appellants (Berman et al), owners of a non-blighted department store in the targeted area, brought suit arguing that the redevelopment plan, which would involve acquisition and clearance of their store via the power of eminent domain, would violate the Fifth Amendment due process clause and public use restriction of its takings clause. They stressed that their property should be exempt from the redevelopment plan, which they argued was targeted at substandard housing problems, and acquisition and clearance because it was a fully functioning, non-blighted, non-residential property. Appellants argued, in essence, that to take property for the purpose of slum riddance was one thing but to take property merely to develop a better balanced, more attractive community was quite another (Berman v. Parker, 1954). The United States District Court for the District of Columbia dismissed the complaint, Berman et al appealed, and the case came before the United States Supreme Court.

The United States Supreme Court affirmed the District Court in a majority opinion written by Justice William O. Douglas that set standards of judicial review of urban redevelopment and economic development efforts involving the use of eminent domain for land acquisition and assembly. In his opinion, Justice Douglas noted that the role of the judiciary in this case was quite narrow because the issues centered on the District of Columbia's determination of its own land use and redevelopment needs, which were essentially police power concerns and legislative in nature. The Court, as the highest level of the judiciary, owed the District of Columbia deference in its legislative police power determinations. As the redevelopment and economic development functions in which the District of Columbia was engaged were public uses the judiciary's sole function was to ensure that all constitutional limitations, including the due process

and public use clause restrictions, were met. In the judgment of the Court these limitations were met. As Justice Douglas stated with reference to the use of eminent domain for redevelopment and economic development public use purposes:

In such cases the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation, whether it be Congress legislating concerning the District of Columbia or the States legislating concerning local affairs. The principle admits of no exception merely because the power of eminent domain is involved. The role of the judiciary in determining whether that power is being exercised for a public purpose is an extremely narrow one. (Berman v. Parker, 1954, p. 102)

The use of eminent domain to facilitate a public use or public purpose was, in the eyes of the Supreme Court, an issue of pure mechanics:

Once the object is within the authority of Congress, the right to realize it through the exercise of eminent domain is clear. For the power of eminent domain is merely the means to the end. (Berman v. Parker, 1954, p. 34)

Justice Douglas also addressed appellants' contention that clearing areas through the use of eminent domain merely to provide balance and attractiveness was not a valid means of furthering public uses, including urban redevelopment and economic development. Douglas emphasized the broad reach of the public welfare concept for which governments at the more local level exercise their police powers.

The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. In the present case, the Congress and its authorized agencies have made determinations that take into account a wide variety of values. It is not for us to reappraise them. If those who govern the District of Columbia decide that the Nation's Capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way. (Berman v. Parker, 1954, p. 103)

The Court also addressed appellants' other argument about the mechanics of the redevelopment process. Specifically appellants had argued that the District of Columbia's redevelopment process involved the transfer of private property to other private parties for the latter's benefit, which appellants argued violated the public use restriction of the Fifth Amendment takings clause. However, Justice Douglas and the other members of the Court not only saw no such violation but suggested that government could well determine that the employment of an agent of private enterprise was the best way to effectuate redevelopment and other public uses.

The public may well be as well or better served through an agency of private enterprise than through a department of government – or so the Congress might conclude. We cannot say that public ownership is the sole method of promoting the public purposes of community redevelopment projects. (Berman v. Parker, 1954, p. 34)

Finally, in addressing appellants' argument that their property should be exempt from clearance because it was a safe, non-blighted, non-residential use the Court stressed, and deferred to, the legislative determination of Congress and the District of Columbia that an area-wide approach was needed to effectuate redevelopment of Southwest Washington, DC. Justice Douglas wrote as follows:

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 believed that the piecemeal approach, the removal of individual structures that were offensive, would be only a palliative. The entire area needed redesigning so that a balanced, integrated plan could be developed for the region, including not only new homes but also schools, churches, parks, streets, and shopping centers. In this way it was hoped that the cycle of decay of the area could be controlled and the birth of future slums prevented. ... Property may of course be taken for this redevelopment which, standing by itself, is innocuous and unoffending. But we have said enough to indicate that it is the need of the area as a whole which Congress and its agencies are evaluating. If owner after owner were permitted to resist these redevelopment programs on the ground that his particular property



was not being used against the public interest, integrated plans for redevelopment would suffer greatly. ... But as we have already stated, community redevelopment programs need not, by force of the Constitution, be on a piecemeal basis- lot by lot, building by building. (Berman v. Parker, 1954, p. 104)

**Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984)**

In Hawaii Housing Authority v. Midkiff (1984), the Supreme Court considered whether a state law that compelled lessors to break up their large estates and redistribute title to lessees to dismantle a land oligopoly violated the public use restrictions of the Fifth Amendment, as applied to the states through the Fourteenth Amendment. A brief review of the salient facts in Midkiff is in order before turning to the Court's decision and rationale. In the 1960s, the Hawaii Legislature determined that a land oligopoly existed in the state because the vast majority of the land that was not owned by the State of Hawaii or the federal government was in the hands of a few dozen large-scale landowners (Hawaii Housing Authority v. Midkiff, 1984). In essence, residents were often lessees of these large-scale landowners. The Legislature concluded that this extremely concentrated land ownership was skewing Hawaii's residential fee simple market, inflating land prices and threatening the public welfare (Hawaii Housing Authority v. Midkiff, 1984). In response the Hawaii Legislature enacted the Land Reform Act of 1967 (Act), which created a land condemnation scheme for the stated public purpose of de-concentrating ownership by taking fee simple titles from large-scale lessors and transferring them to lessees. These land sales and title transfers were designed to be involuntary to lessen federal tax consequences while still facilitating redistribution of fee simple ownership (Hawaii Housing Authority v. Midkiff, 1984). The Act also authorized the Hawaii Housing Authority (Authority) to hold public hearings to determine whether state

acquisition of any particular lessor's large land tracts would effectuate the public purposes of the Act. If that purpose would be served by acquisition the Authority was then authorized to designate tracts for acquisition at prices set either through condemnation trials or by negotiations between lessors and lessees Hawaii Housing (Hawaii Housing Authority v. Midkiff, 1984).

Midkiff, a large-scale landowner compelled under the Act to sell lands to lessees, brought suit against the Authority alleging violations of the Fifth Amendment takings clause's public use restriction. The District Court found in favor of the Authority but, subsequently, the Court of Appeals reversed in favor of Midkiff holding that the Act served no public purpose and each involuntary title transfer from lessor to lessee was simply "a naked attempt on the part of the state of Hawaii to take the property of A and transfer it to B solely for B's private use and benefit" (Hawaii Housing Authority v. Midkiff, 1984, p. 244). Midkiff came before the Supreme Court when the Authority subsequently appealed the Court of Appeals decision.

In a unanimous decision, written by Justice O'Connor, the Supreme Court took the same deferential approach it had manifested in Berman on police power-based land use regulations and held that the State of Hawaii's purpose in promulgating the Act - to eliminate the land oligopoly - qualified as a public use. Thus, the Supreme Court reversed the Court of Appeals and held in favor of the Hawaii Housing Authority. In keeping with this holding, O'Connor clarified that "the public use requirement is [thus] coterminous with the scope of a sovereign's powers" (Hawaii Housing Authority v. Midkiff, 1984, p. 240). Additionally, she justified the use of eminent domain to compel the transfer of title from one private party (lessor) to another (lessee).

But where the exercise of the eminent domain power is rationally related to a conceivable public purpose, the Court has never held a compensated taking to be proscribed by the Public Use Clause. (Hawaii Housing Authority v. Midkiff, 1984, p. 241)

Moreover, she emphasized the rationality of the program relative to legislative findings as further evidence that it was designed to effectuate a public purpose:

Redistribution of fees simple to correct deficiencies in the market determined by the state legislature to be attributable to land oligopoly is a rational exercise of the eminent domain power. Therefore, the Hawaii statute must pass the scrutiny of the Public Use Clause. (Hawaii Housing Authority v. Midkiff, 1984, p. 243)

Finally, she rejected Midkiff's (lessor's) argument that because the Act compelled, through condemnation, the transfer of private property from one private entity the public purpose of the taking was diminished. In addressing Midkiff's argument, O'Connor stressed that eminent domain takings did not have to result in actual public use of the property for a public purpose to be effectuated.

The mere fact that property taken outright by eminent domain is transferred in the first instance to private beneficiaries does not condemn that taking as having only a private purpose. The Court long ago rejected any literal requirement that condemned property be put into use for the general public. As the unique way titles were held in Hawaii skewed the land market, exercise of the power of eminent domain was justified. The Act advances its purposes without the State's taking actual possession of the land. In such cases, government does not itself have to use the property to legitimate the taking; it is only the taking's purpose, and not its mechanics, that must pass scrutiny under the Public Use Clause. (Hawaii Housing Authority v. Midkiff, 1984, p. 244)

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

Overall, the fact pattern in Kelo v. City of New London (2005) reflects a textbook example of the municipal acquisition and assemblage of land through eminent domain to facilitate economic development in the hopes of catalyzing the revitalization of a deteriorating city. The Supreme Court's decades-earlier ruling in Berman and Midkiff notwithstanding, the validity of economic development as a public use was one of the primary Kelo issues. As there were significant peculiarities in Kelo, a review of the more salient facts of the case is in order before discussing the Supreme Court's ruling.

Economic conditions had been deteriorating in New London long before the city began its redevelopment efforts. The State of Connecticut officially declared New London a distressed city in 1990 – just in time for the bottom to fall out of the community's economy. In 1996, the 1,500-employee Naval Undersea Warfare Center, which was located in the city's Fort Trumbull neighborhood, closed down (Kelo v. City of New London, 2005). By 1998, New London's population had shrunk to its lowest level since 1920, at 24,000, and its unemployment rate was twice the state's average. In response, state and local officials targeted the city for revitalization, focusing on its Fort Trumbull section where a new waterfront park was being considered. The New London Development Corporation (NLDC), a private nonprofit entity created to aid the city in economic development planning, was reactivated. In January, 1998 the State authorized a \$5.35 million bond to support NLDC and a \$10 million bond for the proposed park (Kelo v. City of New London, 2005). City officials and planners were excited when the pharmaceutical giant, Pfizer, Inc., announced in February 1998 that it would build a \$300 million research facility adjacent to Fort Trumbull (Kelo v. City of New London, 2005).

NLDC and City officials, viewing Pfizer's proposed facility as a potent catalyst for job creation, increased tax revenue, and waterfront revitalization, acted quickly to capitalize on the pharmaceutical giant's plans and pushed their redevelopment objectives forward. After conducting meetings with Fort Trumbull residents to educate them about redevelopment processes, NLDC formally submitted a redevelopment plan for 90 acres of that neighborhood which contained 115 privately owned properties (Kelo v. City of New London, 2005). Among the planned improvements were a waterfront conference hotel, a small urban village complex with shopping and restaurants, marinas, a pedestrian "riverwalk" along the Thames River, 80 new, upscale dwelling units, a United States Coast Guard Museum, 90,000 square feet of research and development space, and commercial office and retail space (Kelo v. City of New London, 2005).

In January 2000, the City of New London responded positively to NLDC's forward movement by approving the redevelopment plan, designating NLDC as its redevelopment agent to implement the plan, and authorizing NLDC to purchase property or acquire it by eminent domain in the City's name. NLDC was able to acquire most of the designated redevelopment area through negotiated purchase but there were holdouts, including Suzette Kelo, who owned a Fort Trumbull home that she was actively improving. Neither Ms. Kelo's property nor the other holdout properties were blighted but her property and the properties of the other holdouts – 9 owners and 15 properties in all – were condemned. Under Connecticut's municipal development statute, however, a blight finding was not necessary for the taking of property through eminent domain as long as the taking was serving a public use or public purpose (Kelo v. City of New London, 2005). These 15 properties, including Suzette Kelo's, were condemned because

they were located in the approved redevelopment area. In response, Suzette Kelo and the other petitioners brought suit against the City of New London. Petitioners claimed, among other things, that the proposed redevelopment plan involved a taking of their private properties for the benefit of other private entities without providing a clear public benefit, which they argued violated the public use restriction of the Fifth Amendment's takings clause. The trial court (New London Superior Court) granted a permanent restraining order prohibiting the taking of some of the properties, but not the petitioners' properties.

The United States Supreme Court, stunning the nation, relied heavily on Berman and Midkiff to uphold the taking of petitioners' properties and, in so doing, reaffirmed the Court's standards of judicial review in economic development- and redevelopment-related municipal takings. In its five to four majority decision, which was delivered by Justice Stevens, the Court concluded that even though the properties acquired would be transferred to private entities, the purpose for those transfers – economic development – was a public one. The Court stressed that as long as it was clear that the ultimate purpose of such takings was to further a public use, the actual mechanics of the takings, which might include transfer to other private entities, was of little concern to the judiciary. Along these lines, the Court stressed that in considering takings issues it had long since embraced a broad interpretation that equated public use and public purpose (Kelo v. City of New London, 2005). Referencing Berman and Midkiff, the Court indicated that its broad interpretation of the meaning of public use not only included economic development but reflected its longstanding policy of deference to legislative and municipal judgments as to what public needs justify the use of the takings power (Kelo v.

City of New London, 2005). New London's takings, as noted in the syllabus of the case, were accomplished in relation to a "carefully considered" redevelopment plan not designed "to benefit a particular class of identifiable individuals" and were conducted in accordance with a state statute that specifically authorized the use of eminent domain to promote economic development (Kelo v. City of New London, 2005, p. 469, citing Midkiff). As in Berman, the Court noted, the comprehensive nature of New London's redevelopment plan made it especially appropriate to resolve the takings challenges in relation to the entire plan and not on a piecemeal, property-by-property basis.

Furthermore, pursuant to Midkiff, the Court reaffirmed that condemned property does not have to be put into use for the general public to satisfy the Fifth Amendment takings clause public use restriction (Kelo v. City of New London, 2005). In sum, reasoned the Court, "because that plan unquestionably serves a public purpose, the takings challenged here satisfy the public use requirement of the Fifth Amendment" (Kelo v. City of New London, 2005, p. 484).

Finally, the Court saliently addressed two of petitioners' other arguments: 1) the takings are unconstitutional because economic development does not qualify as a public use; and 2) there was no reasonable certainty that the expected public benefits would actually accrue to the public. The Court's response to the first argument was, effectively, a restatement of the Berman and Midkiff cases' affirmation that, in the eyes of the Court, economic development is a traditional, long-established public use indistinguishable from other established public uses, including, among others, blight removal, maintenance of aesthetic standards, and redistribution of land ownership to cure oligopolies.

To avoid this result, petitioner's urge us to adopt a new bright-line rule that economic development does not qualify as a public use. Putting aside the unpersuasive suggestion that the City's plan will provide only purely economic benefits, neither precedent nor logic supports petitioners' proposal. Promoting economic development is a traditional and long accepted governmental function. There is, moreover, no principled way of distinguishing economic development from the other public uses we have recognized. (Kelo v. City of New London, 2005, p. 484)

In responding to the second of these two arguments the Court emphasized, once again, its policy of judicial deference to legislative and municipal judgment about the mechanics of effectuating public uses, including economic development and redevelopment plans, or conferring the public benefits they are designed to provide.

Alternatively, petitioners maintain that for takings of this kind we should require a "reasonable certainty" that the expected public benefits will actually accrue. Such a rule, however, would represent an even greater departure from our precedent. .... The disadvantages of a heightened form of review are especially pronounced in this type of case. Orderly implementation of a comprehensive plan obviously requires that the legal rights of all interested parties be established before new construction can be commenced. A constitutional rule that required postponement of the judicial approval of every condemnation until the likelihood of success of the plan had been assured would unquestionably impose a significant impediment to the successful consummation of many such plans. (Kelo v. City of New London, 2005, pp. 487-488)

In powerful contrast, Justice O'Connor argued in her dissenting opinion that Justice Stevens and the majority were abandoning long-held limitations on governmental takings and argued that economic development takings should be held unconstitutional. O'Connor reiterated that Berman and Midkiff reaffirmed the policy that the judiciary should defer to legislative judgments about what constitutes a public purpose. She noted, further, that it was equally clear that government cannot take one person's private property for the benefit of another without a justifying public purpose (Kelo v. City of New London, 2005). O'Connor found Kelo to diverge significantly from Berman and



Midkiff because the takings in those cases were necessary to remedy blight and land oligopoly, which are clear social harms whereas the private properties condemned in Kelo were not blighted and were certainly not being used in inherently harmful ways. Specifically, O'Connor argued that the Court was moving too far beyond Berman and Midkiff, significantly expanding the meaning of public use and the reach of eminent domain without sufficient justification.

In moving away from our decisions sanctioning the condemnation of harmful property use, the Court today significantly expands the meaning of public use. It holds that the sovereign may take private property currently put to ordinary private use, and give it over for new, ordinary private use, so long as the new use is predicated to generate some secondary benefit for the public – such as increased tax revenue, more jobs, maybe even aesthetic pleasure. But nearly any lawful use of real private property can be said to generate some incidental benefit to the public. Thus, if predicated (or even guaranteed) positive side-effects are enough to render transfer from one private party to another constitutional, then the words “for public use” do not realistically exclude any takings, and thus do not exert any constraint on the eminent domain power. (Kelo v. City of New London, 2005, p. 501)

Furthermore, O'Connor acknowledged the difficulties in isolating motives behind governmental takings and was troubled by the implication in the Kelo majority opinion that in economic development takings the accrual of secondary or incidental public benefits was sufficient to meet the public use test.

Even if there were a practical way to isolate the motives behind a given taking, the gesture toward a purpose test is theoretically flawed. If it is true that incidental public benefits from the new private use are enough to ensure the “public purpose” in a taking, why should it matter, as far as the Fifth Amendment is concerned, what inspired the taking in the first place? How much the government does or does not desire to benefit a favored private party has no bearing on whether an economic development taking will or will not generate secondary benefit for the public. And whatever the reason for a given condemnation, the effect is the same from the constitutional perspective – private property is forcibly relinquished to new private ownership. (Kelo v. City of New London, 2005, pp. 502-503)

O'Connor was perhaps most deeply troubled by the prospect that the majority's opinion in Kelo was opening the door to justify the use of eminent domain to promote economic development to further relatively subjective notions, on the part of governing bodies, of the most productive or highest and best use for targeted private properties.

The logic of today's decision is that eminent domain may only be used to upgrade – not downgrade – property. At best this makes the Public Use Clause redundant with the Due Process Clause, which already prohibits irrational governmental action. The Court rightfully admits, however, that the judiciary cannot get bogged down in predictive judgments about whether the public will actually be better off after a property transfer. In any event, this constraint has no realistic import. For who among us can say she already makes the most productive or attractive possible use of her property? The specter of condemnation hangs over all property. Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory. (Kelo v. City of New London, 2005, p. 503)

Finally, she announced her concerns, which mirrored those of Justice Thomas in his dissenting opinion, that the Kelo majority opinion would effectively permit governments to use eminent domain to benefit the politically and socioeconomically powerful to the detriment of the politically and socioeconomically disadvantaged. Her language reflects a keen awareness of the powerful influence wielded by private sector actors in local governmental efforts to facilitate economic development and redevelopment.

Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random. The beneficiaries 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. (Kelo v. City of New London, 2005, p. 505)

## Summary

As intimated in the preceding subsection, the reach and applicability of eminent domain as a tool for land acquisition and assembly to facilitate redevelopment has expanded as the public use concept has broadened to encompass economic development initiatives in which public benefits are less direct and tangible. Three landmark United States Supreme Court cases reflected and, in effect, augmented this broadening: Berman v. Parker (1954), Hawaii Housing Authority v. Midkiff (1984), and Kelo v. City of New London (2005). Equally important, they ratified a deferential standard of judicial review of local governmental redevelopment and economic development initiatives and, in effect, the use of eminent domain to facilitate land acquisition and assembly for such purposes. These rulings both reflected, and established the framework for, the redevelopment-related statutes implemented by the State of New Jersey. The major propositions of the three decisions are summarized in the paragraphs below.

Berman stands for a number of key propositions. First, the Berman court was clear that the judiciary owes deference to municipalities in the exercise of their police power functions, including redevelopment and economic development, as long as those activities further the public health, safety, and welfare, and adhere to all constitutional limitations. In Berman, the court noted that these functions are very broad and encompass redevelopment and economic development initiatives to render communities healthier, better balanced, more spacious, and more beautiful. Secondly, deference aside, the local government in facilitating such initiatives, whether through land assembly that utilizes eminent domain or other methods, must evidence a decision-making process that complies with the Fourteenth Amendment due process clause by following a

comprehensive approach to the problem addressed that is not arbitrary or capricious. Thirdly, the local governmental process under review must be shown to further a valid public purpose, which in Berman was blight removal. Additionally, the Supreme Court was clear that as it viewed the blight removal in Berman as a valid public purpose, it was unconcerned with the mechanics of land assembly to effectuate that valid purpose, including the use of eminent domain. Moreover, the Berman decision stands for the proposition that non-blighted properties in an otherwise blighted area could be acquired by eminent domain as long as that acquisition was reasonably necessary to effectuate a valid public purpose. Finally, the Berman decision stands for the proposition that eminent domain transfers of private property from one private entity to another private entity even for the latter's benefit are constitutional as long as they facilitate a public purpose including, among others, blight removal and redevelopment.

Midkiff represents an extension and clarification of the propositions and standards of judicial review advanced by Berman. In Midkiff, Justice O'Connor's majority opinion clarified that the public use requirement is conterminous with the scope of the governmental police power. She emphasized that the exercise of eminent domain was constitutionally sustainable and not prohibited by the public use clause of the Fifth Amendment (and Fourteenth Amendment as applied to the states) as long as it was rationally related to a conceivable public purpose. Moreover, Midkiff – which was decided three decades after Berman – reflects the broadening of the public use concept to encompass less tangible public benefits. Midkiff, in fact, stands for the proposition that eminent domain takings of private property do not have to result in an actual public use of that property for the intended public purpose to be effectuated.

Kelo represents a reaffirmation of the propositions and judicial review standards of municipal redevelopment initiatives involving eminent domain advanced by Berman and Midkiff. The Supreme Court clarified that public use and public purpose are essentially interchangeable terms and, echoing Berman and Midkiff, both terms are broad-based enough to encompass the notion of municipally-facilitated redevelopment and economic development. Similarly, the Court reiterated that eminent-domain based transfers from one private entity to another private entity are valid as long as they are accomplished in furtherance of valid public purposes.

Justice O'Connor's opinion in Kelo, although it is a dissent, may prove to have a significant impact if the Supreme Court ever revisits these issues. O'Connor's writing anticipated, or mirrored, the national backlash against eminent domain transfers of property for economic development because of the perception that they only benefitted private interests. In her opinion, she argued that economic development should not be considered a public use. She expressed concern that the majority opinion in Kelo diverged too far from the Court's rulings in Berman and Midkiff. Specifically, she argued that there was no justification for ruling in favor of the City of New London because, aside from the fact that none of the properties in question were blighted, the City's actions were not addressing a social harm. In her view, the primary reason for the eminent domain takings in Kelo was to replace perfectly sound, residential tax-generating uses with higher end mixed uses that would yield higher property values and higher tax revenues. If such local governmental practices were sanctioned by the Court, she feared, it would lead to more and more situations in which benefits would be reaped by powerful private interests at the expense less powerful, marginalized citizens.

## **FEDERAL URBAN RENEWAL LAWS**

### **Title I of the Federal Housing Act of 1949**

The Housing Act of 1949, P. Law 81-171 63 Stat. 413, which was a key component of President Harry S. Truman's domestic legislative agenda, was enacted to increase the federal role in assisting Americans to obtain mortgages and to increase the supply of public housing. Its passage reflected the Truman's Administration's concern with the critical shelter issues of the post-war period, including an aging, often substandard housing stock, and an inadequate number of dwelling units to meet increasing post-war demand (Bellush and Hausknecht, 1967). As reported in the 1940 housing census, the typical non-farm dwelling unit was at least 25 years old and in urban communities 40 percent of the housing stock was defective or substandard. At least 14 percent of the urban housing units needed serious repairs, 11 percent lacked running water and plumbing, and 13 percent lacked private bathrooms and flush toilets (Bellush and Hausknecht, 1967, p. 11). Truman noted in his 1949 State of the Union address that five million families were living in slums and three million families shared their homes with other households (Bellush and Hausknecht, 1967, p. 11). At the same time, the Truman Administration was also aware of the concerns of many city officials throughout the nation who witnessed a continuation of the flight of businesses and affluent residents to the suburbs that began in the 1920s and worried about a concomitant spread of slums and loss of tax revenues (von Hoffman, 2000). The Administration attempted to address these concerns through the Act's provisions.

The Act consisted of several sections of which Titles I, II, and III were among the most important and far-reaching. Title II provided an additional \$500 million of federal funding allocated to the Federal Housing Administration (FHA) to issue and insure mortgages (von Hoffman, 2000, p. 310). Title III extended federal loans and grants for the construction of 810,000 public housing units for the next six years (von Hoffman, 2000, p. 310). However, Title I is the section of the Act most relevant to this dissertation. Title I of the Federal Housing Act of 1949 laid the foundation for the urban renewal program that came into existence through the Federal Housing Act of 1954.

Ostensibly, Title I assisted local governments in clearing slums and encouraging their redevelopment by subsidizing the purchase of prime inner city land by developers (Bellush and Hausknecht, 1967). The program represented a compromise provision sponsored by Senators Robert Taft, Allen Ellender, and Robert F. Wagner, Sr. to appease powerful congressional conservatives who favored entrepreneurial urban redevelopment in inner city areas over the creation of more public housing (Bellush and Hausknecht, 1967). Title I authorized approximately \$1 billion in loans to assist cities with acquisition and clearance of slums (von Hoffman, 2000, p. 310). The Title I subsidization program was based on two primary premises. One main premise was that community redevelopment needs would not be met through private enterprise without some type of financial incentive. The other main premise was that clearance costs would need to be subsidized because of the high cost of inner city land. Inner city slum sites and deteriorating areas were often located close to major transportation routes, were in high demand as sites for stores, factories, and low-rent housing and, therefore, many slum landowners were reluctant to sell at low prices (von Hoffman, 2000). Land assembly and

associated costs thus often created a financial roadblock for private sector attempts at redevelopment (von Hoffman, 2000). Title I, however, providing federal funding for two-thirds of the net project costs, which meant two-thirds of the difference between the costs of clearance and the sale price of the site (Kaplan, 1963, p. 1). The local government was then liable for the remaining third. Sites cleared with Title I federal subsidies were sold at write-down values to private redevelopers who would agree to build site-appropriate uses (Kaplan, 1963).

Title I permitted some latitude in the permitted uses for lands acquired through this subsidization scheme, but the primary emphasis was on residential development. Permitted uses included, among others, luxury housing, middle class housing, low-rent private housing but also a small amount of commercial and industrial uses, and public parks (Bellush and Hausknecht, 1967). Again, the array of permitted uses reflected the fact that Title I was designed as a compromise solution between Congressional public housing factions, whose policies were still New Deal-based, and the emerging redevelopment factions.

Additionally, by including local governments as active players in this federally funded clearance and redevelopment scheme, the Title I program emphasized another tool to counteract the problems of land assembly – eminent domain. Housing historian Alexander von Hoffman has suggested that the reliance on municipal eminent domain power and write-downs in the Title I program can be traced at least back to 1941 and the attempts of the National Association of Real Estate Boards (NAREB) to address land assembly issues (von Hoffman, 2000). In that year NAREB proposed setting up metropolitan land commissions to acquire blighted areas through eminent domain and use



federal and local subsidies to sell the acquired lands to developers at below-market prices (von Hoffman, 2000). In von Hoffman's opinion, this strategy made the notion of urban redevelopment especially attractive to city officials and state legislatures (von Hoffman, 2000).

Title I clearance activity was designed to remove blight - in New Jersey municipal planning boards were required to declare all Title I sites blighted before clearance could commence - but clearance produced severe socioeconomic consequences (Kaplan, 1963). In targeting and clearing slums and blighted areas, Title I programs also tended to target and displace the poor who resided in these areas because they contained large reserves of affordable, albeit often substandard, housing. Unfortunately, the Title I program was not designed to address the housing needs of those displaced and it quickly fell short of meeting its goal of constructing 810,000 new housing units. By 1953, the federal Housing and Home Financing Agency (HHFA), to which Congress had authorized \$500 million in Title I grants to assist with mortgage financing, had spent only a fraction of those funds (von Hoffman, 2000, p. 313). Title I slum clearance activities, which occurred in the midst of the severe shortage of decent, affordable housing that plagued cities in the early 1950s, often re-concentrated displaced households into other neighborhoods already characterized by substandard housing and extensive poverty.

### **Federal Housing Act of 1954**

The Federal Housing Act of 1954, P. Law 560, 68 Stat. 590, which substituted the term "urban renewal" for urban redevelopment, reflected a shift from the "bulldozer" slum clearance approach of Title I of the Federal Housing Act of 1949 toward a more

comprehensive approach aimed at blighted or potentially blighted areas as well as slums (von Hoffman, 2000, p. 313). The 1954 Act actually derived from reforms to Title I advocated during the early Eisenhower Administration through its Presidential Advisory Committee on Government Housing Policies (von Hoffman, 2000). Title I had centered on funding a simple land clearance approach to slums. The 1954 Act funded clearance but also funded the rehabilitation and conservation of buildings and provided federal grants to enable cities to enhance and better enforce their housing codes to preserve buildings, remedy structural deficits, and ease overcrowding (Bellush and Hausknecht, 1967). Before cities could receive funding under the 1954 Act they had to demonstrate to their regional Urban Redevelopment Authority (URA), which was the federal funding and reviewing body, that they had “workable programs” for urban renewal, including the aforementioned conservation, rehabilitation, and code enforcement initiatives, plans for citizen participation in the renewal process, and the creation and implementation of feasible relocation plans (von Hoffman, 2000; Bellush and Hausknecht, 1967).

Newark’s URA was located in Philadelphia and the applicable Federal Housing Authority (FHA) office, which issued urban renewal mortgages, was located in New York City. After 1965, funding review and approval for urban renewal projects shifted from URA to the newly created United States Department of Housing and Urban Development (HUD).

Amendments to the 1954 Act, in conjunction with the 1956 Act, made federally funded urban clearance and renewal projects even more enticing for private sector involvement (von Hoffman, 2000; Bellush and Hausknecht, 1967). The 1954 Act liberalized FHA mortgage insurance terms and the nonresidential allotment for urban

renewal projects was eventually increased from 10 percent to 30 percent. Two years later, the Federal Housing Act of 1956 amended the 1949 Act to provide federal funding for the relocation of residents and businesses displaced by urban renewal.

Moreover, the increase in the percentage of nonresidential redevelopment permitted under the 1954 Housing Act represented a shift away from the predominantly residential redevelopment permitted under Title I toward mixed use, commercial, and industrial redevelopment and renewal initiatives. The urban renewal program permitted a wider array of uses than Title I. Thus, redevelopment under the 1954 Act might include office buildings, stadiums, and parking lots rather than simply public or private housing. In instances where the main thrusts of a redevelopment effort were housing rehabilitation and conservation, the amount of land cleared might be relatively small (von Hoffman, 2000).

Throughout much of the 1950s and even into the late 1960s urban renewal was viewed favorably by city officials and state legislatures and federal funding was increased, but eventually the program came under increasing attack (von Hoffman, 2000). In the first place, critics noted that the projects seemed to take an inordinate amount of time to reach completion, which often left vacant lots standing for years on end. Secondly, in a growing number of urban renewal projects that proved profitable, evidence that the areas cleared – often through eminent domain - were truly slums or blighted was dubious. Thirdly, critics were deeply concerned about the number of people displaced by urban renewal projects who were then unable to return to their communities. The National Commission on Urban Problems conducted a 1966 survey of 1,155 urban renewal project areas and determined that 67 percent of those areas were residential

before renewal but only 43 percent were residential after renewal (von Hoffman, 2000, p. 318). As urban renewal appeared to target so many inner city communities with large numbers of African-American residents the ensuing displacement began to be perceived as a form of institutionalized racism referred to by members of those communities as “Negro removal”. Other factions attacked urban renewal for using eminent domain to destroy viable inner city communities and take private property to further so-called slum clearance and benefit developers and other private entities. In the wake of the riots of the late 1960s, federal low-income public housing programs came under increasing attack. By 1973, President Nixon had imposed a moratorium on all federal public housing programs and construction and the Housing and Community Development Act of 1974 shifted public housing aid to the Section 8 program. Finally, through the 1974 Act, the federal urban renewal program, including the Model Cities program (described below), essentially devolved to local government control through the Act’s Community Development Block Grant (CDBG) program (von Hoffman, 2000).

### **Model Cities Act**

Title I of the Demonstration Cities and Metropolitan Development Act of 1966, 80 Stat. 1255, 42 U.S.C. 3301, et seq, commonly referred to as the Model Cities Act, was an outgrowth of the Johnson Administration’s Great Society initiative and reflected the federal government’s recognition that the delivery of basic social services in the nation’s inner cities, such as health care, education, and housing, was failing and that simply increasing federal funding would not remedy the problem (Hetzel and Pinsky, 1969). The Johnson Administration determined that what was sorely needed was a combination

of technical assistance and funding for local comprehensive planning initiatives in targeted areas to coordinate better service delivery among relevant local, state, and federal agencies. The Model Cities Act was designed to address this and assist cities in coordinating the staging and construction of federally funded public improvements and urban renewal projects. It was hoped that the Model Cities Act would address the failure of the federal and state governmental systems to make certain that transfer payments were effectively directed to distressed cities to adequately address the deficits in social service delivery (Hetzel and Pinsky, 1969). The Johnson Administration was keenly aware that the categorical grant-in-aid programs for health care, education, welfare, housing, urban redevelopment, and manpower were not adequately flexible to meet specific local needs (Hetzel and Pinsky, 1969).

Public improvements under the Act's purview included, among others, airports, libraries, water supply and distribution facilities, sewage facilities and waste treatment plants, highways, transportation facilities, law enforcement facilities, water development projects, and land conservation projects. The rebuilding and revitalization of large slums and blighted areas and the construction of hospitals also fell under the rubric of public improvements. Such facilities and improvements sometimes served as the cornerstones of large-scale urban renewal efforts in disadvantaged neighborhoods which could also entail the construction of residential, commercial, industrial or institutional uses or a combination thereof.

In order to qualify for federal financial aid and technical assistance from HUD, which was the Model Cities administrative agency, the Act mandated that participating cities, which were referred to as demonstration cities, meet certain requirements (Hetzel

and Pinsky, 1969). Demonstration cities applying for funding and technical assistance under the Act had to select a sizeable slum or blighted neighborhood, referred to as the model neighborhood or target area, and prepare and implement a five-year area-wide comprehensive plan for addressing that target area's basic socioeconomic and physical problems. This plan was supposed to be developed over a 12-month period, needed the approval of the local governing body and, upon completion, had to be submitted to HUD for its review and approval. Certain benchmarks had to be met, including blight removal, increasing the supply of low and moderate income housing, and providing maximum opportunities to employ residents - especially members of minorities - in the target area during all phases of the program. Additionally, each comprehensive plan had to contain specific goals for addressing the target area's physical and social problems so that a "substantial impact" could be made on reducing social and educational disadvantages, poor health, underemployment, and educational disadvantages (Hetzel and Pinsky, 1969, pp. 736 -738). Depending on the specific target area this might also entail addressing substandard housing, inadequate public infrastructure, drug and alcohol addiction, and crime. If an urban renewal project was involved, the comprehensive plan had to include a program for addressing the staging, implementation, and impact of that project, including federal, state, and local agency coordination. Regardless of the types of projects involved in target areas, the Model Cities Act required that demonstration cities make the fullest utilization possible of the private sector which, for example, could include significant private investment in residential construction and rehabilitation (Hetzel and Pinsky, 1969).

Moreover, a cornerstone of the Model Cities Act was the encouragement of widespread citizen participation in the comprehensive planning process. Demonstration cities had to develop and implement citizen participation programs to foster enhanced local initiatives in the planning and staging of anticipated public improvements and social service delivery. Each demonstration city had to work with the affected community in the target area to develop some form of neighborhood leadership that residents would accept as fairly and accurately representing their interests and these representatives had to have direct access to the city's decision-making process (Hetzel and Pinsky, 1969). A primary goal was the development of a partnership between the city government and the participating neighborhood in addressing target area physical and socioeconomic ills.

The Model Cities Act provided a variety of grants, disbursed through HUD, to assist demonstration cities (Hetzel and Pinsky, 1969). For example, HUD would provide a grant for up to 80 percent of the planning costs for the approved five-year areawide comprehensive plans. If the public improvement, urban renewal project, or other project or activity approved under the comprehensive five-year areawide plan entailed any displacement HUD would pay 100 percent of the relocation costs. Additionally, HUD would pay up to 80 percent of the costs of administering the approved five-year plan. Through the Model Cities program, HUD also provided funding and assistance for a variety of other programs, including: seed money to assist with home purchases, income maintenance, improving community-police relations, and expanded legal services (Hetzel and Pinsky, 1969). Despite the strong federal role, the ultimate responsibility for administering the HUD approved plan rested with each city's chief executive and governing body.

## Summary

The enactment of the relevant federal redevelopment laws, from Title I of the Housing Act of 1949 through the Model Cities Act played an enormous part in shaping redevelopment efforts – nationally - at the municipal level. In the first place, these laws were structured so that the financing of redevelopment efforts was based on large federal grants for large-scale land assembly, acquisition, and clearance that required a significant municipal contribution. The emphasis on redevelopment of very large sites reflected the widespread belief at the federal and local levels, buttressed by organic plant disease metaphors, that slums and blight were essentially cancers that had to be surgically removed through large-scale clearance. By requiring that some portion of the land assembly and clearance be locally financed the federal laws essentially mandated strong planning and decision-making roles for cities redeveloping areas with federal funds. Additionally, the availability of federal funding for large-scale land assembly, acquisition and clearance encouraged cities to target other areas for large-scale clearance because establishing a federal funding record tended to improve their chances of receiving more funding. Thus, the federal laws encouraged large-scale clearance and redevelopment.

Secondly, the federal laws eventually encouraged a mixed use approach to redevelopment that ultimately included strong economic development and social planning components. This reflected a broadening of the conceptualization of urban redevelopment at the federal level that paralleled the broadening of the public use concept and the expanded reach of eminent domain to facilitate redevelopment-related land acquisition and clearance. The judiciary, as evidenced by the Supreme Court's 1954 Berman decision, was already deferring to the municipal logic of federally-funded



redevelopment as a public use. Nevertheless, earlier federal laws - as exemplified by Title I of the Housing Act of 1949 – reflected a conceptualization of redevelopment as primarily a physical clearance effort aimed at residential reconstruction with an emphasis on affordable housing and public housing. The subsequent federal laws, such as the Federal Housing Act of 1954, were designed to accommodate mixed use redevelopment efforts with a greater emphasis on economic development, including higher end housing as well as affordable housing, and commercial and industrial development. In fact, the Federal Housing Act of 1954 was the legislation that brought the term “urban renewal” into common parlance. Federal funding for the planning of improved social service delivery was added to this mix through the Model Cities Act.

Thirdly, the federal laws set the stage for the development of fairly well-defined roles for the various federal, state, and local agencies as well as the private developers – subject to the vagaries of different state and governmental structures. In effect, these early laws created the template for the joint, public sector/private sector redevelopment efforts that have carried into the twenty-first century. For example, the Model Cities Act provided cities with non-categorical federal grants and technical assistance for social service planning and inter-agency coordination for social service delivery, but only after HUD had approved the comprehensive plans adopted by the cities for the targeted (model) areas. Similarly, regional Urban Redevelopment Authorities (URAs), and later HUD, required local governments and municipalities seeking federal funding assistance for land acquisition and clearance to submit detailed redevelopment plans, replete with existing and proposed land uses and demographic data, as well as detailed relocation plans for the targeted areas. Often, the planning and architectural consultants hired by the

municipal governments prepared redevelopment plans. Too, private sector developers generally carried out the actual physical redevelopment of targeted areas through negotiations with municipal officials. Private entities, including redevelopers and building contractors, were often essential partners with municipalities in the relocation process for displaced residents and businesses. This essential pattern of federal funding coupled with private consultant-assisted municipal planning and physical construction by private redevelopers was repeated nationally from the 1950s through the 1970s. When devolution essentially halted the vast bulk of federal and state funding and programming for urban renewal, the established format of joint partnerships between municipalities and private developers continued to support redevelopment efforts from the 1980s onward and remains the dominant pattern today.

## **RELEVANT NEW JERSEY STATUTES**

### **The Blighted Area Requirement (Blighted Area Clause) of the New Jersey Constitution**

As a sovereign power, eminent domain has been vested in municipalities as creatures of the states. However, New Jersey like virtually all 50 states has set limits on its use, including facilitating the acquisition, transfer, and assembly of private real property for redevelopment purposes. First, the New Jersey Constitution is in accord with the United States Constitution's Fifth Amendment takings clause and due process in limiting the taking of private property such that it must serve a public purpose and the affected party must be justly compensated for the taking. These limitations, apply to private property taken through eminent domain.

Private property shall not be taken for public use without just compensation. Individuals or private corporations shall not be authorized to take private property for public use without just compensation first made to the owners. (New Jersey Constitution, Article 1, Paragraph 20)

Secondly, and in keeping with the New Jersey Constitution (see excerpt below), economic development and redevelopment are considered public uses and public purposes but, generally, eminent domain may be used only if the affected area has first been declared blighted. Municipalities, as public corporations, may undertake economic development and redevelopment activities and may authorize private corporations, redevelopers and other private entities to undertake those activities, including property acquisition and clearance. The applicable language, excerpted from Article 8 of the New Jersey Constitution, is as follows:

The 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. Municipal, public or private corporations may be authorized by law to undertake such clearance, replanning, development or redevelopment; and improvements made for these purposes and uses, or for any of them, may be exempted from taxation, in whole or in part, for a limited period of time during which the profits of and dividends payable by any private corporation enjoying such tax exemption shall be limited by law. The conditions of use, ownership, management and control of such improvements shall be regulated by law. (New Jersey Constitution, Article 8, Section 3, Paragraph 1)

Interestingly, the New Jersey Constitution does not define what is meant by “blighted areas” but written and oral statements from the 1947 Constitutional Convention delegates provided some of the basis for the blight criteria contained in the 1949 Blighted Areas Act. Jane Barus, one of those delegates, introduced an amendment at the Convention that provided the wording for the aforementioned Article 8, Section 3, Paragraph 1 of the New Jersey Constitution. Her supporting remarks indicate that

“blighted areas” were defined by the presence of decay and deterioration indicators including declining property values, population loss, overcrowding, and outdated and obsolescent structures. (New Jersey Department of the Public Advocate, 2006, Appendix, p. viii). Ms. Barus stated as follows:

The older cities in the State, in common with most older cities everywhere, I imagine, have been facing an increasingly difficult situation as the years advance. Certain sections of those cities have fallen in value and have become what is known as ‘blighted’ or ‘depressed’ areas. This has happened, sometimes, because the population has shifted from one part of the town to another, or one section has become overcrowded. Sometimes it has happened because the district has turned to business instead of residential, or partly to business; and sometimes simply because the buildings themselves, although they were originally good and may have been fine homes, have become so outdated and obsolescent that they are no longer desirable, and hence, no longer profitable.

These depressed areas go steadily downhill. The original occupants move away, the rents fall, landlords lose income and they make up for it by taking in more families per house. It’s impossible to keep the properties in good condition, the houses deteriorate more and more, and what was once a good section of town is on the way to becoming a slum. (Proceedings of the New Jersey Constitutional Convention of 1947, Vol. I, at 742)

As the New Jersey Department of the Public Advocate has noted, Barus’ remarks seemed to reflect slum definitions developed during the 1920s and 1930s and chronicled by scholars of early- and mid-twentieth century urban deterioration, including Mabel L. Walker (New Jersey Department of the Public Advocate, 2006). In one of her treatises, Walker defined the term slum as follows:

Slum – an area in which predominate dwellings that either because of dilapidation, obsolescence, overcrowding, poor arrangement or design, lack of ventilation, light or sanitary facilities, or a combination of these factors, are detrimental to the safety, health, morals and comfort of the inhabitants thereof. (Walker, *Urban Blight and Slums* 3, 1938, cited in New Jersey Department of the Public Advocate, 2006, Appendix, p. v)

### **The 1949 New Jersey Blighted Areas Act**

The 1948 New Jersey Blighted Areas Act was crafted and enacted to implement the New Jersey Constitution's "blighted areas" requirement applicable to the acquisition of private property to facilitate urban redevelopment. Under the 1949 Blighted Areas Act, a blighted area was defined as an area in any municipality in which there exists, to a large extent at least one of four criteria (New Jersey Blighted Areas Act, P.L. 1949, c. 187, C:40:55-21.1 et seq, now repealed). These four criteria were as follows:

- a) Buildings and structures on the property are unfit, unsanitary and unsafe for human use and habitation by reason of age, physical deterioration, dilapidation or obsolescence;
- b) Buildings and structures which are so situated and used as to have therein more inhabitants than can be fitly and safely housed;
- c) Buildings and structures which have economically deteriorated and where there is a disproportion between the cost of municipal services rendered to the area as compared with the tax revenue derived therefrom; or
- d) A prevalence of factors conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, crime, and poverty.

The language of these four criteria provides a window into the conceptualization of blight in New Jersey and the focus of redevelopment efforts at this early juncture of the urban renewal period. Indeed, the wording suggests that the primary indicators of blight were a predominance of unsafe, unsanitary living conditions, overcrowding, a decline in property values with concomitant insufficient tax revenue generation, and unspecified conditions that rendered the area susceptible to the spread of disease, crime

and poverty. Moreover, despite the presence of the words “economically deteriorated” in criterion “c” these four criteria clearly apply primarily to residential uses. In focusing on residential uses, New Jersey’s redevelopment efforts in the immediate post-war period were clearly taking their cue from the Title I federal urban redevelopment program’s emphasis on housing.

### **The 1951 New Jersey Blighted Areas Act**

Under the 1951 Blighted Areas Act, N.J.S.A. 40:55-21.1 et seq., now repealed, a municipal governing body could, after determining an area to be blighted following certain defined investigatory and public hearing proceedings, acquire the real property within that area by purchase, or by eminent domain, and clear, re-plan, develop, or redevelop it, which activities would constitute a public purpose and public use. Municipal governing bodies could also agree by resolution, under the Act, that a private corporation could undertake those clearance and redevelopment activities in accordance with the New Jersey Constitution’s blighted areas clause. The term “blighted” was defined under the Act as an area in any municipality where there existed any of five criteria. These criteria, which represent a rewording of the 1949 Blighted Area Act’s criteria “a”, “b”, “c” and “d” and the addition of a new criterion – criterion “e”, were as follows:

- (a) The generality of buildings used as dwellings or the dwelling accommodations therein are substandard, unsafe, unsanitary, dilapidated, or obsolescent, or possess any of such characteristics, or are so lacking in light, air or space, as to be conducive to unwholesome living;

- (b) The discontinuance of the use of buildings previously used for manufacturing or industrial purposes, the abandonment of such buildings or the same being allowed to fall into so great a state of disrepair as to be untenable;
- (c) Unimproved vacant land, which has remained so for a period of ten years prior to the determination hereinafter referred to, and which land by reason of its location, or remoteness from developed sections or portions of such municipality, or lack of means of access to such other parts thereof, or topography, or nature of the soil, is not likely to be developed through the instrumentality of private capital;
- (d) Areas (including slum areas) with buildings or improvements which by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community;
- (e) A growing lack of proper utilization of areas caused by the conditions of title, diverse ownership of the real property therein and other conditions, resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributing to and serving the public health, safety and welfare.

The wording of these five criteria suggests that even in the scant two years since the 1949 Blighted Area Act had been promulgated the concepts of blight and urban redevelopment were undergoing further evolution and expansion in New Jersey. This evolution and expansion is most evident in criteria “b” and “e”. Notably, criterion “b”

applies specifically to the discontinuance, abandonment, and disrepair nonresidential buildings and uses and, specifically, of manufacturing and industrial buildings and uses. This represents a shift from a relatively narrow redevelopment effort focused solely on residential uses, which is embodied in the wording of the 1948 statute, toward a broader redevelopment effort that brings nonresidential, and specifically manufacturing and industrial uses, into the mix. It seems to presage the expansion of urban redevelopment concepts to include nonresidential uses as embodied in the Federal Housing Act of 1954 and the urban renewal program. Criterion “e” is notable as the first time the concepts of utilization, productivity, and stagnation were codified as part of New Jersey’s statutory blight determination criteria. The inclusion of these concepts into the blight determination criteria would prove very significant from a legal standpoint and played a major role in the outcome of the Mulberry Street redevelopment effort, which is the final dissertation case study.

### **The 1985 and 1986 Amendments to the 1951 New Jersey Blighted Areas Act**

The 1986 statute amended the 1951 statute by adding a sixth criterion “f”. The language of this “f” criterion was as follows:

- (f) Areas, in excess of 10 contiguous acres, whereon buildings or improvements have been destroyed, consumed by fire, demolished or altered by the action of storm, fire, cyclone, tornado, earthquake or other casualty in such a way the that the aggregate assessed value of the area has been materially depreciated.

In 1985, the New Jersey legislature added an additional criterion “g” applicable to areas designated as urban enterprise zones which provided those areas with the ability to



use tax exemptions as redevelopment tools. However, such municipalities could only use eminent domain within urban enterprise zones if at least one of the six other criteria, “a” through “f”, was first met and those zones had already been designated as areas in need of redevelopment. Nonetheless, for the sake of clarity and completeness, the full wording of criterion “g”, which was amended under the 1992 Local Redevelopment and Housing Law (LRHL) is provided in the subsection covering the LRHL.

### **The 1992 New Jersey Local Redevelopment and Housing Law (LRHL)**

The Local Redevelopment and Housing Law (LRHL), P.L. 1992, c. 79 (N.J.S.A. 40a:12A-1 et seq.) was enacted in 1992 to revise and consolidate the state’s various redevelopment laws and housing statutes. Part of a three bill package that included the Long Term Tax Exemption Law and the Five Year Tax Exemption Law, both of which are briefly described later in this chapter, the LRHL rescinded the prior statutes and essentially replaced them with a single redevelopment law (Slachetka & Roberts, 2003). The LRHL permits municipalities to target an area for redevelopment and designate it as an “area in need of redevelopment”, which is a semantic replacement of “blighted” areas under the 1949 and 1951 Blighted Areas Act (Slachetka & Roberts, 2003).

Additionally, it permits municipalities to create, adopt, and implement redevelopment plans for designated areas, defines the various redevelopment responsibilities of the governing body, the planning board, and the redevelopment entity, sets forth the procedural steps in the redevelopment process, and delimits the criteria for determining that an area is in need of redevelopment. The term “redevelopment entity” is quite

broadly defined under the LRHL and can include, inter alia, redevelopment agencies and local housing authorities.

Under the LRHL, an area can be designated as an “in need of redevelopment” if the municipality enacts a resolution concluding that any of seven conditions are met. These criteria primarily represent an amendment of the language of the 1951 Blighted Areas statute’s criteria “a” through “f”. For the sake of comparison with the 1951 criteria, the seven 1992 LRHL criteria are listed below in their entirety, but for criteria “a” through “f” the new language is underlined and the deleted language from the 1951 statute contains strike-through markings. In 2003, an eighth criterion “h”, commonly referred to as the LRHL’s smart growth criterion, was added and is included below.

- (a) The generality of buildings ~~used as dwellings or the dwelling accommodations therein~~ are substandard, unsafe, unsanitary, dilapidated, or obsolescent, or possess any of such characteristics, or are so lacking in light, air or space, as to be conducive to unwholesome living or working conditions;
- (b) The discontinuance of the use of buildings previously used for commercial, manufacturing or industrial purposes, the abandonment of such buildings or the same being allowed to fall into so great a state of disrepair as to be untenable;
- (c) Land that is owned by the municipality, the county, a local housing authority, redevelopment entity, or unimproved vacant land, which has remained so for a period of ten years prior to adoption of the resolution ~~the determination hereinafter referred to, and which land~~ and that by reason of its location, or remoteness ~~from developed sections or portions of such municipality, or lack~~

of means of access to developed sections or portions of the municipality, such  
~~other parts thereof~~, or topography, or nature of the soil, is not likely to be  
 developed through the instrumentality of private capital;

- (d) Areas (~~including slum areas~~) with buildings or improvements which, by  
 reason of dilapidation, obsolescence, overcrowding, faulty arrangement or  
 design, lack of ventilation, light and sanitary facilities, excessive land  
 coverage, deleterious land use or obsolete layout, or any combination of these  
 or other factors, are detrimental to the safety, health, morals, or welfare of the  
 community;
- (e) A growing lack or total lack of proper utilization of areas caused by the  
 condition of title, diverse ownership of the real property therein or ~~and~~ other  
 conditions, resulting in a stagnant ~~and unproductive~~ or not fully productive  
 condition of land potentially useful and valuable for contributing to and  
 serving the public health, safety and welfare;
- (f) Areas, in excess of five ~~10~~ contiguous acres, whereon buildings or  
 improvements have been destroyed, consumed by fire, demolished or altered  
 by the action of storm, fire, cyclone, tornado, earthquake or other casualty in  
 such a way that the aggregate assessed value of the area has been materially  
 depreciated;
- (g) In any municipality in which an enterprise zone has been designated pursuant  
 to the “New Jersey Urban Enterprise Zones Act,” P.L. 1983, c.303 (C.52:27H-  
 60 et seq.) the execution of the actions prescribed in that act for the adoption  
 by the municipality and approval by the New Jersey Urban Enterprise Zone

Authority of the zone development plan for the area of the enterprise zone shall be considered sufficient for the determination that the area is in need of redevelopment pursuant to sections 5 and 6 of P.L. 1992, c. 79 (C.40A:12A-5 and 40A:12A-6) for the purpose of granting tax exemptions within the enterprise zone district pursuant to the provisions of P.L. 1991, c.431 (C.40A:20-1 et seq.) or the adoption of a tax abatement and exemption ordinance pursuant to the provisions of P.L. 1991, c. 441 (C.40A:21-1 et seq.). The municipality shall not utilize any other redevelopment powers within the urban enterprise zone unless the municipal governing body and planning board have also taken the actions and fulfilled the requirements prescribed in P.L. 1992, c.79 (C.40A:12A-1 et seq.) for determining that the area is in need of redevelopment or an area in need of rehabilitation and the municipal governing body has adopted a redevelopment plan ordinance including the area of the enterprise zone. L.1992, c.79 sec.5.

- (h) The designation of the delineated area is consistent with smart growth planning principles adopted pursuant to law or regulation.

### **Redevelopment Process under the LRHL**

In accordance with the Local Redevelopment and Housing Law (LRHL) a municipality must follow a distinct process once it has chosen a specific area (target area) for redevelopment (Slatchetka & Roberts, 2003). These are formal steps that apply once an area has been targeted for potential designation as an area in need of redevelopment. However, it is important to note that the LRHL provides considerable flexibility in the

redevelopment process on a number of levels. Indeed, the LRHL does not provide any set process or guidelines for the preliminary period when the municipality is determining which areas should be targeted for potential designation as areas in need of redevelopment. The statute also provides no rules or guidelines governing preliminary, pre-designation discussions between municipal officials and potential redevelopment entities. Moreover, redevelopment areas, including formally designated areas, may be of any size – even as small as a single lot (Slachetka & Roberts, 2003).

The first three steps engage the municipality in what could be termed the first stage, which is the process that may culminate in the designation of the targeted area as an area in need of redevelopment. In Step One, the municipal governing body must issue a resolution directing the planning board to conduct an investigation to determine whether the identified area is in need of redevelopment. In the Step Two, the municipal planning board must conduct a preliminary investigation and hold a full public hearing to determine whether the targeted area proposed for redevelopment meets at least one of the seven “area in need of redevelopment” criteria. The results of this preliminary investigation are generally presented as a planning report that contains recommendation as to whether the targeted area meets the designation criteria, along with supporting documentation and maps. Typically, this report is prepared by an outside, independent consultant hired by the planning board. Testimony is provided at the public hearing by the planning professionals who prepared the preliminary report and proponents and objectors, including interested citizens, are given an opportunity to be heard. Once the hearing is complete, the planning board may recommend to the governing body that all of the targeted area, or a portion of it, is in need of redevelopment. Step Three consists of

the governing body taking stock of the preliminary report and the planning board's assessment and either terminating the designation process or designating all of the targeted area, or a portion of it, as an area in need of redevelopment. This designation is made official through a resolution of the governing body, but no formal public hearing is required and no formal public notice is required beyond what the governing body normally provides (Slatchetka & Roberts, 2003).

The next two steps comprise a middle stage in the process centering on the preparation (Step Four) and adoption (Step Five) of a redevelopment plan for the designated area. A redevelopment plan can either be prepared by the governing body, itself, or the governing body may direct the planning board to prepare it. In either case, an independent planning consultant may be hired to assist in redevelopment plan preparation. The LRHL requires that the redevelopment plan be consistent with, or be designed to effectuate, the goals and objectives of the municipality's master plan (Slachetka & Roberts, 2003). A redevelopment plan, as envisioned by the drafters of the LRHL, represents something of a hybrid in that it is both a plan and a zoning ordinance for the designated area (Slatchetka & Roberts, 2003). Indeed, redevelopment plans generally involve significant changes in how the designated area will be planned and effectively rebuilt. Redevelopment plans spell out standards and guidelines for the designated area governing residential and non-residential land uses and their locations, land use density and floor area ratios, impervious surface coverage, open space, streetscaping, parking, architectural standards and building massing, and vehicular and pedestrian circulation. In fact, the LRHL permits the governing body to adopt a redevelopment plans inconsistent with the master plan through an affirmative vote of the

governing body as long as the reasons are clearly specified and are in accordance with the furtherance of the public health, safety, and welfare (Slachetka and Roberts, 2003).

Redevelopment plans cannot take effect unless and until the governing body adopts them by ordinance.

The final stage in the LRHL redevelopment process centers on implementation of the plan and consists of two steps. Step Six entails the designation of a redevelopment entity by the governing body to oversee implementation of the redevelopment plan. Step Seven entails the redevelopment entity selecting a redeveloper to actually undertake the project and physically redevelop the designated area. The LRHL gives the governing body considerable choice in Step Six in determining which public agency of entity will be the redevelopment entity that oversees implementation. A redevelopment entity could be the local housing authority, the governing body itself, or even a separate redevelopment agency created by the municipality (Slachetka & Roberts, 2003). Under the LRHL the redevelopment entity has tremendous flexibility in Step Seven in selecting a redeveloper. The redevelopment entity can select the redeveloper through a formal request for proposal (RFP) process or may specifically and directly negotiate with a particular redeveloper stemming from before the targeted area was even designated. In fact, the LRHL even countenances that the entire redevelopment process may well have been initiated by a redeveloper who approached the municipality (Slachetka & Roberts, 2003). Too, more than one redeveloper may be chosen for a designated area. After selection, the redevelopment entity and the chosen redeveloper(s) enter into a redevelopment agreement. This agreement specifies the respective responsibilities of the

redevelopment entity and redeveloper for completing the entire redevelopment project, including project phasing, time tables and benchmark deliverables.

## **RELATED NEW JERSEY STATUTES**

### **Long Term Tax Exemption Law**

The Long Term Tax Exemption Law, P.L. 1991, c. 431 (N.J.S.A. 40:20-1 et seq.) permits New Jersey's municipalities to enter into written agreements (by resolution) with private entities undertaking redevelopment and housing projects in order to grant them tax exemptions for periods up to 30 years (Slachetka & Roberts, 2003). Eligible projects include areas designated as being in need of redevelopment under the LRHL as well as Urban Enterprise Zones (UEZs). Exemptions do not apply to existing value of existing structures and improvements or to the value of the land, only to the value of new improvements (Slachetka & Roberts, 2003). Furthermore, the law only permits municipalities to grant these exemptions to "urban renewal entities", which may be corporations, partnerships, limited partnerships, or unincorporated entities approved by the New Jersey Department of Community Affairs (Slachetka & Roberts, 2003). Municipalities are authorized under the statute to use local governmental powers on the urban renewal entities' behalf (Slachetka & Roberts, 2003). The law was enacted to help jump start needed redevelopment efforts especially in decaying urban areas where very high tax rates are often a bar to such efforts. In return for having been granted exemptions under the statute, private redevelopers must pay annual service charges to the municipalities, which are referred to as PILOTS (payments in lieu of taxes). The PILOTS are based on formulas specified in the statute and payments can be phased into



full taxation toward the end of the exemption period. Additionally, the process is synchronized with the LRHL in that projects receiving exemptions must be carried out in accordance with adopted redevelopment plans (Slachetka & Roberts, 2003).

### **Five-Year Tax Exemption and Abatement Law**

The Five-Year Tax Exemption and Abatement Law, P.L. 1991, c. 441 (N.J.S.A. 40A:21-1 et seq.) permits municipalities to grant five-year tax exemptions and abatements for various shorter term redevelopment- and rehabilitation-related projects (Slachetka & Roberts, 2003). Among the eligible projects are home improvements, commercial and industrial development, and conversions of nonresidential structures into multiple-family residences. These exemptions and abatements can be granted to areas designated in accordance with the LRHL as being in need of redevelopment or in need of rehabilitation. A primary of the legislature in enacting the statute was to help stabilize deteriorating neighborhoods and commercial areas and reverse decline (Slachetka & Roberts, 2003).

### **Eminent Domain Act of 1971**

The Eminent Domain Act of 1971, P.L. 1971, c. 361 (N.J.S.A. 20:3-1 et seq.) sets forth the procedures through which property may be acquired by eminent domain. As such, it applies to directly to condemnation activities, involving a condemnor and a condemnee, wherein property is being acquired for a public purpose. The condemnor is the public or private entity condemning private property for a public purpose under the power of eminent domain (Eminent Domain Act of 1971, 20:3-2). (I substituted the word

Act for the Eminent Domain Act of 1971 in this section.) A condemnor may include, inter alia, the State of New Jersey or its municipalities. The condemnee is the owner of an interest in the private property being condemned through eminent domain to effectuate a public purpose (Act, 20:3-2). Under the Act, eminent domain is only supposed to be used when all bona fide attempts to obtain the property through negotiated purchase at the appraised fair market value have failed (Act, 20:3-6). Thus, eminent domain is intended as a measure of last resort. For all takings through eminent domain the condemnor must provide a written declaration of the taking which shall provide, inter alia, a description and plot plan of the area being condemned and the portion being taken, including lot and block numbers, and the names and addresses of all condemnees and the nature of their respective property interests (Act, 20:3-17). The condemnor's right to possession and title to the affected properties vests as soon as this declaration is filed and served upon the condemnees.

Furthermore, the Act establishes procedures for determining compensation for the affected parties when eminent domain is being used and procedures for filing actions to appeal compensation packages if the affected parties believes them to be inadequate (Act, 20:3-12 and 20:3-13, respectively). Specifically, compensation packages for eminent domain takings are determined by three-member commissions appointed by the Superior Court of New Jersey through full evidentiary hearing processes (Act, 20:3-12). The commissioners are empowered to inspect the affected properties and must review comparable sales data provided by the affected parties. Appeals of awarded compensation packages are conducted as non-juried hearings (Act, 20:3-13). Just compensation, which is based on fair market value appraisals, is determined as of the date

of the earliest of the following events: a) date the condemned property is taken by the condemnor; b) the date of the commencement of the action; c) the date on which action is taken by the condemnor that affects the use and enjoyment of condemnees' properties; or d) the date the governing body declares the area blighted based on a the planning board's report (Act, 20:3-30). Otherwise stated, the value of land acquired in connection with the development or redevelopment of a blighted area shall be equal to its value at the time of the blight declaration (Act, 2-:3-38). When housing authorities or redevelopment agencies institute actions to fix compensation packages one of their duly authorized officers or agents may file a declaration of taking with the Superior Court in accordance with the Act's standards (Act, 20:3-39).

### **Summary**

In effect, the blighted areas clause of the New Jersey Constitution laid the foundation for the enactment of the subsequent New Jersey statutes governing redevelopment and blight determination. As discussed, the New Jersey Constitution is very clear that redevelopment is a public use and a public purpose. Although the Constitution does not actually define what is meant by a blighted area, it generally requires that areas within municipalities be declared blighted before eminent domain can be used to acquire and assemble lands for redevelopment and related economic development purposes. It was New Jersey's redevelopment-related statutes, such as the Blighted Areas Acts of 1949 and 1951, which actually provided codified criteria for determining whether any particular area of a municipality is blighted. The written record of presentations given by delegates to the 1947 Constitutional Convention on the

meaning of blight and slum provided the basis for some of the language contained in these criteria. Additionally, the New Jersey Constitution, which provides that the State of New Jersey can enact laws to provide tax exemptions for areas slated for redevelopment, provided the impetus for such statutes as the Long Term Tax Exemption Law and the Five-Year Tax Exemption and Abatement Law.

In the language of three primary redevelopment statutes - the Blighted Areas Act of 1949 and Blighted Areas Act of 1951, which were replaced by the Local Redevelopment and Housing Law (LRHL) – there is an evolution from relatively concise, simplistic criteria toward more complex criteria and characterized by increased vagueness and ambiguity. Indeed, the Blighted Areas Act of 1949 contained only four criteria. These criteria stressed relatively measurable physical attributes indicative of deterioration, including insufficient sanitary systems, structural and safety problems, and overcrowding and economic indicators, including an insufficiency of property tax generation relative to municipal costs for needed local services. However, one criterion centered on the presence of vaguely worded, difficult to measure social characteristics deemed to contribute to delinquency, crime and poverty. The Blighted Areas Act of 1951 expanded on these criteria but also incorporated more ambiguous terminology, centering, in its “e” criterion, on a growing lack of proper utilization caused by title issues and “other conditions” that contributed to stagnation and unproductive conditions. This was the first time that these blight indicators, centering on the difficult-to-measure-and-assess concept of utilization, had been codified. The LRHL, enacted in 1992, expanded the criteria to a total of eight, including an extremely vaguely worded smart growth criterion “h”. However, except for a couple of words, the “e” criterion contained in the 1951

statute remained relatively intact in the LRHL. The relatively detailed municipal hearing process for considering redevelopment proposals and emphasis on public participation contained in the LRHL, aside, the language changes to the “e” criterion probably made it easier than ever to declare a specific municipal area blighted.

Moreover, in all three statutes, only one criterion had to be met to declare an area blighted, or in need of redevelopment. This indicates that throughout the forty-year period between the enactment of the 1949 statute and the LRHL the legislature was committed to easing regulatory constraints against blight declaration, thus making it easier and easier to undertake redevelopment projects. In turn, that suggests a growing legislative desire to ease barriers to the use of eminent domain to facilitate land assembly and acquisition.

## **RELEVANT NEW JERSEY CASES**

### **Cases Relevant to the 1951 New Jersey Blighted Areas Act**

A review of the relevant case law reveals that three cases are frequently cited as dispositive on the standards of judicial review of municipally facilitated economic development and redevelopment efforts. These cases are Wilson v. City of Long Branch (1958), Lyons v. City of Camden (1968), and Levin v. Township Committee of the Township of Bridgewater (1971). All three of them are New Jersey Supreme Court decisions and all three refer back to the United States Supreme Court’s Berman decision. The case descriptions below emphasize the standards employed by the New Jersey Supreme Court in reviewing the validity of the blight determinations and the municipally-

authorized, eminent domain-based acquisitions of private property to facilitate redevelopment and economic development efforts.

Overall, the disposition of these cases hinges on whether the Court could determine that the blight determinations, which facilitated the use of eminent domain for land acquisition in the targeted areas, were supported by what is termed “substantial evidence”. A finding of substantial evidence for blight declarations actually comes directly from Section 6 of the 1951 Blighted Area Act:

A determination that the area ... is a blighted area, if supported by substantial evidence, shall be binding and conclusive upon all persons affected by the determination. (1951 Blighted Area Act, N.J.S.A. 40:55-21.6.)

Significantly, substantial evidence has remained the standard upon which New Jersey courts have evaluated whether governing bodies have been justified in declaring areas blighted under the 1951 Blighted Area Act and its successor, the Local Redevelopment and Housing Law (LRHL). Over the years, the case law has tended to define the parameters of the term “substantial evidence”.

**Wilson v. City of Long Branch, 27 N.J. 360 (1958)**

The fact pattern in Wilson reflects a rather classic redevelopment effort in a city that has become famous, over the years, for several such schemes (Wilson v. City of Long Branch, 1958). In February 1955, the Mayor and Board of Commissioners of the City of Long Branch adopted a resolution pursuant to the 1951 Blighted Area Act requesting that the planning board make a preliminary investigation and hold a public hearing to determine whether a roughly 100 acre area on the northwestern perimeter of the City was blighted (Wilson v. City of Long Branch, 1958). The planning board

undertook the investigation and held public hearings from May through the summer and adopted a resolution declaring the area blighted in September 1955. In October 1955, the board of commissioners approved the blight determination. The plaintiff, who owned private property subject to condemnation in the area declared blighted, sought a judgment that both boards' resolutions were illegal and void arguing that the 1951 Blighted Area Act was unconstitutional (Wilson v. City of Long Branch, 1958). Plaintiff argued that the Act was unconstitutional because after a governing body declared an area blighted it could authorize a private corporation to undertake a redevelopment project in that same area. Too, plaintiff argued that because the Act contained no areal size limitations for declaring an area blighted otherwise sound properties and structures could be acquired and cleared and that the lack of such standards effected a delegation of unrestrained power (Wilson v. City of Long Branch, 1958). Furthermore, plaintiff argued that the determinations of the planning board and board of commissioners was not supported by substantial evidence. The case came before the New Jersey Supreme Court upon appeal by plaintiff after the trial court sustained the municipal action.

In its opinion, the New Jersey Supreme Court held that the Blighted Area Act was constitutional, that the public hearing required under the Act was legislative in nature, and that the blight determinations rendered by the applicable city boards were supported by substantial evidence. First, the Court noted that the Act was constitutional because, inter alia, it was specifically authorized by the 1947 Constitution because the Constitution, itself, contained specific approval language that authorized redevelopment projects for blighted areas (Wilson v. City of Long Branch, 1958). Redevelopment projects of the type implemented by the City of Long Branch for its northwestern

perimeter expressed the general purpose of Article VIII, Section 3, Paragraph 1 of the New Jersey Constitution, which is the blighted area clause. Similarly, the Act was not unconstitutional merely because the word “blighted” was not defined in the New Jersey Constitution. Additionally, the court noted that the authorization of private corporations to undertake redevelopment projects in blighted areas did not render the Act unconstitutional as long as the ultimate taking of the land was for a public purpose, even if some private profit might thereby accrue (Wilson v. City of Long Branch, 1958). Here, the Court noted that public ownership was not necessarily the sole means of promoting the public purpose of redevelopment. Echoing the United States Supreme Court in Berman, the New Jersey Supreme Court held that the Act was not unconstitutional simply because it did not specify standards for the size of the area that could be acquired and cleared and because the area declared blighted might contain structures that were not substandard. Addressing the plaintiff’s averment of unconstitutionality stemming from the failure of the Act to define the term “blighted”, the Court stated:

The five subsections of section 1, supra, [referring to the five criteria (a) through (e) of the 1951 Blighted Area Act] of the act define ‘blighted area’ with substantial exactitude and confine the municipal decision to those limits. The patent purpose is to deal with substantial areas as distinguished from individual properties, and to authorize a declaration of blight when the buildings therein fall within any of the descriptions specified. Without repeating those specifications, we have no hesitancy in finding them to be a sufficient channeling of the local authority. (Wilson v. City of Long Branch, 1958, p. 379)

Relative to the plaintiff’s argument about the lack of any limitation on blighted area size and the potential for designated areas to contain non-blighted properties, the Court evidenced deference to the legislative judgment of Long Branch’s governing body and stated as follows:



Specifically, it is argued that the absence of any limitation upon the size of the area which may be designated as blighted and the possibility that sound structures or even a portion of a municipality containing a number of such structures may be included, points to unrestrained delegation of power. We cannot agree. The area to be classed as blighted is the portion of a municipality which in the judgment of the planning board or governing body, as the case may be, reasonable falls within the definition laid down by the Legislature. The fact that such an area includes some sound homes or buildings, or even that incorporated therein as an integral part an necessary to the accomplishment of the redevelopment plan, is a portion of the municipality containing structures which are not substandard, is not sufficient to provoke a judicial pronouncement that the Legislature unreasonably surrendered its prerogatives and duties. And moreover, where as in this instance the guides for the subordinate agency action area adequate, the courts will not interfere with the boundary lines adopted in the absence of palpable abuse of discretion. (Wilson v. City of Long Branch, 1958, p. 379)

Toward the end of its decision, the Court determined that despite plaintiff's averment to the contrary the blight declaration was indeed supported by substantial evidence. In reaching this conclusion, the Court turned to the record of testimony and exhibits which provided substantial evidence that the 100-acre project area was blighted within the meaning of three of the five criteria set forth in the Act (Wilson v. City of Long Branch, 1958). Under the Act, if even one of the criteria were met the area could be the proper subject for a blight determination. Specific evidence included the fact that 41 of the 71 residential buildings were sufficiently deficient in construction and maintenance to qualify the area as blighted in accordance with the Act's criteria. Thirty of these structures, in fact, qualified as severely deteriorated because of obsolescence or poor construction As well, more than 28 of the 100 acres were vacant and unimproved and the City had liens or title to more than 34 acres of the area because of tax delinquencies. This city was able to conclude from this data that nearly 70 of the 100 acres in the project area were blighted and that criteria "a", "c", and "e" of the Act were

met, providing more than enough substantial evidence to justify the governing body's blight determination.

**Lyons v. City of Camden, 52 N.J. 89 (1968)**

In Lyons v. City of Camden (1968), which was decided ten years after Wilson, the New Jersey Supreme Court applied the substantial evidence test to hold that a 272-acre area of the City of Camden qualified as blighted under the 1951 Blighted Area Act. A brief review of the facts of the case, including a description of the area designated as blighted, is helpful before turning to the rationale for the Court's holding. The Planning Board of the City of Camden declared the Northshore area, which extends inland from the Delaware River north of downtown, blighted after it conducted an investigation and held public hearings pursuant to the Act's requirements. Over 77 percent of the area consisted of undeveloped land, much of it owned by the City of Camden, including 47 acres actually under water along the Delaware River shoreline and 85 acres used as a city dump (Lyons v. City of Camden, 1968). Northshore's residential portion covered about 129 acres of which 11.6 acres were devoted to residential use (Lyons v. City of Camden, 1968). About 170 of the nearly 200 structures on that relatively small area were residential (mostly single-family dwellings) and over half of those dwellings were determined to be substandard. Additionally, the 11.6-acre area was plagued with aging structures on very small lots, vacancies, a number of dwellings and structures unconnected to sanitation systems, and a higher than average number of fires. All of these indicators of blight were compiled by a firm of planning and urban renewal experts who had made a thorough, exterior and interior, structure-by-structure field study of the

area for the City of Camden. The plaintiffs, who were Northshore homeowners, produced their own photographic evidence to counter the blight determination and hired a planning expert who testified on their behalf. Nevertheless, the trial court sustained the governing body's blight declaration. The plaintiffs appealed the decision, which brought the case to the Supreme Court of New Jersey. They still contended that the blight declaration, so far as it concerned their residential portion of the Northshore, was arbitrary, unreasonable and not supported by substantial evidence.

The Supreme Court of New Jersey affirmed the trial court's decision, finding for the City of Camden. Citing the Berman Court's deference to legislative judgments, the Court stated that if the decision of the governing body was supported by substantial evidence, there was simply no justification for the judiciary to substitute its own judgment for that of the local legislators (Lyons v. City of Camden, 1968). As in Wilson, the Court determined that the fact that the area designated as blighted contained some sound structures and dwellings did not justify exempting those structures and dwellings from the designation. The Court reasoned that to exempt them would do damage to the City's integrated, comprehensive approach to urban renewal for the Northshore neighborhood.

After studying the record presented to us, we are convinced, as was the trial court, that substantial evidence supports the municipal determination that the entire Northshore area, as described, should be declared blighted and treated as an integral unit for urban renewal purposes. Consequently, the determination [of the trial court in favor of the City's blight declaration] must be affirmed. (Lyons v. City of Camden, 1968, p. 98)

**Levin v. Township Committee of the Township of Bridgewater, 57 N.J. 506 (1971)**

Levin v. Township Committee of the Township of Bridgewater (1971), which at the time this dissertation was written was nearly 40 years old, is still considered one of the most significant redevelopment cases ever decided by the Supreme Court of New Jersey (Slachetka & Roberts, 2003). On the surface, Levin seems like many other redevelopment cases brought before New Jersey high courts, but a closer look reveals that the decision carries a number of far reaching implications. Levin is different from many of the previous redevelopment cases because it centers primarily on the “e” criterion of the Blighted Area Act. It also involved a suburbanizing area with rural features – Bridgewater Township in Somerset County - as opposed to a more urban area like Camden or Long Branch. In a nutshell, the “e” criterion of the 1951 Blighted Area Act hinged on lack of proper utilization, lowered productivity, and stagnation of parcels in a specific area as an index of blight. This criterion, which was only slightly altered under the 1992 Local Redevelopment and Housing Law, figured very prominently in Gallenthin Realty Development v. Borough of Paulsboro (2007), discussed later in this chapter, and influenced the outcome of the Mulberry Street redevelopment effort, detailed later in this dissertation.

The salient fact pattern in Levin begins, like virtually every other redevelopment case, with a governing body considering what to do about a particular area of its municipality with a less than stellar history of tax revenue generation and private sector investment. In 1960s Bridgewater Township, the target was a triangularly-shaped, 122-acre area flanked by the right-of-way for the proposed I-287 superhighway and Routes 22, 202, and 206 (Levin v. Township Committee of the Township of Bridgewater, 1971).

In 1964, as I-287 was being constructed, Bridgewater Township began considering the Golden Triangle, as it was termed, as a potential federal urban renewal area that could capitalize on its proximity to such an enormous transportation improvement, as well as its access to Routes 22, 202, and 206. Bridgewater officials viewed it as a potential crossroads for the northern portion of Central New Jersey that could become a nexus for massive commercial development. However, the Golden Triangle was not receiving any private sector investment and produced little in the way of tax revenue, considering its prime location. It contained only 18 or 19 dwellings and because of foreclosures and title problems the Township had eventually purchased 268 of its 450 parcels (Levin v. Township Committee of the Township of Bridgewater, 1971).

Planning experts hired by Bridgewater Township, including Isadore Candeub and Carl C. Lindbloom, recommended that the governing body use its municipal authority under the Blighted Area Act, particularly criterion (e), to declare the Golden Triangle blighted so that it could be condemned and assembled for redevelopment. The area, they argued, essentially fulfilled the “e” criterion because it was characterized by a less than productive land use pattern and a lack of proper utilization that reflected diversity of ownership and piecemeal conditions of title. Accordingly, in October 1966, the Township adopted a master plan which recommended redeveloping the Golden Triangle as a major regional shopping center (Levin v. Township Committee of the Township of Bridgewater, 1971). Lindbloom issued a report to the Bridgewater Township Planning Board recommending that the Golden Triangle be declared blighted primarily under criterion “e” of the Act to enable land assembly for a regional shopping center. The

Board declared the area blighted under the Act in September 1968 based primarily on his report and primarily under criterion “e”.

Plaintiffs, a developer and retail-chain store (Two Guys) engaged in a joint venture to develop a 20-acre Golden Triangle tract with one of their stores, appealed the blight declaration in a lower appeals court arguing that the Township’s declaration was unconstitutional because it was for an ulterior purpose (Levin v. Township Committee of the Township of Bridgewater, 1971). Specifically, plaintiffs argued that the Township had acted in bad faith. They averred that the Township adopted the blight resolution primarily because it preferred more upscale stores and was essentially using the blight declaration to acquire plaintiffs’ 20-acre tract. The appellate court, echoing Berman, affirmed the blight declaration and held that the concept of public welfare was broad and inclusive, that it was within the Township’s power to determine that the community should be beautiful as well as healthy, and that it was reasonable for the Township to facilitate the Golden Triangle’s orderly, homogenous redevelopment (Levin v. Township Committee of the Township of Bridgewater, 1971). On appeal by plaintiffs, the case came before the Supreme Court of New Jersey.

The Supreme Court affirmed the appellate court’s ruling validating the blight declaration, focusing particular attention on the “e” criterion. Maintaining that the 1951 Blighted Area Act was applicable to the revitalization of a suburban township, the Court affirmed that a revitalization effort aimed at redeveloping primarily undeveloped land in accordance with a redevelopment plan constituted a public use and public purpose. The Court emphasized that its holding reflected a redevelopment trend in New Jersey that

differed from the national trend in that New Jersey's focus was on suburban and rural, as well as urban, areas.

On the other hand, in our State, from the very beginning of the efforts to deal with the problem of blight, the vista has been a broad and comprehensive one. The Legislature revealed as its clear purpose not only the clearance, replanning, development or redevelopment of urban blight, but suburban and rural blight as well. (Levin v. Township Committee of the Township of Bridgewater, 1971, p. 514)

In addressing the applicability of the “e” criterion, the Court noted Levin was the first case to come before the state judiciary in which a municipality had applied that criterion to a large rural or suburban area as the basis for a blight declaration. The Court affirmed, however, that it was plain from the language of the “e” criterion that the land involved did not have to qualify as slum to make its redevelopment a public use “nor is a public use negated by a plan to turn a predominantly vacant, poorly developed area into a site for commercial structures” (Levin v. Township Committee of the Township of Bridgewater, 1971, p. 515). Additionally, the Court affirmed that the core of the “e” criterion was that the diverse or defective conditions of ownership and title, parcel fragmentation, and, or, outmoded street patterns in an undeveloped, less than fully productive, or stagnant area were preventing it from being redeveloped or otherwise serving the public welfare. Moreover, the Court made clear that eminent domain could serve as an appropriate mechanism to expeditiously bring large, less than fully productive areas into more effective ownership that would facilitate a more comprehensive, integrated, and unified approach to redevelopment.

All of the [redevelopment related] New Jersey statutes ... which we have said are in pari materia [meaning to be construed together], show a purpose to make possible a comprehensive, coordinated and scientific approach to eliminate the conditions retarding public use and to develop or redevelop the area involved in a

unified and integrated manner. The lawmakers recognized that where an undeveloped land area was burdened with defective, questionable or unusual conditions of title, unsuitable lot layouts, diverse ownership, and outmoded and undeveloped street patterns, serious difficulties stood in the way of a unified development which would serve the health, welfare, social and economic interests, and sound growth of the community. They [the lawmakers] knew that fractionalization could be eliminated and the area dealt with as a whole if it could be treated as blighted and if the municipal power of eminent domain could be exercised to expeditiously bring it into such ownership as would permit realization of its maximum potential as part of an orderly community growth. The conclusion is inescapable that subsection (e) was added to the blighted area statute in order to make such a result possible. (Levin v. Township Committee of the Township of Bridgewater, 1971, p. 515)

### **LRHL Case Law**

The major Local Redevelopment and Housing Law (LRHL) case law over the last several years has centered primarily on the statute's "e" criterion [N.J.S.A. 40A:12A-5(e)] when it has been used by municipalities as the primary regulatory basis for specific redevelopment efforts. Gallenthin Realty Development v. Borough of Paulsboro, (2007) is the single most dispositive case on the meaning and applicability of the "e" criterion. Therefore, the following subsection consists entirely of a description of that case, the legal issues involved relative to redevelopment and land acquisition processes, including the use of eminent domain, the Superior Court's holding, and the rationale for that holding.

### **Gallenthin Realty Development v. Borough of Paulsboro, 191 N.J. 344 (2007)**

Gallenthin Realty Development v. Borough of Paulsboro (2007) is noteworthy primarily because it clarified the meaning and applicability of the "e" criterion of the LRHL to redevelopment efforts and, in so doing, effectively gave the statute some teeth (Salkin, 2008). In order to comprehend the full impact of the decision, however, it is



necessary to briefly summarize the salient facts of the case. Gallenthin owned 53 acres of land near the Delaware River, most of which consisted of undeveloped wetlands protected by the New Jersey Department of Environmental Protection, in Paulsboro, New Jersey only a few miles from Philadelphia. The Borough had zoned the Gallenthin property as a marine industrial business park and portions of it were utilized for river access, employee parking, storage, and for growing cattle feed (Gallenthin Realty Development v. Borough of Paulsboro, 2007). Additionally, the Borough had adopted a master plan in 1998 and, in 1999, amended the master plan to classify the Gallenthin property as “in need of redevelopment” under criterion “e” of the LRHL because its unimproved condition rendered it “not fully productive” (Gallenthin Realty Development v. Borough of Paulsboro, 2007). This classification, which had been based on investigative reports conducted by an engineering firm hired by the Borough, subjected the property to condemnation and taking by eminent domain. Nonetheless, the owners of the Gallenthin property testified at a Borough Planning Board hearing that they wanted to start using the land as a dredging depot (Gallenthin Realty Development v. Borough of Paulsboro, 2007). They noted that the property conferred benefits to the public because of the presence of freshwater wetlands. In 2003, the owners appealed the “in need of redevelopment designation”, which was essentially a blight declaration, alleging that their property did not meet any of the LRHL designation criteria. The trial court and the appellate division of the New Jersey Superior Court upheld the Borough’s redevelopment designation finding, inter alia, that the Borough had adhered strictly to the LRHL criteria in designating the property in need of redevelopment and that the Borough’s decision was supported by substantial evidence. When the owners sought further review and

challenged the constitutionality of the LRHL's criterion "e" the case came before the Supreme Court of New Jersey.

In a decision with far-reaching implications, the Supreme Court of New Jersey reversed the judgment of the intermediate appellate court (New Jersey Superior Court) and invalidated the Borough's LRHL "e" criterion-based designation of the Gallenthin property as an area in need of redevelopment. The Court made important distinctions about the LRHL and criterion "e" in its holding (Gallenthin Realty Development v. Borough of Paulsboro, 2007). First, noted the Court, the New Jersey Constitution only authorizes government redevelopment in "blighted" areas, which are equivalent to "areas in need of redevelopment" under the LRHL. The clearance, planning, development, or redevelopment of blighted areas is a public purpose and public use under the New Jersey Constitution and private property may be taken or acquired by eminent domain to further those public purposes and uses. However, the Legislature never intended that the different clauses of the LRHL, including those contained in the language of criterion "e" could be separately construed for purposes of declaring areas in need of redevelopment, or blighted. Therefore, the sole basis for declaring an area or property in need of redevelopment cannot be the fact that it is "stagnant or not fully productive" unless those conditions are based on, or exist because of, issues of title, diversity of ownership or other conditions, as specified in N.J.S.A. 40A:12A-5(e). Herein, Paulsboro's only basis for designating the Gallenthin property as in need of redevelopment was that it was not being utilized in a fully productive manner but, as the Court stated, "those considerations, standing alone, are insufficient to engage the municipality's power to designate property as 'in need of redevelopment' and, therefore, subject to eminent domain" (Gallenthin

Realty Development v. Borough of Paulsboro, 2007, p. 347). There was no substantial evidence relative to conditions of title, diversity of ownership, or other conditions to substantiate that there was any other reason for the designation other than the property not being fully productive.

### **Summary of New Jersey Case Law**

The most salient redevelopment New Jersey case law reflects controversies centering on the 1951 Blighted Areas Act and the 1992 Local Redevelopment and Housing Law (LRHL), the standard of judicial review of municipal declarations, and interpretation of the (e) criterion of both the 1951 and 1992 statutes. Wilson v. City of Long Branch (1958) and Lyons v. City of Camden (1968) stand for the proposition that the primary standard of judicial review of municipal blight declarations is the substantial evidence test. In fact, the substantial evidence test for municipal blight declarations actually comes directly out of Section 6 of the 1951 statute and this has remained the primary standard of judicial review. In Wilson, two primary concerns were that the 1951 statute was not constitutional and that the statute's lack of size standards for blighted areas coupled with the fact that non-blighted properties within targeted areas could be subject to clearance amounted to an unrestrained delegation of power. The New Jersey Supreme Court held that the statute was constitutional as it was authorized under the New Jersey Constitution's blighted areas clause. The Court also determined that those non-blighted properties were necessary for inclusion in order to accomplish the goals of the redevelopment plan. Moreover, the Court determined that the blight declaration was supported by substantial evidence because expert testimony provided strong indicators of

deterioration such that any one of the statutes criteria could have been met. These indicators included, among others, the fact that a majority of the structures in the targeted area of the City of Long Branch were deteriorated, many of them in severe condition. The Court concluded, in fact, that there was substantial evidence to conclude that criteria “a”, “c”, and “e” were met. Similarly, in Lyons, the New Jersey Supreme Court determined that the level of deterioration in the targeted area of the City of Camden provided substantial evidence that the area met the statutory blight criteria despite, once again, the inclusion of non-blighted properties for potential clearance.

The broad standards and ambiguity built into the “e” criterion in the 1951 statute and the LRHL has made it extremely controversial and open to various interpretations and the most salient cases centering on these “e” criterion issues are Levin v. Township Committee of the Township of Bridgewater (1971) and Gallenthin Realty Development v. Borough of Paulsboro (2007). Levin concerned Bridgewater Township’s blighting of a large, 122-acre, 450-parcel area under the “e” criterion primarily because the Township’s consulting planner determined that the area evidenced a less than productive land use pattern. The site was located in the so-called Golden Triangle between transportation improvements, including I-287 and Routes 22, 202, and 206. Plaintiff Levin, who had planned to develop a department store on 20 acres of the targeted area, fought the designation, alleging that the area did not meet the statutory blight criteria. Levin averred that the Township’s only reason for declaring the area blighted was its desire to redevelop the area with higher end uses that did not include his proposed use. However, the New Jersey Supreme Court held that it was reasonable for the Township to declare an area blighted under the “e” criterion that, even though it was not technically a

slum, had enough defective conditions of ownership, parcel fragmentation, vacancies, and lack of development as to render it stagnant, less than fully productive, and difficult to develop. Citing Berman, the Court determined that such redevelopment would constitute a public use because it would clearly further the public welfare by permitting the area to be developed in a unified manner. Levin, then, was relatively straightforward because the Court was able to determine that there was substantial evidence that the conditions enumerated in the “e” criterion were actually met.

Gallenthin, however, was significant because – coming on the heels of the Kelo decision - it represents a retrenchment from the normally deferential stance of the courts toward municipal blight determinations and municipal redevelopment decision-making processes. In light of Kelo, and the public backlash associated with that decision, the New Jersey Supreme Court was loathe to make it easy to broadly interpret the LRHL “e” criterion to render any property subject to eminent domain. As such, the Gallenthin decision served to clarify the meaning and applicability of the LRHL’s “e” criterion. Here the Borough of Paulsboro, near Philadelphia, had declared a mostly undeveloped property near the Delaware River in need of redevelopment under LRHL criterion “e”. The sole basis for the Borough’s determination was that the area was stagnant or not fully productive but the declaration never referenced, or connected, those conditions to conditions of title or other conditions. Interpreting the wording of the LRHL “e” criterion narrowly, the New Jersey Supreme Court determined that the Borough’s declaration was invalid because it had incorrectly and impermissibly separated out the stagnant or not fully productive clause from the conditions of title or other conditions clause. The Court reasoned that considerations that the property was stagnant or not fully

productive, standing alone, were not sufficient to permit the Borough to designate the property in need of redevelopment and subject to eminent domain. Additionally, the Court found no substantial evidence relative to conditions of title, diversity of ownership, or other conditions to substantiate the declaration.

## CONCLUSION

This chapter has summarized the more salient federal and state laws and federal and state cases applicable to this dissertation and its case studies on land acquisition to facilitate redevelopment efforts on Newark, New Jersey over a fifty year period. The first section and subsections of the chapter discussed the expansion of the public use doctrine to encompass economic development and urban redevelopment and, concomitantly, the use of eminent domain as a land acquisition tool to facilitate redevelopment. Descriptions and analyses of the three preeminent Supreme Court redevelopment-related cases: Berman v. Parker (1954), Hawaii Housing Authority v. Midkiff (1984), and Kelo v. City of New London (2005) supported that discussion. This was followed by a description of the more salient federal laws and programs, including the Federal Housing Act of 1949, the Federal Housing Act of 1954 and urban renewal program, and the Model Cities Act. From there the chapter moved into a description of the New Jersey statutes that enabled municipal governments to declare areas blighted for redevelopment purposes, including the 1949 and 1951 versions of the Blighted Areas Act and the 1992 Local Redevelopment and Housing Law. This was followed by a summary of several of the key New Jersey redevelopment cases, including Wilson v. City of Long Branch (1958), Lyons v. City of Camden (1968), Levin v. Township Committee of the Township

of Bridgewater (1971), and Gallenthin Realty Development v. Borough of Paulsboro (2007). The chapter also briefly covered a few of the more important companion statutes, including the New Jersey Eminent Domain Law of 1971 and the New Jersey laws providing tax exemptions and abatements for redevelopment projects.

One of the more important phenomena revealed in this chapter is that the meaning and import of the applicable laws lies less in the verbatim statutory language and more in the cases and judicial opinions that interpret their meaning and import. The statutes have been amended to alter their wording and change their criteria, but the cases have provided more insight, through real-life examples, into the factors associated with blight determination and the use of eminent domain for land acquisition. The cases presented in this chapter also illustrate the evolution of judicial review of blight determinations relative to redevelopment-related statutory criteria. As such, the New Jersey courts have responded to changes in public perceptions about redevelopment, especially since the Kelo decision and especially where the primary beneficiaries of eminent domain appear to be other private entities and not the public. It is arguably no accident that in the Gallenthin decision, which followed close on the heels of the public's negative reaction to the Kelo decision, the LRHL's "e" criterion was interpreted more narrowly. Such judicial rigor is necessary to ensure that regulations designed to codify and implement equitable policies actually do so.

Additionally, analysis of the aforementioned laws and cases reveals interesting patterns and phenomena, which are presented herein without prioritization. First, the laws and statutes covered in this chapter appear to reflect a high degree of deference to local governmental decision-making involving the disposition of properties assembled for

redevelopment. The judiciary essentially views local land use decision-making as an outgrowth of police power functions related to the furtherance of public health, safety, and welfare and therefore shows this same deference toward municipally-facilitated redevelopment decisions. Secondly, the language of New Jersey's redevelopment statutes, especially the LRHL, is broad and its terminology is ambiguous and open to interpretation. On one level, this increasing ambiguity reflects the expansion of the concept of redevelopment as a public use and a broader interpretation of what constitutes a blighted area. In a corollary vein this seems to reflect increasing acceptance that some redevelopment benefits will be less tangible. Regardless, the result has been that New Jersey municipalities have been able to facilitate most any sort of large- or smaller-scale neighborhood clearance and reconstruction scenario they desire and call it a public use in furtherance of redevelopment and economic development. Moreover, the judicial deference and ambiguity have reinforced each other for decades to augment the juggernaut of municipal redevelopment efforts, Gallenthin very recently representing the only sign that this symbiosis is now subject to closer scrutiny.

Thirdly, the laws and cases presented in this chapter indicate that law-makers and municipal governing bodies assume that private actions, whether independently wrought or as part of public-private joint redevelopment ventures, can produce public uses that confer public benefits and fulfill public purposes. Indeed, the laws and statutes allocate roles and responsibilities to the different public and private actors involved in redevelopment and economic development efforts. In essence, redevelopment efforts are often essentially publicly – facilitated private actions designed to produce public uses and confer public benefits. An unstated assumption underlying these public-private



redevelopment arrangements is that municipalities will act in the public interest.

However, does that necessarily follow? When private action is involved, or public power is effectively ceded to private actors, there is a risk that the pursuit of private interests, private motives, and private benefits may take precedence over serving the public good.

Given these complexities, then, the statutes and judicial decisions do not tell us the whole story about the local processes involved in urban redevelopment and economic development, including land acquisition and assembly and the use of eminent domain to facilitate it. Herein, the devil truly is in the details and a primary purpose of the case studies that unfold in this dissertation is to provide those details. This can increase understanding of the entire redevelopment process, including how and why municipalities, acting in conjunction with other, often nonpublic actors, chose certain land assembly strategies. Too, that can enhance understanding of the role of eminent domain in redevelopment. Increasing understanding on those planes, in turn, can help legislatures and policy-makers fashion better responses to the needs of municipalities in need of revitalization.

## **CHAPTER FOUR: REDEVELOPMENT IN CLINTON HILL**

### **INTRODUCTION**

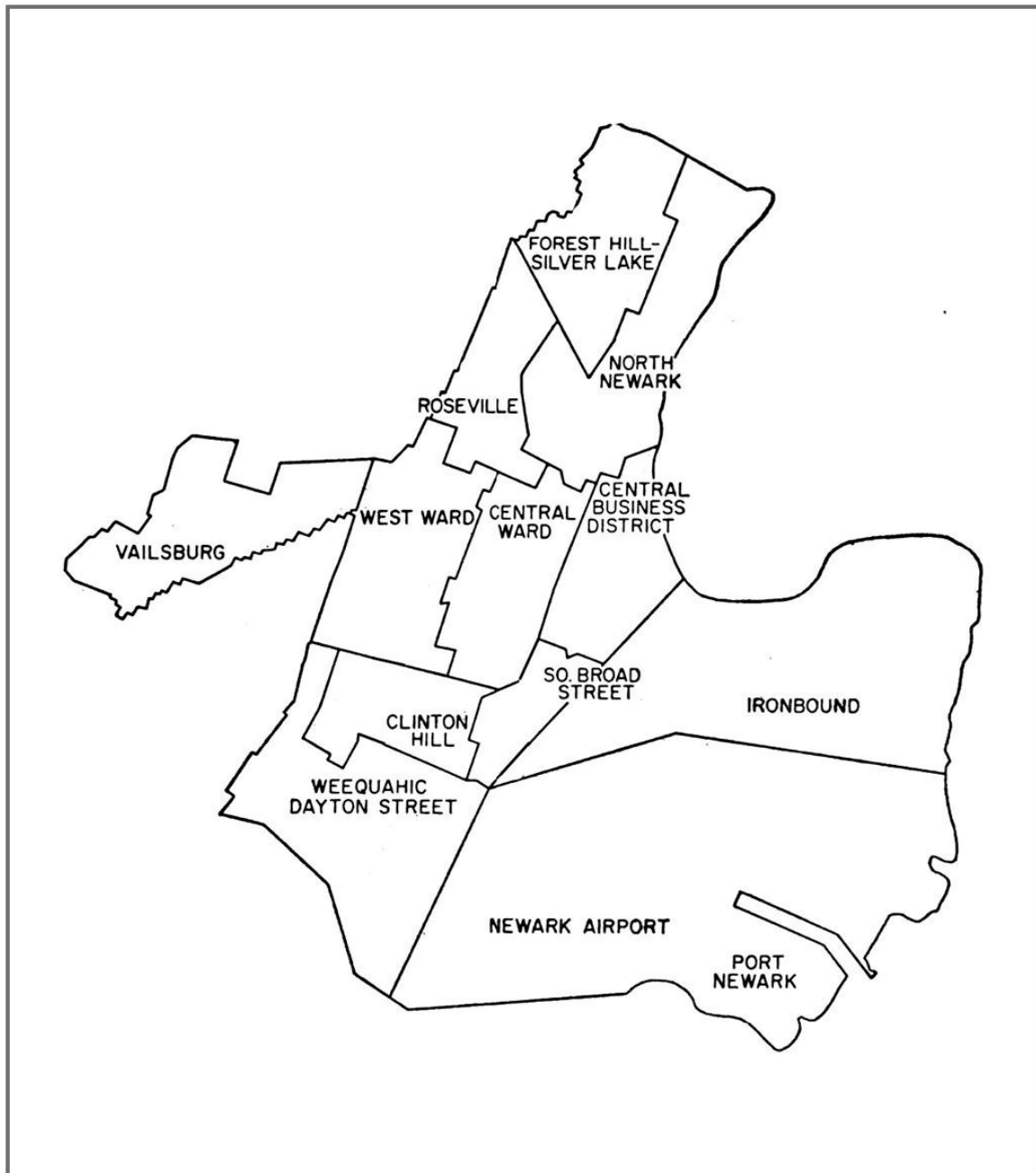
This chapter chronicles the saga of redevelopment efforts in Clinton Hill from the mid-1950s through the late-1960s. That saga centered on two large, adjacent, federally subsidized urban renewal projects: NJ-R-32 and NJ-R-38. The NJ-R-38 project was situated entirely within Clinton Hill whereas NJ-R-32 was initially proposed for location in both Clinton Hill and the Central Ward. NJ-R-32 was later downsized such that it was situated wholly in a portion of the Central Ward bordering the northern portion of Clinton Hill. This chapter details how these projects came to fruition from their inception through final approval and construction, focusing on the dynamics of the land assembly process, funding, and the involvement of the primary public and private actors. As chronicled in this chapter, the neighborhood level efforts of the Clinton Hill Neighborhood Council (CHNC) to minimize the impacts of NJ-R-32 and NJ-R-38 on residents and businesses significantly influenced the land assembly process and project outcomes. The saga of these redevelopment efforts in Clinton Hill, in turn, illustrates the processes and concerns examined in this dissertation. Among these concerns are the conceptualization of redevelopment in Newark in the 1950s and 1960s, what motivated these redevelopment efforts, and the strategies employed by public and private actors to enable land assembly and acquisition including the use of eminent domain. I will discuss my findings on these concerns in the final chapter.

Following this introduction, there are seven sections in the chapter. In the second section, I introduce the reader to the Clinton Hill neighborhood of Newark, including a description of its boundaries with a brief description of current land uses and the

composition of the population. The third section, which is supplemented with data from the 1950, 1960, and 1970 Censuses, discusses the profound socioeconomic changes occurring in the southwestern portion of Newark between 1950 and 1970. This time frame, which includes the years during which these two projects came to fruition, also coincides with the heyday of federally-subsidized, locally-facilitated urban renewal efforts in Newark. A brief description of the founding, composition, and overall mission of the Clinton Hill Neighborhood Council (CHNC) constitutes the chapter's fourth section. The fifth and sixth sections of the chapter chronicle the sagas of the NJ-R-38 and NJ-R-32 redevelopment efforts, respectively. In the seventh and final section, I summarize the chapter and provide a brief assessment of the impact of the two urban renewal projects on Clinton Hill and south central Newark - more than forty years after their approval and construction.

### **CLINTON HILL: LOCATION AND BRIEF DESCRIPTION**

Clinton Hill is located in the south central section of Newark in the city's South Ward, immediately south and southwest of the Central Ward and north of the Weequahic neighborhood (Figure 4-1). Figure 4-2 depicts street boundaries for Clinton Hill. Avon Avenue and Clinton Avenue are its northern boundaries. Chancellor Avenue and Lyons Avenue are its southern boundaries. A portion of Newark's boundary with Irvington Township provides its western boundary and its eastern boundary runs along Elizabeth Avenue, Belmont Avenue (also known as Irvine Turner Boulevard), Clinton Avenue, and Clinton Place. These boundaries roughly closely with depictions of the neighborhood from the 1950s onward (Kaplan, 1963) and with the census tracts from the 1950, 1960,



**Fig. 4-1. Newark Neighborhoods.**

Note. Source is Kaplan, H. (1963). *Urban Renewal Politics: Slum Clearance in Newark*. New York: Columbia University Press.



and 1970 Censuses I used for demographic analysis purposes. Bergen Street, which runs along the crest of a ridge through central and south central Newark, roughly divides Clinton Hill into Lower Clinton Hill and Upper Clinton Hill. In the 1970s, the construction of Interstate 78 in an east-west path through the southern portion of Newark obliterated several blocks of Clinton Hill and effectively cut it off from the Weequahic neighborhood. The NJ-R-32 and NJ-R-38 urban renewal projects predate this construction.

Clinton Hill in 2010 is a predominantly residential neighborhood of densely-packed, two- and three-family, two- and three-story rental housing and detached homes with yards, many of which have been converted into multi-family residences and single-family rentals. Most of the housing is quite old; over 90 percent of it was built before 1939 (U.S. Bureau of the Census, 1960 Census). In recent years, there has been significant private-sector initiated housing rehabilitation in Clinton Hill as well as new two-family housing construction. Nevertheless, Clinton Hill contains a significant number of vacant lots and dilapidated residential and nonresidential buildings. Clinton Avenue, has long-served as the neighborhood's commercial corridor, but there are smaller areas of commercial activity along Avon Avenue. These commercial areas have suffered for decades from deterioration in the quantity and quality of retail and service uses and commercial buildings. The continuing physical deterioration and underutilization of land in large areas of Clinton Hill are legacies of years of economic decline and urban renewal policies that resulted in large-scale residential clearance. Moreover, as detailed in the next section, Clinton Hill experienced significant demographic changes from 1950 onward. Clinton Hill was once predominantly white (of

Jewish and Eastern European descent) and middle-class, but it is now predominantly a working class African American enclave with significant poverty and unemployment.

### **DEMOGRAPHIC CHANGE IN CLINTON HILL 1950-1970**

As discussed in the paragraphs that follow, Clinton Hill was the site of enormous demographic change during between 1950 and 1970, which mirrored the changes occurring throughout much of Newark. This was the period of time in which NJ-R-32 and NJ-R-38 came to fruition and these demographic changes heavily influenced the saga of the two projects, including the land assembly process and project outcomes. Tables 4-1, 4-2, 4-3, and 4-4 provide a snapshot of United States census data for Clinton Hill and Newark from 1950 through 1970, relevant to the story of the NJ-R-32 and NJ-R-38 projects. Specifically, the data provides information on population change, change in racial composition, and change in housing quality over the two-decade period. This information informs the discussion that follows. As further detailed in this chapter, these demographic changes, and the awareness of Clinton Hill's leadership about the impact of these changes on their neighborhood, played a significant role in the land assembly saga and outcome of the NJ-R-38 and NJ-R-32 projects.

**Table 4-1: Demographic Change in Newark 1950-1970**

<b>Demographic Component</b>	<b>1950</b>	<b>1960</b>	<b>1970</b>
Newark Total Population	438,776	405,220	382,417
White Population	363,149	265,889	168,382
African American (Black) Population	74,965	138,035	207,458
Nonwhite Population	75,627	139,331	214,035
Percent White	82.8	65.6	44.0
Percent African American (Black)	17.1	34.1	54.2
Percent Nonwhite	17.2	34.4	56.0

Source: U. S. Bureau of the Census: 1950, 1960 and 1970 Censuses

**Table 4-2: Demographic Change in Clinton Hill 1950-1970**

<b>Demographic Component</b>	<b>1950</b>	<b>1960</b>	<b>1970</b>
Total Population	50,686	50,827	50,461
White Population	46,843	23,244	2,885
African American (Black) Population	3,776	27,657	47,177
Nonwhite Population	3,820	27,784	47,576
Percent White	92.4	45.7	5.7
Percent African American (Black)	7.5	54.4	93.5
Percent Nonwhite	7.5	54.7	94.5

Source: U. S. Bureau of the Census: 1950, 1960 and 1970 Censuses.

**Table 4-3: Newark Select Housing Data**

<b>Data Category</b>	<b>1950</b>	<b>1960</b>	<b>1970</b>
Total DU	124,398	134,872	124,424
Total Occ. DU	122,531	127,772	121,041
Owner Occ. DU	28,705 (23.1%)	28,802 (21.4%)	24,932 (19.6%)
Renter Occ. DU	93,826 (75.4%)	98,970 (73.3%)	96,109 (75.4%)
Vacant DU	1,867 (1.5%)	7,100 (5.3%)	6,346 (5%)
DU Reporting Structural Conditions	120,570	134,872	127,424
DU Reporting Substandard Structural Conditions	36,335 (30.1%)	39,114 (29.0%)	7,608 (5.9%)
Occ. DU Reporting PPR	120,829	127,772	121,041
Occ. DU Reporting PPR that were overcrowded	5,362 (4.4%)	16,600 (13.0%)	17,709 (14.6%)
Average Monthly Contract Rent	\$38	\$64	\$104
Average Value of SDU	\$10,945	\$13,500	\$17,300

Source: U. S. Bureau of the Census: 1950, 1960 and 1970 Censuses.

DU = Dwelling Units; Occ. = Occupied; SDU = Single Dwelling Unit Structure; PPR = Persons Per Room. Figures in parentheses ( ) are percentages.



**Table 4-4: Clinton Hill Select Housing Data**

<b>Data Category</b>	<b>1950</b>	<b>1960</b>	<b>1970</b>
Total DU	14,980	16,322	15,219
Total Occ. DU	14,750	15,781	14,534
Owner Occ. DU	3,495 (23.7%)	3,353 (21.2%)	2,648 (18.2%)
Renter Occ. DU	11,378 (77.1%)	12,428 (78.8%)	11,886 (81.8%)
Vacant DU	169 (1.1%)	623 (3.8%)	682 (4.5%)
DU Reporting Structural Conditions	14,728	16,322	15,219
DU Reporting Substandard Structural Conditions	1,646 (11.2%)	4,534 (27.8%)	926 (6.1%)
Occ. DU Reporting PPR	14,687	15,781	14,534
Occ. DU Reporting PPR that were overcrowded	317 (2.2%)	2,128 (13.5%)	2,544 (17.5%)
Range for Average Monthly Contract Rent	\$35 to \$55	\$65 to \$82	\$106 to \$124
Range for Average Value of SDU	\$6,128 to \$16,241	\$11,100 to \$14,700	\$12,500 to \$18,100

Source: U. S. Bureau of the Census: 1950, 1960 and 1970 Censuses

DU = Dwelling Units; Occ. = Occupied; SDU = Single Dwelling Unit Structure; PPR = Persons Per Room.

Figures in parentheses ( ) are percentages.

Prior to the early 1900s, Clinton Hill was predominantly an affluent neighborhood inhabited by old-line English and Dutch Protestant families. These families built large single-family detached Victorian and arts and crafts homes on tree-lined streets many of which, though showing signs of deterioration and neglect, are still standing. By the 1920s, a process of ethnically-based housing filtering had begun. As the affluent Protestant families moved into the nearby suburbs, such as South Orange, West Orange, and Montclair, Jewish and non-Jewish families, primarily of Eastern European descent, began to move into Clinton Hill. These newcomers prospered and thrived and became solidly middle class. Clinton Hill, and neighboring Weequahic, became the center of Newark's Jewish life. In 1924, Clinton Hill's Polish Jewish families built Newark's largest synagogue, Temple B'nai Abraham, at the intersection of Shanley and Clinton Avenues, directly across the street from Blessed Sacrament Roman Catholic Church (Virtual Newark, Old Newark Houses of Worship, [www.virtualnewark.com](http://www.virtualnewark.com), 2008).

In 1950, a half decade before the NJ-R-32 and NJ-R-38 projects were first conceived Clinton Hill was a relatively stable, still predominantly white, Jewish and Eastern European, residential community of over 50,000 residents. Slightly over seven percent of the residents were African American, which was significantly lower than Newark's figure of 17.1 percent African American (U.S. Bureau of the Census). Closely matching Newark's overall housing demographics, over 77 percent of all occupied housing units were renter occupied. Housing availability was tight; as in Newark, the vacancy rate stood at a slightly over one percent.

However, housing quality in Clinton Hill in 1950 was still slightly better, overall, than it was in Newark. Although a 11 percent of all reporting units were substandard, signifying that there were serious deficiencies in plumbing and other structural defects, that figure was much lower than the corresponding Newark level of 30.1 percent. As well, overcrowding in Clinton Hill, at 2.2 percent, was half the overall Newark figure of 4.4 percent. Census measures of the value of rental and owner-occupied units also suggested that housing conditions in Clinton Hill were healthier, in 1950, than they were in Newark. As the United States census provided overall average housing values and average contract rents for Newark but not for Clinton Hill, I had to rely on the housing data from each of the census tracts I used for Clinton Hill. The combined data for the Clinton Hill census tract data for average housing values and average contract rents could only be expressed as a range. This made direct comparisons problematic for the 1950 Census data, as well as for the 1960 and 1970 Census data. Nonetheless, as can be seen from Tables 4-3 and 4-4, the range for average monthly contact rents and the range for

average values for single dwelling unit structures were higher than the corresponding overall averages for Newark.

As is the case in 2010, residential uses in Clinton Hill consisted primarily consisted of large, two-story and three-story, single-family detached houses with yards and more densely packed, two-story and three-story two- and three-family residential structures. Reflecting the tight post-war housing market, some of the single-family detached housing on Clinton Hill's more affluent, tree-shaded streets was already being converted into multi-family apartment buildings. Figure 4-3 provides photographs of this still-common Clinton Hill housing type.



**Fig. 4-3. Example of Single Family Detached Housing in Clinton Hill.**  
Note. Source is Newark USA, <http://newarkusa.blogspot.com>, Retrieved October, 2009.

In 1950, as in 2010, Clinton Hill contained significant areas of non-residential use. However, in 1950 these areas had not yet experienced significant economic decline and physical deterioration. Clinton Avenue served as the major east-west thoroughfare

and contained the bulk of Clinton Hill's commercial uses and commercial activity. This consisted primarily of smaller-scale retail stores, neighborhood grocery stores, and service-oriented shops. Smaller commercial enclaves were located along Hawthorne Avenue and Avon Avenue. Additionally, Lower Clinton Hill contained pockets of smaller-scale industrial activity. The General Electric plant and Fisher Baking Company, which were steady sources of employment for Newark residents, were located mere blocks away in the adjacent Central Ward.

However, between 1950 and 1970, Clinton Hill changed quite drastically from a predominantly white middle class community with relatively sound housing conditions to a working class, African American community experiencing rapidly deteriorating housing conditions. Data from Tables 4-1 through 4-4 illustrate the corresponding numeric changes, which mirrored – and in some cases exceeded – Newark's overall numeric changes. Most notably, while the total population of Clinton Hill remained relatively constant at around 50,000, the racial composition of Clinton Hill was essentially the reverse of what it had been only twenty years earlier. Clinton Hill, which had been only 7.5 percent African American in 1950, was 54.4 percent African American by 1960 and 93.5 percent African American by 1970. By contrast, Newark changed from 17.1 percent African American in 1950 to 54.2 percent African American which, although large, was not quite so drastic. Moreover, whereas the percentage of substandard housing remained nearly the same in Newark between 1950 and 1960 it soared in Clinton Hill from 11.2 percent to nearly 28 percent. The percentage of units listed as overcrowded increased in both Clinton Hill and Newark within that same ten-year period, but the change was greater in Clinton Hill, from just over two percent to 13.5

percent. Despite the deterioration in housing conditions, vacancy rates – although loosened - remained relatively similar and relatively tight for both Newark and Clinton Hill between 1950 and 1970. In fact, the data indicate that housing availability remained tighter in Clinton Hill than for Newark, overall. Increases in housing values and contract rents in Clinton Hill appear to have essentially mirrored those in Newark.

These drastic changes in Clinton Hill reflect a convergence of large-scale, society-wide economic changes occurring in American at mid-century compounded by Newark's particular, localized brand of urban renewal policies. On one level, Clinton Hill's changeover to a largely African American community the mid-century wave of African American migration that reflected the loss of southern agricultural jobs to mechanization (Hermann, 2002). From the late 1930s through the 1960s, large numbers of African-Americans and their families moved north to Newark and other large northern cities from the economically depressed rural South in search of higher paying, low-skilled manufacturing jobs. Newark, which had an especially plentiful number of low-skilled manufacturing jobs because of its high degree of industrialization, was a logical destination for this migration. Correspondingly, much like the industrial giants of Philadelphia, Chicago, and Detroit, it received one of the largest influxes of African American. In Newark, they settled in the largest numbers in the Central Ward where the older, densely-packed housing was the easiest to rent and generally cheapest – adjacent to the South Ward's Clinton Hill. The Central Ward was also the location of some of the larger firms, including Westinghouse and General Electric.

Unfortunately, the mass movement of relatively uneducated African Americans with low skill sets into Newark coincided with both the intensification of the flight of

jobs and the middle classes away from neighborhoods, like Clinton Hill, that had been redlined by HOLC (Herman, 2002; Jackson, 2000). Large numbers of middle class white households and the manufacturing concerns and ancillary services that employed them had begun to leave Newark by the 1940s, in large part because it was land-poor and plagued by overcrowding and high taxes (Newark Central Planning Board, 1947). The relatively land-rich suburbs could much more easily accommodate growing demand for single-family housing on large lots and the spatial needs of newly modernizing, sprawling plant complexes. Powerful federal mortgage –lending and highway-building policies and programs encouraged and abetted the resettlement of Newark’s middle classes out of the deteriorating housing of the city’s residential wards and neighborhoods into the suburban hinterland.

Data from the 1950, 1960, and 1970 Censuses, contained in the four previous tables, starkly illustrate the effects of post-World War II white outmigration from Newark on the city’s racial composition. Indeed, Newark’s white population plummeted from approximately 363,000 in 1950 to 266,000 in 1960 to 168,000 in 1970. Simultaneously, Newark’s African-American population increased from about 75,000 in 1950 to 138,000 in 1960 to 207,000 in 1970.

The flight of manufacturing jobs and the white middle class population only accelerated during the 1960s. Newark’s breweries and tanneries shut down and Westinghouse and General Electric eventually left, taking with them thousands of jobs (Herman, 2002). Consequently, by the 1960s, the African American unemployment rate in Newark, at 11.5 percent, was twice as high as the corresponding rate for whites (Herman, 2002). Given this cluster of increasingly severe economic conditions, hardly

any African Americans moving into the Newark area in the 1950s and 1960s could have afforded housing in the city's suburbs. Their only realistic choices for residence were Newark's inner city neighborhoods, including the Central Ward and Clinton Hill.

As the proportion of African-Americans in Clinton Hill, many of whom were burdened by low skill sets, low educational attainment levels, and rampant job discrimination the neighborhood shifted from a predominantly middle class community to a decidedly working class one with high unemployment. Data from the 1950, 1960, and 1970 Censuses are illustrative (U.S. Bureau of the Census, 1950, 1960, 1970). In 1950, the unemployment rate in Clinton Hill was approximately six percent compared to Newark's higher citywide unemployment rate of 8.3%. In contrast, the unemployment rate in Clinton Hill had risen to 8.3%, by 1970, significantly higher than Newark's citywide unemployment rate of 6.5%. In 1950, overall median household income levels in Clinton Hill were higher than the citywide median household income level. However, by 1970 median household income levels were lower than citywide median household income levels in half the census tracts in Clinton Hill.

On an even more localized level, African Americans seeking decent housing were confronted with a chronic housing shortage that was severely exacerbated by the one of the city's core policies for assembling land for urban renewal. Specifically, the Newark Housing Authority (NHA), under the direction of its Executive Director, Louis Danzig, and armed with the power of eminent domain, pursued a policy of large-scale clearance of slums and blighted areas which the agency would then sell to private redevelopers who would build moderately priced housing (Kaplan, 1963). In fact, it was common knowledge in the 1950s and 1960s that NHA had a mantra: "middle-income housing on

cleared slum sites” (Kaplan, 1963, p. 15). The immediate effect of this large-scale clearance policy was to destroy whole neighborhoods and, with them, whole swaths of Newark’s privately maintained affordable housing. Much the so-called “middle-income housing” built on cleared sites was essentially public housing which was supposed to be available for those displaced. However, the supply was generally inadequate to meet the demand and it was difficult for many of the displaced families to meet the public housing eligibility requirements.

Significantly, Danzig and the NHA pursued these policies most avidly in the dense, deteriorating neighborhoods of the Central Ward, which was considered the heart of Newark’s slum belt and was adjacent to Clinton Hill (Kaplan, 1963; Herman, 2002). The Central Ward became the locus of much of the city’s large-scale public housing. When confronted with the reality that many displaced households were shut out of public housing because of inadequate supply or because of the onerous eligibility requirements NHA attempted to relocate them within other areas of the Central Ward and Clinton Hill (Kaplan, 1963). This became official NHA policy for re-housing those displaced by their renewal policies from the Central Ward. The number of families effectively shuttled to Clinton Hill because they were literally or effectively displaced by NHA’s urban renewal clearance policies was quite large. As discussed later in this chapter, it was in the thousands.

Concomitantly, NHA’s renewal efforts also eventually displaced or squeezed out what remained of the Central Ward’s white population. Between 1960 and 1967, two-thirds of the white residents of the Central Ward moved out (Herman, 2002). As with the African American residents of Newark these policies destroyed entire communities and



their networks. Many of these remaining white residents were the descendants of Eastern European immigrants whose families had lived in the Central Ward for generations. With housing in short supply in Clinton Hill many of these residents were effectively squeezed out of Newark entirely.

### **THE CLINTON HILL NEIGHBORHOOD COUNCIL (CHNC)**

The Clinton Hill Neighborhood Council (CHNC) was formed in 1954 to stabilize Clinton Hill, prevent white flight, and address what it considered the neighborhood's most pressing issues (Kaplan, 1963). CHNC was actually one of several other neighborhood organizations that essentially operated at a grass roots level in each of Newark's various neighborhoods. Stanley Winters, a professor of civil engineering at the Newark College of Engineering (now NJIT) and a Clinton Hill resident, served at the helm for a number of years. Although it was so-called grass roots organization it was a sophisticated and well organized one. It operated under a president, several vice presidents who were drawn from various block associations, a secretary, and a treasurer (Bonomo, 1956, March 18).

CHNC was profoundly aware of the demographic changes it was experiencing and how those changes were shaping its most pressing issues. Among these issues were residential overcrowding associated with conversion of single-family housing to apartments, housing deterioration and the city's laxity in code enforcement, the need for housing rehabilitation, and the need for more recreational space (Bonomo, 1956, March 18). By the late 1950s, CHNC had begun to wonder about a connection between the residential overcrowding it was experiencing and the displacement associated with NHA's urban renewal policies. From time to time, subcommittees would form within

CHNC to address these issues and take matters to Mayor Carlin and, after 1962, Mayor Addonizio.

Indeed, in late 1957, CHNC issued a 13-page report to the Carlin administration detailing the increasing blight and overcrowding in Clinton Hill and citing the city's lag in housing code enforcement as a prime culprit in potential declining property values ("Clinton Hill crowding worse", 1958 January 1). This report noted that many African-Americans displaced by the clearance and demolition for public housing and other redevelopment activities associated with urban renewal in the Central Ward were moving into Clinton Hill.

However, CHNC was not able to truly connect everything until NHA's Director of Relocation made a public disclosure about NHAs relocation policies for residents displaced from the Central Ward by urban renewal clearance. Specifically, in May of 1958, Samuel Warrence, NHA's Director of Relocation spoke before the CHNC indicated that many African American families displaced by urban renewal from the Central Ward would, in fact, be relocated to Clinton Hill (Kaplan, 1963). In fact, he revealed that Clinton Hill should be prepared to receive between 40 and 50 percent of 7,800 African American families that would eventually be displaced by urban renewal projects in the Central Ward (Kaplan, 1963).

After this revealing announcement, CHNC became the primary grass roots opponent of the negative impacts of NHA's urban renewal land assembly and relocation policies. As detailed in the following sections on the NJ-R-38 and NJ-R-32 projects, CHNC proved to be the one organization, despite consisting of citizen activists, that NHA and the Carlin and Addonizio administrations could not ignore or avoid. CHNC's

familiarity with NHA's urban renewal land assembly policies enabled it to impact the land assembly process and significantly alter the course and outcome of the two projects.

### **THE SAGA OF THE NJ-R-38 URBAN RENEWAL PROJECT**

The genesis of the NJ-R-38 urban renewal project in Lower Clinton Hill reflects jurisdictional conflicts between NHA and the Newark Commission on Neighborhood Conservation and Rehabilitation (NCNCR) between 1954 and 1958 about their respective roles in Newark's overall urban renewal process (Kaplan, 1963). NCNCR was a citizen's advisory committee formed in 1953 when reform-minded Democratic Mayor Leo P. Carlin was pushing hard for the development of such committees to assist his administration in housing code reform to address issues associated with Newark's deteriorating housing stock. Among these issues, bolstered by enabling language in Title I of the Housing Act of 1954, was rehabilitation of deteriorating neighborhoods and deteriorating housing as an alternative to slum clearance activities. Kaplan (1963) notes that Carlin wanted NCNCR to be part of his administration's decision-making process yet removed from political intrigue.

NCNCR was a broad-based hybrid organization in that, although it was ostensibly a citizens group, its membership was actually a mix of the private and public sectors. Realtors and business leaders were included among its membership. Some of its business members were very powerful. In fact, Mutual Benefit Life, the giant insurance corporation headquartered in Newark that had begun to underwrite large redevelopment projects in the city, was an NCNCR member. Mutual Benefit's leadership viewed its membership in the NCNCR as a means of encouraging local and out-of-town investment in Newark (Kaplan, 1963). NCNCR's makeup also included the Executive Director of

the Chamber of Commerce and the Executive Director of the Bureau of Municipal Research, both members of Carlin's administration. Kaplan (1963) observed that these agency heads had considerable input and sometimes control over NCNCR's decision-making.

In its first couple of years, NCNCR's effectiveness in addressing code enforcement and the city's newly created neighborhood rehabilitation program was very limited. It had no actual staff and no public funding. As well, there was disagreement within the administration about whether, under Title I, rehabilitation authority should be vested in NHA or NCNCR (Kaplan, 1963). This was a jurisdictional issue. NCNCR assumed that it would be Mayor Carlin's neighborhood rehabilitation agency. Louis Danzig assumed NHA, which he headed, would undertake that role, but in early 1956 he was told by the Urban Redevelopment Authority (URA) that NHA lacked legal power to rehabilitate parts of the Central Ward (Kaplan, 1963). Danzig, observes Kaplan (1963), was concerned that this limitation endangered NHA's ability to receive federal urban renewal funding.

Conflict with NHA began in June, 1956 when NCNCR introduced an ordinance making itself an official municipal agency and Danzig, in turn, pushed a bill through the State Assembly that would extend rehabilitation power to all redevelopment agencies, including NHA (Kaplan, 1963). At that point, Newark still had no officially designated rehabilitation agency. Moreover, the conflict between NHA and NCNCR was as much ideological as authoritative because NCNCR saw its mission as rehabilitating neighborhoods, which was diametrically in opposition to NHA's clearance mission.

Nonetheless, as Kaplan (1963) points out, a strong similarity between the two agencies was a desire to demonstrate accomplishment through distinct, concrete projects. That tendency toward concrete accomplishment and a desire to contain what it perceived as NHA's power grab, argues Kaplan (1963), led NCNCR to focus its attentions in 1956 on planning the rehabilitation of a site in Clinton Hill, the site that eventually became the NJ-R-38 urban renewal project. This would be NCNCR's first official rehabilitation site. NCNCR began land use planning for that site in January, 1957. NHA, in turn, had urged clearance of the immediate area around the Clinton Hill site NCNCR was considering for rehabilitation in order to prevent blight from the surrounding area from ultimately creeping into the rehabilitation site.

In September 1957, a deal was brokered between NHA and NCNCR on the rehabilitation issue (Kaplan, 1963). The Mayor's office, with City Council's approval, would retain official rehabilitation powers, but would delegate responsibility for the Clinton Hill site to NCNCR. NHA would retain responsibility for Central Ward rehabilitation activities. If any spot clearance was required at the Clinton Hill site NHA would participate. If any rehabilitation were needed for Central Ward renewal projects, NCNCR would be consulted.

Eventually, in 1958, Newark passed a local rehabilitation ordinance that helped define the respective roles of NHA and NCNCR in the urban renewal process. Under that ordinance, NHA retained control of all urban renewal activities in the Central Ward and throughout Newark's slum belt. NCNCR became the agency responsible for neighborhood rehabilitation activities. If NCNCR did not succeed in shifting the emphasis in urban renewal from clearance to rehabilitation at least it was able to

circumscribe some of NHAs power. Danzig, in turn, received assurance that the rehabilitation bloc, including realtors, would not become involved in, or challenge, NHA's urban renewal clearance program. Remaining neutral on this political agreement, Mayor Carlin emphasized that some renewal activity, whether it was clearance or rehabilitation, was better than no activity (Kaplan, 1963).

First announced in December, 1956, the Lower Clinton Hill project, which eventually became NJ-R-38 once federal urban renewal subsidies were procured, was originally intended as a neighborhood rehabilitation project that would cost \$2.5 million (Kaplan, 1963). Data from the Newark Division of City Planning and NHA (1973), summarized in Table 4-5, provide a glimpse of the pre-rehabilitation, pre-urban renewal conditions on the NJ-R-38 site. Table 4-5 also summarizes the components of the project as initially approved, including pre-renewal dwelling unit totals; residential, commercial, and industrial land uses; dwelling unit demolition; acres slated for clearance, site acquisition costs; federal and city share of the financing for these acquisition costs; date of blight declaration, and URA final approval date. Specifically, the site occupied a 78.2 acre, 14-block, L-shaped area bordered by Avon and Clinton Streets to the north, Hawthorne Avenue on the south, Osborne Terrace and Seymour Avenue on the west, and Bergen Street on the east. Figure 4-4 depicts the location and boundaries of NJ-R-38 relative to the rest of Clinton Hill. Prior to neighborhood rehabilitation (renewal) activities, the site was predominantly residential in character; 43.9 acres were devoted to a mix of older single-family homes and two- and three-story structures. Public and semi-public uses, including schools, occupied almost seven acres and streets occupied over 22 of the site's 78.2 acres. Pre-renewal commercial uses totaled over four acres. Much like



**Fig. 4-4. NJ-R-38 Boundaries Map.**

Note. Source is Newark Division of City Planning and NHA. (1967). Newark's Urban Renewal Program.

the majority of the surrounding Clinton Hill neighborhood, the site was densely settled, containing 1910 dwelling units that housed 6,250 persons. The existing housing, although not completely dilapidated, was deteriorating and there were pockets of overcrowding.

Newark's own urban renewal records (Newark Division of City Planning and NHA, 1967) indicate that NJ-R-38 was primarily a residential rehabilitation effort designed to create pockets of moderate income housing and new park and school facilities as opposed to a slum clearance project. Indeed, the project initially entailed rehabilitating 1,158 deteriorating residential structures. In addition, NJ-R-38 entailed the construction of a new park and the expansion of school facilities because of an anticipated increase in the population of the 14-block area engendered by the renewal efforts. Finally, 1.4 of the original 4.6 acres of commercial development was slated to be cleared and redeveloped for residential uses.

Nevertheless, as data from the Newark Division of City Planning and NHA (1967) indicate, NJ-R-38 was more than a rehabilitation effort; it contained a substantial demolition and clearance component. Almost 14 acres were slated for clearance involving demolishing 569 existing dwelling units (30% of the 1,910 pre-renewal units) and replacing them with 597 newly constructed units. The cleared land was slated to provide sites for two six-story apartment buildings containing 232 moderate income units (Newark Division of City Planning and NHA 1973). In addition, 300 new townhouses would be provided on scattered sites throughout the 78.2-acre project area.

NJ-R-38's site acquisition costs were handled in keeping with the extant two-thirds federal and one-third local urban policy. As of July 1967, the city's urban renewal



records indicated that, initially, the federal government provided a grant to fund two-thirds (\$1,611,000) of the total \$2,440,000 (\$1,611,000). Newark's share of the total was one-third (\$829,000). However, the city's renewal records indicate that by 1973 total costs had escalated to \$7,960,000 with federal grants totaling two-thirds of this cost at \$5,229,000 and the city's share totaling \$2,731,000 (Newark Division of City Planning and NHA, 1973).

Newark's urban renewal records indicate that the rehabilitation, redevelopment, and renewal efforts involved in NJ-R-38 benefited the city financially (Newark Division of City Planning and NHA, 1973). The pre-renewal annual tax revenues for the entire 78.2 acre R-38 project area, circa 1959, totaled \$497,330. By 1973, the annual tax revenues totaled \$955,579.

Although NCNCR was the primary agency responsible for overseeing the rehabilitation process, the usual urban renewal land assembly protocols outlined in Chapter One were followed, which included NHA's involvement. First, NHA conducted a study of the level of blight for the intended project area. Data from the Newark Division of City Planning and NHA (1967) reveal that NHA declared the 14-block site blighted on July 23, 1959. The URA approved the resulting renewal plans on September 29, 1961 and the site was then officially designated as NJ-R-38. On June 2, 1964, site acquisition of the 14-acre clearance area began.

However, this land assembly data does not tell the whole story. Indeed, the project was not fully completed until well into the 1970s. As detailed in the paragraphs below, CHNC's response to the project and its willingness to politically engage with the Carlin and Addonizio mayoral administrations, NHA, and NCNCR played a significant

role in an important aspect of the land assembly process: the length of time from blight declaration to completion of all clearance and rehabilitation activities. Too, CHNC's response to the project also played an important role in increasing the project's rehabilitation component and decreasing the emphasis on clearance.

**Table 4-5: NJ-R-38 Initial Project Data**

Pre-renewal population	6,250
Pre-renewal total dwelling units	1,910
Total acreage	78.2 ac
Acres slated for clearance	13.7 ac
Dwelling units to be rehabilitated	1,158
Dwelling units to be demolished	569
Proposed new dwelling unit construction	597
Proposed total dwelling units post-renewal	1,962
Pre-renewal commercial use acreage	4.6 ac
Post-renewal commercial use acreage	3.2 ac
Site acquisition and associated costs	\$7,960,000
Federal grant	\$5,229,000
City share	\$2,731,000
Date of blight declaration	7-23-59
Date plans approved by URA	9-29-61
Acquisition Started	6-2-64

Source: Newark Division of City Planning and NHA. (1967). Newark's Urban Renewal Program.

As reported to the media, the Clinton Hill community was initially rather apathetic about the NJ-R-38 urban renewal effort. At first, there was little fear or distrust ("Clinton Hill group hits renewal lag", 1960 January 9). The community seems almost to have welcomed the project and its potential to address the neighborhood's creeping deterioration. However, as the project dragged on over the first few years and very little rehabilitation occurred, CHNC began to express concern about the lack of progress. In fact, CHNC was becoming increasingly disenchanted with the city's overall lack of response to rehabilitation needs throughout Clinton Hill.

Frustrated, CHNC began to make specific, rehabilitation-related demands on the Carlin administration. The Committee asked the city to expedite a proposed rehabilitation law initiated back in 1955 that would have included federal funding for Clinton Hill (“Rooming houses code”, 1960 May 16). However, NCNCR became involved and created bureaucratic stumbling blocks by requesting too many changes to the underlying law (“Rooming houses code”, 1960 May 16). NCNCR’s response included setting up the Clinton Hill Area Rehabilitation Committee to enlist citizen participation in Clinton Hill rehabilitation efforts. However, community leaders in Clinton Hill became suspicious that NCNCR had actually set up that citizen committee to bypass CHNC (“Clinton Hill group presses”, 1961 February 10). In any event, levels of participation by Clinton Hill residents in the NJ-R-38 renewal effort began to lag as the city’s political awkwardness and bureaucratic fumbling kept it from addressing the neighborhood’s housing rehabilitation needs in a timely fashion.

Moreover, CHNC had become convinced that that the Newark City Council, Newark Central Planning Board (NCPB) and NHA were more interested in redeveloping downtown Newark than Clinton Hill because of the “help which downtown leaders have given to the administration” (“Clinton Hill group hits renewal lag”, 1960 January 9). A bill in the State Assembly bill endorsed by Senators Donal C. Fox (D-Essex County) and Wesley Lance (R-Hunterdon County) that would aid the redevelopment process by providing substantial tax abatements to urban renewal developers seemed to substantiate CHNC’s concerns (“Carlin view is backed”, 1961 February 7). CHNC leaders felt this bill favored downtown renewal over neighborhood revitalization because it provided no such abatements for middle-income housing and cooperative housing (“Carlin view is

backed”, 1961 February 7). They feared it would unfairly place the tax burden for services on small property owners and their tenants (“Carlin view is backed”, 1961 February 7). In addition, CHNC’s leadership was concerned that this bill would only create disincentives for redevelopers to provide housing for lower income families (“Asks caution on tax help”, 1960 November 27). During the winter of 1961, Mayor Carlin, who had earlier maintained a relatively neutral stance on redevelopment land assembly and rehabilitation matters, joined Clinton Hill and CHNC in opposing the Fox-Lance bill (“Carlin view is backed”, 1961 February 7). This opposition was unsuccessful; the Fox-Lance bill became law. Carlin’s opposition may have been at least partly politically motivated because, as Kaplan (1963) noted, Clinton Hill was one of the districts where he lost the greatest number of votes between his 1954 and 1958 mayoral bids.

Eventually, Clinton Hill’s leadership, including the CHNC, regained a more favorable view of the NJ-R-38 project. Two factors figured prominently in the Clinton Hill community’s greater willingness to support the project. First, the Carlin administration began to demonstrate a clearer commitment and emphasis on rehabilitation as opposed to demolition of residential structures. As reported by the local media, only 20% of the NJ-R-38 project site involved clearance and demolition (“Clinton Hill move hit”, 1962 November 8). In fact, the local media reported that Mayor Carlin, himself, was directly involved in ensuring that rehabilitation signs would be placed along the boundaries of NJ-R-38 to eliminate any confusion with the NJ-R-32 project, which was nearly adjacent to NJ-R-38 and which involved much more clearance and demolition (“Renewal badge”, 1962 January 18). This slight gesture showed sensitivity toward

community concerns about the threat of eminent domain and displacement. Secondly, renewed guarantees from the Carlin administration that citizen participation would be encouraged appear to have been crucial in reinvigorating the Clinton Hill community's support for the NJ-R-38 renewal effort. A resolution was adopted in April, 1961 authorizing CHNC to become a full-fledged participant in the Clinton Hill Area Rehabilitation Committee ("Clinton unit to aid renewal", 1961 April 7).

However, the 1962 election of Mayor Hugh Addonizio, a machine and patronage politician who had little in common with his reform-minded predecessor, marked a political and bureaucratic watershed in which the Clinton Hill community's support for NJ-R-38 began, once again, to disintegrate. Specifically, in the fall of 1962, Addonizio shifted the primary responsibility for NJ-R-38 from NCNCR and Newark's City Planning Office to the NHA ("Clinton Hill move hit", 1962 November 8). CHNC interpreted this as a "cheap power play" that signaled "the death of rehabilitation efforts in Newark" (Newark Evening News, 1962 November 8.). Addonizio claimed that the shift was necessary to expedite the project and disagreed with CHNC's dire assessment, emphasizing that NHA had the "experience, training, personnel, and facilities to move the job to completion" ("Delay denied on renewal", 1962 November n.d.). He further claimed that shifting responsibility to NHA would minimize duplications and streamline the land acquisition, demolition, and relocation process but stressed that he had asked NHA to emphasize housing rehabilitation and conservation in reviewing NJ-R-38 progress ("Delay denied on renewal", 1962 November n.d.).

As the Clinton Hill community was still reeling from this power shift, NCNCR proposed another bureaucratic change to which CHNC objected. Specifically, NCNCR

proposed the establishment of a new citizen's committee for participation in the NJ-R-38 project, chosen from Clinton Hill's 30-odd block organizations and committees (Newark Evening News 1963, February 21). CHNC viewed this new committee as an affront to the intent of federally required citizen participation and argued that the new committee would have no real decision-making power relative to urban renewal planning. Moreover, CHNC felt that NCNCR's proposal basically ignored four-plus years of hard work and citizen participation "in the cause of urban renewal, neighborhood improvement, civic pride, leadership training, and healthy inter-group relations" (Newark Evening News, 1963 February 21.).

Progress on NJ-R-38 was slow and the project did not reach completion until the 1970s when Kenneth Gibson was Newark's mayor. The two six-story apartment buildings, which contained 232 moderate income units, were not constructed until 1968 and the proposed park was not completed until 1966 (Newark Division of City Planning and NHA, 1973). Similarly, the proposed school facility expansions were not completed 1973 (Newark Division of City Planning and NHA, 1973.).

Ultimately, however, CHNC's grass roots pressure on the Addonizio administration to consider increasing the rehabilitation component of the NJ-R-38 project met with some success. Danzig, to whom Mayor Addonizio had effectively handed responsibility for the project, ultimately agreed to increase the rehabilitation component from 1,158 units to 1,330 units (Newark Division of City Planning and NHA, 1973). That was an increase of 172 units for rehabilitation. The city reported that by July, 1973, 14 years after the site was declared blighted and when Kenneth Gibson was Newark's mayor, approximately 50 percent of the 1,330 rehabilitation units had been completed

(Newark Division of City Planning and NHA, 1973). Thus, the results were modest and progress on rehabilitating this section of Clinton Hill was obviously slow. Too, Mayor Addonizio's pledge to give rehabilitation greater consideration in urban renewal efforts, including the NJ-R-38 project, may have more nearly reflected his concerns for maintaining voter confidence than any true altruism and empathy for the impacts of clearance activities on Newark's neighborhoods. CHNC's dogged efforts at increasing emphasis on rehabilitation nonetheless forced the administration and NHA to respond more directly to the renewal needs identified by Clinton Hill's own citizens.

### **THE SAGA OF THE NJ-R-32 URBAN RENEWAL PROJECT**

The Jeliffe Avenue project, which would become NJ-R-32 once it was approved for federal subsidies as an urban renewal project, was first announced in November, 1957 at which time it was conceived as an urban renewal project that would bring light industry and new housing to a 25-block area extending from the Central Ward into Clinton Hill (Kaplan, 1963). One of the primary goals of the project was to provide General Electric, Fisher Baking Company, and a few other manufacturing establishments with land to meet their parking and loading needs (Thabit, 1962). This was not insignificant because these Central Ward manufacturers and plants employed thousands of Newark residents. At that time, the estimated cost for the project was \$11 million and it was hoped that an urban renewal plan could be completed and sent to URA by late 1960 (Thabit, 1962).

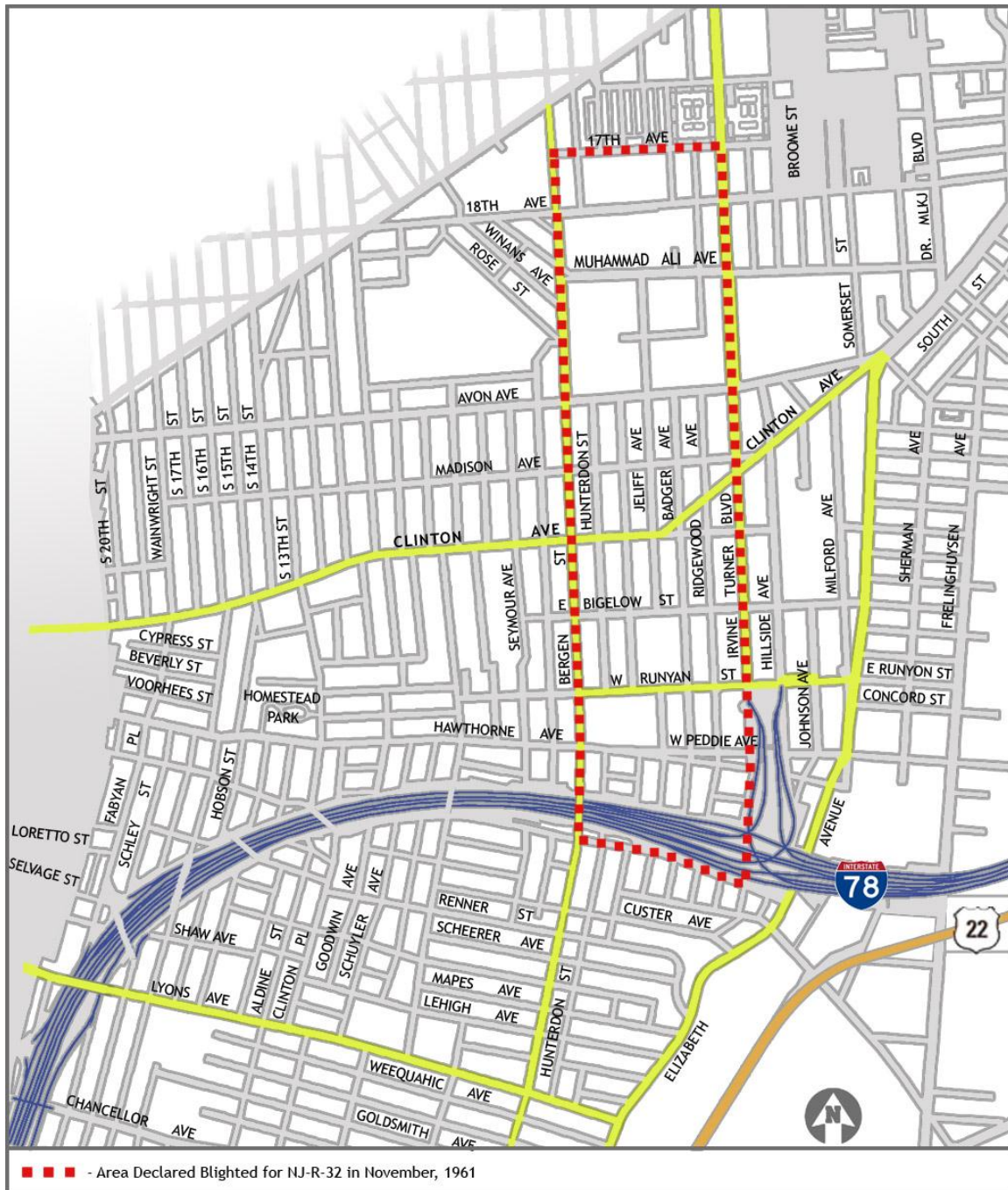
However, over the next couple of years the proposed NJ-R-32 redevelopment mushroomed in both overall concept and acreage. In early 1961, NHA received a firm

proposal from a private redeveloper interested in building an industrial park on the Jeliffe Avenue site, hereinafter known as NJ-R-32 (Kaplan, 1963). This redeveloper, Belmont Redevelopment Corporation, desired a slightly larger site than NHA had originally planned. While the urban renewal plan was still being prepared, URA gave NHA approval to expand the site many blocks to the south from the Central Ward into Clinton Hill. In November 1961, Newark's Central Planning Board and City Council declared a vast, 74-block, 240 acre area within the Central Ward and the Clinton Hill section of the South Ward blighted under New Jersey's Blighted Areas Act and proposed its redevelopment as a huge light industrial district. This area contained 17,000 residents, two-thirds of whom were African American (Thabit 1962). This version of NJ-R-32, greatly enlarged from its original 25 blocks, extended from 17<sup>th</sup> Avenue on the north in the Central Ward south to Watson Avenue in Lower Clinton Hill and from Bergen Street on the west to Belmont Avenue (now Irvine Turner Boulevard) on the east. The location and boundaries of the area declared blighted in November, 1961 for NJ-R-32 are depicted in Figure 4-5.

At the time of the blight declaration, residential uses dominated the project area, including some of the city's most deteriorated housing, but there were pockets of light industrial use in sound condition, especially south of Clinton Avenue (Thabit 1962). The proposed route of the North-South Connector, intended to link I-280 in the city's North Ward with the proposed I-78 in the South Ward, lay along the western boundary of the R-32 site. Between these two proposals, the Central Ward and the Clinton Hill section of the South Ward were targets for massive displacement. The project was bound to be



extremely unpopular with community leaders and affected residents. Nevertheless, the Carlin administration and NHA pushed hard for NJ-R-32's implementation.



**Fig. 4-5. Area Declared Blighted for NJ-R-32 in November, 1961.**

Note. Source is Newark Division of City Planning and NHA. (1967). Newark's Urban Renewal Program.

Thabit (1962) suggests that the impetus for this mushrooming of the NJ-R-32 redevelopment plan despite the enormous displacement potential reflected a convergence of favorable factors. These factors included availability of federal funding for urban renewal for the site and transportation improvements, newly favorable tax laws, deteriorating land use conditions, expansion of renewal concepts to industrial uses and increased developer interest. Additionally, there was a proposal for the construction of a north-south highway, referred to as the North-South Connector, paralleling Belmont Avenue that would link the proposed extension of Interstate 78 through southern Newark with Interstate 280, which coursed through Newark's northern neighborhoods. NJ-R-32 was located immediately west of this proposed connector and that both augmented its industrial potential and carried the potential for more federal funding for further renewal studies and plans. This became increasingly important as funds for studying that portion of the NJ-R-32 site north of Avon Avenue were depleted. Industrial urban renewal, furthermore, was still a relatively new concept in the late 1950s and since its application was still limited to areas that were predominantly residential it behooved the city to include large amounts of residential land in the NJ-R-32 project area. As the northern portion of NJ-R-32 contained some of the worst housing in Newark and its largest concentration of junkyards some form of large-scale urban renewal seemed indicated.

Moreover, the regulatory climate was beginning to evolve in ways that enticed private developer interest in large-scale projects. The recently-enacted Urban Renewal Corporation Law of 1961, commonly known as the Fox-Lance Act, provided tax abatement for urban renewal redevelopers. This sparked the interest of private entities such as the Belmont Renewal Corporation.

Once affected Newark residents became aware of the enormous size of the NJ-R-32 urban renewal proposal, and even before the November, 1961 blight declaration, the public outcry against the project was enormous. Kaplan (1963) refers to the public's reception to the project as the most negative since 1952 when City Council had approved Newark's Little Italy for urban renewal and clearance. In the spring of 1961, toward the end of Leo P. Carlin's second term as Newark's mayor, CHNC began to mobilize Clinton Hill residents in a grass roots campaign to prevent the 32-block area in Clinton Hill that formed the southern portion of the NJ-R-32 project area from being declared blighted and converted to industrial use. NHA had already begun to survey the area to determine the extent of blight and to decide which existing dwelling units and structures should be designated for demolition, rehabilitation, or conservation ("Clinton hill plans flight", 1961 May 9). However, CHNC and other Clinton Hill community leaders were becoming convinced that there was insufficient need for such a large light industrial redevelopment area as proposed for the NJ-R-32 urban renewal project. In addition, more than 250 Clinton Hill residents voted against the NJ-R-32 proposal during an April 28, 1961 public meeting of the CHNC held at Mt. Calvary Baptist Church ("Clinton hill plans flight", 1961 May 9).

Moreover, CHNC and South Ward Council Member Sophie Cooper were convinced that NHA's proposal would only lead to further decline in Clinton Hill, which was already beginning to deteriorate (Kaplan, 1963). The introduction of light industrial uses into areas that had always been residential, alone, would hasten its decline. Furthermore, African American community leaders in the Central Ward and Clinton Hill were deeply concerned that the project portended enormous displacement of African

Americans. Clinton Hill residents, in turn, were concerned about this displacement because they were keenly aware of NHA's practice of relocating residents displaced from the Central Ward into their neighborhood. They alleged that NHA was deliberately trying to create a racial imbalance in their still balanced, integrated neighborhood (Kaplan, 1963).

In light of these concerns, CHNC began to mount an attack against the project. CHNC's ultimate goal was to prevent City Council from approving the project altogether but, short of that, forcing NHA to move the boundaries northward out of Clinton Hill would suffice (Kaplan, 1963). Given residents' clear sentiments and recognizing the need to substantiate the basis for its opposition to NJ-R-32, CHNC sought the advice of an independent expert to conduct an objective study to ascertain the need for, and feasibility of creating, such a large, light industrial area in Clinton Hill. They chose Walter Thabit, a New York City planning consultant who had worked extensively on an alternate plan for the Cooper Square area of the Lower East Side. His Cooper Square efforts had created a community-based plan for redeveloping an 11-block area of the Lower East Side that involved heavy citizen participation. He had helped save Cooper Square from being demolished for urban renewal purposes, and this prevented the displacement of thousands of residents and several hundred businesses.

Thabit's resulting report for the CHNC, entitled "Industrial Potential in Clinton Hill: A Study of the Feasibility of the Clinton Hill Light Industrial Project, NJ-R-32", was tantamount to a repudiation of the entire basis for the support NHA and NCPB were lending the project. He determined that there was insufficient need for the creation of a large light industrial park within the 74-block NJ-R-32 area and recommended that the

City of Newark drop the project until it could actually determine the need for turning so much land from residential to industrial uses. As an alternative, he recommended that the city conduct a new and complete urban renewal study for the Central Ward to determine the best arrangement of land uses so that much smaller areas could be delineated for potential projects (“Scores Clinton Hill industrial”, 1961 August n.d.).

In August 1961, CHNC invited Thabit to one of its executive meetings to discuss his findings (“Scores Clinton Hill industrial”, 1961 August n.d.). At this meeting he stated that the city’s decision to create a light industrial park in Clinton Hill appeared “arbitrary and capricious”, and unjustified on the basis of available data (“Scores Clinton Hill industrial”, 1961 August n.d.). He stated that the need for so much land for light industrial use within the NJ-R-32 project was “far too tenuous a proposition to deserve such a designation” (“Scores Clinton Hill industrial”, 1961 August n.d.).

Thabit’s independent, objective conclusion that the entire basis for the NJ-R-32 project was unclear, at best, was well-substantiated and analytically sound. In perhaps the most salient portion of his report he emphasized the dearth of interest on the part of regional industries in the NJ-R-32 site (Thabit 1962). He noted that Newark agencies and industrially-related entities, including the Newark Central Planning Board, the Newark Development Council, NHA, the Pennsylvania Railroad, and the labor unions, had sought interest from large industries with large spatial needs in NJ-R-32 but concluded in written reports that there was no such interest. Essentially no industries from outside the Newark area had expressed interest in locating within NJ-R-32, either north of Avon Avenue or south of it in Clinton Hill. Moreover, Thabit found that these agencies viewed the Belmont Redevelopment Corporation’s interest in NJ-R-32 with suspicion (Thabit 1962).

They considered it entirely possible that Belmont was using its expression of interest in industrial development as a ruse to get NHA to transfer the site to it via negotiated purchase or, if necessary, eminent domain and thereby write down the price for a prime piece of land (Thabit 1962). However, because the city had no hard assurances that the site would be developed industrially it was entirely possible that once NHA transferred the land Belmont would revise the original plans to develop the site residentially (Thabit 1962). Given that federal urban renewal funds would already be enabling a write down of the NJ-R-32 site acquisition costs potential redevelopment of the project area for residential purposes could profit Belmont enormously.

Additionally, Thabit determined that the meager interest that had been expressed in the NJ-R-32 site came almost entirely from small local firms specializing in wholesale machinery or other non-manufacturing concerns. Many of these firms were searching for land because they were facing potential displacement from other urban renewal projects in Newark. However, their land needs were also small, varying from one-half acre to perhaps three acres (Thabit 1962). In fact, through his analysis, Thabit determined that overall there was a clearly established need for no more than 30 additional acres of land for light industrial uses within all of Clinton Hill (Thabit 1962). Too, much of the need for these 30 acres could easily be accommodated merely by shutting down and clearing Clinton Hill's junkyards, coal pockets, and second-hand automobile establishments.

As well, Thabit convincingly addressed the issue of NJ-R-32's likely negative impacts on the existing residents of a large swath of the Central Ward and Clinton Hill. In particular, he focused on the potential displacement of a large chunk of Newark's African-American population. The clearance and demolition that would be necessitated

by NJ-R-32 would displace approximately 17,000 people, about two-thirds of whom would be non-white and largely African-American (Thabit 1962). Too, the proposed North-South Expressway that would run along the western edge of NJ-R-32 and would connect I-280 through the Central and South Wards to the proposed I-78 extension through Newark would displace an additional 7,500 people (Thabit 1962). Together, Thabit noted, the two projects would displace 15% of Newark's nonwhite population, most of them African-Americans (Thabit 1962). This would represent approximately two-thirds of the total expected displacement of nonwhites from all urban renewal programs NHA had slated for the years 1962 through 1972 (Thabit 1962). In turn, this potential displacement would, he argued, likely lead to a deterioration of living conditions for nonwhites in the Central and South Wards and continued housing discrimination would consign the displaced to locate in expanding and increasingly concentrated nonwhite areas.

Moreover, he noted that the middle income housing promised for displaced nonwhites within these projects would not likely entirely replace the housing stock lost. Fully 10,000 units of low and moderate income rental housing would have to be constructed on vacant land to offset these losses (Thabit 1962). Newark, noted Thabit, had created no such program for these units on vacant land and there was no assurance that housing discrimination and segregation would not continue.

In light of his overall conclusion that the massive NJ-R-32 light industrial urban renewal project was neither necessary nor feasible Thabit made two significant recommendations relative to Clinton Hill and, interestingly, Newark's portion of the Meadowlands (Thabit 1962). First, he recommended that Clinton Hill be retained for

predominantly residential uses. In terms of providing adequate land to meet Newark's future light industrial needs Thabit recommended looking to the city's nearly three square miles of undeveloped Meadowlands acreage – about 1,800 acres. This land was adjacent to the nexus of major transportation improvements, including Newark International Airport, the New Jersey Turnpike, which was the state's major automotive and trucking route, and active freight and passenger rail lines. Too, Meadowlands acreage was much cheaper, at about \$2.00 per square foot, than land in Clinton Hill and the NJ-R-32 site, which was generally worth about \$6.00 per square foot (Thabit 1962). At most, he argued, Clinton Hill was one of several Newark neighborhoods where replacement sites could be investigated for the smaller light industrial concerns that might either be displaced by the city's urban renewal plans or that needed additional space for modernization and small-scale expansion (Thabit 1962).

Only a few months prior to Thabit completing his report, the Newark City Council's November, 1961 blight declaration of the 74-block NJ- R-32 site had begun to spawn fears that the city might exert its eminent domain powers to displace thousands of residents and hundreds of businesses. The local newspapers began reporting residents' fears ("Turner foe of demolition", 1962 January 23). News reports noted that Central Ward Councilman Irvine L. Turner had begun receiving many complaints from residents in the area slated for demolition that they would now not only have to sell their homes to the city but would receive inadequate compensation to purchase the new housing slated for the renewal area. Turner, in response, recommended that housing in the NJ-R-32 site be rehabilitated for continued residential use rather than torn down to be replaced with a mix of light industrial uses with new housing in residential pockets. He maintained that



the NJ-R-32 project was really an attempt to scare 16,000 African-Americans and Puerto Ricans so that they would leave Newark (“Turner foe of demolition”, 1962 January 23). There were hundreds of acres of undeveloped lands and junkyards in the Port Newark (Meadowlands) area, he argued, that would be more suitable for an industrial park than Clinton Hill (“Turner foe of demolition”, 1962 January 23).

Armed with Thabit’s findings and building on the momentum of public sentiment against the project, which reflected the fear that NHA would use its eminent domain powers to displace thousands of residents, CHNC and the Clinton Hill community decided to pursue litigation. In December, 1961 seven Clinton Hill residents filed suit in New Jersey Superior Court against the City of Newark and the Newark Housing Authority to upset the blight designation of the NJ-R-32 site. The case was argued before the New Jersey Superior Court on July 21, 1962. This court battle, which had continued for three years, was finally lost in 1964 (“Clinton Hill unit elects”, 1964 November 8).

Nevertheless, CHNC continued campaigning against what it termed the city’s “official secrecy” about NJ-R-32. This eventually prompted the Newark City Council, the NCPB, and NHA to finally consider, after more than 15 years of federally subsidized project activity, the impact of the city’s urban renewal policies and its use of eminent domain. The combination of CHNC’s campaigning, the Thabit report, and the pending lawsuit with the Clinton Hill community goaded the city to reexamine the NJ-R-32 proposal and the need for so much light industrial land. Additionally, CHNC began to organize to work on a Clinton Hill master plan and Clinton Hill’s citizenry stepped up its public protests against the project, prompting one reporter to write that such activities

may have increased the city's awareness that it could not always run roughshod over every single neighborhood (Jackson, 1962 May 21).

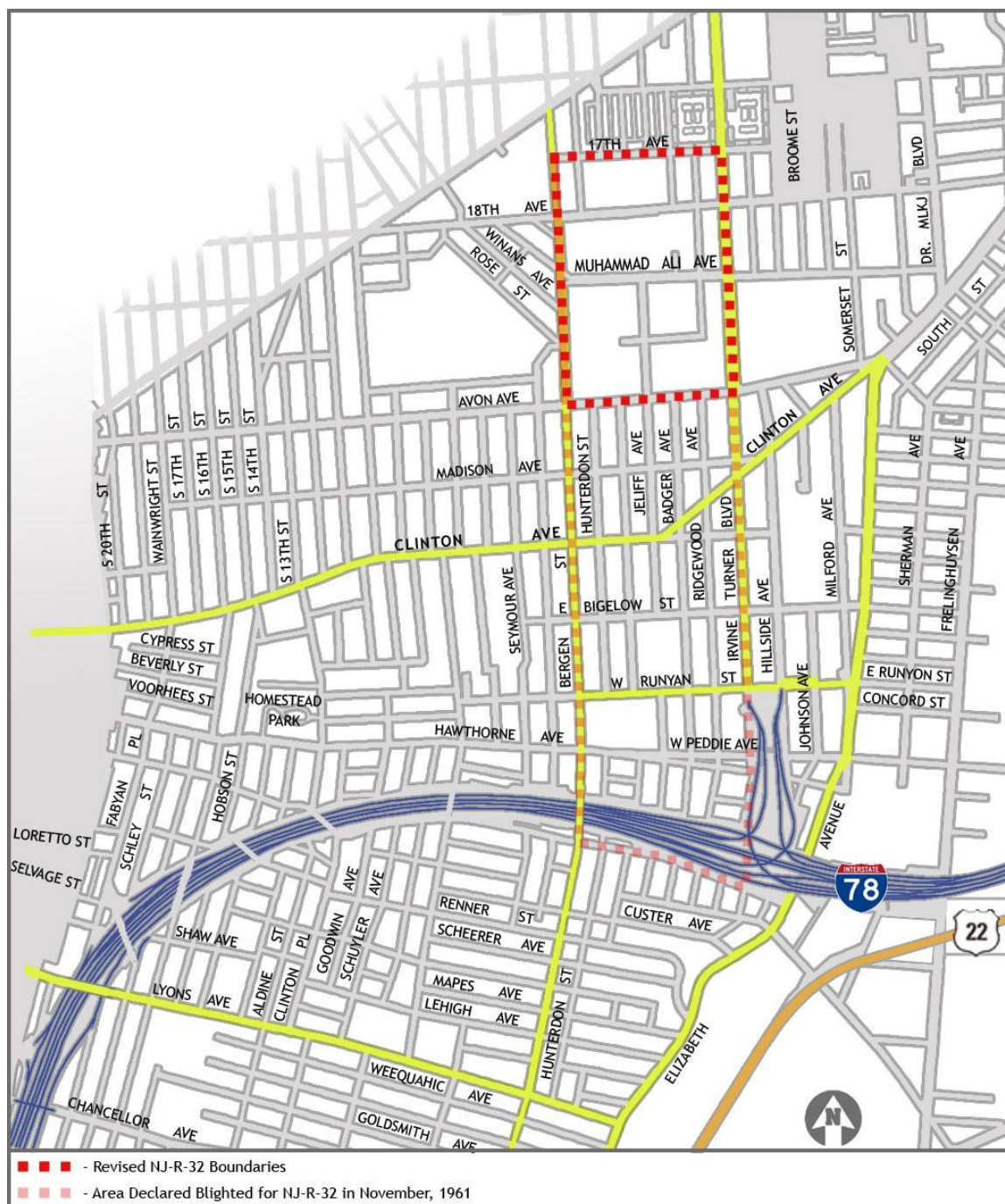
In July, 1962, Mayor Addonizio asked Danzig to a conference on urban renewal and urged him to consider downsizing the NJ-R-32 project and revising its concept plan to concentrate on housing and neighborhood rehabilitation rather than industry (Kaplan, 1963). Nearly a year later, in the spring of 1963, Addonizio held meetings with the Clinton Hill citizens groups and the CHNC in which he began to back a plan that would reduce the size and scope of the NJ-R-32 project by removing the Clinton Hill section from the site area ("Will discuss renewal plan", 1963 May n.d.). Danzig termed plan a compromise that represented a "people's victory" ("Will discuss renewal plan", 1963 May n.d.).

For Clinton Hill, the immediate results of CHNC's well-organized grass roots efforts were positive. The project was certainly not defeated. However, the final version of the project that obtained HUD approval in July 1966, the \$20,320,000 site costs of which were two-thirds federally funded, was drastically reduced in size. Indeed, NHA excluded the 33 Clinton Hill blocks – that area south of Avon Avenue – from the project site. NJ-R-32 now occupied a 94.2-acre area wholly within the Central Ward that stretched from Avon Avenue north to Seventeenth Avenue and between Bergen Street and Belmont Avenue (now known as Irvine Turner Boulevard). Figure 4-6 depicts the boundaries of the revised NJ-R-32 project. Instead of 17,000 residents and many hundreds of businesses displacement would now be reduced to 8,000 residents and a few hundred businesses ("Land reuse plan is hit", 1965 February 26). The revised project

only included within its boundaries those residential and non-residential buildings and structures most dilapidated and most in need of demolition.

Moreover, the light industrial component of the project was drastically reduced; simply permitting little more than expansion of the GE plant. In short, NJ-R-32 evolved from a minor industrial expansion for parking and loading to a massive industrial renewal project and then back to a large-scale predominantly residential urban renewal project.

In terms of meeting the residential needs of low income households in the Central Ward the final approved plan for NJ-R-32 produced mixed results. Table 4-6 provides basic data from the Newark Division of Planning and NHA (1973) on the revised and downsized project. This data includes the following: pre-renewal population; pre-renewal dwelling unit totals; residential, commercial, and industrial land uses; dwelling unit demolition; acres slated for clearance, site acquisition costs; federal and city share of the financing for these acquisition costs; date of blight declaration, and HUD final approval date. A total of 1,758 dwelling units in the 94.2-acre site were slated for demolition and even though an existing public housing project (Felix Fuld Homes) would be retained, the approved plans called for a total of only 1,326 dwelling units, post-renewal. The one-to-one replacement policy for residential demolition, supposedly a fixture of the federal urban renewal process, was going to be met.



**Fig. 4-6. Revised NJ-R-32 Project Boundaries.**

Note. Source is Newark Division of City Planning and NHA. (1967). Newark's Urban Renewal Program.

On the other hand, the approved plan appears to have represented an attempt to create a full-service community that would replace the one lost. This plan included low-income, low-rise and townhouse units for senior citizens and families, a new community center, a new elementary school, a park, a neighborhood cultural center, and a new warehouse for the Board of Education. Over seven acres of commercial uses, relatively centralized within the site for easier resident access, would be retained.

**Table 4-6: NJ-R-32 Basic Project Data (Revised Boundaries)**

Pre-renewal population	6,447
Pre-renewal total dwelling units	1,758
Total acreage	94.2 ac
Acres slated for clearance	61.6 ac
Dwelling units to be rehabilitated	0
Dwelling units to be demolished	1,758
Proposed new dwelling unit construction	1,326
Proposed total dwelling units post-renewal	1,326
Pre-renewal commercial use acreage	15.1 ac
Post-renewal commercial use acreage	7.5 ac
Pre-renewal industrial use acreage	11.5 ac
Post-renewal industrial use acreage	11.5 ac
Site acquisition and associated costs	\$20,322,000
Federal grant	\$15,487,000
City share	\$4,835,000
Date of blight declaration	11-61
Date plans approved by HUD	7-22-66
Acquisition Started	7-22-66

Source: Newark Division of City Planning and NHA. (1973). Urban Renewal Progress: City of Newark 1972-1973.

Newark's urban renewal records indicated that it would take some years for the city to realize any significant tax revenue benefits from NJ-R-32 renewal effort (Newark Division of City Planning and NHA, 1973). The city was certainly aware that scaling down the project certainly meant less tax revenue. Pre-renewal annual tax revenues for the entire 94.2-acre NJ-R-32 project site, circa 1961, were \$717,281. However, annual tax revenues totaled only \$223,883 in 1973. Thus, NJ-R-32 seems to have represented a

short-term loss for the City of Newark. Even long-term, annual tax revenues for the improved site were only projected to rise to a relatively modest \$889,883.

## **CONCLUSION**

In conclusion, well-organized, grass roots activism played a large part in the chronologies of the NJ-R-38 and NJ-R-32 urban renewal projects in Clinton Hill, both in terms of the land assembly process and final development approval and physical construction. The bulk of this opposition and activism came from the Clinton Hill Neighborhood Council (CHNC). In the case of NJ-R-38, dogged campaigning on the part of CHNC effectively forced NHA to increase the housing rehabilitation component, even though Mayor Addonizio had removed NCNCR from project involvement. This was a modest but important victory for Newark's first city-sponsored, federally subsidized neighborhood rehabilitation project. It demonstrated that neighborhood rehabilitation was a viable urban renewal alternative to the usual template of clearing whole neighborhoods and replacing them with public housing. It was one of the earlier examples of an entire community effectively bargaining with Louis Danzig and NHA, the powerful agency he headed.

In the case of NJ-R-32, CHNC's grass roots efforts met with more spectacular success. True, the project was still approved and there was still large-scale displacement. However, the size of the project was tremendously scaled down from 240 acres to 94 acres and instead of displacing 17,000 Newark residents a more modest 8,000 would be displaced. Additionally, the light industrial component of the project, reflecting the thorough analysis of CHNC's expert, Walter Thabit, was tremendously scaled down to

reflect the actual demand for light industrial space. CHNC's efforts were, up to this point, probably the most effective citizen campaign yet mounted against the powerful urban renewal juggernaut that NHA had become. At this point in the early 1960s, this project had been Newark's largest urban renewal controversy since clearance activities in the city's North Ward in the early 1950s destroyed what had been America's fourth largest Little Italy. As uncovered in this dissertation, another large urban renewal controversy would brew in Newark in the late 1960s.

The chronologies of the NJ-R-38 and NJ-R-32 projects suggest that several other forces and factors were at play that influenced the land assembly and redevelopment processes. In the first place, I note that the NJ-R-32 project, redevelopment could have been accommodated by rezoning the site to permit light industrial uses. However, Newark officials sought a statutory redevelopment route under the Blighted Areas Act that entailed a blight investigation as well as the potential use of eminent domain powers in the event of holdouts. The city's choice to follow a likely more politically troublesome route, instead of rezoning, suggests that it offered the advantage of greater municipal control over the ensuing redevelopment process. Secondly, the willingness of Newark officials to massively expand the size of the NJ-R-32 project once a private developer (Belmont Renewal Corporation) expressed interest suggests that they viewed land as a transferrable, deliverable commodity – a city for sale. Thirdly, Belmont's interest in the project apparently reflected not only the potential for eminent domain to write-down land assembly costs but also the existence of dedicated federal urban renewal funds for acquisition and clearance. As long as such dedicated funding streams existed city officials and interested developers would chase them. Fourth, the location of both the

NJ-R-38 and NJ-R-32 sites in the deteriorating Central Ward and Clinton Hill neighborhoods suggests that redevelopment efforts were, at this early juncture, focused on areas with significant indicators of actual blight. Finally, the fact that private developer interest in the NJ-R-32 project was instrumental in moving Newark officials to expand the project suggests that in Newark and probably other cities privatization of redevelopment predates the devolution that began in the 1970s.

In 2010, the NJ-R-32 project site reflects a mix of hope and failure. There is hope for the community because a new, full-service park with excellent playfields and a track has been built with technical and financial assistance from the Trust for Public Land's subsidiary agency, Parks for People. Well-maintained moderate-income, market rate, and Section 8 townhouse developments ring the eastern and western sides of this park. However, just south of this new park are acres of abandoned, boarded-up mid-rise apartment buildings that once housed hundreds of families. They are a visible affront to the surrounding community; the failed public housing legacy of the NJ-R-32 project.

The NJ-R-38 site, which was the site of neighborhood rehabilitation efforts, also evidences a mix of success and some decline. As planned, NJ-R-38 contains a park along Seymour Avenue as its centerpiece. This park, known now as Mildred Helms Park, is still well-maintained as are the portions of the residential streets (Hedden Terrace and Seymour Avenue) with older single-family detached and multi-family housing that surround it. Strikingly, these are the areas that benefited from the neighborhood rehabilitation and conservation efforts that CHNC fought so hard to augment, even though the increase in the number of rehabilitated units was relatively modest. The townhouse community built as part of NJ-R-38's public housing component, however, is



not in such good repair. It contains a number of boarded-up units. Additionally, the edges of the project site show signs of deterioration and contain some vacant and overgrown lots. This can be seen along the Bergen Street boundary of NJ-R-32. The current spotty deterioration evident in the NJ-R-32 site reflects some of the disinvestment Newark has long suffered which has recently been exacerbated by the foreclosure crisis.

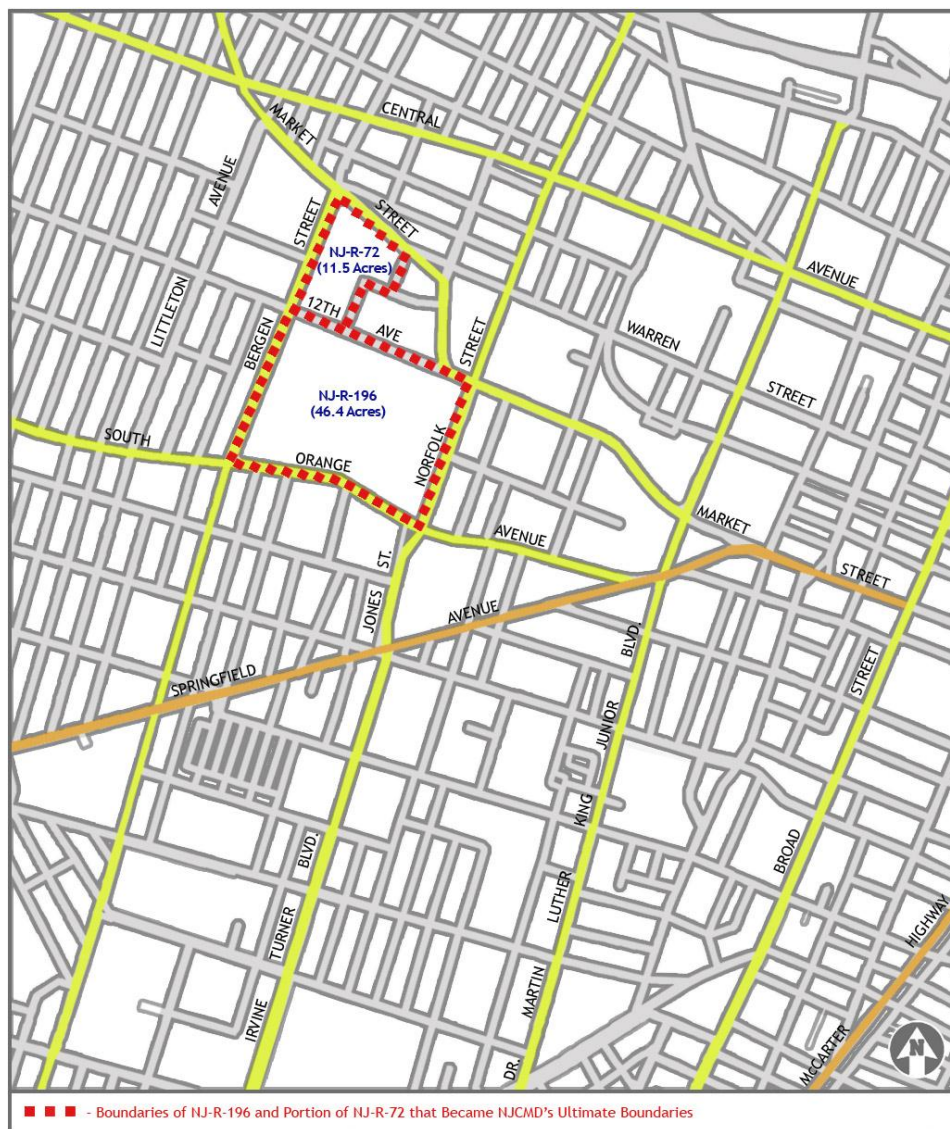
## **CHAPTER FIVE: THE NEW JERSEY COLLEGE OF MEDICINE AND DENTISTRY URBAN RENEWAL PROJECT**

### **INTRODUCTION**

One of the pivotal projects of Newark's 1960s urban renewal period was the relocation of the New Jersey College of Medicine and Dentistry (NJCMD), now known as the University of Medicine and Dentistry of New Jersey (UMDNJ), from Jersey City to Newark's Central Ward. At the time, setting up a large new medical college and teaching hospital in the middle of a teeming urban center was the exception; nationally, most such facilities were being constructed in suburban areas (Chinard, 1978). The establishment of NJCMD in Newark's Central Ward was a complicated process that began in 1966 and extended well into the 1970s. In fact, the teaching hospital, known locally as University Hospital, was not actually completed until 1978. Today, UMDNJ's campuses occupies the 46.4-acre site of what was officially called the NJ-R-196 Medical Center Urban Renewal Project and an 11.5-acre portion of what was officially called the NJ-R-72 Fairmount Urban Renewal Project (Figure 5-1). The relocation of NJCMD from Jersey City to Newark became an integral part of the Newark's extensive, Central Ward-centered Model Cities Program.

Relocation of NJCMD to Newark was an example of the city's efforts to catalyze economic development and revitalization through establishment of a medical educational complex, the "meds and eds" strain of urban economic development (Adams, 2003, p.571). More saliently, the land assembly process that facilitated the relocation was one of the largest examples, in Newark's redevelopment history, of the threatened use of

eminent domain in an area declared blighted. An entire 14-block area was cleared and over 3,000 residents, most of whom were African American and poor, and 120-odd businesses were displaced (NHA,1968). The alleged mishandling of the public's involvement in the NJCMD urban renewal project and the turmoil over the relocation of families and businesses have been cited as one of the underlying causes of Newark's July, 1967 civil disorder (Tuttle, 2009).



**Fig. 5-1. Boundaries of NJ-R-196 and Portion of NJ-R-72 (NJCMD's Ultimate Boundaries).**

Note. Source is Newark Division of City Planning and the Newark Housing Authority (NHA). (1967). Newark's Urban Renewal Program.

The complicated chronology of the relocation and establishment of NJCMD in Newark represents an unfolding drama about a highly contested urban space. The story is rife with controversies centering on land assembly and project size, blight designation, the threatened use of eminent domain, displacement and relocation of residents, funding, and community participation. The associated negotiations and conflicts between the Addonizio administration, NHA, NJCMD's Board of Trustees, the New Jersey Department of Community Affairs (NJDCA), HUD, and the Central Ward community shed light on redevelopment strategizing and land assembly during Newark's late 1960s urban renewal period, which will be discussed in the concluding chapter.

This chapter contains ten sections, which are further broken down into subsections. The first section is simply the introduction. In the second section, I chronicle the major events and circumstances from NJCMD's founding in 1956 through the decision to relocate from Jersey City to Newark in late 1966 and early 1967. Included in this section of the saga is the December, 1966 agreement in which NHA and the Newark City Council agreed to deliver the NJ-R-196 site to NJCMD along with up to 100-odd additional acres of Central Ward land for the college's future expansion needs – nearly one year before the NJ-R-196 site was even declared blighted. The third section chronicles the road to the June 1967 blight hearings on the NJ-R-196 site. This portion of the saga includes NHA's February, 1967 door-to-door survey of the NJ-R-196 site to ascertain whether it was blighted, NHA's submission of an urban renewal plan to HUD for NJCMD's relocation to the NJ-R-196 site, and Mayor Addonizio's application for funding for the area as a Model Cities neighborhood. The fourth section chronicles the June, 1967 blight hearings on the NJ-R-196 site, which were pivotal in exposing the

affected community's concerns but left many issues unresolved. These hearings were also essentially formalities because of the December, 1966 land delivery agreement and because NHA had already filed an urban renewal plan with HUD. In the fifth section, I chronicle NJCMD's post-blight hearing concerns about its land needs, interrelated issues that dogged NHA, NJCMD, and Mayor Addonizio and his administration, which centered on federal funding for the NJCMD urban renewal project, residential displacement, and NJCMD's role in Newark's Model Cities effort. This section also chronicles the December, 1967 blight designation of the NJ-R-196 site. The sixth section chronicles the federal and joint state and local response to NJCMD's land assembly process and the accompanying relocation issues, which resulted in the so-called Newark Agreement between NJCMD and the surrounding Central Ward community and its affirmative action components. In the seventh section I detail the designation of the NJCMD relocation to Newark as a federal urban renewal project and the medical college's actual move from Jersey City to Newark. I discuss the early impacts of the NJCMD urban renewal project in the eighth section, and in the ninth section I discuss some of the longer range impacts of the project on the surrounding community. In the tenth and final section I provide a conclusion and brief recap

## **FROM NJCMD'S FOUNDING THROUGH THE DECISION TO RELOCATE FROM JERSEY CITY TO NEWARK**

### **Founding of NJCMD and the Decision to Leave Jersey City**

The earliest incarnation of what later became NJCMD was the Seton Hall College of Medicine and Dentistry (SHCMD), established in 1954 and located on Baldwin Avenue in Jersey City. SHCMD was operated by the Roman Catholic Archdiocese of

Newark. In September 1956, an entering class of 80 students began their four-year journey at what was then the first medical school in the State of New Jersey. By 1964, however, SHCMD was on the verge of collapse. The medical school was in dire financial straits and there was a severe shortage of space in the old Jersey City Medical Center in which it was housed. Clinical departments were forced to relocate to the affiliated Veterans Administration Hospital in East Orange and Newark City Hospital and clinical clerkships were inconveniently scattered all over the metropolitan area (Chinard, 1978).

Fearful of losing its only medical school, the State Assembly enacted the New Jersey College of Medicine and Dentistry Act of 1964 and officially took over SHCMD from the Archdiocese in May 1965 for the sum of \$4 million (UMDNJ Libraries, 1999). It was renamed the New Jersey College of Medicine and Dentistry, also known as NJCMD. Governor Hughes appointed a seven-member Board of Trustees to oversee NJCMD's operations and finances. In early 1966, Robert R. Cadmus, M.D., who had enjoyed a distinguished career as Hospital Director for 16 years at the University of North Carolina, was appointed NJCMD's first president (Sammis, 1983).

In January, 1966, the Board of Trustees determined that NJCMD would have to leave Jersey City and relocate to a site that would permit the construction of a modern, expansive, state-of-the-art medical college and teaching hospital (Gerald G. Kallman Associates, 1966). The Board had determined the Jersey City Medical Center's physical plant problems posed serious threats to NJCMD's ability to attract and keep high quality teachers and students (Gerald G. Kallman Associates, 1966). Two very different sites emerged as choices: the 138-acre Mary Harley Dodge Estate straddling Madison and

Chatham in suburban Morris County and the 46.4-acre NJ-R-196 urban renewal site in Newark's Central Ward.

### **The Addonizio Administration Encourages NJCMD Relocate to Newark**

In the late summer of 1966, Newark's Mayor Hugh J. Addonizio and NHA, determined to convince NJCMD to pick Newark, made NJCMD a proposal and an offer (NJCMD Board of Trustees, 1966). The proposal was that NJCMD temporarily relocate to, and take over Newark City Hospital, the city-run hospital in the central Ward plagued with financial problems, severe patient overcrowding, and inadequate equipment and staffing. In return, NHA offered to deliver to NJCMD between 30 and 80 acres of Central Ward land to NJCMD to encourage it to locate its new medical complex in Newark.

On September 19, 1966, New Jersey Governor Hughes and Republican Democratic leaders of the New Jersey State Assembly made a large financial pledge to NJCMD. The State pledged \$30 million as its share of the estimated cost of \$65 to \$70 million to construct a new NJCMD medical complex (NJCMD Board of Trustees, 1966). The remaining \$35 to 40 million would be coming from the federal government. Mayor Addonizio and his administration interpreted these events as a signal of state support for relocating the medical school to Newark rather than Madison (NJCMD Board of Trustees, 1966).

### **NJCMD's Acreage and Land Assembly Issues Become Relocation Factors**

Whichever site was chosen, it would have to be large enough to accommodate the comprehensive medical school and teaching hospital complex proposed by NJCMD's

Board of Trustees. According to NJCMD's own documents (NJCMD, 1968c) the complex would accommodate over 800 students and hundreds of medical personnel. Planned structures and facilities included the following: 275-bed teaching hospital, medical library with 400 reading spaces, basic sciences building with laboratories, dental school for 80-plus entering students, 1,000-seat auditorium, multi-use classrooms, administration buildings, mental health clinic, preventive medicine wing, power plant, student housing, nursing facilities, an intensive care unit, pathology lab, radiological facilities, physical rehabilitation center, surgical suites, community mental health inpatient and outpatient services, and parking for 2,500 automobiles (NJCMD, 1968c). The teaching hospital would handle up to 100,000 visits per year – 35 to 40 percent more than a comparably sized community hospital – serving Newark and all of Northeastern New Jersey (NJCMD, 1968c). Finally, the complex would function as a regional medical research and clinical training center.

In light of the size and complexity of this planned complex, NJCMD's Board engaged the services of a three-member site advisory committee in April, 1966 to compare the pros and cons of the Newark and Madison sites and issue a recommendation. Committee members were selected by the Executive Council of the Association of American Medical Colleges and the Council on Medical Education of the American Medical Association.

Before the site advisory committee issued its report, NJCMD's Board of Trustees and NJCMD President Robert Cadmus had initially favored the Madison site (Chinard, 1978). They were convinced, bolstered by the committee's report, that the present development and future expansion of the medical school required 150 acres. The



Madison site, which contained nearly 150 acres on a single, essentially undeveloped, contiguous parcel of land, was already assembled and deliverable for redevelopment.

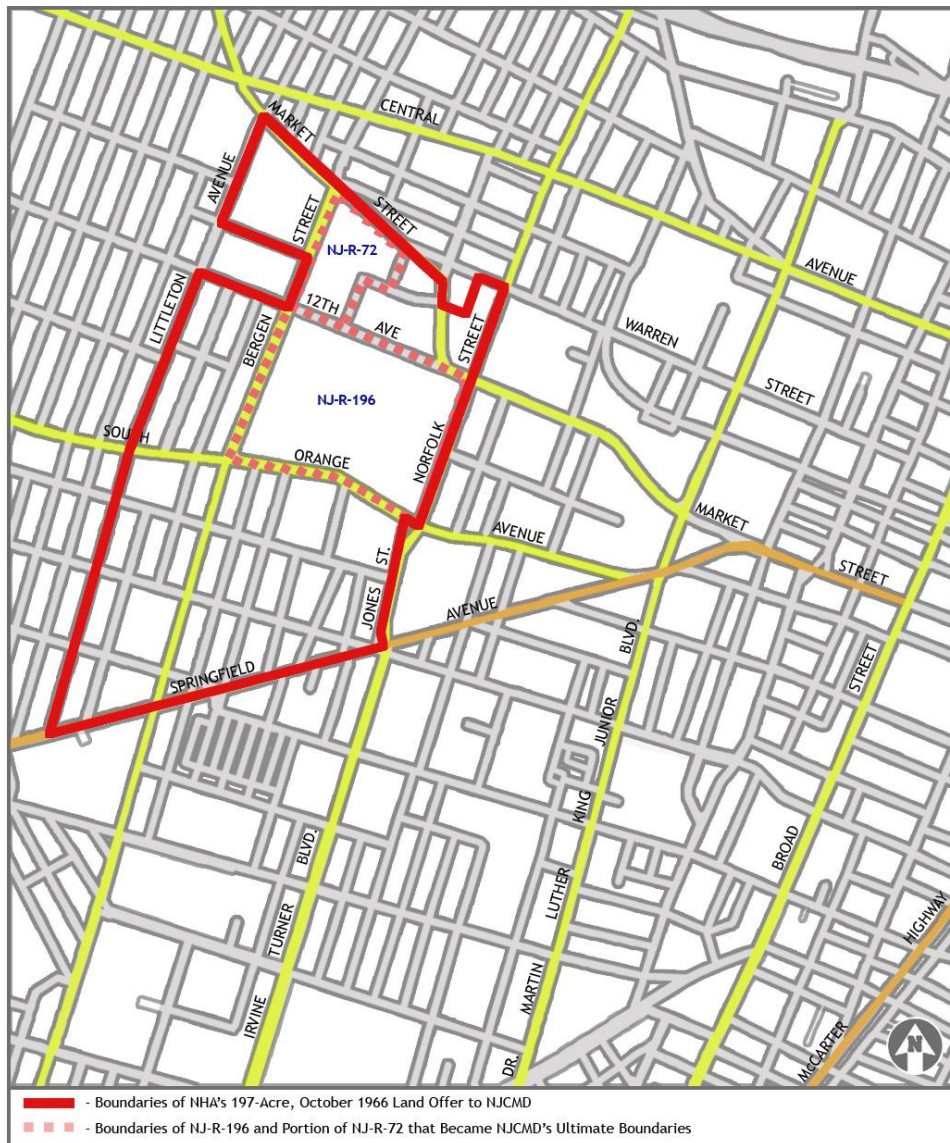
On the other hand, as Chinard (1978) notes, NJCMD's Board and President Cadmus also perceived that Newark offered advantages the Madison site could not provide. Newark City Hospital, which was adjacent to the NJ-R-196 site, was NJCMD's affiliate and could conveniently serve as a primary teaching hospital until the new hospital was built. Additionally, the Veterans Administration (VA) Hospital, affiliated with NJCMD since its Seton Hall days, was located less than one mile west in East Orange. NJCMD's faculty and students actually found the VA hospital's antiquated facilities and need for greater professionalism appealing (Chinard, 1978). Moreover, the densely settled, low-income community surrounding the Newark site, which had urgent medical needs, could provide an excellent resource for clinical work and research.

The site advisory committee issued a report in letter form in October, 1966 recommending the Madison site because of its perception of NJCMD's acreage needs and its belief that the Madison site offered NJCMD the greatest potential to control its own expansion (Faulkner et al, 1966). Specifically, the committee concluded that at least 150 acres would be needed to accommodate the proposed medical facilities and allow for potential expansion over the next 100 years ((Faulkner et al, 1966). The committee emphasized that NJCMD should seek to own or fully control these 150-odd acres from the start so that long-range planning could be initiated before any construction occurred (Faulkner et al, 1966). Too, the committee argued, Newark's urban renewal process was highly bureaucratic and NHA considered Central Ward land too valuable to transfer it to NJCMD for expansion (Faulkner et al, 1966). In the report, the committee noted that

obtaining additional parcels beyond the NJ-R-196 site in Newark would require separate approvals from NHA, Newark's City Planning Office and the Newark Central Planning Board (NCPB), the Mayor, and the Newark City Council (Faulkner et al, 1966). In sum, the site advisory committee concluded that relocation to Newark's Central Ward sites - NJ-R-196 and the cleared portion of NJ-R-72 - would not provide sufficient control of, and access to, a large enough contiguous area for future expansion.

After the site advisory committee issued its report, the Addonizio Administration and NHA amended their earlier proposal and offered to deliver up to 197 acres (Figure 5-2) of land in several large Central Ward parcels to NJCMD (Stearns, 1966). This larger area, which was well in excess of NJCMD's desired 185-acre site, included the 46.4-acre NJ-R-196 urban renewal site. NHA had already slated the 197-acre area for clearance as several federally-subsidized urban renewal projects, and 11.5 acres of the NJ-R-72 project had already been cleared (Stearns, 1966). Mayor Addonizio offered the 197-acre area to NJCMD Board of Trustees in an October 3, 1966 letter to Board Chairman George F. Smith (Addonizio, 1966, October 3). A total of 6,509 dwelling units housing thousands of predominantly low income, African American residents were contained within the 197-acre area, as well as hundreds of businesses, churches, schools, and community institutions (Addonizio, 1966, October 3). The mayor indicated that the several large parcels that made up the 197-acre area could be assembled as a contiguous whole and cleared within "approximately 2 to 2 ½ years" to provide NJCMD with land for construction of the medical school complex and for future expansion (Addonizio, 1966, October 3, p. 3). Funding for the clearance of additional lands would not be an issue because, as he noted, the city "already has on hand a Federal grant of \$12.7 million

for the acquisition and demolition of the entire Fairmount Project (NJ-R-72) area” (Addonizio, 1966, October 3, p. 2). Addonizio intimated that eminent domain could be invoked to ease land acquisition (Addonizio, 1966, October 3, p. 3).



**Fig. 5-2. Boundaries of NHA's 197-Acre, October 1966 Land Offer to NJCMD.**

Note. Source is Stearns, Hugh H. (1966). Report dated October 7, 1966: Informational Data on the City of Newark's Offer of Proposed Site for the New Jersey College of Medicine and Dentistry, dated Oct. 7, 1966. [UMDNJ Medical Libraries Special Collection, Archives Series III, RG/B-3-B, Box 7, Folder 38.]

**November 14, 1966 NJCMD Board of Trustees Public Hearing on Relocation Choice**

In response to the site advisory committee's recommendation, the NJCMD Board of Trustees convened a public hearing on November 14, 1966 at the Assembly Chamber State House in Trenton to consider the merits of relocating to Newark as opposed to Madison. Those testifying in favor of relocating to Newark reflected the ties developing in Newark between city and state government, labor, big business, and higher education in urban redevelopment endeavors. Among those testifying in favor of relocating to Newark were Mayor Hugh J. Addonizio, NHA Executive Director Louis Danzig, Senators Maclyn S. Goldman, John J. Giblin, and Nicholas T. Fernicola of Essex County, Essex County Assemblyman Paul Policastro, Joel R. Jacobson, President of the New Jersey Industrial Union Council of the AFL-CIO, Matthew Stevens, Executive Director of the Essex-West Hudson Labor Council, Samuel A. Rinaldi, representing the Board of Directors of the Greater Newark Chamber of Commerce, and Dr. Donald Grunwald, Associate Professor and Secretary of the Faculty of the Graduate School of Business Administration of Rutgers-Newark (NJCMD Board of Trustees, 1966). The transcripts of the hearing reveal that Mayor Hugh J. Addonizio ardently supported NJCMD relocating to Newark.

In his testimony, Mayor Addonizio attempted to refute the arguments NJCMD's site advisory committee had set forth in its October 1966 report favoring the Madison site over Newark (NJCMD Board of Trustees, 1966). The site advisory committee had argued that Madison offered greater accessibility for staff and patients because of its centralized suburban location. Addonizio countered that, in terms of accessibility, Newark was the superior choice because it was close to Routes 78 and 280 and the New

Jersey Turnpike, served as the hub of New Jersey's passenger rail and bus lines, and contained the state's largest seaport and airport. Regarding acreage needs, he cited data on the size of recently completed medical centers throughout the country suggesting that, although Newark could deliver as much as 197 acres of Central Ward land (Figure 5-2) to NJCMD, the school would not actually need that much land (NJCMD Board of Trustees, 1966). Moreover, he argued that the site advisory committee's recommendation favoring Madison was evidence of a class-based, anti-urban bias against Newark (NJCMD Board of Trustees, 1966). He emphasized that NJCMD's physicians and staff could easily find excellent housing in Newark's affluent suburbs, such as Short Hills, South Orange, Maplewood from which they could commute to the new medical complex (NJCMD Board of Trustees, 1966).

More saliently, Mayor Addonizio's stressed that, once relocated to Newark, NJCMD could serve as the focal point for the revitalization of a model city within a city in the Central Ward. In his view, NJCMD could serve as an economic engine creating employment and catalyzing new housing construction, new school construction, and commercial development in the Central Ward communities surrounding the new campus. He implored the Board of Trustees to choose Newark over Madison as the site for the new medical college.

Let the need of our state government be the needs it has left unmet for generations. The New Jersey College of Medicine and Dentistry can and should play a role in the greatest draw of our age, the rebirth of American cities. It is only in my city and cities like it that the great issues of our time are being raised and met. And you belong with us. You owe it not to Newark, but to the future or your school, to play a central role in the world of tomorrow and not be left outside looking in. Your school can rise, not a symbol but a fact of our commitment to a better New Jersey and a better America.

We offer you the opportunity to stand in the middle of a model city area, an area, not of the slums you see today, but an area alive with bright new housing, with busy commercial centers, modern schools and spacious parks. You can never make me believe, and you have a hard time making the citizens of New Jersey believe, that there is a better place to put a State Medical College than in the City of Newark. I cannot believe it now and I never will believe it.

So I ask you to join with those of us who know the future of our Nation is in our cities and ask you to resolve to make the New Jersey College of Medicine and Dentistry part of that future. You owe New Jersey, its people and yourselves no less. Thank you, gentlemen. (NJCMD Board of Trustees, 1966, pp. 21-22)

Paul Policastro, Essex County Assemblyman, echoed the Mayor's sentiments. He connected the relocation of NJCMD to the federal government's attempts to revitalize cities through its urban renewal program.

I, for one, am in favor of Newark getting this hospital for one particular reason besides everything else that has been said – that this would be a good time in view of what is happening with the Government trying to rehabilitate the cities. I think that placing this hospital in the City of Newark, plus all the other advantages that it has, would be a good thing to start the rehabilitation of the biggest city in the State. (NJCMD Board of Trustees, 1966, p. 58A)

As indicated in his October 3, 1966 letter to George Smith, Addonizio was very aware of the Board of Trustees concerns about NHA's ability to deliver the 185-plus acres NJCMD sought in time to meet its construction time frames. In his testimony at the Board's hearing, he reiterated the immediate availability of Central Ward lands for delivery to the medical school.

First of all, we have 35 acres which can be available immediately. All we have to do is demolish buildings and clear it, which would be certainly within that year's time. The other land could be made available within a year and a half to two years. Now you are not going to build this complex within a year and a half to two years. If you did, then you would be super-human. It hasn't been done in my generation certainly by any contractor that I know of .... Our experience shows very definitely that we can have that land available within a year and a half. (NJCMD Board of Trustees, 1966, pp. 26-27)

In addressing the Board's concerns about land needs and land acquisition costs, NHA Executive Director Louis Danzig emphasized that 185 Central Ward acres could be delivered to NJCMD at a write-down because, in his agency's determination, it they comprised a slum area devalued by years of deterioration that required clearance (Ibid). Danzig noted that this determination was based on comprehensive surveys completed by the City Planning Department and the NHA as part of Newark's urban renewal program. He emphasized that, based on NHA's experiences delivering urban renewal lands to Rutgers University and the Newark College of Engineering for their new campuses, the maximum price NJCMD would pay would be one dollar per square foot, or \$43,560 per acre, but possibly as low as \$0.60 per square foot (NJCMD Board of Trustees, 1966, p. 31-32). As Danzig stressed, slum categorization created a highly negotiable purchase price.

Its [the 185 acres] total value should be approximately \$12 million. That has no relation to what you will pay... We have no estimate on the value. But it is a slum and to us in our industry in which we are dedicated to slum clearance it has no value. It is unfit for human habitation and ought to go ... So if you are interested in negotiations we will be very glad to meet with you and meet any price that you can afford to pay. (NJCMD Board of Trustees, 1966, p. 31-32)

In his November 14, 1966 testimony, Danzig also emphasized NHA's slum clearance record to reassure the Board about NHA's land delivery capabilities and to quell fears about the undesirability of the neighborhoods surrounding the 197-acre area slated for clearance. He suggested that some of that land could serve as a buffer area for the medical school. Too, he stressed that the Central Ward contained sound public infrastructure and a ready supply of labor.

Now we in Newark, gentlemen, are dedicated to and have worked diligently for slum clearance and renewal. As a matter of fact, over 20 per cent of the city is

now in active execution of slum clearance rehabilitation and urban renewal factors. And we can assure the distinguished members of the Board of Trustees that this land above everything else is sound, that buffer zones and site planning can be readily established to take away the fear of the surrounding area, that public transportation is available, that there is fine water in abundance and streets and sewers and all other utilities are on site, and that labor is plentiful and we are getting cries from places like St. Barnabas [a nearby hospital] about not being able to get enough help into that suburban area – that labor in Newark is plentiful – that clinical material and research material are abundant. (NJCMD Board of Trustees, 1966, p. 40)

Danzig also seems to have viewed land in Newark as a commodity to be sold, delivered, and reconfigured to meet redevelopment needs. Eminent domain and pledges of state funding provided the statutory tool and monetary capability to facilitate the clearance and delivery of slums to redevelopment interests, including NJCMD. In fact, he indicated that it was the status of these lands as urban renewal clearance sites which armed NHA with the power of eminent domain and guaranteed state federal funding that gave Newark the advantage over Madison in terms of ease of land delivery.

If Newark was the only site under consideration, how simple it would be to arrange for the city and the State to use their money and powers of eminent domain to acquire the land [referring to maps brought to the hearing] in the yellow or cerise or whatever, to be reimbursed by the Urban Renewal Administration later. (NJCMD Board of Trustees, 1966, p. 39)

Some of the November 14, 1966 public hearing testimony reflected a strong belief in the potential for NJCMD to function as a “meds and eds” facilitator of education-oriented development and education-related employment. Senator Maclyn S. Goldman (Essex County) stressed that locating NJCMD in Newark's Central Ward would, in conjunction with nearby Newark College of Engineering (now NJIT), Rutgers-Newark and Rutgers-Newark Law School, Seton Hall University, and the Newark Public Library, create in Newark “a complex of high learning unparalleled” in New Jersey's history (Ibid,



49). Dr. Donald Grunwald, from the Graduate School of Business at Rutgers-Newark, emphasized NJCMD's potential to attract jobs and industry to Newark much as Boston's educational complex, dominated by Harvard, MIT, Boston University, and Tufts, had catalyzed the creation of the Route 128 high tech corridor (Ibid). In his opinion, the relocation of NJCMD to Newark would solidify Newark's role as one of the state's two primary higher education complexes, the other being the New Brunswick-Princeton corridor. He also emphasized the cross-field intellectual stimulation that would result from NJCMD's proximity to an engineering school, a law school, and a state university.

So Newark is one of the two places that we can use to attract industry to New Jersey on the basis of a science and technical collaboration and locating the Medical School in the Newark area will help the growth of our State and of North Jersey as compared with other areas of the country .....Knowledge is an interrelated thing and medical knowledge and business knowledge and so on, other fields of knowledge, all work better with each other....the city is the only such place that you can find this kind of intellectual stimulation. (NJCMD Board of Trustees, 1966, pp. 84-87)

Labor representatives who testified at the public hearing asserted that establishing NJCMD in Newark would generate an increased need for ancillary businesses and supporting industries (NJCMD Board of Trustees, 1966). This would result in increased employment opportunities. They also stressed that Newark possessed a large complement of medically- and non-medically skilled employees who could help staff NJCMD. Moreover, the increased business would generate increased tax revenues. In the view of Joel R. Jacobson, President of the New Jersey Industrial Union Council of the AFL-CIO, the organization that represented 150,000 industrial trade unionists at the time:

The school will help attract corresponding and supporting industry. As a result ratables will increase and new jobs will be provided. It appears to me that as citizens of the State which we are concerned with the problem, here is one area in

which we can again try to achieve and find a solution. (NJCMD Board of Trustees, 1966, p. 55)

Some proponents of a Newark relocation suggested that Newark's willingness to bear a huge economic opportunity cost by removing 185-plus acres of land from the tax roles for a tax-exempt institution was evidence of good faith on the part of the Addonizio administration and NHA . The testimony of Samuel A. Rinaldi, representing the Board of Directors of the Greater Newark Chamber of Commerce, is illustrative:

... since the businessmen generally are loathe to see even one area of ratables taken off the books. The process of 150 or 185 acre taken off the books is rather a shock to the system. (NJCMD Board of Trustees, 1966, p. 41A)

Similarly, Senator John J. Giblin (Essex County) lent overt praise to Mayor Addonizio in his offer to deliver land to meet NJCMD's needs.

... the Mayor of Newark has gone beyond any expectations beyond any other Mayor that I know of any municipality when he has offered the proper amount of land – it might be 175 or 165 acres – free to the Board of Trustees of this Medical College. (NJCMD Board of Trustees, 1966, p. 35A)

### **NJCMD Chooses Newark and NHA Agrees to Deliver NJ-R-196 Site to NJCMD with Option to Acquire 100-Plus Additional Acres for Future Expansion**

On December 8, 1966, less than one month after the November 1966 hearings NJCMD, functioning as an arm of the State of New Jersey, entered into a written agreement with NHA and the Newark Municipal Council for the delivery of land in the Central Ward Newark (Rawson, R., Rawson to S. D. Catters, December 8, 1967). This agreement had three primary components. First, the City Council and NHA agreed to deliver 11.5 acres of already-cleared NJ-R-72 urban renewal project land to NJCMD to enable the college to construct its interim facilities. Secondly, the 46.4 acres of land slated to become the NJ-R-196 urban renewal site would be delivered to NJCMD by

March 1, 1968. The intent was that the relocation of NJCMD to Newark would become an urban renewal project eligible for federal aid. NJCMD would construct its permanent facilities on the 46.6-acre NJ-R-196 urban renewal site, including the new medical and dental schools, basic science buildings, laboratories, 250-bed teaching hospital, library, auditorium, heating plant, and related facilities. Until the permanent facilities were completed in 1968, the medical school would be located in interim facilities to be constructed on the 11.5-acre NJ-R-72 urban renewal site. These events were labeled as Phase I of the relocation to Newark.

As the third component of this agreement, NHA and the Newark City Council agreed to deliver approximately 100 additional acres of land adjacent to the NJ-R-196 and NJ-R-72 sites, for a total of up to 150 acres, to NJCMD on 18 month's prior notice to permit its orderly future expansion. Although the medical college's future expansion plans were very undefined, access to this additional land was the essence of NJCMD's Phase II relocation to Newark. Delivery of these lands early on was designed to protect the State of New Jersey from having to purchase additional lands for NJCMD's expansion at an inflated price.

However, the December, 1966 agreement had been pushed through in a manner that would eventually contribute to the controversy surrounding NJCMD's relocation to Newark's Central Ward. In the first place, NHA had facilitated this agreement with little media involvement and virtually no public notice. As documented by Kaplan, in his research on urban renewal politics in Newark, this was very much in keeping with the with NHA protocol under to keep the early stages of urban renewal projects relatively nonpolitical and minimize the risk that community controversy would stall them (Kaplan

1963). Secondly, this agreement, which paved the way for the use of eminent domain, to acquire for clearance properties housing 3,000 people, was executed prior to any actual determination that the NJ-R-196 site was blighted. Under New Jersey's then extant Blighted Areas Act, a finding that those 46.4-acres were blighted was a necessary precondition for transferring them to NJCMD. In essence, the agreement set the stage for a pre-determined outcome that the site would be declared blighted and it arguably contravened the applicable statute in a manner that, relative to affected residents and businesses, posed due process issues.

On December 10, 1966, the Board of Trustees announced that NJCMD was moving from Jersey City to Newark (NJCMD, 1966). In this bulletin, NJCMD noted the following: 1) NJCMD sought an additional 100 acres to bring its total holdings up to 150 acres; 2) interim facilities would be located on 11.5 acres of already-cleared NJ-R-72 urban renewal land; and 3) the permanent facilities would eventually be built on the 46.5-acre NJ-R-196 site. The bulletin made clear that from the Board's perspective, its decision to relocate to Newark was contingent on NHA facilitating the transfer of the 46.4 acres, the 11.5 acres, and nearly 100 additional acres for future expansion of the medical center. If Newark failed to guarantee that the two Phase I sites and the 100-odd acres for Phase II would be deliverable, NJCMD was prepared to relocate from Jersey City to Madison. For reasons detailed later in this chapter, NJCMD's Board of Trustees delayed purchase of the 11.5 acres of the NJ-R-72 urban renewal land from NHA for construction of its interim facilities until April, 1968.

## **THE ROAD TO THE JUNE 1967 BLIGHT HEARINGS**

### **Newark's Municipal Council Begins Blight Assessment of NJ-R-196 Site and NHA Prepares and Files NJCMD Urban Renewal Plan**

As noted earlier in Chapter Three, the New Jersey Constitution had recognized redevelopment as a public use since 1947 but, under the State Constitution's blighted areas clause, all areas slated for redevelopment had to be declared blighted. Therefore, no federal urban renewal monies could be obtained by Newark to assist with land acquisition costs for the NJ-R-196 site until the areas was declared blighted per the standards of New Jersey's Blighted Areas Act, N.J.S.A. 40:55-21.1, et seq. This was a concern for city officials as NHA and the city's Division of City Planning estimated that acquisition costs for the 1,500-odd properties on the 46.4 -acre NJ-R-196 site would total over \$17 million (Newark Division of City Planning and NHA, 1967). The 11.5-acre portion of the NJ-R-72 urban renewal project that would contain NJCMD's interim facilities was, again, not a funding issue because it had already been cleared (Kervick, 1967).

The Newark City Council acted quickly to help the city begin a blight assessment for the NJ-R-196 site while also setting in motion the process for obtaining federal urban renewal funding, despite the fact that the site had not yet been declared blighted. On January 18, 1967, the Newark City Council adopted a resolution to undertake a survey of housing, structural, and demographic conditions on the NJ-R-196 site, prepare an urban renewal plan for the site, and file an application for HUD funding under Title I of the Housing Act of 1949 (NHA, 1968). This resolution was posted in the Newark News and the Newark Star-Ledger and NHA maintained that notice of the urban renewal plans was sent to all property owners. In February 1967, NHA hired 10 community service workers

and aides to conduct a door-to-door survey of the 14-block NJ-R-196 urban renewal site to ascertain residents' socioeconomic status and living conditions. On March 15, 1967, the Newark Municipal Council adopted a resolution designating and authorizing the Newark Central Planning Board to conduct an investigation and hold a public hearing to determine whether the proposed medical center site constituted a blighted area (NHA, 1968). NHA prepared the "Urban Renewal Plan: Medical Center Urban Renewal Project", dated April 21, 1967, and filed it with HUD in late April as part of its application for funding to assist with the estimated \$17 million cost of acquiring the existing properties on the NJ-R-196 site (NHA, 1968). As discussed later in this chapter the urban renewal plan was later revised and resubmitted in the spring of 1968.

### **Results of the Door-to-Door Survey of the NJ-R-196 Site: Pre-Clearance Conditions**

NHA's urban renewal plan for NJCMD's relocation to Newark, filed in April, 1967 contained the results of the survey data gathered by NHA's community service workers in February, 1967. NHA officials publicly discussed the survey results at the June 1967 blight hearings on the NJ-R-196 site, details of which are contained in a subsequent section of this chapter. NHA's survey demonstrated that the 14-block, 46.4-acre area that - pre-clearance - comprised the NJ-R-196 site was predominantly residential but was characterized by a considerable mix of land uses; about 25 percent of all structures contained non-residential uses (NCPB [Newark Central Planning Board], 1967, Book 2, Testimony of Alfred J. Walker, p. 11). The 14 blocks contained 505 buildings, 1,234 dwelling units, and 126 nonresidential uses including 88 businesses, 21 industrial concerns, and 17 non-profit entities, the latter of which included several houses of worship (NCPB, 1967, Book 2, Testimony of Alfred J. Walker, p. 11). Residential

uses totaled 27 acres (Newark Division of City Planning and NHA, 1967). Commercial uses totaled 3.6 acres and were concentrated primarily along the site's three east-west running thoroughfares: South Orange Avenue, Thirteenth Avenue, and Twelfth Avenue (Newark Division of City Planning and NHA, 1967). Industrial uses totaled 0.8 acres and were concentrated in the southwest quadrant of the site, along a one block stretch of Morris Avenue (Newark Division of City Planning and NHA, 1967). The majority of the housing consisted of two- and three-story structures, each housing several families. There were also larger mid-rise apartment structures rising to four or five stories. Figure 5-3, depicting a late-1950s, pre-clearance aerial photograph of the Central Ward and the NJ-R-196 site, reveals a densely settled area sandwiched between Newark City Hospital in the forefront and downtown Newark in the background.



**Fig. 5-3. Photograph of NJ-R-196 Site and Central Ward in the Late 1950s.**  
Note: Source is UMDNJ University Libraries Special Collection.

Alfred J. Walker, then NHA's Director of Urban Renewal who supervised the March 1967 door-to-door survey, later testified during the June 1967 blight hearings on the 46-acre site that the survey data revealed an area in physical decline (NCPB, 1967, Book 2, Testimony of Alfred J. Walker, pp. 10-17). Some of the survey data are summarized below in Table 5-1. A total of 377 (345 residential and 32 nonresidential) of the 505 buildings on the 46-acre site, or 74.6 percent, were determined to be blighted (NCPB, 1967, Book 2, Testimony of Alfred J. Walker, pp. 10-17). A total of 798 of the 1,218 dwelling units, or 66 percent, were found to be deficient or dilapidated because they lacked adequate water and plumbing facilities, had inadequate bathroom and kitchen facilities, or other structural defects that created health hazards (NCPB, 1967, Book 2, Testimony of Alfred J. Walker, pp. 10-17). Surveyors found that 367 residential structures (83 percent of the residential structures) were wood frame structures, 31.1 percent lacked central heating and there was considerable vacancy and abandonment (NCPB, 1967, Book 2, Testimony of Alfred J. Walker, pp. 10-17).

**Table 5-1: March 1967 Survey of Physical Conditions on the 46-Acre NJ-R-196 Site**

Block Number	Total Buildings	Not Blighted	Not Reported	Blighted Residential	Blighted Non-Res.	Vacant Parcels
211	39	9	2	27	1	10
212	39	2	1	35	1	4
213	21	5	1	11	4	-----
214	49	6	7	36	-----	1
215	40	6	3	30	1	5
216	22	1	-----	19	2	15
217	49	8	4	33	4	1
218	48	19	6	23	-----	-----
219	29	13	2	10	4	-----
220	15	4	-----	7	4	1
221	39	9	-----	28	2	1
222	41	4	3	31	3	2
223	36	8	1	22	5	11
224	38	4	-----	33	1	5
TOTALS	505	98	30	345	32	57
Percent	100	19.4	6.0	68.3	6.3	

Source: NCPB (Newark Central Planning Board). (1967). NJ-R-196 Blight Hearings, June, 1967. Newark: Author.



Moreover, the population changes that had occurred on the site were evidence of social decline (NCPB, 1967, Book 2, Testimony of Alfred J. Walker, pp. 10-17). The 1960 Census indicated that the same 14-block area contained 1,183 families and 560 single-person households (NCPB, 1967, Book 2, Testimony of Alfred J. Walker, pp. 10-17). However, the results of NHA's March 1967 door-to-door survey indicated that the area contained only 730 families and 381 single-person households (NCPB, 1967, Book 2, Testimony of Alfred J. Walker, pp. 10-17). In actual numbers, the area sustained a 43 percent population decrease from 5,530 persons in 1960 to 3,163 persons in 1967 (NCPB, 1967, Book 2, Testimony of Alfred J. Walker, pp. 10-17). There was also a decline in the number of dwelling units from 1,409, according to the 1960 Census, to 1,218 units per the survey, of which only 1,038 were occupied (NCPB, 1967, Book 2, Testimony of Alfred J. Walker, pp. 10-17).

On the other hand, the pre-clearance zoning of the 46-acre site suggests that the neighborhood was not characterized by an indiscriminate mélange of jumbled and juxtaposed uses suggested by the survey (NHA, 1968). The 3R: Third Residence District zoning, which covered the majority of the 14-block area, reflected the fact that the neighborhood consisted of a mix of residential uses and small commercial and industrial pockets, a pattern common to Newark at that time (Zoning Ordinance of the City of Newark, 1967). Third Residence District (3R) zoning permitted a mix of single-family two-story and three-story dwellings, two-flat and three-flat multi-family dwellings, mid-rise apartments, and houses of worship. The commercial pockets along South Orange, Thirteenth and Twelfth Avenues were zoned 2B: Second Business District, which permitted the mix of smaller-scaled retail concerns and services found along those streets.

Small industrial pockets were zoned 2I: Second Industrial District, which permitted virtually any non-nuisance-creating industrial use (Zoning Ordinance of the City of Newark, 1967).

From a socioeconomic standpoint, the pre-clearance neighborhood was densely populated, poor, and overwhelmingly African-American (NHA, 1968). In the “Urban Renewal Plan: Medical Center Urban Renewal Project”, dated April 21, 1967 (NHA, 1968, Exhibit N) NHA characterized the site as “one of the most materially, socio-economically depressed areas remaining in the city”. Ninety-six percent of all families and 96 percent of single-person households were nonwhite and predominantly African American (NHA, 1968, Exhibit N). The overall density was 68 persons per acre, or 43,520 persons per square mile (NHA, 1968, Exhibit N). Fully 650 of the 730 families, or 89 percent, were renters (NHA, 1968, Exhibit N). Only 92 of the 1,234 dwelling units could be classified as single-family housing (NHA, 1968, Exhibit N). NHA determined that, based on income levels, fully 477 of the 730 families, or 65 percent, were eligible for federally aided public housing (NHA, 1968, Exhibit N). Although the door-to-door survey results did not yield data on unemployment and educational attainment, NHA noted that unemployment and limited employability were chronic problems (NHA, 1968, Exhibit N).

Moreover, NHA's survey revealed that site residents suffered from a host of other social problems closely related to difficult socioeconomic circumstances (NHA, 1968, Exhibit N). Family structures were precarious. NHA stated that in a large percentage of the families the father was absent. Separation and out-of-wedlock births were common and inadequate child supervision was rampant. Residential overcrowding was severe

because of the conversion larger apartments into smaller ones. There was a dearth of recreational facilities and park space. On the other hand, the 14-block area contained at least 10 liquor dispensing establishments. Survey workers indicated many residents suffered from low self-esteem and evidenced high levels of apathy about underemployment.

These deteriorated housing and socioeconomic conditions reflected decades of Central Ward deterioration and municipal and governmental documents associated with Newark's planning and redevelopment efforts had been documenting this decline. Newark's 1947 Master Plan, for example, provided maps of housing conditions for the entire city in which the eastern portion of the Central Ward, which is the portion closest to downtown Newark and contained the future NJ-R-196 site, was depicted as severely blighted. The 1947 Master Plan maps refer to this portion of the Central Ward as a "neighborhood needing complete clearance and re-developing (more than 50% of dwelling units substandard" and as an "obsolete area: clear and rebuild" (Newark Central Planning Board 1947, pp. 43, 45).

Although NHA's survey data painted a bleak picture of pre-clearance conditions on the NJ-R-196 site, interviews I conducted with individuals intimately familiar the neighborhood suggest that before the neighborhood was razed it was quite viable. When asked whether, pre-clearance, the 14-block site constituted a blighted area one interviewee, who was a member of the Governor's 1968 commission on the Newark riots familiar with the area, gave the following response:

Was it so blighted that it was unfit for human habitation? I don't think so. I think it was a really vibrant community in which, you know, you had a lot of different

ethnic groups and you had a lot of thriving business. (S. Jaffee, personal communication, December 12, 2007)

Another interviewee, born and raised literally one or two blocks from the NJ-R-196 site, who has been working extensively with a major Newark community development corporation, did not consider the site an actual slum. He believed that the area was actually quite similar, in terms of mixed uses and levels of structural quality, to the presently vibrant, multi-ethnic, restaurant-filled Ironbound neighborhood east of downtown Newark, which has become a trendy entertainment destination. In his opinion, NHA's determination that the NJ-R-196 neighborhood was deteriorated and blighted provided an excuse to condemn and clear 46.4 acres and transfer the land to the medical school (R. Cammarieri, personal communication, February 4, 2008). The following comments, excerpted from the transcript of his February 2008 interview, are illustrative:

Like any area that large you would have had some pockets that were deteriorated, some buildings that were let down – a lot of stick-built houses, stick-frame houses. But it was mixed ... in terms of use, mixed in terms of quality of the housing. There was also brick-built housing. Where I grew up just a few blocks away it was a very stable working class area. Mixed – predominantly African-American by the mid-60s although not completely. Just a neighborhood - your typical urban neighborhood. It wasn't – I don't think you could characterize it as a slum. I often tell people – I'll take visitors ... on tours of the city and the Ironbound and you know there are parts of Ironbound where if you drive down there that is similar to what you would have found up here before they demolished it all. Yeah, it wasn't you know, you didn't have – it was not - I certainly wouldn't characterize it as a slum or the popular conception of that word. It was a mixed urban neighborhood where you'll find buildings that were deteriorating but it wasn't the majority. You had – it was pretty stable. You had industry there – small industries which began to leave – again, the disinvestment move. But, that was clearly used as an excuse by these guys to take all of that land. (R. Cammarieri, personal communication, February 4, 2008)

An urban theorist interviewed for this case study who had lived in the city's nearby Society Hill neighborhood in the 1980s and 1990s also believed that the pre-

clearance NJ-R-196 site was not a blighted slum (R. Anglin, personal communication, November 20, 2007). In supporting his assertion he stressed the socioeconomic attributes of the residents rather than the neighborhood's physical condition. The residents of the site in 1967, similar to many other Central Ward residents in the 1960s, were generally relatively recent African American immigrants from the South. Many of them were members of the working class, many of them were church-going, and many of them were veterans. They moved to Newark hoping to eventually purchase their first homes and create their own communities. The following comments from his November 2007 interview are illustrative:

It was not a hell hole. It was lower middle class communities that with the right supports could have been solidly middle class or viable. The only reason they weren't ... they were viable, they were viable communities, they were not hell holes. They were communities peopled by individuals who went to church. They were not, if you read the history, the juke joints – note of that. They were just people that were striving... these were folks who worked, who went to war, bought their first house but because the city wanted to get this new teaching hospital they looked around and said this was where we're gonna put it. (R. Anglin, personal communication, November 20, 2007)

#### **April, 1967 Version of the Urban Renewal Plan for NJCMD**

The April, 1967 version of the NJCMD urban renewal plan was structured to permit the development of a state-supported medical school on a single parcel (Newark Division of City Planning and NHA, 1967). Specifically, NJCMD's permanent facilities would be located on the NJ-R-196 site (46.4 acres), which had to be cleared, and its interim facilities would be located on a portion of the adjacent NJ-R-72 site (11.5 acres), which had already been cleared. NHA and Newark's Division of City Planning considered these two sites to constitute, together, a singular 57-acre parcel (Newark

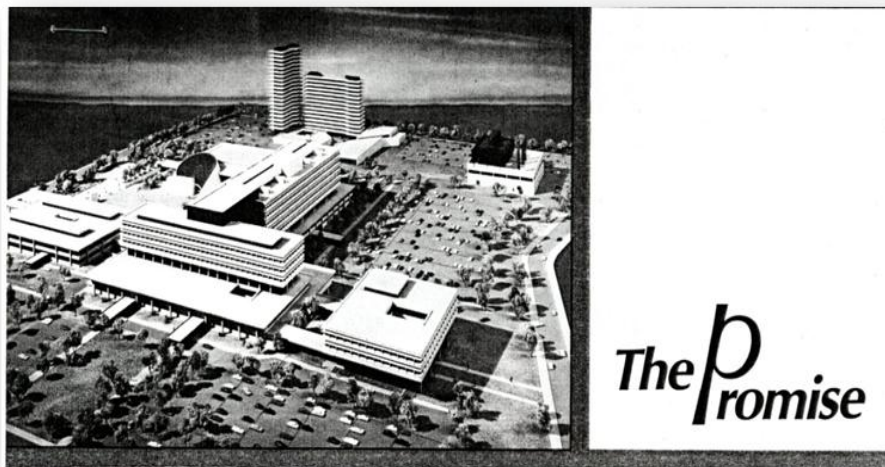
Division of City Planning and NHA, 1967). As the 11.5-acre portion of the NJ-R-72 site had already been cleared, the April, 1967 version of the urban renewal plan concentrated on clearance of the NJ-R-196 site. The NJ-R-196 site (refer back to Figure 5-1) was bounded on the north by Twelfth Avenue, on the south by South Orange Avenue, on the east Norfolk Street, and on the west by Bergen Avenue. However, per the December, 1966 agreement between NHA, the Newark City Council, and NJDMD, an option still existed in April, 1967, for NHA to transfer to NJCMD an additional 100 additional acres of adjacent parcels slated for urban renewal for future expansion. As later detailed, this land acquisition option was no longer available after March, 1968.

The cleared site would be redeveloped with new construction for the public institutional uses that would comprise NJCMD's new medical center. These uses would include the planned 275-bed, high-rise university teaching hospital, core teaching and research facilities for medical and nursing students, a dental school for 80-plus students, teaching and research facilities for the basic sciences, administrative facilities, medical library accommodating 400 users, 1,000-seat auditorium, dormitories for medical, dental, and nursing students, and above-ground and below-ground parking. Uses and facilities would be constructed in accordance with NJCMD's needs (NJCMD, 1968d), detailed earlier in this chapter.

NHA, as Newark's designated redevelopment agency under the federal urban renewal program, was the agency for site acquisition of the NJ-R-196 site. NHA was empowered to utilize eminent domain to address potential holdouts unwilling to sell. Once the site had been acquired and cleared, NHA would formally transfer it to NJCMD and the medical school could hire developers and builders from the private sector to

actually construct and redevelop the site with NJCMD's planned medical complex uses and facilities.

NHA was also the designated agency for clearance of the NJ-R-196 site. In the case of NJ-R-196, this meant that NHA would raze the residences and businesses of a neighborhood that, in 1967, contained 3,163 residents (Newark Division of City Planning and NHA, 1967). They lived in 1,234 dwelling units and their neighborhood contained over 100 businesses. The entirety of the 27 acres of residential uses, 3.6 acres of commercial and business uses, 0.8 acres of industrial uses, and 5.7 acres of public and semi-public uses, and several acres of streets would be replaced with 46.4 acres of medical school and teaching hospital facilities. Figure 5-4 provides an architect's rendering of what NJCMD envisioned the site would look like upon completion.



**Fig. 5-4. Architects Rendering of Planned NJCMD Complex on NJ-R-196 Site.**

Note. Source is NJCMD. (1968e). Bulletin: The promise of better health. Jersey City: Author. [UMDNJ Medical Libraries Special Collection.]

The urban renewal plan also entailed a complete rezoning of the NJ-R-196 site (NHA, 1968). Specifically, those 46.4 acres would be rezoned from 3R Third Residence District, 2B Second Business District, and 2I Second Industrial District to 4R Fourth

Residence District. Ironically, the 4R District also permitted all of the residential uses then standing under the site's 3R District zoning. However, the 4R District was the more appropriate designation for the NJCMD project because it was designed primarily to accommodate larger-scale institutional and office uses, including college-related and university-related uses and dormitories (Zoning Ordinance of the City of Newark, 1967, pp.1354-1355).

The Addonizio administration, with NHA's assistance, sought federal urban renewal monies for acquisition and clearance of the land and properties on the NJ-R-196 site. Land and property acquisition and clearance was anticipated to cost over \$17.1 million (Newark Division of City Planning and NHA, 1967). As detailed later in this chapter, the site was not officially declared blighted until December, 1967. However, the Newark Division of City Planning and NHA (Ibid) reported in July, 1967 that a federal grant in the amount of \$13.6 million had been obtained for property acquisition and clearance, with the city providing \$3.5 million of the total \$17.1 million cost (Newark Division of City Planning and NHA, 1967).

### **NJCMD Becomes a Focus of Newark's Model Cities Effort**

At nearly the same time that NHA filed its NJCMD urban renewal plan, the Addonizio administration acted to secure federal funding for the project under the Demonstration Cities and Metropolitan Development Act of 1966 (Model Cities Act). The administration's goal was to utilize this money to coordinate planning between state and local agencies in addressing the Central Ward's severe social service and health care needs. On April 25, 1967, Mayor Addonizio submitted a letter to HUD Secretary Robert C. Weaver, enclosing a several-hundred-page Model Cities Act application, through



which the city requested a nine-month, \$198,000 planning grant for the aforementioned coordination efforts (Addonizio, Addonizio to R.C. Weaver, April 25, 1967). The application identified the Central Ward as the focus of Newark's Model Cities effort and named the proposed NJCMD medical center on the NJ-R-196 site as a primary component of this effort. The Central Ward, which contained a population of 62,000 living on 1,700, was referred to in the application as the Model Neighborhood (Addonizio, Addonizio to R.C. Weaver, April 25, 1967).

A brief description of the Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3334, herein referred to as the Model Cities Act, is in order. The Model Cities Act was an outgrowth of the Great Society initiative and essentially functioned as a coordinating mechanism. It was enacted in response to the growing need for cities to coordinate the planning, construction, and implementation of federal public facility projects located within their corporate limits between relevant federal, state, and local agencies and to relate such projects to area-wide development plans on a comprehensive basis. Public improvements under the Act's purview included, among others, airports, libraries, water supply and distribution facilities, sewerage facilities and waste treatment works, highways, transportation facilities, law enforcement facilities, water development and land conservation projects, the rebuilding and revitalization of large slums and blighted areas, and hospitals. A cornerstone of the program was the encouragement of widespread citizen participation and local initiative in the planning of so-called Model Cities programs for public facilities improvements and urban revitalization. The Model Cities Act authorized the Secretary of HUD to provide the necessary financial and technical assistance.

Newark had created a central agency within its government, the Community Development Administration, to coordinate the various Model Cities programs designed to address the Central Ward's ills. This agency would receive federal technical aid and funding but its positioning as a city agency kept Newark's Model Cities effort under local control.

The Model Cities Act application Mayor Addonizio submitted painstakingly documented the Central Ward's array of outstanding socioeconomic problems. These included Newark's highest rates of infant mortality, venereal disease, out-of-wedlock births, poverty, alcoholism, narcotics dependency, and drug-related crime in the nation, compounded by a huge concentration of dilapidated housing, and a severe shortage of physicians (City of Newark Mayor's Office, 1967). These problems and conditions mirrored, on a larger scale, those conditions revealed for the NJ-R-196 site by NHA's February, 1967 survey. The Central Ward Model Cities area was mostly residential with "often incompatible commercial and industrial uses" and contained the worst housing decay in the entire city, harboring 30 percent of Newark's deteriorating and dilapidated housing (City of Newark Mayor's Office, 1967, Part I (B), p. 13). Residents' high levels of poverty and unemployment were accompanied by severe health problems. Although the area housed only 15 percent of the city's population it was estimated to contain 25 percent of all Newark families with incomes under \$3,000 and 30 percent of all citywide health problems (City of Newark Mayor's Office, 1967, Part I (B), p. 13). In fact, the Model Neighborhood contained 34 percent of all tuberculosis cases recorded in Newark in 1966 (City of Newark Mayor's Office, 1967, Part I (B), p. 13). Newark's Office of Economic Development estimated that 30 percent of all the unemployed persons in

Newark lived in the Central Ward's Model Cities area (City of Newark Mayor's Office, 1967, Part I (B), p. 13). Moreover, 25 percent of the crime recorded in the city was recorded within the Model Cities area (City of Newark Mayor's Office, 1967, Part I (B), p. 13).

The application materials made it very clear that NJCMD would have a focal role in Newark's Model Neighborhood efforts (City of Newark Mayor's Office, 1967, Part 3, Component A, 5, Component D, pp. 17-23, Component E, pp. 4-10). Specifically, NJCMD would serve as the primary institution for jointly addressing the Model Neighborhood's (Central Ward's) medical and social welfare needs, with the understanding that this could catalyze improvements in social, educational, employment and recreational services (City of Newark Mayor's, Part 3, Component D, p. 17). The application stressed that existing hospitals and health care services in Newark's inner city neighborhoods were inadequate, especially in terms of drug addiction treatment and prevention facilities (City of Newark Mayor's Office, 1967, Part 3, Component D, pp. 17-20; and Part 3, Component E, p. 4). One of NJCMD's missions was to address these inadequacies.

In general, the present effort in health services has been limited and grossly inadequate to meet growing needs. It is for this reason that the City recently undertook the drive to attract to the Model Neighborhood the suburban-bound State College of Medicine and Dentistry. The City will lose a large amount of taxable land, but the general desirability and particular health care of the Model Neighborhood will increase rapidly and greatly as a consequence of the school's location and its interest in the community. Furthermore, the construction of a new state-operated Mental Health Center to serve primarily the Model Neighborhood should overcome most of the needs in this area. (City of Newark Mayor's Office, 1967, Part 3, Component E, p. 4)

The application materials also stressed that centrally locating and concentrating a teaching hospital and outpatient centers in one medical complex – NJCMD - would catalyze improvements in the Central Ward's existing hospitals, including Newark City Hospital (City of Newark Mayor's Office, Part 3, Component E, pp. 1-6). It was anticipated that these improvements would draw physicians to open new clinics in the Central Ward.

In addition, there is an overriding need to bring to the Model Neighborhood a new medical school which, with its vast and modern facilities, its prestige, and its faculty will provide an incentive and a reason for the improvement of other facilities and the location of new facilities in the area..... The primary goal in improving health services in the Model Neighborhood area is to evolve a relationship with the New Medical School whereby the School will become the major stimulus in bringing about quality of service, a new quantify of services and new kinds of services previously not available. (City of Newark Mayor's Office, 1967, Part 3, Component D, pp. 18-19)

Moreover, NJCMD had already indicated its willingness to work closely with a variety of public and private agencies, large and small, including the Health Council of Newark ad Vicinity and the Community Development Administration, in coordinating the planning efforts to address the Model Neighborhood's health needs. NJCMD was committed to using innovative means reach these goals, including setting up neighborhood clinics for outpatient services and rehabilitation, and an experimental community physician program (City of Newark Mayor's Office, 1967, Part 3, Component E, p. 6). Under this latter program, health care teams consisting of physicians, nurses, students, health aides, and social scientists would provide complete medical care to volunteer Model Neighborhood families (City of Newark Mayor's Office, 1967, Part 3, Component E, pp. 6-7).

## **JUNE 1967 BLIGHT HEARINGS ON THE NJ-R-196 SITE**

### **Introduction**

The Newark Central Planning Board (NCPB) began presiding over the blight hearings for the NJ-R-196 site on June, 13, 1967. In light of the December, 1966 land delivery agreement between NJCMD and NHA, the April, 1967 filing of the urban renewal plan and funding request, and the April, 1967 Model Cities funding request, the blight hearings were somewhat ex post facto. Nonetheless, the blight hearings - which were conducted at Newark City Hall - were essentially the first time the impacted citizenry had had a chance to publicly respond to the presumption that the area proposed for the medical school urban renewal project was blighted. Nearly 80 witnesses testified and the testimony was lengthy, lasting several days. The transcripts filled nine volumes. There were tense moments, especially on the part of those witnesses opposing the blight presumption. As well, NCPB sometimes attempted to curtail witnesses' floor time.

Witnesses testifying and advocating for a blight finding reflected the upper echelons of the Addonizio administration and its line agencies. NHA Director Louis Danzig was a chief witness. Other primary witnesses testifying in favor of a blight finding included Samuel Walker, NHA Director of Urban Renewal, and Samuel Warrence, NHA Director of Relocation.

Those who opposed the blight allegation included many prominent members of Newark's African-American community, some of whom were nationally known and respected. Such witnesses included Robert Curvin, representing the Congress for Racial Equality and Louise Epperson, a community activist and resident of the 14-block NJ-R-196 urban renewal site who was facing displacement. Both of these individuals provided

lengthy testimony. George Richardson, former Democratic Assemblyman of Essex County and Chairman of the United Community Committee, also testified. Richardson's testimony was significant in no small part because the United Community Committee, one of Newark's foremost social service agencies, was slated to be a major player and organizing force in Newark's Model Cities effort. Stanley Winters, who had been Chairman of the Clinton Hill Council during the City's urban renewal efforts in that neighborhood, sent in a lengthy written testimony opposing the blight allegation.

### **Testimony in Favor of Declaring the NJ-R-196 Site Blighted**

Testimony in favor of declaring the NJ-R-196 site blighted revealed two primary arguments. The first primary argument was that the survey data, which revealed physical and socioeconomic deterioration, strongly supported a finding that the area was unfit for human habitation and should be declared blighted. Secondly, the redevelopment of this area with NJCMD's new facilities would confer a public good by removing that blight. Blight elimination, in Louis Danzig's view, was not a choice but a mission NHA was required to carry out as soon as an area was determined to be blighted in order to fulfill the statutory mandates of the New Jersey Blighted Area's Act.

The great purpose of this legislation is the elimination of slums and blight. The clear intent is that redevelopment projects must be undertaken whenever blight is found and be planned for redevelopment in uses that are suitable and practical. Since the City assigned the function of blight elimination to the Housing Authority, we have tried to perform it to the limit of available financial resources. (NCPB, 1967, Transcripts, Testimony of Louis Danzig, Book 1, p. 17)

However, Danzig emphasized in his testimony a larger conception of urban renewal. He viewed it as the primary way for Newark to address its needs for economic and cultural revitalization and housing and jobs as well as slum elimination (Ibid, p. 32).

Urban renewal is the only tool available to replace blight with facilities for all these things [referring to housing, jobs, education, and community facilities], within a balanced program serving all the needs of all the people. (NCPB, 1967, Transcripts, Testimony of Louis Danzig, Book 1, p. 29)

Furthermore, Danzig noted that it was not cost effective for the City of Newark to permit the existence of slums and blight. Newark's blighted areas tended not to generate enough tax revenue to cover the municipal service costs they engendered. Danzig acknowledged the expense and time involved in urban renewal processes but emphasized the city would benefit from the resulting decrease in the costs associated with urban decline. He hinted that addressing the physical problems of slums by literally razing them would help the city begin addressing their associated social and economic ills.

Slums produce only 6 percent of municipal revenues while consuming 40 percent of the City expenditures for schools, welfare services, fire and police protection and other public functions. The urban renewal process is difficult, expensive and time-consuming. Nevertheless, it is an indispensable factor in checking and reversing the declining trend under which American cities have suffered in recent years. (NCPB, 1967, Transcripts, Testimony of Louis Danzig, Book 1, p. 33)

Danzig also emphasized that the NJCMD urban renewal project would be pivotal for Newark and the Central Ward on several levels. It would bring much needed, higher quality medical health care to the Central Ward. Too, it would catalyze job creation and many of the semi-skilled jobs could be filled by Central Ward residents. It would encourage the direct involvement of medical personnel in addressing medically-related social problems. Moreover, it provided an opportunity for Newark to serve as an urban pioneer and an example for other cities in redeveloping a blighted site with a medical center to address inner city socioeconomic issues.

A balanced program means hospital and health care for residents of our city. ... A balanced program brings to Newark at Bergen and West Market Street [adjacent to and associated with the proposed NJCMD site and the proposed new facilities] new clinical and hospital facilities relating to the problem of mental health” (NCPB, 1967, Transcripts, Testimony of Louis Danzig, Book 1, p. 31)

To more perfectly balance the urban renewal program in Newark we now have a unique opportunity to have in our midst the newest and most modern Medical Center in the United States. The presence of this complex will certainly create additional jobs in the nearby pharmaceutical, chemical and electronics industries which will provide opportunities for collaborative research. Newark has available a large number of skilled and unskilled workers, technicians and professional personnel which will be necessary to staff and operate the College of Medicine and Dentistry and the University Hospital” (NCPB, 1967, Transcripts, Testimony of Louis Danzig, Book 1, p. 31)

The primary objective of the creation of a State Medical and Dental College is to adequately train health manpower to meet the medical needs not now available to the poor. Involvement in the urban scene will best motivate young physicians-in-training to attack the medico-social problems of such areas. It will raise the level of community health by introducing services never before possible through ordinary medical and hospital services. (NCPB, 1967, Transcripts, Testimony of Louis Danzig, Book 1, pp. 31-32)

In achieving the reality of a Medical Center, Newark will be pioneering for other metropolitan areas in the nation. (NCPB, 1967, Transcripts, Testimony of Louis Danzig, Book 1, p. 32)

On the other hand, Danzig evidenced a degree of detachment about the impending large-scale displacement of residents and businesses that relocating NJCMD into the densely settled Central Ward would engender. He focused, instead, on the sheer numbers of housing units demolished and replaced in Newark through urban renewal between 1949 and 1967. Many replacement units, most of which were in public housing, were often located well outside affected residents' original neighborhoods and eligibility requirements were so onerous that those displaced sometimes found themselves in private housing in other deteriorating neighborhoods that was less affordable than what they had



left. Nevertheless, for Danzig, the volume of clearance was, in itself, a measure of success.

In the rebuilding process we have to-date demolished more than 9,000 dwelling units. These have been replaced with 17,625 units, including 10,227 units of low-rent housing. (NCPB, 1967, Transcripts, Testimony of Louis Danzig, Book 1, p. 18)

Danzig further testified that, in his view, negotiated purchase of properties, demolitions, and relocation of residents and businesses following the NJ-R-196 blight determination would be relatively perfunctory. He indicated that the need for condemnation, and the potential use of eminent domain, would be minimal. There is no indication, from his testimony, that he considered the mere threat of eminent domain associated with the new medical school would likely be sufficient to induce hardship for property owners, residents, and businesses. He seems to have anticipated few holdout problems once negotiations for purchasing properties commenced. Condemnation and eminent domain were simply part of NHA's toolkit to be used - if necessary - to acquire what was deemed blighted land for eventual clearance and redevelopment.

Urban renewal is well understood in Newark but let me say for the record that, if the hearing area is blighted, as we consider it to be and if Federal officials are satisfied that an urban renewal project is feasible, as we are sure it is, then the City will proceed to acquire property, the Newark Housing Authority will relocate occupants, demolish structures, assemble and dispose of the land at re-use value to the New Jersey College of Medicine and Dentistry for rebuilding according to the controls as set forth in the urban renewal plan.

From out extensive previous experience with urban renewal projects, properties to be acquired will be purchased by negotiation at fair market value with a minimum resort to condemnation. Site residents and non-residential occupants will be assisted to relocate and given payments for moving expenses and for direct loss of personal property without undue hardship. (NCPB, 1967, Transcripts, Testimony of Louis Danzig, Book 1, pp. 33-34)

Finally, in his testimony, Danzig ignored the fact that Addonizio's administration and NHA had essentially abandoned the usual blight determination protocol. As noted earlier, NHA prepared the urban renewal plan for the NJCMD project and submitted it to HUD a full two months before the June 1967 blight hearings began. Nevertheless, Danzig actually describes how, per post-blight determination protocol, NHA would prepare an urban renewal plan that it had, in fact, *already* prepared. His testimony corroborates the after-the-fact nature of the blight hearings. It also hints at the impassivity of NHA and City officials in the face of the impending displacement of thousands of Central Ward residents and many viable businesses as well as the seeming violation of their due process rights.

If the Planning Board determines that the Hearing area is blighted and this finding is approved by the Municipal Council, an Urban Renewal Plan for the project will be developed by the Housing Authority. This Urban Renewal Plan, when reviewed and approved by the Planning Board and the Municipal Council, will then be the subject of another public hearing, as required by federal law, before funds will be made available to carry out the proposed Urban Renewal Plan. (NCPB, 1967, Transcripts, Testimony of Louis Danzig, Book 1, p. 33)

The testimony of Alfred J. Walker, NHA's Director of Urban Renewal, was perfunctory and devoid of rhetoric. Most of Walker's testimony was directly based on data gathered from NHA's February 1967 door-to-door survey of the NJ-R-196 site. He concentrated on the following blight indicators: excessive mixing of incompatible nonresidential land uses amidst residential land uses, number and percentage of dilapidated and obsolescent structures, structural deficiencies endangering public health, predominance of frame construction and other fire hazards, inadequate sanitary and kitchen facilities, burned out structures and vacancies, decline in population, degree of depreciation in value, and age of structures.

The hearing area is blighted because of substandard dwelling conditions as found by the Newark Housing Authority's Survey. This area is blighted because the majority of the structures in the area are dilapidated. This area is blighted because the majority of the structures were found to be depreciated or obsolete in the recent re-appraisal study. This is a blighted area both by housing conditions and environmental conditions. This area clearly meets all the conditions of blight in the New Jersey State Law. (NCPB, 1967, Transcripts, Testimony of Alfred J. Walker, Book 2, pp. 16-17)

NHA Relocation Director Samuel Warrence's testimony on relocation plans for the 3,000-odd residents who would be displaced from the NJ-R-196 site was neither as detached as Walker's nor as imbued with revitalization rhetoric as Danzig's. Warrence emphasized that more than 3,000 of the 4,500 vacant rental dwellings available in Newark at that time were decent, safe, and sanitary and would provide more than adequate residential options for those displaced (NCPB, 1967, Transcripts, Testimony of Samuel Warrence, Book 2, p. 7). He further noted that there were about 20,000 dwellings vacated every year in Newark and there was a stock of about 1,400 low-rent vacancies available in the public housing projects (NCPB, 1967, Transcripts, Testimony of Samuel Warrenc, Book 2, p. 7). Warrence testified that NHA would reimburse displaced families and businesses for moving expenses and loss of property per applicable federal relocation requirements, which had been made state law through the Relocation Law of the State of New Jersey, Chapter 79 (NCPB, 1967, Transcripts, Testimony of Samuel Warrence, Book 2, p. 3). Families forced to move into more expensive units would be reimbursed the difference between the new units and the old ones from which they were displaced (NCPB, 1967, Transcripts, Testimony of Samuel Warrence, Book 2, pp. 5-6). He argued that, given the blighted nature of the 14-block

area, displaced residents would actually benefit by moving into improved living conditions.

However, Warrence did not truly acknowledge the psychological and economic distress these residents would be facing from displacement and the destruction of their neighborhood. Instead, he emphasized the impact of their relocation on the various neighborhoods and schools in those areas where NHA had determined vacant available units were located. Even that impact, he emphasized, was small compared to the yearly high turnover rates within the city's poorer neighborhoods because there was nothing unusual about the composition of the families and individuals to be relocated from the NJ-R-196 site. It was simply assumed that those displaced by NJCMD would simply have to make the necessary adjustments even if they were scattered them far from their old neighborhood, their social network, and the businesses and community institutions they had frequented.

What effect will relocation have on the neighborhoods in which the displaced families are relocated? As we all know, schools and other facilities in some sections of Newark have been suddenly overcrowded by population movements. Investigation will show that this has occurred only when large, young families of immigrants or other free-choice movers have replaced small, elderly families. The composition of families to be displaced from the Medial School site is fairly normal, without excessive size or extreme youth. Moreover, the impact of 730 families in scattered vacancies is small compared to the impact that has sometimes resulted from the 20,000 per year turnover movers. In any case, obviously moving cannot be prohibited and the only solution is to adjust to change and develop adequate safeguards so that families are moved to decent quarters. (NCPB, 1967, Transcripts, Testimony of Samuel Warrence, Book 2, p. 8)

Like Danzig, Warrence was proud of NHA's relocation record and emphasized the sheer volume of relocations facilitated by his division. He viewed the fact that

multiple state and municipal agencies had used NHA's relocation services as another measure of success.

The Relocation Division has more than 17 years experience and, during that time, it has relocated 12,000 families without serious difficulty or undue hardship. In addition to relocation from public housing sites and urban renewal areas of the Housing Authority, the services of the Relocation Division have been used by the New Jersey State Highway Department, the State Division of Veterans Housing, the Essex County Highway Commission, the Newark Board of Education, and the City of Newark.

We are justifiably proud of our record. More than 93 percent of the families we have relocated have been moved into better housing at rents they can afford. This is 12 percent higher than the national average. (NCPB, 1967, Transcripts, Testimony of Samuel Warrence, Book 2, p. 9)

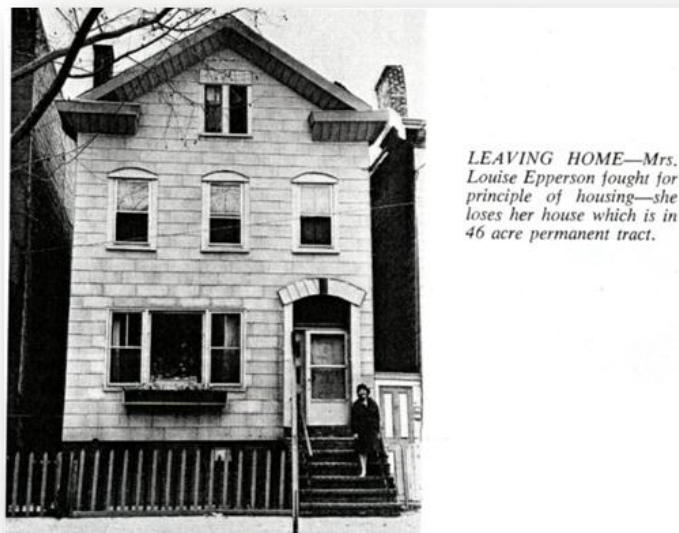
### **Testimony Against Declaring the NJ-R-196 Site Blighted**

The testimony in opposition to declaring the NJ-R-196 urban renewal area blighted reflected the concerns and issues raised by leaders of Newark's African-American community, Central Ward property owners and residents facing displacement from the NJ-R-196 site, and members of the Clinton Hill Neighborhood Coalition (CHNC). I broadly refer to these groups and individuals as opponents. Although opponents disagreed with the blight label and feared displacement many of them were actually in favor of the medical school. They viewed NJCMD's pending relocation to Newark as a boon for addressing the health problems plaguing the Central Ward's largely-poor, African-American and Hispanic communities. Their central problems were with the blight declaration and clearance process, NJCMDs' land requirements, and what they perceived as insensitivity on the part of city and NHA officials to their community's viability and their relocation needs.

Analysis of the transcripts of the June 1967 blight hearings led me to conclude that opponents set forth eight primary arguments, or objections. First, they argued that the 46-acre site, although in need of improvement, was not blighted. They argued, secondly, that there was no justification for NJCMD's claim that it needed access to up to 150 acres of cleared land to accommodate its proposed facilities and future expansion needs. Third, they charged that the proposed relocation program for the 3,000-odd residents who would be displaced from the NJ-R-196 site was simply inadequate. Fourth, they averred that the prior land acquisition contract between NJCMD, the City of Newark, and NHA rendered any meaningful citizen participation and the entire blight hearing ex post facto. Fifth, they argued that the proposed medical center bore no relationship to the City's Master Plan. Sixth, they charged that the loss of the site from the tax rolls would create fiscal problems that would be passed onto residents and small businesses. Seventh, opponents claimed that the entire project was politically and economically motivated by the desire of city officials to make use of available federal funding and to break apart the black voting bloc to assure the continuation of the city's white power base. Finally, they charged that the Newark Central Planning Board was not qualified to hold the blight hearing. These allegations are further fleshed out in the following paragraphs with excerpts from the transcripts.

Witnesses who argued that the NJ-R-196 was not actually blighted tended to draw from their own personal experiences of the 14-block area emphasizing that it was a functioning neighborhood that contained the homes of over three thousand residents and the businesses they patronized. Louise Epperson, a widow, site resident and head of the Committee Against Negro and Puerto Rican (CANPRR) removal, the grass roots

community organization fighting NHA's efforts to clear the 46.4-acre site for NJCMD, began holding CANPRR meetings in her house in January, 1967 to fight the destruction of her neighborhood. In her blight hearing testimony, she stressed that much of the housing was in good condition, despite reports to the contrary, and that city officials were obligated to provide replacement homes for those torn down. Figure 5-5 shows her standing at the front of her house on the NJ-R-196 site, later razed, and Figure 5-6 shows her pouring coffee in the kitchen of that same house.



**Fig. 5-5. Louise Epperson at Her House on the NJ-R-196 Site circa 1967.**

Note: Source is NJCMD. (1968b). It happened in Newark, N.J.: a tale of urban America. Bulletin of the New Jersey College of Medicine and Dentistry. Spring 1968, Vol. III, No. 3..Jersey City: Author. [UMDNJ Medical Libraries Special Collection.]



**Fig. 5-6. Louise Epperson in Her Kitchen circa 1967.**

Note: Source is NJCMD. (1968b). It happened in Newark, N.J.: a tale of urban America. Bulletin of the New Jersey College of Medicine and Dentistry. Spring 1968, Vol. III, No. 3. Jersey City: Author. [UMDNJ Medical Libraries Special Collection.]

I have told you before, no matter what anyone says, I don't live with roaches and rats, contrary to what the Police Department says, the Fire Department says and many of my people say. ... I wish you, since you are the Planning Board, not just ride past our neighborhood. Get out of your cars and come into 40 12<sup>th</sup> Avenue. Inspect my home and inspect any of the others in my neighborhood, their homes. I think it is a shame to tear down many of these homes. If you must tear them down, the only thing we are asking you to do is to build. Tear them down, but build first. Give us homes to move into. This is as simple as the noses on your face. You know if you tear down these homes, there will be no place for these people to go into.

Everyone is not project conscious. I'm not project conscious. But if the houses were built and the projects, I'm willing to live in any place, as long as it's decent. But at least give me as good as I'm living in now. Don't give me worse.

I don't think you gentlemen have ever thought of these particular things that I'm pointing out to you. I don't care anything about Addonizio or anyone else that might get down here in City Hall that would do such mean things to a group of people, whether they be a black group or a white group. This is not humane. To be human means something, gentlemen. This is the first thing that you should think about, not the medical school, not anything but people. In order to think of people, think of housing first. Don't move us out of our homes, have the



bulldozers ride off all through the land, all through the night and day, knocking it down, not one house going up in Newark. All I know and all I see is a bulldozer riding and I think this is a disgrace to a big city like Newark. (NCPB, 1967, Transcripts, Testimony of Louise Epperson, Book 2, pp. 25, 27-28, 38-39)

Other witnesses implied that NHA's proposed blight designation for the NJ-R-196 site was arbitrary and capricious. They charged that there was no hard evidence that physical deterioration and social conditions on the proposed site and surrounding areas of the Central Ward were any worse or significantly different from conditions common throughout much of Newark. The testimony of Robert Curvin, a representative of the Congress on Racial Equality (CORE), was especially illustrative. He alleged that the medical school, rather than benefiting Central Ward residents, was actually a land give away by the Mayor and City officials to NJCMD that would most directly benefit the medical college, redevelopers and other real estate interests, and downtown businessmen.

All of a sudden you are going to try to say that an area of the City is blighted; it is now unfit for human habitation. So you say. In fact, a large number of people or a large amount of material and information will be admitted as evidence that the area is blighted. I would like to raise this question: can you substantiate any view that the economic and social conditions of the people who live in that area of the City differ in any large degree from people who are presently living in areas like our housing projects, for instance? Can you show me that the health problems are any less in our housing projects than they are in areas like that? Can you show me that the conditions of safety are any better than other areas of this City than in that area? And I would argue that you cannot. You cannot demonstrate on the basis of any objective analysis that that area is unfit for human habitation. If the area needs rebuilding and redevelopment – and I think most of us can certainly agree that it does – it does not need a medical school. What is the medical college all about? It is another effort of the City of Newark and the Mayor of the City to provide a give away to people who have no real interest in the problems of the people of this City, but only an interest in getting something for themselves. Who will benefit from the medical school? Perhaps some of you gentlemen will benefit from the medical school. The builders will benefit from the medical school. The downtown businessmen will benefit from the medical school. Who will benefit from the medical school? Will people in the poor community benefit from the medical school? The real estate interests in the City will benefit and probably are benefiting already from the medical school. The redevelopers will benefit from

the medical school. (NCPB, 1967, Transcripts, Testimony of Robert Curvin, Book 2, pp. 311-313)

Moreover, it was also suggested that much of the residential and business blight occurring in the NJ-R-196 site reflected years of neglect by the Addonizio administration and NHA. They argued that once area newspapers began to publish articles about efforts to have the site declared blighted for NJCMD's relocation neighborhood property owners, sensing the inevitability of clearance, began to put off repairs and improvements. The allegations of blight began to become a self-fulfilling prophecy. Stanley Winters, past-president of the Clinton Hill Neighborhood Council during that neighborhood's battles with NHA over urban renewal, provided written testimony to the effect that this scenario was not new.

The findings of these reports [NHA's blight reports and studies on NJ-R-196] contrast with the testimony of the officials here and bring home a powerful lesson. One cannot talk about how "terrible" things are, as some of you gentlemen did in the press article cited above, without also pinpointing the official neglect and inefficiency which prevented any followup to these recommendations and instead allowed the neighborhood to drift and stagnate. Then along come the Mayor, the Housing Authority, and others who are suddenly interested in the area's future where before they were not and they say, look at these vacant lots, the rusty cars, the broken down buildings – isn't it terrible? Do you gentlemen realize how much this sort of thing has actually occurred within the past eight months since the Medical College proposal was pushed by the Mayor? I drive through this area every day, twice a day; I have friends in this area and visit their homes. There has been a significant change in the quality of the upkeep of the area recently. Landlords and tenants alike apparently feel a sense of inevitability about the destruction of their homes and small businessmen too. The manner by which public officials foster this sense of inevitability through reckless, unequivocal, and premature press releases and authoritarian methods of proceeding borders on open irresponsibility. These are the real culprits, and others involved behind the scenes, but they are not the ones who suffer; only the people in the community suffer. We saw the same thing happen in the original 250-acre site of NJ-R-32, the so-called Light Industrial Project. If people in Clinton Hill hadn't fought that tooth and nail and in the courts, 5,000 dwelling units and 18,000 people would have been bulldozed without any plan for replacement of their living quarters. (NCPB, 1967, Transcripts, Testimony of Stanley Winters, Book 9, pp. 16-17)

Furthermore, Winters averred, NHA had contravened the spirit and intent of New Jersey's Blighted Areas Act, N.J.S.A. 55:14A-52, et seq, by concentrating almost exclusively on demolition and clearance of blighted areas. He testified that NHA had been ignoring the potential, contained within the language of the Act for alternatives to clearance including the following:

... carrying out plans for a program of voluntary repair and rehabilitation of buildings and improvements, and ... plans for enforcement of laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements, and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements. (NCPB, 1967, Transcripts, Testimony of Stanley Winters, Book 9, pp. 20-21)

He believed that NHA's shortsightedness had contributed to Newark's failures in addressing its slum problems and had actually exacerbated them.

Indeed, witnesses argued that some of the blight might be directly attributable to a purposeful decision on the part of NHA and Newark's building inspections divisions not to enforce the applicable building and housing codes. Lax of enforcement would encourage blight and that, in turn, would enable NHA to successfully campaign for clearance and renewal. Witness Derrick Winans, a resident of the Clinton Hill section of Newark and a statistician, suggested that this was the strategy employed by NHA and Newark's building inspectors to enable NHA to claim that roughly 169 acres of the Central Ward were blighted, including the 46-acre NJ-R-196 site and the 100-plus, adjacent acres NJCMD wanted earmarked for its future expansion.

I would like to speak about why this area is blighted, so-called. If indeed the City of Newark comes along and says 169 acres are blighted, it could only be because the city of Newark inspection department allowed it to be that way. Any evidence that is presented here about substandard dwellings, unsafe dwellings and unsanitary dilapidated buildings, should be immediately turned over to the

inspection department of the City of Newark, Mr. Denbo's office, so that he could go and enforce the housing code. It's very clear the housing code is not enforced. On the one hand the city comes to the people and say, well, we cant enforce the housing code, on the one hand they come and say we are going to declare your homes blighted and throw you out, on the other hand they can't come along and say we'll fix them up and enforce the housing code. Either one hand doesn't know what the other is doing or as I suspect more accurately, it is a deliberate plot. (NCPB, 1967, Transcripts, Testimony of Derrick Winans, Book 6, pp. 138-139)

Witness George Richardson, a well-known civil rights activist, former Democratic New Jersey State Assemblyman, charter member of Newark's Business Industrial Coordinating Council, and Chairman of the United Committee, furthered these sentiments and fleshed them out. He charged that the Newark Central Planning Board (NCPB), City Council, and NHA had been using blight designations as an artifice to enable large-scale clearance and renewal in the Central Ward and parts of the West and North Wards.

So blight is not an unknown entity to the City of Newark. Blight is a gimmick that the City of Newark and the Housing Authority has used to bring about plans and programs that they deem necessary.

We maintain, Mr. Chairman, that the entire blight hearing as well as the criteria and priorities for determining blight makes a mockery of justice and is also illegal. The City determined to have that area declared blight so that it can recover some of the \$15 million dollars that it will outweigh from the urban renewal funds. If the Medical College trustees have demanded new land to the north or even to the west of Martland Medical Center [Newark City Hospital], then Newark Housing Authority would have seen fit to deem that area blighted also.

No – for that matter, any other area that the medical trustees of the College [NJCMD] have wanted for that site, you as a Planning Board of Newark would have been asked to declare that area blighted and the Newark Housing Authority will have came before you with all the statistics necessary to show that this area was blighted. (NCPB, 1967, Transcripts, Testimony of George Richardson, Books 1 through 4, p. 37)

As noted earlier, witnesses charged that NJCMD's claim that it needed 150-plus acres of land for expansion and buffering was grossly excessive. Alvin Oliver, who represented the United Community Committee, testified about the the extent of the lands potentially transferrable to NJCMD per the December, 1966 agreement between NJCMD, the City Council, and NHA (NCPB, 1967, Transcripts, Testimony of Alvin Oliver, Book 5, p. 65). He explicitly detailed that in addition to the transfer of the 46-acre NJ-R-196 urban renewal site, that agreement gave NJCMD the right to exercise an option, upon 18-months notice, to acquire an additional 120 contiguous acres of adjacent land for future expansion. Therefore, he argued, the blight hearings were really about 166 acres of land, not simply the 46-acre NJ-R-196 site and this meant that NJCMD's plans, and NHA's blighting and clearance procedures, could ultimately displace as many as 22,000 people, not 3,000 (NCPB, 1967, Transcripts, Testimony of Alvin Oliver, Book 5, p. 62).

This revelation about the potential size and scope of the NJCMD project galvanized opponents to assert that NJCMD could minimize its future land needs and the displacement of Central Ward residents. One witness, stressing the densely settled character of the Central Ward, argued that NJCMD could minimize displacement by building a more vertical campus instead of the sprawling, horizontal campus it was proposing.

You want to build a medical school, build it, take two acres to build your medical school but don't you put our people out. (NCPB, 1967, Transcripts, Testimony of Rajan Saladeen Bey, Book 8, p. 25).

One of the most pressing issues for the opponents, however, was the perceived inadequacy of the relocation plan. They feared NHA was either severely underestimating the likely residential displacement and relocation impacts or simply not responding to it.

Moreover, as opponent George Richardson argued at the blight hearing, relocation problems would only be compounded by the presence of incomplete urban renewal projects and projected highway construction (NCPB, 1967, Transcripts, Testimony of George Richardson, Books 1 through 4, p. 38). Specifically, he was referring to the proposed construction of a north-south expressway called the Mid-Town Connector that would run through the Central Ward, one block east of the NJ-R-196 site, from the proposed I-78 extension through Clinton Hill to I-280 in Newark's North Ward.

Witness after witness chipped away at the logic of NHA's assertions that it could accommodate the relocation needs associated with the NJCMD urban renewal project. Witness Alvin Oliver noted that Danzig and Warrence had asserted that vacancies resulting from yearly turnover rates in publicly and privately owned housing, coupled with NHA's supply of 826 low income units, would provide more than enough housing to accommodate those displaced (NCPB, 1967, Transcripts, Testimony of Alvin Oliver, Book 5, p. 63). However, Oliver noted that the City of Newark had recently passed an ordinance drastically limiting the production of new low income units (NCPB, 1967, Transcripts, Testimony of Alvin Oliver, Book 5, p. 64).

Other witnesses noted that unit turnover rates did not automatically equate to vacancies, especially given the large waiting lists for units. Louise Epperson testified that there was already a waiting list of 500 households for Newark's available low income units (NCPB, 1967, Transcripts, Testimony of Louise Epperson, Book 2, p. 26). Opponents charged that many of the vacant units would not be affordable for a majority of households displaced from NJ-R-196 site. Large-scale demolition in the Central Ward from earlier urban renewal projects, they argued, had severely limited the supply of

decent units affordable to lower income households. Stanley Winters' testimony helped clarify the problem in relying on vacancy rates to address relocation needs:

Take the matter of relocation, which the Housing Authority officials assure us will take place smoothly and equitably. Mr. Warrence is quoted in the June 11, Newark News as claiming a vacancy rate of 4.4 percent or 6,000 apartments a year in Newark's privately owned housing. But at what rentals, Mr. Warrence? Low or high? Listen to what the Federal Housing Administration had to say in its 'Analysis of the Newark New Jersey Housing Market', issued October 1965, page 20: 'In the city of Newark there are 2,275 vacant units available for sale or rent at present, a net vacancy ratio of 1.9 percent. This is about 3,000 vacant units fewer than in 1960 ... The large-scale demolition of housing units since 1960 and the attendant absorption of old, low-rent units in the city, by families displaced by demolition, together with a decline in the housing stock of the city, are reflected in the tightened market.' We have here a manifest contradiction. One and a half years after the FHA [Federal Housing Administration] found a vacancy rate of 1.9 percent, Mr. Warrence finds a rate 250 percent higher. FHA found 2,575 vacancies, the Housing Authority 6,000. The Authority claims a turnover rate of 1,300 families a year in public housing. How many are merely moving from one project to another? How long are the waiting lists in existing projects? Will someone tell us. (NCPB, 1967, Transcripts, Testimony of Stanley Winters, Book 9, pp. 22-23)

Opponents' testimonies revealed their belief that the entire blight hearing procedure amounted to nothing more than a mere formality, an ex post facto procedural process to finish off a pre-determined outcome. They charged that because the Newark City Council, NHA and NJCMD had, several months earlier, entered into a December, 1966 agreement to transfer Central Ward lands – including the NJ-R-196 urban renewal site - all opportunities for public input thereafter were also mere ex post facto formalities. That included these blight hearings. Witness Stanley Winters charged that NCPB was “already obligated to support a finding of blight in order to fulfill its contractual obligations” to NJCMD (NCPB, 1967, Transcripts, Testimony of Stanley Winters, Book 9, p. 12). One witness cited ongoing demolition of entire adjacent blocks of the NJ-R-

196 site as evidence that the hearings, and the appearance of citizen participation, were an ex post facto formality:

I see day by day where you're tearing down houses in the 46 acres, maybe under private contract, but you are still doing it anyway, so therefore I have no other opinion but to believe you've already acted on this matter. From West Market Street and Hunterdon Street – or shall I say Morris Avenue up to Bergen Street – nearly the whole two blocks is cleared away and every time I go over that way I see more and more. What is this Mr. Cocuzza [Chairman of the NCPB], is this acted on the Board or what? I would like an answer to that. Did you order the houses torn down or what? Mr. Cocuzza, I don't see how you could sit there and understand what I am saying. Like I told you before, I believe you've already acted before the facts and this is one of the proofs. You're not even interested in what I'm saying. (NCPB, 1967, Transcripts, Testimony of Rajan Saladeen Bey, Book 8, pp. 10-11)

As noted earlier, a number of witnesses questioned the validity of the medical center urban renewal project because it was not in conformity with Newark's Master Plan. Indeed, Newark's most recent master plan, the 1964 Master Plan, contained neither future land use plans nor proposed zoning changes relating to the construction of a large medical center in the Central Ward (City of Newark, 1964). Witness Stanley Winters noted that the 1964 Master Plan actually recommended that the site remain primarily residential and that it be improved with recreational facilities, including a 10-acre playground (NCPB, 1967, Transcripts, Testimony of Stanley Winters, Book 9, p. 13). He noted that the only reference to any future medical facilities in the Central Ward was a recommendation that a portion of the neighboring Fairmount Renewal Project area (NJ-R-72) might be made available for the expansion of Newark City Hospital (NCPB, 1967, Transcripts, Testimony of Stanley Winters, Book 9, p. 13).

Witness Charlotte Greenberg, who referred to herself as a Newark resident and personnel interviewer for one of the City's major hospitals, went even further in



criticizing the disconnect between the NJCMD project and the 1964 Master Plan. Ms. Greenberg implied that this disconnect was deliberate and hid more insidious, global aims. She alleged that City's true plan was to use urban renewal to reduce, shift around, or displace the population of dependent persons and those needing a higher level of social and educational services, including children.

For many years, this City functioned without a master plan. When the master plan was finally issued by this august body large areas were marked for urban renewal. Large areas were earmarked for new roads. No provisions were made for the construction or maintenance of the schools in the City. This sort of leads me to believe that the master plan which you presented in that nice green book had nothing to do with the master plan you really had in mind; the one that you are implementing so well now. The plan that you are implementing today is designed to relieve the City government of almost all of its responsibility to its citizens. As a matter of fact, it is designed to destroy neighborhood after neighborhood with a bulldozer, overcrowd adjacent areas, declare the area blighted, bulldoze it around and around. We've been here for 13 years and that is all we've seen in the City, crowded areas and the bulldozer once again. If we believe this is the real plan, and I do, it is easier to understand why the absence of educational facilities was so prominent in your first and primary plan. After all, with a little bit of luck the City can use urban renewal techniques to reduce the number of children so overcrowding will no longer be an issue and there won't be anybody left to demand any proof from the system anyway, or the City services, which we have the right to. (NCPB, 1967, Transcripts, Testimony of Charlotte Greenberg, Book 7, pp. 73-74)

Additionally, as noted earlier, some witnesses were deeply concerned about the property tax and ratable implications of the NJCMD urban renewal project. They argued that clearing the 46.4-acre NJ-R-196 site and, eventually, up to 100-odd acres in adjacent areas for NJCMD would remove hundreds of residential and commercial properties from the tax rolls and create a large, contiguous area of tax-exempt land. Indeed, as a state institution, NJCMD would be tax-exempt. The loss of several hundred Central Ward parcels from the tax rolls would only exacerbate the erosion of Newark's tax base, an ongoing problem since the post-war flight of the middle class and businesses. Opponents

feared the resultant fiscal problems would simply be passed onto struggling Central Ward landowners, residents, and small businesses in the form of higher property taxes and higher rents (NCPB, 1967, Transcripts, Testimony of Rajan Saladeen Bey, Book 8, p. 9). From their perspective it made little sense that Newark and its business and development community would support a project that was not going to increase tax revenues.

Somehow, the Newark Housing Authority must demonstrate to you that its plans for tearing down this 169 acres would actually increase ratables for the City of Newark, that is by federal regulations, also stipulated in the state law which is a copy of the federal regulations. I challenge them to show in any way how this is going to add ratables to the City of Newark. It's not. For you to declare this area blighted, you must show how this area, the development of this area through urban renewal will in fact add ratable to the city. It will not. Why therefore would some business interest not care about the loss of ratables, 12 million dollars minimum in loss of ratable? (NCPB, 1967, Transcripts, Testimony of Derrick Winans, Book 6, p. 76)

Witness Derrick Winans also argued that the downtown Newark business community's support of a project that would not generate tax revenues could be explained by the fact that many of these businesses had been the beneficiaries of the city's pro-business tax abatement policies (NCPB, 1967, Transcripts, Testimony of Derrick Winans, Book 6, pp. 76-77). Specifically, the City of Newark had bestowed 20-year tax abatements on many of the non-Central Ward businesses that supported the medical college urban renewal project. As a result of the abatement program, these businesses would remain immune from any tax increases the Addonizio administration would levy to make up for the revenue deficits associated with the loss of taxable parcels once land was cleared for the NJCMD project. Furthermore, Winans argued, the segments of the Newark business community that supported the NJCMD project included realtors, speculators, mortgage lenders, and appraisers. These real estate oriented

businesses interests stood to benefit from the infusion of federal monies into an urban renewal project that might catalyze even more clearance and redevelopment (NCPB, 1967, Transcripts, Testimony of Derrick Winans, Book 6, p. 77).

Opponent witnesses argued that politicization of the NJCMD urban renewal project had compromised the impartiality of the blight hearing, effectively guaranteeing that the NJ-R-196 would be declared blighted. They alleged that an overarching basis for the Addonizio administration's and the Newark business community's strong support for the project and the potential clearance of over 150 acres of Central Ward land was to maintain Newark's white power base. Specifically, clearance of predominantly African-American and Puerto Rican neighborhoods and displacement of their residents could facilitate the breakup of the Central Ward's large minority voting bloc and maintain the governing status quo of a white mayor and a white City Council. This alleged conspiracy was difficult to substantiate. However, witness Alvin L. Oliver provided statistics on the size of the Central Ward African-American voting bloc, arguing it was large enough to threaten the white political status quo.

The entire site lies in the middle of the Negro ghetto and it is estimated to affect directly some 22,000 residents. While I am on the subject, it might be interesting to note the reason why I came to the conclusion that the whole operation was politically motivated. There exists in that area – by the way, the figures I have are minimum, since now the site has moved up in the Fairmount Urban Renewal Development - the figure I have based on the 1967 figure that existed in the county hall of records shows a total registration of 6530 in this area. This encompasses seven portions of the Central Ward district and three portions of the West Ward district. It's also safe to say, in view of the fact that my data proves conclusively that 51 percent of the total population in this area is 21 years or over, it's safe to say that there are well over 17,000 potential voters existing in this medical site tract. If we are to examine the election returns of 1964, it is safe to say that you probably will have a black mayor in the City of Newark if those 17,000 people had voted. (NCPB, 1967, Transcripts, Testimony of Alvin L. Oliver, Book 5, pp. 73-74)

Oliver also suggested another manner in which those who supported clearing the NJ-R-196 site for NJCMD were motivated by racial politics. He charged that a goal of the Newark Chamber of Commerce was to support the urban renewal and clearance policies of NHA's and the federal and state highway agencies to displace, remove, and re-concentrate minority residents into tighter and tighter areas so that cleared areas could be repopulated with whites and suburbanites. Indeed, he alleged that not only could the highway projects, including I-78, I-280, and the Mid-Town Connector, dislocate 30,000 people, but NHA lacked realistic plans for re-housing them (NCPB, 1967, Transcripts, Testimony of Alvin Oliver, Book 5, pp. 130-131). He implied that the combination of highway projects and urban renewal projects planned for Newark amounted to an unspoken, systematic, large-scale effort to remove minorities or squeeze them into specific neighborhoods.

What they [Newark City Council, Addonizio administration, NHA] are doing very carefully and systematically is constructing an ever-tightening noose around the ghetto, they are making the ghetto area smaller and smaller and then they are bringing boundaries around this ghetto area. This medical school is a knot in the noose for one mass lynching of people who live in the ghetto. This indeed is no different than Warsaw, indeed no different from other ghettos in history. If people ask why do Negroes rise up, rise up sometimes in violence, didn't the residents of the ghetto of Warsaw rise up? The fact of the matter is when you construct this ever-tightening noose around the ghetto with less and less breathing space for people, you are cheating them of their land, historically the most precious commodity people can own. (NCPB, 1967, Transcripts, Testimony of Alvin Oliver, Book 5, p. 131)

Stanley Winters charged that despite rhetoric from the media and the Addonizio administration that the medical school complex would benefit the Central Ward with improved health services, the real purpose of the project was to provide an economic boost for Newark (NCPB, Transcripts, Testimony of Stanley Winters, Book 9, pp. 25-

26). Winters pointed out that the administration had been arguing that bringing NJCMD into the middle of Newark along federal and state monies for urban renewal would create construction jobs, provide a host of job opportunities in the medical field and ancillary fields, and catalyze other redevelopment projects. Success with the project could increase Newark's chances of getting more federal urban renewal and Model Cities funding. Nonetheless, Winters stressed that, in light of the amount of displacement that would ensue, the project should not simply be passed off as "a mixed blessing for Newark and for the majority of its people" (NCPB, 1967, Transcripts, Testimony of Stanley Winters, Book 9, p. 26). There was no guarantee, he suggested, that the anticipated economic boost stemming from NJCMD's relocation to the Central Ward would accrue directly to the surrounding neighborhoods. Certainly, the project could not be viewed as a directly benefit to the 3,000 residents facing displacement.

The real purpose of this project was disclosed by the Star Ledger last March in an article which said that this project is vital to Newark because the city 'is in desperate need of a shot in the arm.' Yes, Newark needs a shot in the arm – who will administer the serum, what kind of serum will it be, and who will receive it? The site residents? The displaced? The ordinary citizens? Or others? (NCPB, 1967, Transcripts, Testimony of Stanley Winters, Book 9, pp. 25-26)

Finally, Winters averred that the NCPB was not qualified to conduct the blight hearing because of several factors that rendered its members biased in favor of a blight declaration (NCPB, 1967, Transcripts, Testimony of Stanley Winters, Book 9, pp. 9-12). He noted that NCPB members had already informed area newspaper reporters that the area was in terrible shape, so their prejudgment was in print. Additionally, he argued that because Addonizio supported the project and because NCPB members were Addonizio appointees, it would be essentially impossible for them to vote against the blight

declaration. Winters testified that he had reviewed NCPB records since 1953, when the Newark's new reform government came into being, and found that whenever NHA had presented a proposed redevelopment area to NCPB for blight consideration NCPB had never failed to declare the affected areas blighted. It seemed that, for years, NCPB had been rubber stamping NHA's clearance and redevelopment plans. Moreover, he charged that as the Board counted no African-Americans or Puerto Ricans in its membership it was not representative of Newark's population and racial composition. He stated that this made a "mockery" of citizen participation in the urban renewal process (NCPB, 1967, Transcripts, Testimony of Stanley Winters, p. 11). He also charged that because the December, 1966 agreement between NHA, the City Council and NJCMD to transfer the NJ-R-196 site to NJCMD rendered the blight hearing pre-determined NCPB should disqualify itself from conducting it.

## **POST-BLIGHT HEARING ISSUES AND EVENTS**

### **NJCMD's Continuing Concerns about Site Size and Location**

During the summer and fall of 1967, NJCMD's officials and its Board of Trustees were engaged in their own controversy over the desirability of the Newark site, especially with regard to future land needs. Apparently, the existence of the December 1966 land transfer agreement between NJCMD, NHA and the Newark City Council which included an option to acquire more land for expansion did not quell these concerns. Doubtless, such fears were only aggravated by the opposition publicly expressed at the blight hearings and most viscerally expressed through the July, 1967 civil disorders. In an attempt to grapple with the Board's anxieties, NJCMD President Cadmus, prepared two white papers on the college's continuing location and land acquisition concerns. The

earlier white paper, referred to as Cadmus, 1967a, is dated August 14, 1967, two months after the public blight hearings and one month after the civil disorders. The later white paper, referred to as Cadmus, 1967b, is dated December 8, 1967.

In his two white papers, Cadmus couched NJCMD's land concerns in terms of nonpolitical industry norms (Cadmus, 1967a; Cadmus, 1967b). Specifically, he looked at standards for locating and sizing medical college campuses and the site and location choices for all American medical schools built between 1946 and 1959. He also held informal conversations with authorities from other medical schools about their location and size criteria. Framing these issues in a nonpolitical manner enabled Cadmus to officially maintain neutrality. Nevertheless, his investigation did raise concerns about the desirability of the Newark site. In his first white paper (Cadmus, 1967a), Cadmus noted that the United States Public Health Service recommended a minimum size of 50 acres but an ideal size of 75 to 150 acres to permit future expansion. Furthermore, he noted that 81.5% of all medical schools built between 1946 and 1959, whether or not they were affiliated with a dental school or university hospital, ended up locating on suburban sites ranging in size from 17 acres to over 500 acres (Cadmus, 1967a). However, the medical authorities he interviewed cautioned against oversimplification and casual comparisons between institutions emphasizing that site size and location were interrelated and could not be considered separately (Cadmus, 1967a). As he noted, a publication entitled "Medical Education Facilities – Planning Considerations and Architectural Guide", U.S. Public Health Publication No. 1180-A-16, although recommending a minimum of 50 to 150 acres, indicated no preference for suburban sites (Cadmus, 1967a).

Cadmus reported that his review of the available literature indicated that the need for adequate land for future growth and development in the face of rising construction costs was a much more significant factor in medical center physical planning than whether a site was suburban or urban (Cadmus, 1967b). However, Cadmus investigation did reveal that rising construction costs were often compounded in urban areas by the uncertainties presented by deteriorating neighborhoods and the scarcity of land for parking. His investigation revealed that high costs associated with the scarcity of land in some medical centers had made it difficult to expand health care programs (Cadmus, 1967b). This, in turn, had led to failures in medical education and inadequacies in addressing the public needs. In urban areas, the availability of large amounts of land could offer a form of security against such cost uncertainties.

Cadmus' investigation also revealed that the need to control the assembly and disposition of properties in order to amass contiguous parcels was an especially important concern in determining medical center sites (Cadmus, 1967b). In dense urban areas, especially, hold out property owners could force medical complexes to assume almost byzantine configurations that were costly and ultimately interfered with the effective delivery of medical care. Cadmus cited as one example the construction and expansion of Tufts New England Medical in Boston, which twisted and turned in a highly inefficient spatial pattern to exclude holdout properties (Cadmus, 1967b). He also cited the New York Eye and Ear Infirmary which was constructed at a cost of \$7.5 million around a White Tower restaurant, which was a burger joint (Cadmus, 1967b). The power of condemnation, or eminent domain, Cadmus' research suggested, minimized these spatial problems.



Cadmus uncovered another important factor that drove the search for adequate land for medical centers: the desirability of horizontal rather than vertical construction and expansion (Cadmus, 1967b). Horizontal expansion was viewed as facilitating personal interaction and growth. Vertical expansion offered high site utilization but it was blamed, even in urban areas, for fragmentation of hospital care, various operational inefficiencies, and reduced potential for expansion and alteration, both physically and in terms of medical programming and health care delivery.

Although Cadmus' investigation suggested that condemnation and the power of eminent domain could provide greater control over land assembly and increased security against holdouts he found that negative consequences could ensue when medical centers were built on urban renewal lands (Cadmus, 1967b). The wild card was that the threat of eminent domain had been engendering civil rights and property rights issues. Specifically, federal authorities had reported that accommodations to address civil rights and property issues associated with medical college urban renewal projects could result in suboptimal land assembly that compromised medical care and medical education (Ibid). Cadmus did not provide any details on these incidents. However, their mere mention suggested that NJCMD's Board feared that locating on Central Ward urban renewal land would subject the school to civil rights and property issues that would compromise land assembly and the physical integrity of the medical complex.

### **Interrelated Issues Centering on Funding, Land Assembly, Displacement, and the Model Cities Program Jeopardize NJCMD's Relocation to Newark**

Funding the construction of NJCMD's new medical complex had been a complex issue from the start because of the scale of the project. NJCMD had estimated that the

construction costs for the complex would total nearly \$96 million (NJCMD, May 1968). NJCMD's relocation to Newark and new facilities were widely recognized as "the largest single capital venture (except for highway construction projects) ever undertaken by a New Jersey governmental agency" (Caruba, 1967). The cost makeup was also complex. For example, \$3.5 million of the total costs represented anticipated improvements to Newark City Hospital, which would serve as NJCMD's teaching hospital after the relocation until the new one was completed. Table 5-2 breaks down the \$96 million total cost, which is based on NJCMD's 1967-1968 estimates, into its major components. Basic component costs for the medical and dental school, teaching hospital, heating plant, library, auditorium and science buildings would total over \$74 million. This \$70-odd million figure the one quoted by local media at the time (Manber, 1968 July 3). Special component costs, including renovations and improvements to Newark Hospital, the Mental Health Center, student facilities and underground parking, added over \$21 million to the \$74 million cost.

**Table 5-2: NJCMD's 1967-1968 Construction Cost Estimates for the Newark Medical Complex**

<b>BASIC CONSTRUCTION COMPONENTS</b>	<b>COST</b>
Interim Facilities	\$5,000,000
Dental School	\$10,301,450
Library, Auditorium, Heating Plant	\$6,613,282
Teaching Hospital (250 beds)	\$22,892,525
Science Building (8 stories)	\$32,992,980
<b>BASIC CONSTRUCTION TOTAL</b>	<b>\$74,430,237</b>
 <b>SPECIAL CONSTRUCTION COMPONENTS</b>	 <b>COST</b>
Newark City Hospital Improvements	\$3,500,000
Student Union and Student Housing	\$10,000,000
Underground Parking Garage	\$4,000,000
Mental Health Center	\$3,850,000
<b>SPECIAL CONSTRUCTION TOTAL</b>	<b>\$21,350,000</b>
 <b>COMBINED TOTAL</b>	 <b>\$95,780,237</b>

**Source:** NJCMD. (1968a). A Challenge in Urban Health: Improved Delivery of Health Services in Newark, NJ, dated May, 1968. Jersey City: Author.

NJCMD's Board of Trustees determined that financing these large costs required a multifaceted approach, which would entail floating of bonds and seeking federal and state aid. Some of the financing and financing mechanisms were pledged and determined relatively early in the process. As detailed earlier in this chapter, Governor Hughes and the Democratic wing of the State Assembly had pledged \$30 million for the medical complex by September, 1966. These monies would be allocated to NJCMD over a three year period (NJCMD, 1968). Self-liquidating bonds were expected to finance other components of the new medical complex, including the \$4 million underground parking costs (Manber, 1968 July 3). Additionally, NJCMD had submitted a letter of intent to the United States Public Health Service on March 15, 1966 to apply for federal funding under the Health Professions Educational Assistance Act to assist with the costs of building a new medical complex (Wood & Cohen, 1968). However, as detailed later in this chapter, NJCMD did not receive funding under the Health Professions Educational Assistance Act until the spring of 1968.

In assessing NJ-R-196 estimated \$17 million site acquisition and clearance costs, Mayor Addonizio, NHA, and the City Council determined that the city would have to float a \$15 million bond issue to cover most of these acquisition costs (Shabazian, 1967 December 10). They worked with the state legislature to pass a law that would allow the city to float the \$15 million bond issue without charging it against the city's debt limit (Shabazian, 1967 December 10). On April 5, 1967 the City Council approved the authorization for the bond issue but the city did not proceed with it because it hoped for federal reimbursement. Nonetheless, the Addonizio administration also concluded that the city actually needed federal aid for NJ-R-196 site acquisition and clearance costs and

did not proceed with the bond issuance, hoping for federal reimbursement. Donald Malafronte, Mayor Addonizio's aid and Model Cities liaison, indicated that there was concern that the city would not be reimbursed by the federal government if municipal funds were spent before NJCMD was approved as an urban renewal project (Shabazian, 1967 December 10).

Indeed, the Addonizio administration was aware that no federal urban renewal funding for site acquisition and clearance would be forthcoming unless certain preconditions were met. One precondition was that the 46-acre NJ-R-196 site had to officially be declared blighted by the Newark Central Planning Board and the Newark City Council. The fact that NJCMD had entered into the December 1966 contract for delivery of these lands, which effectively made the blight hearings *ex post facto*, did not obviate the blight designation requirement. Another precondition was that the 11.5 acres of NJ-R-72 Fairmount urban renewal land be rezoned to permit medical college uses for NJCMD's interim facilities. NJCMD officials had made it clear to Mayor Addonizio and NHA that getting the rezoning approved was crucial because the interim facilities, which were planned for the NJ-R-72 site, had to be ready for students starting classes in September, 1968 (Shabazian, 1967 December 10). A third precondition was that the NJ-R-196 site had to be officially designated a federal urban renewal project otherwise NHA would not be able to obtain federal aid under Title I of the Housing Act of 1949 for land acquisition and clearance.

Addonizio and NHA began to address these conditions in the fall of 1967 (Shabazian, 1967 December 10). NCPB voted on October 26, 1967 to rezone the 11.5-acre site from residential to public use to permit construction of NJCMD's interim

facilities. On November 14, 1967, the city applied to HUD for federal approval of this zoning change.

However, as detailed in the following paragraphs, getting the NJCMD relocation to Newark approved as an urban renewal project became intertwined with continuing political and ideological conflicts over funding, relocation, and NJCMD's role in Newark's Central Ward Model Cities program. The ensuing drama drew in governmental, non-governmental, and political players including officials from HUD, the Department of Health and Human Services (HEW), the newly created New Jersey Department of Community Affairs (NJDCA), as well as the Addonizio administration, and representatives of the impacted Central Ward community. Throughout the remainder of 1967, following the NJ-R-196 blight hearing and the July civil disorders, conflict and controversy stalled efforts to get urban renewal status for the NJCMD project and jeopardized the medical school's relocation to Newark.

HUD, specifically, was hesitant to confer urban renewal status and provide aid urban renewal aid because it was concerned about the viability of relocation plans for the 730 families living on the NJ-R-196 site (Shabazian, 1967 December 10). Unofficially, according to press reports, the federal government was also concerned about the potential 150-acre size of the overall NJCMD project and the displacement it would engender (Shabazian, 1967 December 10). Federal officials viewed the Central Ward community's fierce opposition to the displacement NJCMD's move to Newark would engender as a major causal factor in the July 1967 civil disorders. In the wake of the disorders, federal review of relocation strategies had become more stringent.

The relocation plan HUD was skeptical about was contained in the medical school urban renewal plan (“Urban Renewal Plan: Medical Center Urban Renewal Project”) NHA had submitted in April, 1967, which had been prepared in accordance with the requirements of Section 105 (c) of Title I of the Housing Act of 1949. According to the relocation plan portion of this document over 3,000 residents (730 families and 319 single-person households), 88 commercial businesses, 21 industrial businesses, and 17 non-profit organizations would be displaced from the NJ-R-196 site (NHA, 1968). The emphasis of the relocation plan was on helping displaced residents and businesses find existing, affordable, and structurally sound public and private housing and commercial space in nearby Central and South Ward neighborhoods. Per the applicable Title I federal standards, affordable meant that individual households were not expected to pay more than 25 percent of their gross monthly income for rent and household utilities.

Specifically, the plan noted that there were 826 public housing units in the NJ-R-32 urban renewal project in the South Ward’s Clinton Hill neighborhood that would be available to re-house those displaced from the NJ-R-196 site (NHA, 1968, Exhibit J). Most of these units were designed for large families and elderly persons but the plan noted that this was appropriate because the majority of NJ-R-196 households consisted of large families and single elderly persons. Residences in NJ-R-32 would be contained within three sites. Two of the sites, which together covered 11.26 acres, would contain 460 dwellings designed for large families and the third site, which covered three acres, would contain 366 units especially designed for the elderly (NHA, 1968, Exhibit J). The relocation portion of the urban renewal plan also noted that an additional 1,012 units of public housing were theoretically going to be available for occupancy within three

Central and South Ward urban renewal projects: 514 units in NJ-R-6, 228 units in NJ-R-38, and 273 units in NJ-R-52 (NHA, 1968, Exhibit J). However, there were long waiting lists housing and much of it was still under construction; there were no guarantees these units would be available to displaced NJ-R-196 residents.

Additionally HUD was concerned about the fact that, in preparing the relocation plan, NHA had relied on vacancy rates and existing dwelling unit vacancies. NHA stated in the April, 1967 NJCMD urban renewal plan that the estimated vacancy rate and number of vacancies for 1966 – extrapolated from 1960 Census data - were 4.4 percent and 6,070 units, respectively (NHA, 1968, Form H-6122). Given the new construction of public housing on NJ-R-32, NJ-R-6, NJ-R-38, and NJ-R-52, ongoing private housing construction, and estimated vacancy rates and vacancies, NHA estimated that there would be adequate housing for the displaced NJ-R-196 residents (NHA, 1968, Form H-6122). However, the agency could provide no guarantees that those households displaced from the NJ-R-196 medical school site would find that any of this available housing, public or private, would be affordable. As well, households displaced from the NJ-R-196 site would be competing for these units with other households displaced by other urban renewal projects.

The relocation portion of NHA's April, 1967 NJCMD urban renewal plan provided no true relocation options for displaced commercial and industrial businesses and non-profit (NHA, 1968, Form H-6122). The main component of this portion of the relocation plan was essentially on an explanation of reimbursement options, primarily for moving expenses.

Relocation issues also became intertwined with NJCMD's role as a central focus of Newark's Central Ward Model Cities initiative. This primarily reflected the involvement of Paul Ylvisaker, the energetic, visionary Commissioner of the newly created New Jersey Department of Community Affairs (NJDCA). On August 3, 1967, less than a month after Newark's devastating civil disorders, Ylvisaker met for three hours in Trenton with Governor Hughes and John V. Spinale, a special assistant to the Governor, and proposed the development of a "model urban complex" on a 66-acre tract that NJCMD had set aside for its future expansion (Sullivan, 1967 August 4). Within this 66-acre tract, Ylvisaker envisioned a model redevelopment project characterized by a mix of low and moderate income housing units, schools, recreational facilities, day care centers that would also provide jobs for Central Ward residents ("Model Newark eyed", 1967 August 3). During this meeting, Ylvisaker stated that "long before" the disorders he had hoped that the medical school project would become the focus of this model urban redevelopment effort ("Urban plan linked to medical site", 1967 August 3).

He also emphasized the employment potential engendered by the relocation of NJCMD to the Central Ward (Star-Ledger, 1967, August 3). In the short term, NJCMD's relocation to the Central Ward would mean construction jobs. Once construction was finished by mid-1971, it was estimated that NJCMD would have an operating budget of \$20 million in state, federal, and private funds, two thirds of which would be for payroll, and it would be employing more than 1,800 persons in more than 50 job classifications ("Urban plan linked to medical site", 1967 August 3). This large staff would include medical personnel but also a variety of non-medical, skilled and semi-skilled personnel. NJCMD boosters anticipated the medical complex would spawn ancillary shops and



services, including banks, restaurants, supermarkets, barber shops, and florist shops and would attract private physicians and dentists whose practices would feed off the medical college's patient base ("Urban plan linked to medical site", 1967 August 3). The hope was that ancillary activities would boost Central Ward employment prospects and Ylvisaker believed Central Ward residents could staff many of the semi-skilled, non-medical employment opportunities. As he stated to Governor Hughes at the August 3<sup>rd</sup> meeting:

When talking about housing in this immediate area we want to see if we cant use some acreage for housing which can be integrated with the school's needs, so that the community does not feel put upon. It's in this type of an area where workers and technicians plus doctors and dentists will want to locate so that a good housing mix is possible both in color and income. In making the medical college an immediate help to Newark, the matter of jobs must be considered from construction to work within the school and related medical facilities once the college is completed. ("Urban plan linked to medical site", 1967 August 3)

Commissioner Ylvisaker also stressed to Governor Hughes that the federal government was encouraging urban redevelopment concepts centered on medical college complexes to catalyze overall community improvement as well as improved health care.

In fact, the surgeon general's office is interested in medical institutions that solve community problems. Government is getting away from the medical center as such. We want a facility that can excel in teaching and research, plus solve the problems of Newark. ("Urban plan linked to medical site", 1967 August 3)

Ylvisaker and Spinale emphasized to Governor Hughes that direct, local, citizen participation was key to the success of such model redevelopment efforts. Spinale told the press, after the meeting, that planning of this model urban complex "must [include] full participation of the Negro Community" ("Urban plan linked to medical site", 1967 August 3). Such emphasis reflected the new spirit of citizen participation and local

control that were hallmarks of the Model Cities Act. Governor Hughes was responsive to these ideas and, during the August 3<sup>rd</sup> meeting, asked NJCMD President Robert R. Cadmus and Commissioner Ylvisaker to develop a system for community involvement and planning (Gansberg, 1967 August 3)

However, any momentary enthusiasm for Ylvisaker's concept for developing a Model Cities-like complex on land NJCMD had earmarked for future expansion was almost immediately replaced by retractions from NJCMD officials and the Governor's office. On August 4, 1967, NJCMD officials publicly denied agreeing to yield any lands slated for the college's future expansion for the construction of a model urban complex. Spinale issued a statement to the press corroborating that NJCMD officials had not formally agreed to Ylvisaker's proposal and were, at most, possibly receptive to such ideas. As he stated, "the medical school in no way diminished its rights to this land" (Cedrone, 1967 August 4). NJCMD officials, referring directly to the college's December 1966 land delivery agreement with NHA and the City of Newark, noted that the college intended to use the 46 acre NJ-R-196 site immediately and 100 acres, after 18 months notice, for future expansion. According to NJCMD officials, the real import of the recent meetings between New Jersey leaders and the college was that construction of the new medical facilities was to begin in August, 1968 (Cedrone, 1967 August 4). A few days earlier, on August 2, 1967 during a press interview at his Jersey City office, President Cadmus stated that he had never heard NJCMD was considering limiting its use of land (Gansberg, 1967 August 3). Reiterating that the school had a contract with the city for up to 150 acres, Cadmus nevertheless revealed some sensitivity to residential relocation issues, stating as follows:

We do have an interest in seeing that people are not dislocated from one slum to another. The main issue with us is, can we do something for the people of Newark. We believe we can. (Gansberg, 1967 August 3)

Moreover, Cadmus' statements in the wake of Ylvisaker's proposal refueled Central Ward residents' displacement concerns (Gansberg, 1967 August 3). Newark officials tried to quell their concerns by insisting that only 3,000-odd residents would have to move because NJCMD's relocation to Newark only involved a 46-acre site. Central Ward leaders, as they did during the blight hearings, insisted the real figure was 22,000, reflecting NJCMD's expansion plans and its potential use of NJ-R-72 lands beyond the 11.5 already-cleared acres slated for the college's interim facilities (Gansberg, 1967 August 3). The Governor's office tried to minimize these fears by announcing that NJCMD had no plans for at least five years to build on 66 acres beyond the NJ-R-196 site that were reserved for future expansion (Gansberg, 1967 August 3). .

On the other hand, as reported by the national media, the land and displacement controversies surrounding NJCMD's relocation to Newark became something of a "political cause célèbre" for the city's African-American leadership and Central Ward community organizers (Chapman, 1967 December 26). Junius Williams, a leader of the Newark Area Planning Association (NAPA), stated that the potential impact of NJCMD's relocation to the Central Ward had "united us more than anything else" (Chapman, 1967 December 26). George Wheeler, a leader along with Louise Epperson of the Committee Against Negro and Puerto Rican Removal (CANPRR), emphasized how NJCMD's relocation to Newark was catalyzing action within the Central Ward's African-American community against what it perceived as a dominating white political regime.

For once in this city, the black people are going to stop the power structure from enforcing its will on the black community. (Chapman, 1967 December 26)

Indeed, some of Newark's African-American leaders viewed the medical school controversy as a means of galvanizing voters in a city that was nearly 50 percent black to push for the election of a black mayor (Chapman, 1967 December 26). Other community leaders, viewing the medical school as an inevitability that could bring positive change, worked behind the scenes to come up with alternative land use scenarios for NJCMD that involved less displacement. For example, NAPA came up with a plan, drafted by Yale architects, which would have relocated NJCMD on only 17 acres of Central Ward while increasing the size of the proposed teaching hospital (Chapman, 1967 December 26).

#### **The December 1967 Blight Designation of the NJ-R-196 Site: The Addonizio Administration and NJCMD Begin to Respond to Community Concerns**

Given the lengthy June, 1967 blight hearing process, followed in July by the civil disorders, and the intertwined controversies centering on funding, relocation of those facing displacement, NJCMD's land needs, and the college's role in the Model Cities program, it is not surprising that the 46.4-acre NJ-R-196 site was not officially declared blighted until December, 1967. In keeping with state and municipal regulations, the blight designation required the approval of the Newark Central Planning Board (NCPB) and the Newark City Council, in that order. The nine-member NCPB voted to declare the 46.4-acre site blighted on or about November 25, 1967 (Cusick, 1967 December 7). Two weeks later, on December 6, 1967, the Newark City Council voted unanimously to approve the blight designation, which made the 46.4-acre site eligible for federal urban renewal funding. The city would be able to recoup from the federal government approximately three-fourths of the total estimated \$17 million cost of acquiring and

clearing the NJ-R-196 site. As the City Council and NHA had already entered into a December 1966 agreement with NJCMD to transfer the NJ-R-196 site to the college, the favorable vote were tantamount to a rubber stamping exercise. This was the very result that many June 1967 blight hearing witnesses had feared.

The blight designation only exacerbated the concerns of Central Ward residents about their likely relocation, NJCMD's land acquisition plans, and whether their health care needs would actually be met (Cusick, 1967 December 7). Too, they viewed the blight declaration as a political gain for Addonizio. These concerns were clearly voiced at the December 6<sup>th</sup> City Council right before the Council's unanimous blight declaration vote. Phil Hutchins, a representative from the Newark Student Non-Violent Coordinating Committee, and Stanley Winters, then a professor at the nearby Newark College of Engineering, were among those voicing last-minute concerns and objections. Hutchins argued that the NJ-R-196 site was needed for housing, not as a "showpiece for Mayor Addonizio's gubernatorial campaign" (Cusick, 1967 December 7). Both Hutchins and Winters stressed that the black community was not going to benefit from the new medical complex, arguing that new teaching hospital's 250 beds would be woefully inadequate to address the health care needs of the surrounding community (Cusick, 1967 December 7). Additionally, there was still great concern over the amount of urban renewal land, beyond the 46.4-acre NJ-R-196 site, NJCMD wanted to acquire for potential expansion. Moreover, Central Ward residents were had noted that federal relocation monies for those about to be displaced were slow in coming.

NJCMD's Board of Trustees and the Addonizio administration, aware of these continuing concerns began to respond publicly, albeit outside Newark, to assuage fears.

On December 6, 1967, the same day the Newark City Council approved the NJ-R-196 blight designation, Mayor Addonizio spoke before a small audience at Princeton University claiming NJCMD's Board of Trustees had lowered its land demands from 150 acres to 112 acres ("Mayor hints may trim med land", 1967 December 7). Donald Malafronte, the Mayor's aide and Newark's liaison for the Model Cities program, was also in attendance and was more specific. He stated that federal relocation monies for displaced residents and businesses was being held up because the Addonizio administration was trying to get NJCMD's Board to decrease its land requirements to only the 46.4-acre NJ-R-196 site ("Mayor hints may trim med land", 1967 December 7).

From the standpoint of NJCMD's Board, Newark's actions in officially designating the 46.4-acre NJ-R-196 site blighted did not lessen their anxieties about the city's ability to deliver land to meet its acreage requirements. It is interesting to note that the second of the two white papers NJCMD President Robert Cadmus prepared to justify the college's land needs, discussed earlier in greater detail, is dated December 8, 1967. That was two days after the City Council officially declared the site blighted and two days after Addonizio and Malafronte indicated to the Princeton audience that NJCMD was beginning to lower its acreage requirements in the face of neighborhood opposition. The sequence of events suggests Cadmus prepared the second white paper as a defensive strategy to prevent the college from having to make any more land concessions.

Nonetheless, the grass roots momentum that had been building in Newark's African-American community to force NJCMD to reconsider its land requirements had an effect on the college's leadership. Cadmus altered his position about the need for so much land. In late December, 1967, NJCMD's Board of Trustees announced that the

school would be cutting back the amount of land it was seeking in the Central Ward to less than 100 acres.

## **THE FEDERAL AND JOINT STATE/LOCAL RESPONSES TO THE LAND ASSEMBLY AND RESIDENTIAL RELOCATION ISSUES**

### **The Wood-Cohen Letter**

By December of 1967, HUD was acutely aware of the well-publicized controversies surrounding NJCMD's land requirements and the uncertainties about housing availability for those who would be displaced from the 46-acre site. The recent civil disorders were a keen reminder that the Central Ward community's response to displacement and the use, or threatened use of eminent domain could not be ignored. Accordingly, HUD sent inspectors to Newark later that month to determine whether there were a sufficient number of units to meet the demand for those displaced (Chapman, 1967, December 26). Charles C. Beckett, HUD's regional relocation director, headed a task force that spent several days in Newark in early to mid December gathering data on the city's ability to relocate all 730 families and 300-odd individuals (Shabazian, 1967 December 12). During this housing inspection, Beckett met with representatives from both sides of the NJCMD issue. He met with members of Newark's governmental power structure, including Mayor Addonizio and NHA officials, and he met with community and grass roots representatives, including the Committee Against Negro and Puerto Rican Removal (CANPPR) and NAPA (Shabazian, 1967 December 12). However, based on his December, 1967 assessment, Beckett's indicated that HUD was still not able to confer urban renewal status on the NJ-R-196 site (Bernstein, 1967 December 13). HUD

remained skeptical about the extent of NJCMD's land demands and the availability of housing for those who would be displaced.

At the same time, NHA had been unable to convey the 11.5-acre NJ-R-72 tract to NJCMD for its interim facilities because HUD was still studying the proposed land use change of this parcel from residential to public use. In fact, as reported to the Newark Evening News, HUD was studying the 46-acre NJ-R-196 and the 11.5 acre NJ-R-72 tracts as a single package because of potential displacement impacts (Bernstein, 1967 December 13). It was still possible that HUD would recommend that NJCMD cut back on its land requirements (Bernstein, 1967 December 13). Newark officials and NHA were nervous because the city's application for \$13.5 million in federal urban renewal funds for acquisition and clearance of the NJ-R-196 site was riding on HUD's assessment. In anticipation of federal funding, the city had declined to floated its own bond issues for that purpose. Mayor Addonizio's recent efforts to meet with HUD Secretary Robert C. Weaver to speed approvals for the 46 acre and 11.5 acre sites went nowhere and the Addonizio administration was reported to have become bitter (Chapman, 1967 December 26). The administration feared NJCMD would abandon plans to relocate to Newark.

A few weeks later, from January 3<sup>rd</sup> to January 5<sup>th</sup> of 1968, consultants to the Surgeon General conducted site visits in Newark and Jersey City in accordance with procedures for assessing funding applications under the Health Professions Educational Assistance Act (Wood & Cohen, 1968). These consultants, who specialized in medical education and research, conducted their site visits at the invitation of NJCMD President Cadmus and NJCMD's Board of Trustees, gathering information about NJCMD's



medical and dental educational programs, proposed research programs, and medical library plans. Their chief finding was that the relocation of NJCMD represented “an unusual opportunity for improving health care in the community providing educational opportunities for students of the health professions and occupants and providing employment for residents of Newark during construction and following completion of the plant” (Ibid). However, the Surgeon General could not authorize funding for NJCMD under the Health Professions Educational Assistance Act until site issues were resolved, including meeting Model Cities Act requirements relative to the housing, employment, and educational needs of the impacted Central Ward residents. That, in turn, meant that the Surgeon General would not issue an approval until HUD and HEW issued their approvals.

In response, HUD Under Secretary Robert C. Wood and HEW Under Secretary Wilbur J. Cohen sent a letter to Governor Hughes, dated January 10, 1968, setting forth several steps that needed to be carried out to bring the NJCMD project into compliance with the Model Cities Act and to assure funding under the Health Professions Educational Assistance Act. The letter, which came to be known as the Wood-Cohen Letter, emphasized that decision on the ultimate site had to satisfy the intent of the Model Cities Act that it be compatible with the plans developed for the neighborhood as a whole (Wood & Cohen, 1968). Site size would have to be resolved in terms of the school’s essential educational needs balanced against the social impacts resulting from the amount of acres removed from residential use (Wood & Cohen, 1968). The letter also emphasized that HUD and HEW approvals rested on suitable relocation plans for those displaced as well, providing employment and employee-training opportunities for area

residents within the medical complex, and linking long-range health care service planning with long-range, social service planning set in place in the Central Ward under the Model Cities Act (Wood & Cohen, 1968).

The upshot of the letter was HUD needed a firm commitment as to the immediate and ultimate size of the area NJCMD and a revised relocation plan for those displaced that would be submitted to HUD as part of a revised urban renewal plan. The letter ended by indicating the above terms were met HUD would be prepared to approve a contract with the 11.5-acres of NJ-R-72 land and a new contract for financial assistance for the 46 acre tract.

### **Addressing the Wood-Cohen Letter: The Newark Agreement**

In response to the HUD and HEW mandates of the Wood-Cohen letter, six public hearings were held in February and March of 1968 in Newark before Ralph Dungan, Chancellor of the New Jersey Department of Education, to determine how the mandates would be addressed. Among those attending these meetings were the following: NHA Executive Director Louis Danzig, Joel Stern from NJDCA, Junius Williams and Harry Wheeler from NAPA, NJCMD President Robert Cadmus, Louise Epperson from the Committee Against Negro and Puerto Rican Removal, and Charles C. Beckett from HUD. Danzig attended each of the six meetings. Issues addressed included NJCMD acreage requirements, housing options for those facing displacement, minority contractor recruitment for NJCMD construction, minority recruitment and training for NJCMD employment opportunities, and citizen participation in accordance with Model City guidelines. The hearings essentially functioned as a series of negotiations between those representing the city and state interests in getting the medical school established and

those representing the surrounding Central Ward community and their interests in housing, health care, job training and employment (NJCMD, 1968a, p. 8). Although Cadmus attended, his participation was deliberately nominal to maintain neutrality in the face of negotiations between the city, and state, and the community.

The hearings were sometimes heated, reflecting the distrust felt by Central Ward residents towards NHA, and this was apparent in the public hearing transcripts in the interchange between Danzig, NAPA, and other community representatives. In particular, there was a tremendous amount of confusion surrounding the disposition of the parcels earmarked for urban renewal in the Central Ward in the NJ-R-6 and NJ-R-72 urban renewal sites, near the NJ-R-196 where NJCMD would be constructed (Public Hearings on Conditions Related to the Establishment of a Medical School in Newark, NJ, Transcripts, 1968). Hearing attendees were unclear about which parcels were available for future housing construction versus nonresidential redevelopment. Too, there were major private land owners within this portion of the Central Ward with development options on some of the larger parcels and it was feared that these landowners would not be willing to release them to NHA. Moreover, NAPA representatives wanted any urban renewal lands slated for residential construction to be conveyed to public, non-profit, community-based corporations, not NHA. In response, Danzig prepared that he brought to the March 1<sup>st</sup> public hearing addressing these community concerns and agreeing to convey over 68 acres of NJ-R-6 and NJ-R-72 urban renewal lands - earmarked for housing – to non-profit community-based corporations (Public Hearings on Conditions Related to the Establishment of a Medical School in Newark, NJ, 1968, March 1<sup>st</sup>, pp. 3-4).

As later reported by NJCMD's Board of Trustees, the conclusion of the last of the hearings on March 1, 1968, was triumphant and the mood was jubilant (NJCMD, 1968a, 9). Louise Epperson threw her arms around Dr. Cadmus and heartily kissed Mrs. Cadmus. Many others in the hearing room embraced each other.

These six meetings culminated in the creation of a written agreement that addressed the concerns set forth in the Wood-Cohen Letter, including NJCMD's ultimate land requirements. The official title of the agreement was: Agreements Reached Between Community and Government Negotiators Regarding New Jersey College of Medicine and Dentistry and Related Materials, but is commonly referred of the Newark Agreements, but it has since come to be known as the Newark Agreement. From the perspective of land assembly for urban redevelopment, the most salient portion of the Newark Agreement was that NJCMD agreed to limit its entire acreage requirement the 46.4-acre NJ-R-196 site and the already-cleared 11.5 acre portion of the NJ-R-72 site upon which its interim facilities would be located until the new medical school, dental school, teaching hospital, and related facilities were completed on the NJ-R-196 site (Newark Agreement, 1968). Thus, NJCMD would construct its entire facility on 57.9 acres of land, having given up any claims, stemming from the December, 1966 land transfer agreement, to 100-odd additional acres of land for future expansion. Any expansion would be confined to new construction within those 57.9 acres.

Additionally, the language of the Newark Agreement ensured that all displaced residents and businesses would receive assistance for relocation. The Agreement, reflecting an early attempt at affirmative action, also mandated the following: 1) NJCMD and the State of New Jersey would provide minority contract bidding opportunities for all

phases medical complex construction; 2) NJCMD and the State of New Jersey would take affirmative steps to recruit minorities for employment opportunities related to the medical complex and encourage them to apply; 3) NJCMD and the State of New Jersey would encourage and provide opportunities for full citizen participation in decision making during all phases of the project's development; and 4) NHA, the City of Newark, and the State of New Jersey would adhere to Model Cities Act guidelines in the construction of housing for those displaced by the NJCMD urban renewal project (Newark Agreement, 1968).

### **NJCMD BECOMES AN URBAN RENEWAL PROJECT AND THE MOVE TO NEWARK BEGINS**

Even before the Newark Agreement was hammered out, NHA, Newark officials, and HUD acted very quickly to facilitate approvals for NJCMD so that construction could start in time for the opening of classes in September, 1968. In early March, NHA revised the Urban Renewal Plan: Medical Center Urban Renewal Project (Urban Renewal Plan) to comport with the Wood-Cohen letter and Danzig's March 1, 1968 letter in which he agreed to make 68 acres of NJ-R-72 and NJ-R-6 lands available for re-housing those displaced. The revised date of the Urban Renewal Plan was March 4, 1968. On March 14, 1968 NHA, held a public hearing in City Hall Council Chambers to consider a proposal to officially undertake the NJCMD project as an urban renewal project would render it entitled to federal aid under Title I of the Housing Act of 1949.

As a result of the substantial levels of agreement that had been reached during the six public hearings between the City of Newark, the State of New Jersey and the Central

Ward community the March 14<sup>th</sup> public hearing proved to be a mere formality. The project received a green light for urban renewal funding (NJCMD, 1968a, p. 9).

Approvals by the Newark Central Planning Board and City Council followed quickly thereafter.

Federal funding approvals were announced in short order. On March 15<sup>th</sup>, 1968, HUD announced that it had approved a \$17,300,000 grant to Newark to permit NHA to buy and clear the 46-acre NJ-R-196 tract. HUD also approved a \$1,000,000 relocation grant for assistance for those residents and businesses displaced. An uneventful hearing in which the 11 acre interim site for NJCMD was approved as an urban renewal project had actually occurred in early February, 1968 a few days before the six public hearings that culminated in the Newark Agreement began. On May 1, 1968, NJCMD purchased 11.5 acres of already-cleared NJ-R-72 urban renewal land upon which it would construct its interim facilities. Though these actions, the relocation of NJCMD to Newark had officially become an urban renewal project with federal funding for land acquisition and clearance and federal funding for relocation assistance for those displaced.

NJCMD's entire move from Jersey City to Newark and construction of its facilities occurred over an eleven year period from 1968 to 1979. NJCMD began moving the medical school from Jersey City to Newark and into the interim facilities in the 11.5-acre NJ-R-72 tract in July 1968. On July 1, 1968, Newark City Hospital was officially acquired by State of New Jersey as the primary teaching hospital for NJCMD and renamed the Harrison J. Martland Unit of NJCMD.

In 1970, NJCMD merged with Rutgers Medical School to create the College of

Medicine and Dentistry of New Jersey. Ground was broken was broken for the construction of CMDNJ's new campus on the NJ-R-196 site in July, 1971 and the campus was finally dedicated in May, 1976. This dedication covered the Medical Sciences Building, Dental School Building, Community Mental Health Center, George F. Smith Library of the Health Sciences, and the power plant. In 1977, the Dental School, physically relocated from Jersey City to the 46 acre NJ-R-196 site in Newark. The teaching hospital was dedicated in May, 1979 and became known as University Hospital. NJ Governor Brendan Byrne signed legislation on December 10, 1981 establishing CMDNJ as the University of Medicine and Dentistry of New Jersey (UMDNJ). The Newark City Hospital Building now houses UMDNJ's school of Health Related Professions and School of Nursing and various clinical and administrative offices.

## **EARLY IMPACTS OF THE NJCMD URBAN RENEWAL PROJECT - MEETING THE TERMS OF THE NEWARK AGREEMENT**

### **Introduction**

As discussed in the next several paragraphs, the primary early impacts of the NJCMD urban renewal project were positive and negative. Positive impacts included improvements in health care delivery and the affirmative action efforts associated with the implementation of the Newark Agreement and mandated by Newark's Model Cities programming. The most apparent negative impact was the destruction of the 14-block neighborhood on the NJ-R-196 site and the displacement of its 3,000 residents and its businesses and institutions.

### **Early Improvements in the Delivery of Health Care in the Central Ward**

On May 21, 1968, the City of Newark and NJCMD entered into an agreement

conveying Newark City Hospital to NJCMD (City of Newark and NJCMD, 1968). This hospital had been functioning as one of the college's primary teaching hospital. The agreement also addressed the inpatient and outpatient treatment of indigent patients and the losses associated with their lack of insurance and inability to pay their medical bills. Specifically, the City of Newark agreed to pay \$7.4 million annually to NJCMD or the treatment and care of the medically indigent, which fee could be relieved if Medicaid assumed those costs. In return, NJCMD agreed to annually furnish 180,000 inpatient care days and 175,000 outpatient visits and emergency room visits for indigent patients.

Within the first six months after NJCMD's July 1, 1968 takeover, Newark City Hospital (renamed Martland Hospital), which had been plagued with overcrowding, inadequate staffing, and poor equipment, benefited from 249 new personnel, including 80 additional nurses, and greatly improved facilities and equipment (Martland Hospital of the New Jersey College of Medicine and Dentistry, 1969). In keeping with the mandates of the Newark Agreement, three-quarters of the new personnel were Newark residents, many of whom were minorities, and training programs were inaugurated for those Newark residents seeking employment in the paramedical fields.

In the summer of 1968, several NJCMD medical students became involved in community outreach health care programs as envisioned in the Newark Agreement (NJCMD, 1968b). These programs were specifically designed to address some of the Central Ward health problems identified through Newark's Model Cities program. A new Community Comprehensive Family Health Center resulted from this effort in which medical students acted as private physicians for disadvantaged Central Ward families. In



addition to treating illness, students assessed the role of socioeconomic status in disease processes in an effort to resolve community-wide medical problems.

Additionally, by late 1968, NJCMD was also in the process of founding a department of community dentistry (NJCMD, 1968b). This department would serve as a resource for planning, executing, and evaluating ways to improve dental care in New Jersey's disadvantaged communities, including the Central Ward. Training would emphasize the impact of difficult socioeconomic conditions on dental illness and dental care.

### **Hiring and Training of Central Ward Residents and Economic Development**

The affirmative action progress in minority hiring and bidding related to the construction of the medical complex, which was mandated in the Newark Agreement, was evident by the fall of 1968 (NJCMD, 1968b). One of the requirements was that 50 percent of all apprentices and one-third of all journeymen involved in NJCMD's construction be members of minority groups. The review council called for under the Newark Agreements had already been meeting regularly to determine whether this mandate was being met. This review council, composed of state and community representatives, contractors, labor representatives, and representatives of the federal government, had already initiated a three-week halt on NJCMD's construction while it investigated whether the requisite number of minority contractors and journeymen had been hired (NJCMD, 1968b). The review council's diligence had far-reaching effects. Specifically, it catalyzed the creation of a state-run contractor's assistance office in the state building in Newark to provide advice to minority contractors on bidding for NJCMD construction contracts and other state contracts (NJCMD, 1968b).

In actuality, NJCMD had become involved in assisting with minority contractor recruitment for its construction needs even before the creation of the contractor's assistance office (NJCMD, 1968b). The college located 36 minority contractors and took 16 of them to Trenton to become pre-qualified to bid for state construction projects. Additionally, NJCMD sent three full-time employees into the community for a 14-week period to recruit apprentices and journeymen to help meet its construction needs (NJCMD, 1968b).

NJCMD also became directly involved in economic development activities, albeit on a relatively small scale (NJCMD, 1968b). It assigned a staff member to stimulate small business entrepreneurship within the African-American community. The college teamed with the Greater Newark Urban Coalition to encourage the opening of new minority-owned and -operated businesses such as laundries, florists, and restaurants which would be located near the medical school site in the heart of the Central Ward. The Greater Newark Urban Coalition had received a \$60,000 grant from the Ford Foundation to assist with such efforts (NJCMD, 1968b).

## **Displacement**

Full clearance of the NJ-R-196 site did not occur until 1971, but by 1968 NJCMD perceived that many economically disadvantaged landowners and residents from that site were in financial straits because reimbursement for their properties was relatively slow in coming. Therefore, the college communicated directly with the HUD and designated priority tracts of land where persons are to be relocated first (NJCMD, 1968b, p. 7). NJDCA, aware of these displacement issues, loaned \$500,000 to NHA to speed up reimbursement to homeowners on the NJ-R-196 site with the proviso that NHA would

later reimburse NJDCA once it received federal urban renewal funds for the project. In fact, \$1.1 million of federal funding had actually been made available for relocating residents shortly after the March 14, 1968 public hearing in which the NJCMD relocation to Newark was officially declared an urban renewal project.

## **LONG RANGE IMPACTS OF THE NJCMD URBAN RENEWAL PROJECT**

### **Displacement and Loss of a Neighborhood: Fate of the Residents**

Per the mandates of the Newark Agreements, which incorporated NHA Director Louis Danzig's March 1, 1968 letter, tracts of land in the NJ-R-6 and NJ-R-72 urban renewal areas were made available for the construction of new housing that theoretically could have provided affordable housing units for the 3,000-plus residents displaced from the NJ-R-196 site. As Danzig had pointed out during the blight hearings, and as detailed in the urban renewal plan for NJCMD, there were hundreds of existing units in nearby portions of Newark's Central and South Wards theoretically available and affordable for those displaced by NJCMD. However, there were limitations. First, the families and individuals displaced by the medical college would be competing for units with other families and individuals displaced from other urban renewal and redevelopment projects within the City of Newark. Secondly, there was no guarantee that those units, even if attainable, would be affordable. During the June 1967 blight hearings community representatives and residents had warned that many NJ-R-196 would not be able to afford either down payments or rents on these allegedly affordable units.

Unfortunately, there do not appear to be any records or documentation as to where residents displaced from the NJ-R-196 site resettled. Theoretically, some residents were

able to remain in the Central Ward by relocating in the 68 acres of urban renewal land NHA Director Danzig had indicated were available for their resettlement. However, it is also likely that, similar to what happened with those displaced by the NJ-R-32 project described in Chapter Four, many of the displaced ended up moving into the South Ward, including Clinton Hill. However, given the increasing instances of residential overcrowding within Newark's Central and South Wards, many residents likely moved to neighboring East Orange or Irvington. Housing was becoming available through a filtering process in these communities through the acceleration of white flight and middle class flight from Newark and its older suburban ring in the wake of the July, 1967 civil disorder.

### **NJCMD and Economic Development**

Proponents of the medical school project had promoted it as a means of catalyzing economic development and the revitalization of the Central Ward. In addition, it was a major focus of the Model Cities effort because of a conviction that the medical center and teaching hospital could not only also help address the health problems associated with devastating socioeconomic circumstances but also bring in new medical professionals who would open offices. This, in turn, was supposed to facilitate the development of ancillary retail, commercial, and service businesses that would cater to the needs of the medical complex's staff and patients. As well, it was hoped that redevelopment of the heart of the Central Ward would foment the redevelopment of the same area with mixed residential and institutional uses and housing over commercial uses.

My experience walking through the NJCMD site and its surrounding area revealed that many of the older, dense tenement dwellings surrounding the medical

complex's 57.9 acre site have been razed and replaced with newer residential and commercial uses and some institutional uses. For example, on Bergen Street, to the immediate west of the medical center campus, there are newer commercial uses, including a chain pharmacy store and restaurants that serve the neighborhood, UMDNJ staff, and patients' visiting families. To the north, along 12<sup>th</sup> Avenue there is a shopping strip with convenience stores and small restaurants adjacent to a middle income townhouse development. To the south, along South Orange Avenue, there is a mix of institutional uses and residential uses. East of the campus, sandwiched between Norfolk Street and Essex County Community College, are a several hundred relatively upscale townhouse dwellings, including the Society Hill development. West of the campus is the residential Fairmont neighborhood, which consists primarily of older, deteriorating two- and three-family housing, but has also seen some renovation and new residential construction following tear-downs.

Overall, though, a walk around the medical campus and adjacent areas gives the impression that no truly comprehensive approach to the revitalization or rehabilitation of the neighborhoods and communities razed for urban renewal has occurred. Aside from the modest commercial uses mentioned above, the newer development surrounding the medical school consists primarily of almost physically separate residential pods with little pedestrian interconnectivity and virtually none with the medical center. From a visual and pedestrian perspective, the resulting urban fabric is disjointed. The land use pattern does not provide a sense that one is in the midst of a viable neighborhood with vital social networks.

## CONCLUSION

As an urban renewal project, the relocation of NJCMD from Jersey City to Newark was extraordinarily significant to the racial, economic, and political history of Newark. Although the project brought needed healthcare, related social programs, and jobs to the Central Ward, it led directly to the complete destruction of a poor but vital neighborhood and the ensuing displacement of 3,000 people and scores of small businesses and institutions that comprised an entire social network. Especially for Newark's older African American residents the evisceration of the physical core of their community was a severe trauma that has left lasting scars. There were deep flaws in the way NHA, NCNB and other Newark officials handled the project in the early months of 1967, particularly in terms of the exclusion of the affected public from the decision-making. The lack of transparency in the early months of the project, coupled with the cementing of a land delivery agreement months in advance of any blight determination and an impassive, perfunctory blight hearings process, set the stage for massive frustration within the affected community. As noted earlier, the project has been directly implicated as a causal factor in the devastating July, 1967 civil disturbances (Tuttle, 2009). NJCMD, a project associated with the Model Cities effort and ostensibly designed to serve a public purpose, became emblematic as the primary exemplar of racially-tinged, neighborhood powerlessness in the political dynamic of Newark's urban redevelopment program.

This chapter has chronicled the story of the political dynamics and processes involved in the relocation of NJCMD from Jersey City to Newark as a federally-subsidized urban renewal project. I have covered the associated controversies over land

assembly, the relocation of residents facing displacement, and the impacts of the project on the surrounding community. As indicated above, the saga of NJCMD is a rather tortured one. It is the story of how a locally-facilitated, state- and federally-funded land assembly process for a major public use, buttressed with the threat of eminent domain, ultimately led to the complete destruction of an entire 14-block neighborhood. The story of NJCMD's relocation to Newark is also an example of how a single city agency – NHA - wielded enough power over the land assembly process to effectively contravene statutory imperatives and due process and convey those 14 blocks to a state institution - NJCMD – prior to the site being declared blighted and prior to the filing of an urban renewal plan. Indeed, the blight hearing process that occurred some six months after this conveyance agreement was essentially an after-the-fact formality that led to pre-determined outcome that the site would be declared blighted.

The story of the NJCMD urban renewal project is also about how community resistance became intertwined with sociopolitical imperatives to set limits on an eminent domain-supported process of land assembly for a public use. Specifically, because the project was a focus of Newark's Model Cities effort, it was ultimately subjected to the scrutiny of HUD and HEW, especially with regard to NJCMD's land requirements and its displacement impacts. The combined scrutiny of community leaders and the two federal agencies resulted in NJCMD making concessions on its land requirements and NHA taking steps to create greater assurance that residents would be adequately re-housed. Through the resulting Newark Agreement, NJCMD limited its campus to the 57.9 acres contained on the 46.4-acre NJ-R-196 urban renewal site and the 11.5 acres of already cleared NJ-R-72 urban renewal. NJCMD's attempts to ultimately acquire 150 acres for

expansion were vanquished. Nonetheless, for residents like Louise Epperson who headed CANPRR, the victory was bittersweet. NJCMD began to make good on its promise, as mandated under the Newark Agreement, to serve the impoverished Central Ward's healthcare needs in innovative ways and to include the community in decisions that affected them. Too, NJCMD became actively involved in the affirmative action process, hiring minority contractors for its construction needs and recruiting nearby residents for job training so that they could fill the college's paramedical and clerical positions. However, Louise Epperson - like the 3,000 other residents of the 14-block area - lost her home and her neighborhood.

The chronology of the NJCMD urban renewal project suggests that several other themes were at play that influenced the land assembly and redevelopment processes. First, the fact that the redevelopment approach to this project - like the NJ-R-38 and NJ-R-32 projects - was a statutory one as opposed to a rezoning one suggests that this provided Newark officials with greater municipal control over the process in terms of land assembly and the master planning of the site's future uses. Secondly, NHA Director Danzig's insistence about the ease of transferring the needed land to NJCMD despite the fact that it housed a viable neighborhood of 3,000 residents suggests a strong tendency for Newark's governing agencies to view the land as a tradable commodity. Danzig had emphasized that eminent domain could be invoked to ease the land assembly and transfer. Essentially, for the right offer, Newark was for sale. Indeed, he seems not to have viewed eminent domain as a tool of last resort. Thirdly, the importance of multiple funding streams to the project's viability cannot be overemphasized. Newark officials wanted the NJCMD project in no small part because receiving federal funding would improve the



city's funding track record and improve chances for future federal funding for other renewal projects. Hence, as soon as NHA filed the urban renewal plan for NJCMD Mayor Addonizio filed the Model Cities application.

Moreover, the land delivery agreement between NHA and the Newark Municipal Council and NJCMD not only occurred several months before the blight hearings were held but before any residents were even informed of the possibility that eminent domain would be invoked. Thus, even in the absence of the actual invocation of eminent domain, the necessary land assembly was nearly a foregone conclusion. This suggests that other processes outside of eminent domain and statutory protocols involving collaborative efforts between different governmental, or nongovernmental, entities may be even more important to assembling land and propelling a redevelopment project forward. Indeed, the NJCMD project suggests the existence of land assembly without eminent domain.

Additionally, the story of the NJCMD project revealed some important undercurrents related to Newark's redevelopment leadership and decision-makers. As discussed in Chapter Two, urban regime theory holds that regimes governance countenances the involvement of the business community. However, recent reappraisals of regime theory (Mossberger & Stoker, 2001) argue for the existence of policy networks and mixed regimes that blend social reform with economic growth agendas but may not contain all the features of full-blown urban regimes. The redevelopment leadership most actively involved in the NJCMD project suggests that decision-making reflected governance by a policy network, or perhaps a mixed regime, rather than a full-blown regime. Members of Newark's business community and industry representatives were

mostly supporting players in the NJCMD project and primarily when the school was deciding between Newark and Madison, New Jersey for its new site.

More importantly, as Lawlor (2002) has noted, concern with urban regimes should not obscure the importance of strong mayoral leadership and mayoral agendas in the production of urban life, which necessarily includes redevelopment. As noted earlier, Mayor Addonizio campaigned actively and hard for NJCMD to choose Newark over Madison. He was instrumental in making the NJCMD urban renewal project the focus of Newark's Model Cities effort. His push for funding and appropriate programming may have reflected his gubernatorial desires, but his ambitiousness certainly helped propelled the project forward.

Finally, the story of the NJCMD urban renewal process highlights the fact that despite the conventional assumption that redevelopment is always in the public interest that may not always be entirely true. In the case of NJCMD, the reality was mixed. The medical school and teaching hospital were designed to address the enormous health care needs of the impoverished Central Ward and its largely African American community. These needs were largely met and continue to be met. Additionally, the Newark Agreement created affirmative action programs for the admission of students and the hiring of area residents that are still in place and still effective. On the other hand, the same medical complex designed to address the Central Ward's health care needs also led to the destruction of one of its core neighborhoods and removed 3,000 residents from their homes. The same people NJCMD was designed to help were also hurt by the project. Too, the motive behind the tremendous support Newark officials lent the project seemed to have less to do with helping a beleaguered community and more about

amassing a superlative urban renewal track record to maintain political power and obtain more federal funding.

Long-range, NJCMD – now UMDNJ – has continued to serve the medical needs of the Central Ward, Newark, and Northeastern New Jersey with its large teaching hospital and in-patient and out-patient clinics. It continues to distinguish itself as a medical school with one of the largest minority enrollments in the nation. The success of the NJCMD urban renewal project as a catalyst for the economic revitalization of the Central Ward has been mixed, at best. New higher-rent housing has supplanted the deteriorated housing of the 1960s and there has been some convenience-oriented commercial development along the edges of the medical school. However, the promise of the NJCMD project to foment a rebirth and reinvigoration of Newark's Central Ward appears to have been largely illusory. The lasting impression is that, over the last four decades, the heart of the Central Ward has simply been surgically excised, but there has been no transplant.

## **CHAPTER SIX: MULBERRY STREET REDEVELOPMENT EFFORT**

### **INTRODUCTION**

This chapter chronicles the effort to redevelop a 14-acre site along Mulberry Street in downtown Newark by supplanting its large surface parking areas with high-density, transit-oriented mixed residential and commercial uses. A Mulberry Street Redevelopment Plan was proposed and the Newark City Council approved the project but it never came to fruition. The project hinged on the acquisition and clearance of most of the properties in the 14-acre area, which included the potential for the use of eminent domain in the event of a holdout problem. To that effect, the City Council declared the area in need of redevelopment (blighted). However, the redevelopment effort was terminated in July, 2007 when affected residents won their lawsuit against the blight declaration in New Jersey Superior Court. Despite the failure of the Mulberry redevelopment effort, its saga reveals much about the nature of the urban redevelopment-associated land acquisition process in Newark in the new century. Since the devolution of federal and state renewal funding and programming, city officials have had to rely heavily on the inclinations of the private sector to facilitate urban redevelopment. Land assembly has become something of a public-private partnership. The Mulberry story reflects the need for these types of partnerships. It also reflects changes in redevelopment law and associated case law in New Jersey since the Clinton Hill and NJCMD projects. Moreover, the outcome of the Mulberry Street redevelopment effort mirrors growing public unease, since the United States Supreme Court's 2005 Kelo decision, with the municipal use of eminent domain to transfer property from one group of private owners to other private entities for economic development purposes.

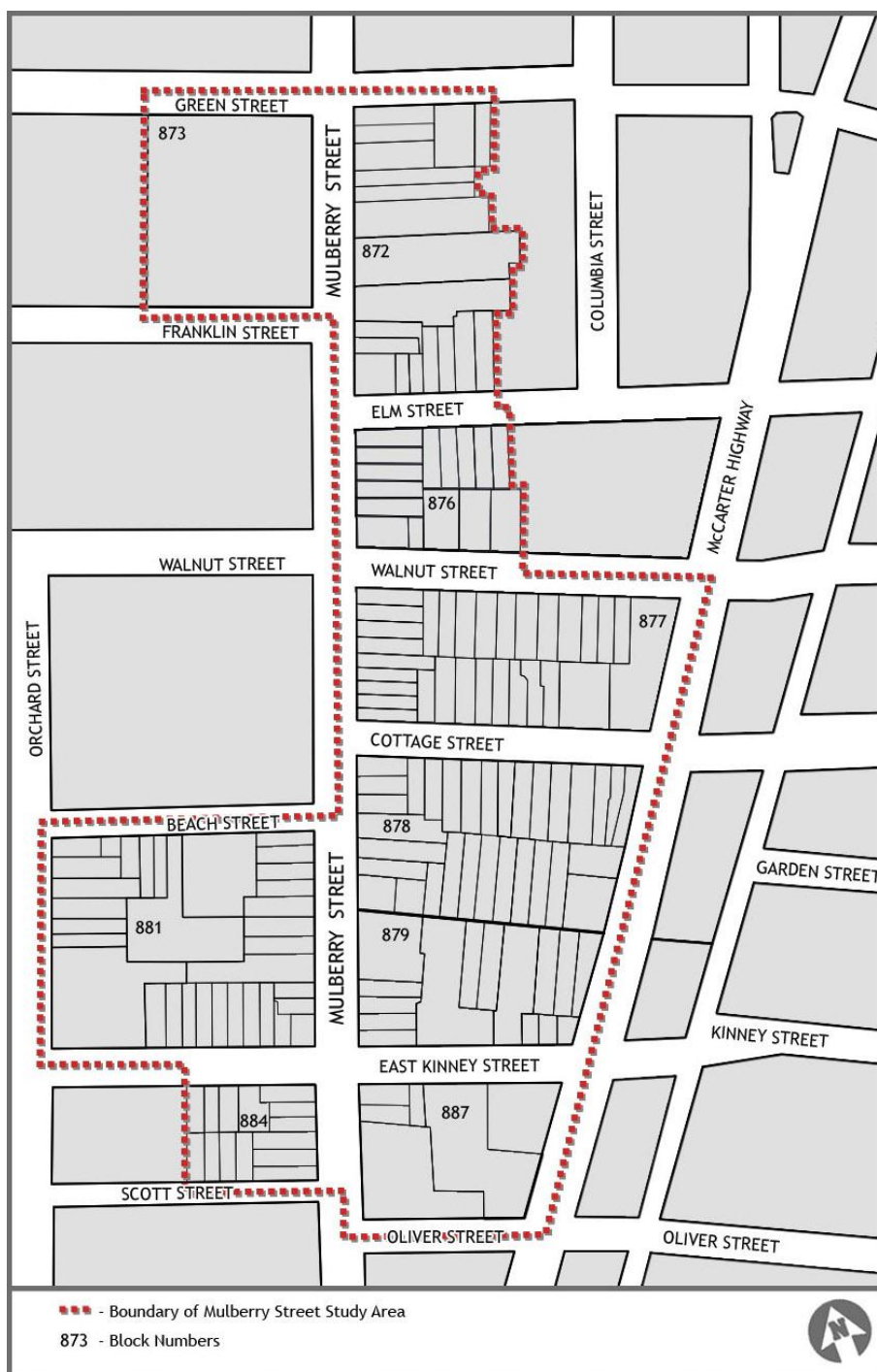
The chronological details of the Mulberry Street redevelopment effort process are important because they are rich with details about how city officials and private interests jointly, if informally, engaged in the land assembly process. These details are also revealing about how the redevelopment concepts for Mulberry Street were conceptualized, why this 14-acre site was favored by the public and private sectors, and the role of eminent domain in this particular land assembly process. Recounting these details also brings the associated actors, processes, and events to life to enhance understanding of Newark's approach to redevelopment in the new century.

Following this introductory section, the chapter chronologically recounts the Mulberry redevelopment effort in six sections and various subsections. In the second section, I describe the 14-acre Mulberry Street area that became the subject of the redevelopment effort. Following that, I discuss the history of the area in the third section, which entailed decades of disinvestment and the privately-facilitated razing of residential and commercial uses that were replaced with expansive areas of surface parking. In the longer fourth section, I chronicle the 2002-2005 joint public-private effort to acquire and assemble the 14-acre site for redevelopment and get it declared in need of redevelopment (blighted) under the Local Redevelopment and Housing Law (LRHL), N.J.S.A. 40A:12A-1, et seq. I detail the 2005 approval of the redevelopment plan in the chapter's fifth section. As detailed in the sixth section, this approval and the entire redevelopment effort was derailed in 2007 when residents and businesses threatened by eminent and displacement waged a successful lawsuit against the City of Newark that invalidated the blight declaration. I end the chapter with a summary conclusion.

## **MULBERRY STREET DESCRIPTION: VISUAL AND SPATIAL FRAGMENTATION**

The 14-acre site of the Mulberry Street redevelopment effort, which city officials referred to as the Mulberry Street Study Area, is located on the edge of downtown Newark about three blocks southeast of the city's core business intersection of Broad and Market Streets. Newark's main transportation lines and its more recent downtown redevelopment efforts are also nearby. Figure 6-1 depicts the boundaries, tax blocks, and lot lines of the Mulberry Street Study Area (Steck, 2004, p. 3). The 10-block, 5.13-acre Downtown Core Redevelopment Area, redevelopment effort centered around the new Prudential Center Arena, borders the Mulberry Street Study Area on the northwest (Schoor DePalma, 2005). The Gateway Urban Renewal Area, a large, high-rise office and retail complex dating from the late 1960s, is located about four blocks directly north. Newark Penn Station, which is New Jersey's busiest train station and serves the Northeast Corridor rail line, AMTRAK, and the PATH transit line, is a ten minute walk northeast. McCarter Highway (Route 21), which parallels the Northeast Corridor Line, forms the Study Area's eastern boundary and connects with Route 22 and the New Jersey Turnpike. The highly successful New Jersey Performing Arts Center (NJPAC) is located approximately one half mile north of the Mulberry Street Study Area.

The Mulberry Street Study Area is irregularly shaped and abuts major governmental facilities, including City Hall, a federal courthouse, and the Post Office, that employ hundreds. It extends over eight block, contains 166 lots owned by 65 property owners (Schoor DePalma, 2004, p. 8), and is bounded by. Green Street, Oliver Street, Scott Street, Orchard Street and Mulberry Street.



**Fig.6-1. Boundary of the Mulberry Street Study Area.**

Note. Source is Steck, Peter G. (2004). Mulberry Street Redevelopment Investigation Report.



**Fig. 6-2.Existing Land Uses in the Mulberry Street Study Area.**

Note. Source is Schoor DePalma. (2004)..Mulberry Street Redevelopment Investigation Report.



The existing land use pattern of the Mulberry Street Study Area (see Figure 6-2 on previous page) is marked by small residential and commercial pockets interspersed between large areas of surface parking. For-pay, surface parking lots that serve the nearby government offices remain, by area, the single largest land use. In combination, the surface parking, vacant lots, and storage yards account for over 60.6 percent (8.66 acres) of the 14.29 acres in the study area (Schoor DePalma, Inc., 2004, p. 27). The surface parking areas are centered along Mulberry Street (Figure 6-2). Most of Tax Blocks 878 and 879, 881, and 873 and a sizeable portion of Tax Block 877 consist of for-pay surface parking lots. The nearly contiguous expanse of surface parking, coupled with the storage yards and vacant lots has resulted in an area that appears visually and spatially fragmented (School DePalma, 2004).

There are two primary pockets of commercial and light industrial land uses. One pocket is clustered along the McCarter Highway. It is interspersed with storage yards serving the light industrial uses. The other area is in the northeast corner of the study area, along Mulberry Street in Tax Blocks 872 and 876. This pocket contains several small scale commercial uses and the offices of the New Jersey Law Journal.

Additionally, there are pockets of mostly residential uses along Walnut Street, Elm Street, and the north side of Cottage Street characterized by nineteenth century, three-story brick, wood-frame, and aluminum-sided row houses in decent condition (Steck, 2004, p. 4). Most of these buildings are renter-occupied by three or four households. The residential pockets also harbor a few small restaurants and bars and a church. Some of the buildings are mixed use, containing commercial and service uses on the first floor and residential uses on the upper floors. These residential pockets are the

least visually and spatially fragmented sections of the Study Area and in field visits I experienced them as the most neighborhood-like in the Mulberry area (see Figure 6-3, below).



**Fig..6-3. Residential Pocket in the Mulberry Street Area.**

Note. Source is Alan D. Cander, photographed November, 2004.

In contrast, the more southern portions of the Mulberry area, including Tax Blocks 881, 878, and 879, epitomize its marked visual and spatial fragmentation. A field visit revealed large surface parking lots and vacant lots interspersed with a few small-scale commercial and light industrial uses, and couple of single-family and multi-family row houses.

The area south of the Mulberry Study Area represents a continuation of this mixed residential and commercial land use pattern, albeit less visually and spatially fragmented. In part, this reflects the construction, over the past decade, of rows of two-family dwelling units on 25-foot lots. This newer construction is spillover from identical new residential construction in the adjacent Ironbound neighborhood east of the Northeast Corridor tracks.

Virtually all of the Mulberry Street Study Area is zoned Second Industrial District, which was the case when the Mulberry redevelopment effort began in 2002 (Steck, 2004). The one exception is Block 873, which as part of the City Hall complex is actually zoned Fourth Business District. A wide range of residential, commercial, and lighter industrial uses are permitted in the Second Industrial District (Zoning Ordinance of the City of Newark, 2010, Section 4030.2). The existing land use configuration is therefore consistent with the zoning. Maximum heights in the Second Industrial District are 2.5 times the width of the widest street the property abuts, which means that some buildings could be constructed up to six to eight stories, or about 100 feet (Steck, 2004). The maximum residential density within the Second Industrial District is 48.4 dwelling units per acre (Steck, 2004). The zoning permits large-scale residential construction on minimum two acre parcels.

In 2002, when the Mulberry Street redevelopment effort began, the applicable 1991 Newark Master Plan, entitled “Newark’s Master Plan: Policies and Strategies for the Future”, recommended distinct areas of residential, commercial, light industrial, and public and semi-public uses for the Mulberry Street area (Steck, 2004). The plan’s land use component recommended a continuation of the light industrial uses in those Mulberry area properties closest to the McCarter Highway. Properties along Mulberry Street between Green Street and Cottage Street were recommended for commercial use, and the plan recommended the preservation of existing residential uses along Walnut Street, Scott Street, and Columbia Street. The plan recommended Tax Block 881 for public and semi-public use, seemingly to preserve it as a surface parking lot for the nearby governmental uses.

Reflecting the small size of the residential pockets and the large expanse of surface parking lots and vacant lots, the 14-acre Mulberry area has a small relatively small residential population. In 2002, when the redevelopment effort commenced, there were only about 270 households in the Mulberry area (Schoor DePalma, 2004). A majority of these households were of Portuguese and Hispanic descent, reflecting the fact that the Mulberry Street area had become a cultural spillover from the heavily Portuguese and Hispanic Ironbound neighborhood east of the Northeast Corridor tracks.

### **MULBERRY HISTORY: DISINVESTMENT AND EXTENSIVE SURFACE PARKING**

The visual and spatial fragmentation of the Mulberry Street area reflects decades of disinvestment. A brief review of the neighborhood's history reveals the forces involved in that disinvestment and the resulting fragmented land use pattern. Development of the Mulberry Street area began in earnest in the early nineteenth century. Maps dating back to 1806 depict residences and demarcated property lines. By the late nineteenth century the area had become a densely built, mostly residential working-class neighborhood economically connected to Newark's central business district. It contained small retail and service uses and a few factories and provided employment and housing for recent European immigrants. One of the more prominent industrial uses was the Roberts Rubber Factory on Tax Block 887, a still-standing, three-story building constructed between 1908 and 1930 (Schoor DePalma, 2004, p. 20).

Early twentieth century photographs reveal that the Mulberry Street area, despite the presence of small factories and stores, was much more residential than it is today (Newark Public Library, 1922). At that time, it consisted largely of brick and wood

frame two- and three-story row houses mixed with small factories and commercial establishments (Newark Public Library, 1922). Then as now most residents were renters, and then as now the blocks along Elm, Walnut, and Cottage Streets were among the most residential in character. The northern reaches of the 14-acre area were actually part of Newark's Chinatown, a neighborhood that had virtually vanished by the late 1960s. Mulberry Arcade, a small alley-like street, since vacated, was periodically subject to raids by the police because it contained opium dens and illegal gambling operations.

A variety of factors fostered the land use changes and eventual fragmentation of the Mulberry Street area and predominance of surface parking. One of these was the flight of manufacturing and the middle classes from Newark, which started well before World War II and facilitated enormous disinvestment in Newark's downtown and adjacent neighborhoods. The mid-twentieth century disinvestment experienced in Newark and Mulberry Street reflected a combination of changes in the physical plant needs of manufacturing concerns and federal housing and highway subsidies that encouraged the flight of businesses, industries, and the middle classes to the suburbs. As industrial technologies changed to favor low-rise, horizontally configured industrial plants with larger land needs, densely built inner city areas like Mulberry Street could not compete with the suburbs. Mulberry Street's industrial structures and buildings became obsolete. Additionally, Newark could not compete as a residential city with the post-war, federally-financed housing construction occurring in its suburbs where taxes were also more favorable. Federal highway construction aided and abetted middle class flight from Newark to these municipalities. Consequently, assessed values plummeted in the Mulberry area and some buildings were razed or abandoned.

Newark's tax base problems and the city's attempts to ameliorate also exacerbated the disinvestment and decline of the Mulberry Street area. For years Newark had been in a "squeeze play" because for decades approximately 40 percent of all property within city limits has been tax exempt including its universities, religious institutions, federal, state, and county governmental offices, and the Port Authority of New York and New Jersey (P. Steck personal communication, 2009). This has not helped Newark's tax base woes, the legacy of its continued high poverty levels and the decades-long flight of business and industry. Consequently, Newark has long had trouble paying for needed services. Too, New Jersey laws mandate that a portion of municipal taxes allocated to the county should be equalized (P. Steck, personal communication, July 17, 2009). However, as Newark had been declining for so many years some homes were assessed for next to nothing and the owners paid very little in taxes. For decades, the state had been responding to Newark's desperate tax base problems by infusing it with monies for schools and municipal services. This created an incentive for Newark to keep its tax base low. Consequently, the city rarely reassessed properties, going for as long as 25 years between reassessments (P. Steck personal communication, 2009). The tax base was low but taxes, themselves, were very high. Although keeping the tax base low was beneficial from the standpoint of receiving state funding the resulting high taxes created a disincentive for reinvestment. That factor, alone, hastened the decline of Newark's downtown and its central neighborhoods, including the Mulberry Street area. Moreover, the high taxes discouraged the private sector from investing in the redevelopment of areas declared blighted unless they received some form of tax abatement (P. Steck, personal communication, July 17, 2009).

Urban planners and designers with experience in Newark theorize that some of the disinvestment in downtown Newark and Mulberry Street after 1950 reflected the fact that downtown redevelopment efforts tried, largely unsuccessfully, to enable Newark to compete with the suburbanization of retail trade. One practitioner suggested that the pedestrian skyways built for the nearby Gateway Urban Renewal Project, the enormous late 1960s office complex Victor Gruen helped design, contributed to the decline of downtown Newark and Mulberry Street (A. Nelessen, personal communication, August 4, 2009). A pedestrian leaving Newark Penn Station for his or her job in the Gateway complex could, and still can, walk to work using these skyways without ever having to set foot outside at the street level. This separation of a large portion of Newark's pedestrian traffic from the street level, he has argued, was deleterious to downtown Newark's retail trade. The resulting street level retail disinvestment and decline along Market and Broad Streets spread to Mulberry Street and its small-scale, retail and service establishments. All of this was occurring at the same time that it was becoming increasingly difficult for Newark's retail establishments to compete with the burgeoning shopping and free parking opportunities in the suburbs. The metastasizing of surface parking lots in the Mulberry Street area, then, was partly a market response by the Newark retail community to provide enough downtown parking to retain their customer base and discourage them from driving to free parking at the suburban malls. Thus, the Mulberry area became more valuable as a large-scale parking lot for downtown businesses and government offices than as a place of commerce, which led to more disinvestment.

Every American city did it [consigned large areas of their downtowns to surface parking] because it wanted to compete with the suburban – the free parking in suburbia. So, if you wanted your city to be successful what you had to do was create parking spaces because everybody was now moving away from transit. (A. Nelessen, personal communication, August 4, 2009)

As a result of these factors and its decreasing utility as an ancillary downtown business and residential area the Mulberry area landowners began to assemble groups of contiguous lots after 1950 for clearance. Some of the cleared, contiguous lots were being held in speculative mode as the owners waited for a change in market demand. Nevertheless, the clearance of these assembled, contiguous lots left large vacancies in the urban spatial fabric of the Mulberry Street area.

Concomitantly, as buildings began to come down and lots were cleared in the Mulberry Street area in the post-war period, demand grew for surface parking lots to accommodate the expanding federal and state office network along nearby Broad Street. The first parking lots in the Mulberry Street area began to appear in the 1950s through private sector activity on some of the already-cleared, commonly owned lots (A. Dambach, personal communication, July 17, 2009). The social and economic costs of redeveloping already-assembled and cleared lands for surface parking were relatively minimal because virtually no displacement of residents and businesses and little new construction was required. The need for more surface parking likely accelerated the clearance of lots and the destruction of much of the earlier urban fabric of the Mulberry Street area. Existing land use maps contained in Newark's 1964 Master Plan, prepared during Mayor Hugh Addonizio's tenure, depict the Mulberry Street area as still mostly built-out with a mix of commercial, light industrial, and residential uses (Candeub, Fleissig & Associates, 1965). However, existing land use maps contained in the Newark



Master Plan 1978, prepared 14 years later during Mayor Kenneth Gibson's tenure, depict substantial areas of vacant land on the west side of Mulberry Street (Coopers and Lybrand and Barton-Aschman Associates, Inc., 1978). By 2002, when the Mulberry Street redevelopment effort began, parking lots, storage yards, and vacant lands had become the neighborhood's predominant land uses (Schoor DePalma, 2004).

The land use changes on Tax Blocks 878 and 879 over the decades, from predominantly residential to mostly surface parking illustrate this evolution and provide a microcosm of what happened throughout much of the Mulberry Street area (Schoor DePalma, 2004, p. 17). These two tax blocks now comprise a single 3.24-acre block bordered by Mulberry Street, East Kinney Street, Cottage Street, and the McCarter Highway. Photographs and maps from the 1930s demonstrate that these two tax blocks were, at that time, almost entirely residential (Schoor DePalma, 2004, pp. 16-17). In fact, they were separated by a block-long residential street called Mulberry Place that was vacated in 1975. By 1950, Tax Blocks 878 and 879 had evolved from purely residential blocks into mixed use blocks of residential, commercial, and industrial uses that were still intensively utilized. However, by the late 1980s, surface parking lots and storage yards had supplanted many of those uses and spread over 68 percent of the area of the single block formed by Tax Blocks 878 and 879 (Schoor DePalma, 2003, p. 17). By 2000, only seven buildings remained standing on the block's 46 lots and taxable improvements amounted to no more than 20 percent of the block's assessed value (Schoor DePalma, 2004, p. 17). Other than façade work and interior remodeling of existing structures, the Mulberry Street area was, by then, nearly devoid of real estate activity. Figure 6-4

provides a sense of the visual and spatial fragmentation created by the large expanse of surface parking in the Mulberry Street area.



**Fig.6-4. Example of Surface Parking in the Mulberry Street Area in November, 2004.**

Note. Source is Alan D. Cander, photographed November, 2004.

## **SAGA OF LAND ACQUISITION AND ASSEMBLY AND BLIGHT DECLARATION**

### **Introduction**

This section describes the formal and informal processes public and private sector actors engaged in to facilitate the Mulberry Street redevelopment effort. I have concentrated on land acquisition and assembly and blight declaration. Since the 1992 passage of the Local Redevelopment and Housing Law, a declaration in that an area is in need of redevelopment has supplanted the term blight declaration, but the meaning is essentially identical. I divided this section into subsections to facilitate the overall chronological flow and to emphasize key events. It was also designed to shed light on the mindsets of the different key public and private sector actors and their support or

opposition to the redevelopment effort and the political economy of the land assembly process. In fact, entire subsections address why the James Administration and the redevelopers were so keen on redeveloping these particular 14 acres and why a formal redevelopment process was pursued instead of a rezoning approach.

### **Early Private Sector Land Acquisition and Assembly and Modest Redevelopment Concept**

The initial redevelopment goals and associated land acquisition and land assembly activities for the Mulberry Street area, following decades of disinvestment in the neighborhood, were quite modest. Steven Lenter, president of Scott-Martin, Inc. and S.H.L. Corporation, owned approximately five acres along Mulberry Street in the southeastern edge of Newark's CBD which were being used as for-pay, surface, public parking lots (Smothers, 2003, November 15). In early 2002, Bruce Wishnia and Emile Farina of Newark Redevelopment Corporation (NRC) became interested in purchasing those five acres of surface parking lot lands from Lenter for redevelopment purposes (Mays, 2003 March 30). At that time, NRC's goal was to purchase and redevelop that acreage with the easily replicable, three-story multi-family residential structures common to the more urban sections of Essex, Hudson, and Union Counties commonly referred to as "Bayonne boxes". On April 18, 2002, NRC entered into an agreement of sale (see Figure 6-5 on the next page) with Scott-Martin, Inc. and S.H.L. Corporation (Steven Lenter) to purchase a series of contiguous lots on Block 878, also known as 298-308 Mulberry Street, and possibly 296 Mulberry Street in Block 279 (Mulberry Street Property Owner's Group v. City of Newark, 2007).



**Fig.6-5. Lands Purchased by NRC from Steven Lenter in 2002.**

Note. Source is Steck, Peter G. (2004). Mulberry Street Redevelopment Investigation Report.

NRC also entered into an option agreement with Lenter to purchase another series of lots on Blocks 877 and 878, including lots used for surface parking and lots along an adjacent portion of Mulberry Street and portions of Walnut and Orchard Streets (Mulberry Street Property Owner's Group v. City of Newark, 2007). Thus, by April of 2002, the beginnings of a defined area for future redevelopment had been assembled through private sector activities. Shortly thereafter, as detailed in the next subsection, the public sector – in the form of the Newark Department of Economic and Housing Development – entered into the Mulberry Street land acquisition and assembly arena.

### **Mulberry Redevelopment Concept Expands and the Land Assembly Process Begins**

In mid-2002, Newark's Department of Economic and Housing Development, cognizant of rising property values near downtown Newark and the potential for increasing the tax revenues in the Mulberry Street area, approached NRC's Farina and Wishnia, and asked them to come up with a more ambitious plan for the neighborhood (Mansnerus, 2005 October 16). In response, NRC entered into a partnership with Metro Homes, a regional builder of large-scale residential projects based in Hoboken, to form the Mulberry Street Urban Renewal Company. Through this partnership, NRC would serve as the developer and Metro Homes would serve as the builder. NRC and Metro Homes also hired A. Nelessen Associates, an urban design consulting firm, and Dean Marchetta, an architect who had worked with NRC on large residential projects to assist with the design of buildings, parking, internal circulation, and amenities such as, vegetation, open space and lighting.

The redevelopment plan NRC and Metro Homes conceived for the Mulberry Street area with the assistance of A. Nelessen Associates and Dean Marchetta in mid-2002 was greatly expanded in terms of acreage and scope from the modest proposal of a few months earlier for the five-acre area purchased from Lenter. Under the new proposal, the redevelopment site, which was termed the Mulberry Street Study Area, covered the contiguous, 14-acre, 8 city block area described earlier - extending from Green Street south to Olive Street and west from Orchard Street to the McCarter Highway. The basic redevelopment strategy for the 14-acre Mulberry Street area was to have it declared blighted under the applicable criteria of New Jersey's Local Redevelopment and Housing Law, then condemn, acquire, and clear it and rebuild it as a mixed-use, "urban village" physically integrated with the land use and circulation pattern of downtown Newark. As the press reported, the new urban village would contain 2,000 higher-end condominium units, retail uses, and 180,000 square feet of high-end office space and retail and service uses (Smothers, 2003 November 15).

Other details, centering on proposed structural and architectural features and amenities provide a richer understanding of the redevelopment concept and how it would fit into the existing physical fabric of downtown Newark. Many of these details reflected A. Nelessen Associates' expertise on physical and socioeconomic redevelopment amenities and data from a nationwide survey the firm had conducted for the National Association of Realtors to determine the right mix of business, services, park areas and building heights to attract people to urban areas (Smothers, 2003 November 15). Specifically, a mainstay of the plan would be the creation of high-density, mixed-use three to seven-story buildings with distinctive architecture, large windows and balconies

(Figure 6-6). Retail stores, specialty shops, and offices would be located on the first and second floors and residential uses, which would have designer kitchens, would be housed on the rest of the floors. Parking for these buildings would be indoors and built into the overall mixed-use structures in such a manner that the residential and commercial sections would effectively wrap around them (A. Nelessen Associates, 2004). This type of parking arrangement, termed structured parking, would essentially be unobtrusive and invisible at the street level from the standpoint of residents, office workers, and visitors. Parking area and building rooftops exposed to sunlight would contain rooftop gardens with extensive shrubs and grassy areas to promote outdoor passive and active recreational uses, including miniature golf. The rooftop gardens would promote energy efficiency and qualify these mixed-used structures as green buildings.

“Our plan is to transform Mulberry Street into the City’s first comprehensive urban neighborhood with all those amenities necessary for successful urban living” (A. Nelessen Associates, 2004).



**Fig .6-6. Architect’s Rendering of Mixed-Use Buildings Proposed for the Mulberry Street Redevelopment Effort.**

Note. Source is A Nelessen Associates. (2004). Presentation before Newark Municipal Council on Mulberry Street Redevelopment Plan design concepts.

Another major component of the redevelopment concept was a multi-modal, central plaza on Mulberry Street around which the multi-use buildings with their residential, commercial, and office uses would be oriented (A. Nelessen Associates, 2004). This plaza would contain sidewalks to facilitate pedestrian use and would be accessible via automobile from surrounding areas of downtown Newark and the Ironbound. Additionally, the plaza and the entire Mulberry Street Redevelopment Area, only a 10-minute walk from Newark's Penn Station, would serve as a transit stop for the proposed extension of Newark's existing light rail system through the Mulberry Street area. The plaza would be landscaped with ornamental trees and shrubs and would contain a linear park providing ground level, accessible green space in the center of the Mulberry area and for passive recreational uses and outdoor seating and dining opportunities. Combined, the proposed central plaza, rooftop gardens, and green spaces atop the structured parking would add 125,000 square feet (about three acres) of landscaped area to the total green space within the City of Newark (A. Nelessen Associates, 2004).

In terms of timing and costs, NRC and Metro Homes proposed that the project would occur in six phases to be completed over a five year period (Smothers, 2003, November 15). The initial estimated cost for the project was pegged at \$350 million. NRC and Metro Homes indicated that they would privately finance all costs associated with redeveloping the Mulberry Street Area, including land acquisition, relocation, and construction. In turn, they requested that the City of Newark revamp, extend, and finance the necessary public infrastructure improvements, including sewer lines, water lines, and storm water facilities. Once the physical development aspects of the plan (Mulberry



Street Redevelopment Plan) were worked out, NRC began to seek backing from Mayor Sharpe James and his administration.

On October 8, 2002, NRC's Farina and Wishnia and Metro Homes President Dean Geibel sent a written memorandum to Newark's City Business Administrator Richard Monteilh that was significant for several reasons (Farina, Wishnia, and Geibel, 2002, October 8). First, it provided a basis for the creation of a more formalized official redevelopment agreement with the City of Newark. The October 8<sup>th</sup> letter was an early attempt to secure strategic connections with the James Administration and Newark's governmental officials to help NRC move forward with its land acquisitions and redevelopment ambitions. Secondly, the letter called for fast-tracking the Mulberry Street Redevelopment Plan. Thirdly, the letter called for the Municipal Council to pass a resolution authorizing the preparation of a report establishing that the subject area is in need of redevelopment under New Jersey's Local Redevelopment and Housing Law. Fourth, the memorandum confirmed that NRC and Metro Homes would serve as the developer and builder for the project once the area was declared in need of redevelopment. Finally, the memorandum emphasized that it was "extremely important" that the City and the developers negotiate for tax abatements or tax incentives for the buyers and future residents (Farina, Wishnia, and Geibel, 2002, October 8).

Most significantly, the existence of the memorandum suggests a predetermined approval of the Mulberry Street Redevelopment Plan by the Municipal Council and a positive outcome for the redevelopment effort. Indeed, the memorandum predated any decision by the Newark Central Planning Board to study the Mulberry Street area to determine whether it qualified as an area in need of redevelopment. Additionally, the

memorandum created a presumption that NRC and Metro Homes would be the designated developer-builder which, once agreed upon by City officials, would effectively block any democratic form of competitive bidding. The fact that this presumption was created by the putative developers themselves meant that it was self-serving. Too, the letter was written and delivered many months before the Newark Central Planning Board and Newark Municipal Council notified the public about the Mulberry redevelopment proposal and public hearing or other forums for public participation in the redevelopment process were established.

Neither Monteilh nor the Department of Economic and Housing Development seems to have received the developers' memorandum as an invasion, or usurpation, of their authority. In fact, the reaction of Department of Economic and Housing Development officials could best be described as amenable and forward-moving. On November 14, 2002, Dr. Niathan Allen, who headed the Department, met with NRC's Farina and Wishnia in an advisory capacity offering recommendations to propel the fast-tracking of the Mulberry project (Buonocore, 2007, p. 7). During this meeting, Dr. Allen, Farina, and Wishnia discussed an "expanded use of the redevelopment concept" to include all 14 acres the developers had proposed for redevelopment (Buonocore, 2007, p. 7). Dr. Allen also recommended that the Mulberry project move forward as a redevelopment project rather than as a zoning change or use variance.

In effect, Dr. Allen's recommendation meant that forward movement on the Mulberry Street Redevelopment Plan would be based on declaring the 14-acre Mulberry Street area an area in need of redevelopment (blighted) according to the criteria in the Local Redevelopment and Housing Law (LRHL), N.J.S.A. 40A:12A-1, et seq. This

determination had to be made by the Newark Central Planning Board (NCPB) and the Newark Municipal Council after conducting a study and holding public hearings. If NCPB and the Newark Municipal Council determined that the proposed redevelopment area met the LRHL blight criteria that, in turn, would permit the creation of an official redevelopment plan and permit acquisition and clearance of the site to allow the implementation of the redevelopment plan. It also meant that the City of Newark could invoke its powers of eminent domain if there were holdouts and negotiated purchases failed to facilitate the necessary land acquisitions and transfers.

On December 6, 2002, NRC sent a letter to Dr. Allen confirming his recommendations, detailing the expanded redevelopment area to be investigated, broadly outlining the redevelopment process, and discussing the potential for using eminent domain (Buonocore, 2007, p. 7). Specifically, NRC proposed expanding the investigation area to include Blocks 877, 878, 879, 881 and 887 and portions of Blocks 872, 876, and 884 (Farina and Wishnia, 2002, December 6). NRC recommended that the City then take the necessary steps to have the area declared an area in need of redevelopment followed by adoption of a redevelopment plan based on the concepts, mixed uses, and densities they had pitched to Dr. Allen. Farina and Wishnia stated wrote that they were prepared to secure a professional planner to assist the Department of Economic and Housing Development to assemble the data needed for the “area in need of redevelopment” investigation and to prepare the investigation report. As in the November correspondence, they made it clear that they anticipated that NRC would be designated the redeveloper. Furthermore, they wrote that once the area was declared in need of redevelopment they planned to redevelop the area in six discrete phases over a

several-year period, each phase lasting between 18 and 36 months (Farina and Wishnia, 2002, December 6). Phase A, for example, would include all of the land in Tax Blocks 878, 879, and 887 in the southeastern portion of the Mulberry area (Mulberry Street Property Owner's Group v. City of Newark, 2007). The letter also indicated that for each phase, NRC would acquire property not already under its control through negotiated purchase but would ask the city to utilize its condemnation and eminent domain powers to acquire properties when such negotiations failed. In return, NRC would provide the funding for property acquisition and relocation. Farina and Wishnia's letter emphasized the importance of the expanded redevelopment area as a marketing and revitalization strategy.

NRC believes that this project will substantially enhance the character of the Mulberry Street area. By expanding the bounds of the Area, we believe that we will be able to control the overall appearance of the neighborhood, which we believe is both essential to the marketing of the project and important to the City in its quest to revitalize the downtown. (Farina and Wishnia, 2002 December 6)

The official, public stance of the James administration was that redeveloping the 14-acre Mulberry Street area would address the neighborhood's underutilization and deterioration, generate increased tax revenues, and help stimulate economic development throughout the rest of downtown Newark. The James Administration and NRC believed the proposed mix of higher-end uses would play a key role in stimulating economic development throughout the downtown area. Their intent was that the high-end condominium units would attract moderate to higher income professionals who would choose Newark for "urban living", much as they had been choosing Hoboken and Jersey City (Mays, 2003 September 14). The Class A office space would entice high-end businesses to relocate to the Mulberry Street area, creating the momentum for job

opportunities that would attract workers in the financial and legal professions. Higher-end retail and service uses in the Mulberry Street area would cater to the new professionals while attracting other Newark residents and visitors.

From the administration's perspective, the expected tax revenue generation justified redeveloping the site with prime office space and high-end housing units rather than rebuilding the area with more affordable ones. Historically low tax revenue generation in the Mulberry Street area suggested to the James administration that with so much of its acreage devoted to surface parking and vacant lots the neighborhood was not being utilized to its full potential. Residential and nonresidential uses in the 14-acre Mulberry Street Study Area had only returned \$139,000 in tax revenues for fiscal 2002-2003 (Smothers, 2003 November 15). In contrast, Newark's City Business Administrator, Richard Monteilh, projected that the high-end condominiums and commercial uses proposed for the Mulberry area would generate \$6 million in annual tax revenues (Smothers, 2003 November 15).

Mayor James also viewed the Mulberry Street redevelopment effort as an extension of Newark's Downtown Core District Redevelopment Plan. That project southeast of the intersection of Broad and Market Streets entailed redevelopment of a declining, 24-acre area of downtown Newark with office, retail, entertainment, and high density residential uses. The 18,000-seat Prudential Center Arena, completed in late 2007, was its chief component, but it included a 235,000 square foot entertainment center, educational facilities, two million square feet of office space, a hotel, and 1.7 million square feet of higher density mixed residential and commercial uses. As reported by the media, Mayor Sharpe James believed with "angelic fervor" that the Downtown

Core District Redevelopment Plan and by extension, Mulberry Street's redevelopment, would make Newark a "destination", catalyzing a downtown revitalization that would create jobs (Jordan, 2004 December 5).

Moreover, the design team and the James Administration touted these amenities as promoting smart growth goals (Mays, 2003 March 30). Certainly, the plan was transit-oriented and pedestrian-friendly. The plan was also lauded for its high density, higher-end housing. In addition to attracting young professionals back to the city higher density housing represented an anti-sprawl measure and better quality housing attracted employment back into the city. Too, the fact that the proposed residential component was geared toward young professionals was touted by promoters as an indication that it would generate fewer children and entail less in the way of infrastructure and fiscal impacts than more traditional family-oriented residential development. Finally, the higher densities were viewed as a means of providing more housing options that would encourage inner city growth, a result that would promote smart growth and help make Newark more competitive with other cities within the region (Smothers, 2003 November 15). Thomas Banker, a Columbia University professor and economic consultant to the James Administration called the Mulberry Street Redevelopment Plan "the poster child for smart growth" (Mays, 2003 March 30).

Indeed, the James administration was initially very confident that all aspects of the project, from land acquisition through construction of the final phases, would run smoothly. Eventual declaration of the 14-acre as an area in need of redevelopment would secure the city's right to invoke the power of eminent domain, if necessary, to address

any potential holdout problem. The administration anticipated that construction would begin as early as spring of 2004. However, as further discussed, that never came to pass.

At this point, and before returning to the chronology of the land assembly process, it is important to consider a series of related issues. First, it is important to address why the City of Newark, its agencies, and NRC and Metro Homes supported redeveloping this particular, relatively large, 14-acre site. Secondly, it is important to consider why, based on Dr. Allen's recommendation, the city and the redevelopers chose to pursue a lengthy, formal redevelopment process rather than simply rezoning the site. The next three subsections discuss these explanatory factors and their interrelatedness.

### **Why this Particular Site on Mulberry Street?**

A variety of reasons seem to have been at play in encouraging the James administration and NRC chose to focus redevelopment efforts on this particular 14-acre site along Mulberry Street. These reasons, or explanatory factors, were revealed through analysis of municipal resolutions, correspondence between the redevelopers and city officials, and newspaper articles, and through elite interviews of proponents and opponents of the Mulberry redevelopment effort. Some of the explanatory factors reflected a perception that the Mulberry area offered distinct advantages relative to sound planning principles. Other reasons reflected long-term downtown revitalization goals. Some of the reasons were made relatively overt through public presentations and through the press. They were, in a sense, officially sanctioned reasons. Other explanatory factors were more political and were made less public, or official.

One of the explanatory factors behind the choice of the Mulberry site reflected its perceived advantages relative to smart growth principles, including proximity to existing

dense development and existing and proposed transportation improvements (A. Dambach, interview, July 17, 2009). In the first place, the site is adjacent to downtown Newark which, although it has been experiencing decline, is still relatively densely developed. Secondly, the Mulberry site was perceived as transit convenient. It is a ten-minute walk to Newark's Penn Station, which serves NJ Transit, AMTRAK, and PATH and provides manageable travel times to Newark Liberty International Airport, only one stop south, as well as Manhattan, the North Jersey suburban ring, and the other major Northeastern cities. Additionally, the site is located along the right-of-way of a proposed extension by New Jersey Transit of Newark's light rail line south through the Mulberry Street corridor to Newark Liberty International Airport and Elizabeth. As well, McCarter Highway was slated for widening to improve traffic flow and access through the edge of downtown Newark toward the New Jersey Turnpike and Route 22. From the standpoint of sound transportation infrastructure planning and smart growth considerations, redeveloping the Mulberry site made excellent sense.

One of the less desirable characteristics of the Mulberry neighborhood, namely its large amount of surface parking and vacant land, was actually perceived in a positive light by redevelopment proponents. The large percentage of the 14-acre site covered by surface parking and vacant lots offered immediate advantages. It portended greater ease of land assembly and acquisition because so much of the land was uninhabited and residential and business impacts would be less significant on this 14-acre tract than would have been the case in a same-sized tract in Newark's more built-out areas. Too, redevelopment proponents may have considered the site relatively easy to assemble for redevelopment purposes because the existing residential population was perceived as



small and lacking in funds and, therefore, incapable of meaningful political opposition. However, according to a member of the Mulberry Street Coalition and Mulberry Street Property Owner's Group – the grass roots organizations that opposed the redevelopment effort - that was a miscalculation.

And, then the next thing was that they realized that most of the other things in there were single-family homes and people couldn't afford to fight. They didn't anticipate anybody in the area that would have the financial wherewithal or the organizing power that we had to keep anybody together. (G. Mytrowitz, personal communication, July 16, 2009)

In light of the extent of surface parking and vacant lots the Mulberry site was perceived, furthermore, as a holding zone for future development and redevelopment. The James administration and NRC likely viewed Lenter's initial five-acre purchase in the Mulberry area as an assemblage of property to create a holding zone for the future, ready-made for redevelopment.

So , it was – you know – given the problems with managing the properties and deteriorating properties the answer is there was one push to simply respond to the demand for parking but it was – and I think this is recognized by many people - it's an interim holding use. You're assembling property. You're paying taxes on it but you're looking for the long-range to when an area turns around because now you have a large contiguous area without the problems of relocation of residents or businesses ready to be redeveloped. (P. Steck, personal communication, July 17, 2009)

The fact that Lenter, who was the biggest single property owner in the Mulberry Street area, had already bought and assembled a contiguous 5-acre area made the Mulberry area more attractive to NRC (A. Dambach, personal communication, July 17, 2009). Once they purchased his 5-acre portion it was then easier to assemble additional contiguous areas for redevelopment. Purchasing Lenter's 5-acre portion created a “nucleus” of assembled surface parking lot land available for future redevelopment (J.

Buonocore, personal communication, September 20, 2009). When NRC entered into the option agreement with Lenter to purchase additional parcels it reflected their early optimism about the potential for assembling more contiguous land to redevelop a larger area along Mulberry Street.

Well, I think what really triggered it was they were able to make a deal with Lenter who owned the lots” (J. Buonocore, personal communication, September 20, 2009).

The obvious thing is, first of all, looking at a surface parking lot it’s generally assembled land. You have no relocation issues. It is from that perspective just ripe for development. Although, some of these are older, and I’m sure have contamination issues that have not been addressed. There is someone who is a willing seller in most cases. They are just waiting for the right time. (P. Steck, personal communication, July 17, 2009)

### **Why Was a Relatively Large-Scale Redevelopment Effort Pursued?**

Interviews with Newark planning staff, a representative of the Mulberry Street Coalition, and consultants on both the proponent and opponent sides of the Mulberry Street plan suggested that the issue of critical mass was one of the primary bases for advocating a large scale redevelopment effort. Based on these interviews, critical mass appears to be a somewhat multifaceted term. A synthesis suggests that, in the context of the Mulberry redevelopment effort, the term critical mass countenances a project with enough mixed use acreage at sufficient densities and intensities that the project, through a balance of housing, retail, and commercial uses, can sustain itself. For a project to have enough critical mass to be self-sustaining it must be sufficiently revenue generating to at least pay for itself. In the case of a mixed-use redevelopment effort, as was intended for the Mulberry Street area, the critical mass can also refer to a unit tipping point. A tipping point is a minimum number of apartments, condominium units, or other types of housing

units that will provide economies of scale and pay off fixed costs (A. Dambach, personal communication, July 17, 2009). Among other costs, fixed costs can reflect infrastructure improvements, land acquisition and, if eminent domain is involved, the just compensation provided to affected property owners. These fixed cost categories were factored in as a basis for the 2,000 condominium units proposed for the Mulberry redevelopment effort.

However, different facets of the overall critical mass concept were emphasized by different interviewees. An urban design consultant for the redevelopment effort emphasized that critical mass means that the project must provide security, a sufficient balance of housing units to sustain retail uses, and enough urban greenery to constitute an environmental amenity (A. Nelessen, personal communication, August 4, 2009). Specifically, the proposed land use mix and densities must be such that they would generate or facilitate a sizeable daytime and nighttime population. The consultant felt this was crucial for maintaining security because the Mulberry area had experienced incidents of violent crime over the last several years. Additionally, the concept of critical mass countenances that housing units will be plentiful enough and close enough to retail uses to sustain them. Dwelling unit densities and, or, floor area ratios must also be sufficient to give a redeveloper a density bonus in return for providing green space.

Critical mass means that you've got enough balance of housing and retail to make a thing work as its own entity ... financially and every other way. Every other way. That you have enough critical mass of people to start out with. The first thing is that you can provide security. The classic eyes on the street. Number one – enough intensity that you can provide security because in that area there had been and there continues to be several drive-by shootings. People can actually get killed in that area. So that was - number one that there's enough critical mass to get elements of security on the street. That's number one. Number two, you've got enough housing units to balance the amount of retail that you are going to have there so that there is – when you come down from your apartment there's something at the ground level. Then there's enough additional customers to use it

which is another whole part of both the design strategy and the critical mass. The third one was that you get enough density so that you can create urban green. That's the way we work. Meaning with X number of units, we can start to get green roofs. And, we can start to get really extensive streetscaping and, in fact, one of the design concepts was to create the arena on one end and create a kind of entertainment plaza at the other end with like two anchors in a shopping center. (A. Nelessen, personal communication, August 4, 2009)

One interviewee suggested that in concentrating their efforts on a relatively large site NRC and the Mulberry proponents were reflecting a bias common in the urban redevelopment field toward large projects on large sites managed by redevelopers with a lot of large-scale experience (P. Steck, personal communication, July 17, 2009). This bias reflects certain realities and has a distinct logic. In the first place, smaller redevelopers with less large-scale experience are at greater risk for financial problems and default. Banks tend to view projects backed by large-scale developers with successful track records more favorably and are more apt to extend credit to those developers. Secondly, there is a bias toward both large sites and wholesale clearance because it is easier to market a project literally built on a clean slate. Condemnation and clearance physically removes the perceived “problem” of pockets of non-affluent residents living in older buildings with low assessed values. Too, clearance is perceived as easier to accomplish if it occurs over several blocks rather than in piecemeal fashion (P. Steck, personal communication, July 17, 2009). As one consultant stated, referring to the mindset of many redevelopers:

There are ... I think it's both a common sense real estate – again when I go into a neighborhood I would rather have the whole thing cleared if I'm the developer rather than having a patch of housing that's to be retailed in a little neighborhood of low-income people. That's not how I want to market my brand new housing. So, from a pure real estate marketing point of view I want a clean slate. That's much more easily accomplished over a several block area and so I think that there

is a bias toward large developers. (P. Steck, personal communication, July 17, 2009)

Another interviewee argued that the proposed design considerations for redeveloping the neighborhood, in conjunction with the need to continue to meet the demand for employee and visitor parking for the adjacent government offices, necessitated a large site (D. Roberts, personal communication, 2009). This interviewee had been hired as a consultant on the redevelopment effort by the City of Newark. Specifically, the interviewee explained that the only way to replace the surface parking that would be lost by redeveloping Mulberry Street would be to build vertically. That would require garages and parking decks several stories tall that would have to be placed partially underground or wrapped internally into the proposed mixed-use buildings. Working within the existing street and block grid, as had been proposed for the Mulberry redevelopment, and providing construction space for these structures would also require a certain amount of depth. Additionally, the existing lot configurations in the Mulberry site were generally long and narrow. Their geometries did not facilitate the creation of the more box-like parcels needed for building vertical parking structures connected to mixed-use buildings.

### **Why was a Statutory Redevelopment Approach Chosen Instead of a Rezoning Approach?**

From a regulatory standpoint, there were two primary approaches through which redevelopment of the Mulberry Street area could have been effectuated. One approach was to rezone the 14-acre site, or portions thereof, to permit a mix of uses at higher densities and intensities than permitted as it was then zoned. Another approach was to pursue a formal, statutory redevelopment process under the LRHL. As already indicated,

the second approach was the one pursued by the James administration and NRC and adopted by NCPB and the Municipal Council. According to an attorney with years of experience in redevelopment law, New Jersey municipalities contemplating the redevelopment of a relatively large area more commonly pursue a formal, statutory LRHL redevelopment process rather than rezoning (J. Buonocore, personal communication, September 20, 2009). My research, primarily through interviews, suggested a number of overarching reasons why the James administration pursued the aforementioned second approach in the Mulberry redevelopment effort.

For Newark, as in other municipalities in New Jersey, greater municipal control over the redevelopment process was the preeminent reason for pursuing the statutory redevelopment approach rather than rezoning. The statutory redevelopment process under the LRHL provided Newark with two primary advantages over rezoning strategies (J. Buonocore, personal communication, September 20, 2009). First, it gave the James Administration the opportunity to select their preferred redevelopers which, in this case, were NRC and Metro Homes. In fact, as detailed earlier, a series of memoranda between NRC and Dr. Niathan Allen in the fall of 2002 suggests that the selection of NRC as a redeveloper was somewhat predetermined. Secondly, the statutory redevelopment process provided the James administration with the ability to designate a specific, contiguous area – in this case a 14-acre site along Mulberry Street – as the redevelopment area. This, in turn, gave the James administration considerable control over the land assembly process.

In contrast, a rezoning approach would have left the James administration with no real control over either the land assembly process or the choice of redeveloper. Certainly,

rezoning the 14-acre site might have permitted parcels to be retrofitted to allow redevelopment at specific densities and mixed uses not permitted under the then-current zoning. However, rezoning would have resulted in a much more ad hoc redevelopment process subject to the agendas of multiple developers none of whom would have been chosen by the James administration. The resulting redevelopment pattern may have been much more balkanized reflecting each redeveloper's individualized rezoning rather than the more synchronized, comprehensive approach that would have ensued from a single redeveloper. Additionally, interviews conducted with planners involved in the Mulberry redevelopment effort suggested that the James administration may have believed that simply rezoning the Mulberry site to permit higher density mixed uses would not have been sufficient to attract private investment for redevelopment (A. Dambach, personal communication, July 17, 2009). The LRHL was enacted, in part, to facilitate redevelopment of declining areas that would not have been redeveloped or rehabilitated through private investment alone.

Furthermore, the statutory redevelopment process has another powerful regulatory advantage over rezoning – the use of eminent domain. Under the LRHL redevelopment process, the James administration would be able to use eminent domain to transfer properties to NRC and Metro Homes once the Newark Municipal Council had declared the Mulberry area an area in need of redevelopment and a redevelopment plan had been adopted. Additionally, these land transfers could occur at discounted prices because just compensation packages paid to owners of condemned properties tend to be lower than what those properties would actually command on the market. The ability to carry the

eminent domain stick would have made the statutory redevelopment process very desirable for the James administration, NRC, and Metro Homes.

Well, first of all, it [eminent domain] certainly played an important part. Number one, although developers don't like to admit it when they are negotiating with property owners it is helpful for them to realize – to indicate to property owners that a property is going to be taken at some time in the future. And, you can either cut a deal with me or potentially sit on this for six years and have the city come and do it but it's going to happen. ... The other issue is that it gives confidence to the developer that they are not going to be held up by that last person, the hole in the donut that's going to hold up the whole project. ... But, it shows you that part of the issue is that makes development successful is you can assemble land at, in some cases I think, at below market prices. (P. Steck, personal communication, July 17, 2009)

Finally, at the time the project started the political and legal climate in New Jersey was more favorable for land acquisition and assembly strategies that included the use of eminent domain to transfer property from one private entity to another for redevelopment purposes. In New Jersey, anti-eminent domain sentiment was still rather nascent when the Mulberry Street redevelopment effort began. There was essentially no New Jersey case law in 2002 on the LRHL criteria to counter the declaration of the Mulberry site as an area in need of redevelopment. It would be another five years before the New Jersey Supreme Court's Gallenthin decision would challenge the broad application of the LRHL's "not fully productive" e criteria for such declarations. The James Administration and Newark officials knew that the Mulberry Street residents had little in the way of financial resources and little legal recourse to fight a blight designation under the LRHL. When attorney John Buonocore was hired to represent the grass roots Mulberry Street Property Owner's Group in its battle against the redevelopment effort, a couple of years prior to the Gallenthin decision, the chances of prevailing against the City



of Newark's attempt to have the neighborhood declared in need of redevelopment were slim.

Plus, back then, you couldn't win this case anyway. You know. And, Buonocore almost flat out told me that in the beginning. This is an uphill battle. This is very difficult. You know, we don't know what the final outcome's gonna be. He [Buonocore] would never give us the feeling of whether or not we were gonna win or lose. I guess he didn't wanna mislead us in case we didn't win. (G. Myrtrowitz, interview, July 16, 2009)

### **First Attempt to Determine Whether the Mulberry Street Area Qualified as an Area in Need of Redevelopment**

On December 16, 2002, Dr. Allen sent a memorandum to the Clerk of the Municipal Court enclosing a copy of a resolution (Resolution 7RCN) authorizing NCPB to hold a hearing to determine whether the Mulberry area qualified as an area in need of redevelopment per the LRHL criteria (Allen, 2002, December 16). Specifically, Resolution 7RCN authorized NCPB to begin a preliminary investigation and hold a public hearing on whether the 14-acre Mulberry Street area, with its 160+ lots located on portions of Tax Blocks 872, 876, and 884 and the entirety of Blocks 877, 878, 879, 881, and 887, should be declared an area in need of redevelopment. The resolution, which was prepared by Dr. Allen, stressed that the Mulberry redevelopment project was desirable and ambitious. Dr. Allen recommended that the blight declaration be fast-tracked so that it would be scheduled for upcoming hearing agendas. The Newark Municipal Council passed Allen's resolution on December 19, 2002, with two abstentions, by a vote of seven to zero.

The notice process for the upcoming public hearing began shortly thereafter in February, 2003. On February 14, 2003, Dr. Allen sent a memorandum to the Clerk of the Municipal Court enclosing a display map of the Mulberry Street area, representing it as

an area in need of redevelopment (Allen, 2003 February 14). In this memorandum the Clerk was instructed to display the map to the public from February 14th through March 3rd. On February 25, 2003, NCPB sent notice to affected property owners that it would hold a public hearing in the Municipal Council Chambers at City Hall on March 3, 2003 to consider investigating whether, under the LRHL criteria, the 14-acre Mulberry Street Study Area qualified as an area in need of redevelopment (NCPB, 2003 February 25).

NCPB's subsequent hearing, which occurred over several days between early and late March, 2003, was marked by one of the earlier instances of organized public opposition to the redevelopment effort. This occurred on March 24<sup>th</sup> when the Mulberry Street Property Owner's Group, a grass-roots coalition of affected property owners supported by the related Mulberry Street Coalition, went into formal action. On that date, the group's attorney, John Buonocore, filed a simple written objection to the proposed Mulberry Street Redevelopment Plan and the potential for the area to be declared in need of redevelopment (Buonocore, 2003 March 24). This written objection, composed as a letter to NCPB, included a list of 22 objectors who owned a total of 38 lots in the subject area. All of the objectors were members of the Mulberry Street Property Owner's Group.

The umbrella group, the Mulberry Street Coalition, was a formidable opponent and, as further detailed in a subsequent section, was a primary force in the Mulberry redevelopment effort's demise. Although not against redeveloping the Mulberry area, on principle, the Coalition deeply objected to the potential for using eminent domain and displacing residents and businesses. The Coalition maintained a website and counted approximately 100 people in its membership, including property owners within the Mulberry Street Study Area as well as a number of individuals who did not reside in the

Mulberry area but felt a keen solidarity with the Coalition's stance (G. Mytrowitz, personal communication, July 16, 2009). A number of these outside members resided in the nearby Ironbound neighborhood. In fact, the Coalition was strongly supported by the Ironbound Community Corporation. Moreover, the Coalition's political and financial backing of the Mulberry Street Property Owner's Group enabled the Group to hire John H. Buonocore, Jr. as their attorney. Buonocore, a partner in the Morristown, New Jersey-based firm of McKirdy and Riskin, had a reputation as one of the state's foremost eminent domain attorneys.

The March 31, 2003 NCPB hearing did not turn out well for the Mulberry redevelopment proponents. The hearing was marked by appearances from Burgis Associates, members of the Mulberry Street Property Owner's Group and their attorney, John Buonocore. Burgis Associates was the planning consultant hired by NRC to prepare an Investigation Report on whether the Mulberry Street area qualified as an area in need of redevelopment. Burgis Associates had concluded that the 14-acre Mulberry Redevelopment Study Area was in need of redevelopment primarily because it met the LRHL's "e" criterion. Their reasoning rested on the assumption that parcels in which the value of the land exceeded the assessed value of the improvements provided evidence of lack of proper utilization (D. Roberts, interview, November 24, 2009). They concluded that surface parking lots are de facto examples of lack of proper utilization or underutilization because the assessed value of surface parking lot improvements will almost always be lower than the land value. In justifying their claim that the Mulberry Area met the "e" criterion Burgis Associates emphasized that more than 50 percent of the

14-acre area consisted of surface parking lots, storage yards, and vacant lots (Mays, 2003, April 2). They also emphasized that the site contained dilapidated buildings.

However, Buoncore's cross examination of Burgis revealed their Investigation Report to be riddled with errors, faulty assumptions, and slipshod analyses. He emphasized that comparing assessed values, instead of proven values, with land values tends to be problematic in Newark because of the ages of buildings and structures. He also emphasized that the surface parking lots, although certainly low intensity uses, did generate tax revenues for the City of Newark ( Mays, 2003, April 2).

Buoncore's cross examination strategy was very effective. NCPB, bothered by the inconsistencies and flawed reasoning in Burgis' report failed to reach a decision on whether to declare the area in need of redevelopment. The hearing was adjourned and a continuation hearing was set for June 9, 2003. However, the June 9<sup>th</sup> hearing was never held.

On May 21, 2003, the Newark Municipal Council essentially reneged on their support for the Mulberry redevelopment effort and passed Resolution 7REE by a vote of 7 to 0, which rescinded Resolution 7RCN. The Municipal Council's action immediately halted NCPB's investigation on whether the Mulberry Area qualified as an area in need of redevelopment, which was highly significant. If NCPB had been able to continue its investigation and determine that the 14-acre Mulberry area qualified as an area in need of redevelopment, that would have marked the first step toward condemning parcels. After adoption of Resolution 7REE, however, the redevelopment effort was effectively stalled for about eight months.

Various reasons were asserted publicly for the Municipal Council's decision to rescind Resolution 7RCN. The Star-Ledger reported that the Municipal Council's vote was influenced by the fact that other Municipal Council members were beginning to challenge Mayor Sharpe James and his administration (Mays, 2003 May 22). The Mayor had been a vocal and strong supporter of the Mulberry project but when his support began to wane that provided an entrée to attack him. Council Member Augusto Amador, whose jurisdiction included the Mulberry area, indicated that he still supported the redevelopment effort but wanted the affected landowners and the redevelopers to reach some type of formal agreement concerning displacement and relocation (Mays, 2003, April 2). The Mulberry Street Property Owner's Group claimed the Municipal Council was persuaded to halt NCPB's area in need of redevelopment investigation because of the errors and analytic deficiencies in the Burgis Report and because the Group had pressured the Municipal Council to vote against the project (Mulberry Street Property Owner's Group v. City of Newark, 2007, p. 12).

Thus, this first attempt to declare the Mulberry Street area in need of redevelopment had failed. The James administration, the Municipal Council, NCPB, NRC, and Metro Homes would not officially make a second such attempt until January of 2004. However, the redevelopment effort was not dead. It had merely been tabled. The interim period, which is the subject of the next subsection, allowed time for redevelopment proponents and opponents to recharge.

**Recharging: NRC Makes Campaign Contributions and Prepares a Relocation Program, Mayor James Recharges, and the Mulberry Street Coalition Hires a Consultant**

Despite the actions of the Municipal Council, NRC and Metro Homes remained committed to reigniting interest in the stalled Mulberry Street redevelopment effort. They channeled their energies into garnering Municipal Council support and designing a relocation program for residents and businesses facing displacement if the project were resumed. So-called “pay to play” contributions were legal in New Jersey. For the next several months, NRC and Metro Homes and their friends and family members made more than \$53,000 in campaign and political contributions to several of the Municipal Council members and Mayor James to gain political support for the Mulberry Street redevelopment effort (Ferris, 2004 September 5).

By September 2003, NRC and Metro Homes had designed a relocation and reimbursement program (Mays, 2003, September 14). This program, which would be administered through their jointly-held subsidiary, the Mulberry Street Urban Renewal Company, would offer residential owners, landlords, and tenants distinct options and incentives to remain onsite. Displaced resident-owners who wished to seek replacement housing within the neighborhood would receive reimbursement covering the fair market value of their properties and relocation expenses plus \$40,000 credit toward purchase of a new Mulberry project unit. Displaced resident-owners who did not wish to seek replacement housing within the Mulberry area would receive fair market value and relocation reimbursement plus \$20,000 for the purchase or rental of a non-redevelopment unit. Residential tenants would receive \$7,500 in relocation payments plus a credit of \$15,000 if they wished to purchase a unit in the Mulberry project (A. Nelessen

Associates, 2004). Residential landlords not residing in the property they own would be given the opportunity to sell it at fair market value and would receive a bonus of \$20,000.

The relocation and reimbursement program also offered options for commercial owners, landlords, and tenants and incentives to remain onsite (A. Nelessen Associates, 2004). Those commercial owners occupying their buildings would receive fair market value and relocation reimbursement plus, if their commercial use was compatible with the Mulberry project, a credit of 10 percent toward the purchase of any appropriate commercial space within the project. Commercial tenants facing displacement whose uses were compatible with the redevelopment plan could receive a 10 percent credit bonus to lease any appropriate commercial space within the Mulberry project.

Otherwise, they would be entitled to a payment of \$10,000 to relocate outside of the Mulberry project. Commercial landlords not occupying the property that they owned would be given the opportunity to sell their properties at fair market prices plus they would receive a bonus of \$20,000.

However, the real impetus for reigniting the project seems to have come from Mayor Sharpe James, himself. On November 14, 2003, NRC, Metro Homes, Newark City Business Administrator Richard Monteilh and Mayor James convened a press conference in which James announced that he was officially reviving the Mulberry Street Redevelopment Plan (Strunsky, 2003 November 16). During the press conference, NRC and Metro Homes spelled out the details of the project's urban village redevelopment concept and explained that they would privately fund the project's \$550 million cost – now significantly higher than the original \$350 million estimate. At the conference, Mayor James emphasized that the project represented the first major residential

component of Newark's sweeping downtown renaissance and would be the city's first village-type, planned community and would be fully integrated into the physical and socioeconomic fabric of the city. He also enthusiastically announced that construction would begin as early as the spring of 2004, despite the fact that the project had not been formally resurrected by NCPB or the Municipal Council. Taking cues from the sudden rebirth of political support for the Mulberry Street project, the City Clerk quickly moved to place the project back on the December meeting agendas of the Municipal Council and NCPB.

The Mulberry Street Coalition responded to the enthusiasm and support of the James Administration for the Mulberry project by mounting a renewed opposition effort. In late November, 2003, the Coalition sent a letter to the Newark Municipal Council emphasizing that redeveloping the Mulberry area carried the potential for displacement and requesting that the Council delay issuing any resolutions authorizing NCPB to conduct an area in need of redevelopment study for at least one month. The Coalition alleged that NRC and Metro Homes had only approached a few property owners about relocation options. None of the property owners had proposed selling them their properties. The Coalition emphasized that it was neither anti-growth nor against redeveloping the neighborhood, but Coalition members did not wish to sell their properties and believed the area could be redeveloped without displacing them. Additionally, the Coalition announced that it had retained a professional planner, Peter G. Steck, to study the Mulberry Street area and make creative redevelopment recommendations that did not entail displacement.



Throughout this period, both the Municipal Council and the Mulberry Street Coalition benefited from the attentions of the local press, which announced the formal reengagement of both entities in the Mulberry Street redevelopment process. The Star-Ledger printed several articles about the project at the very beginning of December, 2003, which widely broadcast the James Administration's strong support for designating the 14-acre site as an area in need of redevelopment. On December 3, 2003, The Star-Ledger printed an article stating that Mr. Steck would present an alternative redevelopment plan on behalf of his clients in early 2004 that would not require condemnation (Mays, 2003 December 3). The article noted Steck's critiques about the redevelopment concepts advanced by NRC and Metro Homes for Mulberry Street and potential neighborhood impacts (Mays, 2003 December 3). Among his main critiques were the following: 1) the potential loss of parking spaces for the adjacent state and federal buildings was insufficiently addressed; 2) projected tax revenue generation from the proposed redevelopment was unrealistic because it would be more than offset by costs associated with increased infrastructure and service needs as well as tax abatements proposed to incentivize investment; and 3) condemning properties now for a project with a five year construction period would actually exacerbate disinvestment and blight. Steck also argued that if the project failed the vacancies resulting from all of the condemnation and clearance would simply create more blight.

Dean S. Geibel, the Metro Homes principal actively engaged with NRC's Farina and Wishnia in the Mulberry redevelopment effort, responded that Steck's criticisms were unwarranted (Mays, 2003 December 3). Geibel noted that the mixed use redevelopment concepts Metro Homes and NRC proposed were based on research done

by one of their own consultants on amenities that foster successful urban living. He emphasized that Metro Homes, NRC and their consultants had spent \$600,000 preparing a comprehensive development plan designed to address all of the various concerns the project was facing. From his perspective, the criticisms reflected private and political agendas and did not accurately reflect the particulars of the redevelopment concept.

All these things [criticisms, protestations] are roadblocks because people have their own agenda ... this isn't something we just threw together. (Mays, 2003, December 3, quoting Geibel)

### **Second Attempt to Determine Whether the Mulberry Street Area Qualified as an Area in Need of Redevelopment and the January 5, 2004 Newark Municipal Council Hearing**

The Newark Municipal Council held a public hearing on December 3, 2003 to reconsider whether the Mulberry site should be investigated to determine whether it could qualify as an area in need of redevelopment. No determinations or conclusions were made at this hearing. However, the Council decided to resume the hearing on December 17, 2003.

In the meantime, redevelopment proponents and opponents renewed their efforts. That same week members of the Mulberry Street Coalition held a rally outside Newark City Hall urging the Municipal Council to delay authorizing NCPB to begin investigation whether the Mulberry site should be declared an area in need of redevelopment. NRC and Metro Homes, still reeling from the December 3<sup>rd</sup> Star-Ledger article and Peter Steck's reasoned critique, decided to more proactively seek support from within the Mulberry neighborhood and provide residents and business owners with more information about proposed uses, design specifics, and phasing. On December 15, 2003,

they took advantage of the brief lull in the hearing process and presented a mixed-use redevelopment concept before affected residents, businesses, and property owners.

Additionally, support for the project began to pour in from community development corporations operating in other Newark neighborhoods. One of these entities was the Unified Vailsburg Services Organization, a neighborhood based human services and community development organization founded in 1972 by local Newark residents. On December 16, 2003, the Unified Vailsburg Services Organization sent a letter to the Newark Municipal Council expressing support for the Mulberry Street redevelopment effort and emphasizing its potential to increase the tax base and foment enthusiasm for urban living in Newark (Anthony, 2003). One week later, the Union Chapel Community Development Corporation, another neighborhood-based community development corporation operating in Newark, sent an identical letter to the Municipal Council expressing their support (Baskerville, 2003, December 16).

On December 17, 2003, the Newark Municipal Council conducted the continuation of its earlier December 3<sup>rd</sup> hearing. It was marked by the presence of members of the Mulberry Street Coalition and the Mulberry Street Property Owner's Group. The Coalition had issued a flyer referring to their attendance as a "rally" to stall any Municipal Council decisions on the redevelopment effort (Mytrowitz, 2003 December 17). At the hearing, George Mytrowitz, a spokesperson for the Coalition, expressed concern that the city had not considered other options before pushing for wholesale redevelopment of the Mulberry Street area (Mays, 2003 December 3). He urged the Municipal Council to delay voting on whether to authorize NCPB to begin a redevelopment investigation until after Council members had had an opportunity to

review the alternative plan being prepared by Peter Steck, the Coalition and Property Owner's Group's planning consultant. NRC's Bruce Wishnia countered that the Coalition and the Property Owner's Group did not really understand the redevelopment process (Mays, 2003 December 3). Council Member Augusto Amador, who represented the Mulberry area, sympathized with the Coalition's concerns and urged the other Council Members to defer voting on whether to authorize NCPB to conduct a redevelopment investigation until more information was forthcoming. Amador was persuasive and the Council deferred voting on this question.

However, the Newark Municipal Council did not delay long. On January 4, 2004, the Star-Ledger announced that the Council would hold a public hearing at 6:00 P.M. on January 5, 2004 to immediately be followed by a special meeting on the Mulberry redevelopment effort. The next evening, January 5<sup>th</sup>, the Council passed Resolution 7RA(S) 010504, which reversed Resolution 7REE and authorized NCPB to conduct an investigation and public hearings to determine whether, under the LRHL, the 14-acre Mulberry Street Study Area qualified as an area in need of redevelopment. Signatures and letters requesting the opportunity to speak indicate that about 40 affected residents and members of the business community were in attendance (Newark City Clerk's Office, 2004, January 5).

As revealed from an audio recording of the January 5, 2004 Municipal Council hearing, the use of eminent domain in the land assembly process for the Mulberry redevelopment effort was a prominent issue that created heated discussion (Newark Municipal Council, hearing audio recording, January 5, 2004). Members of the Municipal Council and the city's legal staff emphasized two primary points about the use

of eminent domain: 1) it was a customary redevelopment tool of last resort in the event of failed negotiated purchases; and 2) talk of eminent domain at this point in the Mulberry Street redevelopment process was premature (Newark Municipal Council, hearing audio recording, January 5, 2004). The city's legal staff emphasized that before there could be any consideration of using eminent domain the Municipal Council would have to approve the 14-acre Mulberry site for redevelopment, subject to NCPB's investigation and recommendation that it qualified as an area in need of redevelopment under the LRHL. No condemnation, and therefore no use of eminent domain, could occur until the Municipal Council issued such an approval. To emphasize this point, the Municipal Council explained that the entire redevelopment effort was at such an early stage that NRC had not even been officially designated the developer (Newark Municipal Council, hearing audio recording, January 5, 2004). Nevertheless, George Mytrowitz, spokesperson for the Mulberry Coalition and Mulberry Property Owner's Group, used a biblical reference to accuse the Municipal Council of essentially using eminent domain to covet the homes of Mulberry Street residents. Responding to this charge, one Municipal Council Member, whose name was inaudible on the audiotape, stressed that eminent domain was a local governmental power in common use throughout the United States – not just in Newark.

When you say thou shalt not covet thy neighbor's house unfortunately that's why I was talking to Mr. Steinbaum [City of Newark staff attorney]. There is such thing in government. It's called eminent domain and it is something that is prevalent throughout the country and it's being done throughout every municipality in the country. So, that is something that is not germane just to the city of Newark. So, I just want to put that on the record. They did not go in and say this is what we're carving out for us. (Newark Municipal Council, hearing audio recording, January 5, 2004)

At the same time, there is evidence from the audiotape that the Municipal Council was aware of the power of condemnation and eminent domain to instill fear in Mulberry Street area residents and business owners. They were also aware of residents' and business owners' concerns about the limitations of just compensation and relocation payments in the event of displacement. In a few instances, this awareness was revealed rather inadvertently

No one has been condemned here. The scare tactic is condemnation. We haven't given anyone the OK to condemn anyone's home at this point at all. (Newark Municipal Council, hearing audio recording, January 5, 2004)

Once the redevelopment plan is voted on whatever the prices are that is what they stay at. One of the things that we've not looked at in this city is if it's a business do we just pay for the business or do we look at the revenues that may be lost in relocation or do we pay for the revenue that may not be able to fit into that particular scheme of a plan. (Newark Municipal Council, hearing audio recording, January 5, 2004)

In terms of the land acquisition process, members of the Municipal Council seemed to be under the impression that the impetus for expanding the redevelopment area from a few acres to 14 acres came from the City of Newark, not NRC and Metro Homes. From their perspective, the redevelopers had not simply marched into the municipal offices in search of land to locate a fully thought-out plan that they had developed in a private sector vacuum. One Municipal Council member, responding to accusations by members of the Mulberry Street Coalition that the Mulberry Street effort was pushed by redevelopers who were working behind the backs of residents and business owners, was very clear about this.

One of the things you need to know is that when the developers went into the development office it was not with the intent of getting 13 blocks or 14 blocks. That was not their intent. That was an offer made to the developers by the city

department. OK? So, when you say they came in with the intent of doing that it was not their original intention. That was not their premise when they went in – we want all of this - give us all or nothing. It was not their offer. That was done by the City of Newark. (Newark Municipal Council, hearing audio recording, January 5, 2004)

On the other hand, it is conceivable that these comments reflect efforts by the Council Members to protect the James Administration's favored redevelopers – NRC and Metro Homes - from allegations that they usurped or unduly influenced governmental decision-making in the redevelopment process.

As revealed from the hearing audio recording, municipal staff and Mulberry proponents publicly advanced several reasons for their support for the Mulberry redevelopment effort (Newark Municipal Council, hearing audio recording, January 5, 2004). Specifically, they argued that the redevelopment effort would address the underutilization of the Mulberry neighborhood, provide more tax revenues, and help catalyze the revitalization of downtown Newark. Bruce Wishnia, of NRC, and Dean Geibel, of Metro Homes emphasized the potential for the redevelopment of the Mulberry area to become a cornerstone of downtown Newark's rebirth. He noted that Newark had not been adequately capitalizing on its transportation and infrastructure advantages which, in his opinion, had encouraged the underutilization and underdevelopment characteristic of the Mulberry area. Geibel stated that NRC and Metro Homes opted for creating a vision for the Mulberry Street area that would entail working closely with the community rather than simply building more of the three-story, three-family houses that had become ubiquitous throughout Newark (Newark Municipal Council, hearing audio recording, January 5, 2004). He stressed that they wanted residents to remain in the Mulberry area and were baffled that hardly any residents and property owners showed up

to the informational meetings they had held about the redevelopment effort, even though notices were hand-delivered in English and Portuguese. Dean Marchetto, the architect NRC and Metro Homes had retained, argued that unless the Mulberry area was redeveloped it would experience more inappropriate, unplanned residential growth with three-family homes above garages and driveways (Newark Municipal Council, hearing audio recording, January 5, 2004).

Support for the project during the hearing also came from a number of Mulberry residents (Newark Municipal Council, hearing audio recording, January 5, 2004). One resident specifically mentioned the lack of vision in prior development as a major factor in the decline of the Mulberry area. Echoing Marchetto's concerns, another resident stated that without a plan in place, the Mulberry area would simply fall prey to the ad hoc construction of three-family homes with no real attention to the potential for downtown revitalization. Another resident decried the large number of surface parking lots in the neighborhood. Several residents stated that they were pro-growth and in favor of redeveloping the neighborhood but desired better communication between the redevelopers and the community.

Opponents of the Mulberry redevelopment effort stressed, at the January 5, 2004 hearing, that they were opposed to the potential use of eminent domain and the ensuing displacement, not redeveloping the Mulberry Street area (Newark Municipal Council, hearing audio recording, January 5, 2004). Among those who stressed this were members of the Mulberry Coalition, a property rights attorney from the Institute for Justice (the Northern Virginia-based libertarian law firm), and a number of Mulberry area residents. Referring to the potential use of eminent domain in the Mulberry



redevelopment effort as a “land grab” the Institute for Justice attorney argued that it was not necessary to declare an area blighted to redevelop it (Newark Municipal Council, hearing audio recording, January 5, 2004). He stressed that a redevelopment process based on eminent domain “never plays out well” (Newark Municipal Council, hearing audio recording, January 5, 2004). Too, he noted that eminent domain usually engenders a lot of bad publicity. He urged the redevelopers and the City of Newark to include the existing property owners as active players in the Mulberry area redevelopment process. Carol Johnson, a Mulberry resident and objector, opined that the James Administration’s support for the Mulberry redevelopment effort was motivated by budget crises and stated that the redevelopment process was really about “replacing survivors with higher end people” (Newark Municipal Council, hearing audio recording, January 5, 2004).

However, one of the more poignant objections was voiced by Nancy Zak, a community organizer at the Ironbound Community Corporation. She argued that the Mulberry redevelopment effort was another example of Newark doing neighborhood planning through developer-driven redevelopment rather than through a full comprehensive planning effort with adequate citizen participation in the decision-making process. She implied that an underlying goal of redevelopment efforts in Newark was to remove those residents considered less desirable and supplant them with wealthier residents.

You [the Municipal Council] have the power to make developers sit down with the community and say let’s come up with a plan that is reasonable where everyone can be included. Not have people be driven out because they’re not as good, not as rich or whatever it is. These people deserve the right to be able to stay. To be part of this process. That is what neighborhood planning is. Redevelopment planning is being done in Newark instead of comprehensive master plans. And I have heard even – it’s not a secret – I have heard this on the

record from members of your own Planning Board [NCPB] – when these redevelopment plans come time and time again, on the record at a meeting. Why are we doing this by piecemeal redevelopment plans? Where is the comprehensive plan for the City of Newark? That’s what we need to be asking about. This thing should be deferred, put to a vote where the developers sit down with the community. Let’s have that neighborhood process and let’s start it now. (Newark Municipal Council, hearing audio recording, January 5, 2004)

Nevertheless, at 9:45 P.M. the Municipal Council adjourned the public portion of the hearing and voted to authorize NCPB to investigate whether the Mulberry Street area qualified as an area in need of redevelopment under that statutory criteria contained in the LRHL. The resulting resolution, Resolution 7RA (S) 010504, also authorized NCPB to conduct a public hearing on their investigation results.

The period between the January 5<sup>th</sup> hearing and April, 2004 were relatively quiescent relative to the Mulberry redevelopment effort, but that did not stop the Mulberry redevelopers from attempting to gain political influence. Between January and April of 2004, NRC and Metro Homes spent thousands of dollars in political contributions to Newark Municipal Council members Hector Corchado and Augusto Amador, who represented the heavily Portuguese and Hispanic Mulberry area and the neighboring Ironbound. Although pay-to-play was legal in New Jersey at the time, the contributions were suggestive of undue influence in the redevelopment process.

#### **NCPB’s Mulberry Street Redevelopment Investigation Report – April 2004**

In late January, NCPB and the City of Newark, through its Department of Economic and Housing Development, retained David Roberts of Schoor DePalma, Inc., as their planning consultant to prepare a written report with a recommendation as to whether the Mulberry area qualified as an area in need of redevelopment under the LRHL. Roberts completed and submitted his “Mulberry Street Redevelopment

Investigation Report “ to NCPB in late April, 2004. He concluded that the Mulberry Street area qualified as an area in need of redevelopment under the LRHL criteria. He later revised the report per minor city staff comments and resubmitted it on June 30, 2004.

Roberts’ conclusion that the Mulberry area qualified as an area in need of Redevelopment was based on his direct field observations from walking the site and analyzing Sanborn insurance maps, aerial photographs, and tax records relative to the LRHL criteria (Schoor DePalma, Inc., 2004). However, his overall approach to visiting the Mulberry neighborhood, gathering data, assessing its redevelopment potential, and applying the LRHL criteria was contextual and historic. He focused on how the neighborhood had changed over time and how it had fared in relation to the rest of downtown Newark. In part, this reflected his rather broad-based interpretation of the intent of the LRHL statute and its criteria.

I think the statute looks at redevelopment as holistically and in terms of an area where it is a drain on the public welfare – whether it’s an economic drain or whether it’s a social drain or whether it creates a crime problem, or whatever, that there’s a need for a concerted action by a responsible public body which is – words out of the statute – to affect change in the public interest. (D. Roberts, personal communication, November 24, 2009)

From that perspective, he concluded that the Mulberry area, which was located in the midst of successful projects, including the New Jersey Performing Arts Center, Seton Hall Law School, and the Gateway complex, had missed out on the redevelopment momentum that had benefited Newark since the 1970s (Schoor DePalma, Inc., 2004).

More specifically, Roberts focused on documenting how disinvestment over the years had spatially and physically impacted the neighborhood in a way that had resulted in an overall pattern of underutilization.

Our approach was to try to show globally a trend over time, to show that there was a growing or total lack of proper utilization by the disappearance of buildings and the spread of parking lots throughout the area and that that gradually led to a decline in terms of the overall improvement ratio of the area in general. (D. Roberts, personal communication, November 24, 2009)

He used the insurance maps and aerial data, coupled with observations obtained from his field visits, as tools to demonstrate that disinvestment had led to a predominance of less productive land uses – especially surface parking. As detailed in his report, he viewed these uses as contributing only marginal economic benefits and their predominance helped qualify the Mulberry area as an area in need of redevelopment. Moreover, the relatively long history of disinvestment convinced him that private market forces could not be counted on to address the decline.

While surface parking fills an existing need for buildings lacking on-site parking in the immediate area, the use involves marginal investment in site improvements, generates negligible employment opportunities and contributes little to improve the City's fiscal condition. It consumes land that could otherwise be available for much more productive uses given the intensity of development allowed within the B-4 and I-2 zones and found with the Gateway Urban Renewal Area. (Schoor DePalma, Inc., 2004, p. 23)

The private sector appears to be following a development pattern out of context with reintensification of the downtown core and has failed to provide additional anchor uses that will add to or support the redevelopment of the downtown as an office , cultural and civic center, or to provide a downtown housing base. The study area is taking on a monolithic, low intensity character (parking lots) and needs a focused plan to ensure appropriate diversity and intensity. (Schoor DePalma, Inc., 2004, p. 23)

Although Roberts' overall approach was contextual and historical, he also walked the site during his field visits, concentrating on the exterior physical conditions of the

buildings and structures and the utilization of buildings and land. In evaluating these conditions he relied on the building condition criteria adopted by the City of Newark, which evaluated buildings as good, fair, substandard, or dilapidated and then he related them to the various LRHL criteria (Schoor DePalma, Inc., 2004). If he determined that buildings were substandard and dilapidated Roberts concluded this indicated LRHL “a” and “b” criteria were met. Buildings and structures that were unsafe because of faulty design or layout he considered indicative that the “d” criterion was met. Roberts did not conduct internal inspections of the buildings and structures in the Mulberry area nor did he conduct any title or ownership searches.

Applying his contextual and historic findings and the data garnered from his site visits to the LRHL criteria, Roberts’ primary conclusion was that most of the Mulberry Study Area qualified as an area in need of redevelopment in accordance with the “e” criterion. As detailed earlier in Chapter Three of this dissertation, the language of criterion “e” states, in full, as follows:

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. (Local Redevelopment and Housing Law, N.J.S.A. 40A: 12A-1 et seq., as amended)

In reaching this conclusion, he emphasized several observations and conditions from his analysis and data gathering (Schoor DePalma, Inc., 2004). First, 61 percent of the 14-acre Mulberry site was being used for surface parking lots, storage yards, and vacant land. Secondly, in fully 77 percent of the site’s taxable acres that contained improvements, land values exceeded improvement values. Indeed, taxable improvements

accounted for only 34 percent of the total assessed value of the taxable properties. Too, many portions of the Mulberry area resembled “war zones” because of trash, barbed wire, and safety hazards. Moreover, there were a number of buildings with discontinued uses. Furthermore, some of the commercial buildings exhibited obsolete design. Finally, six buildings demonstrated structural and façade deterioration (Schoor DePalma, Inc., 2004). Roberts viewed the plethora of surface parking and storage yards as evidence that they had become the most viable land uses in the entire 14-acre site, which he considered a strong indicator of the deterioration of the neighborhood. Relative to the “e” criterion, these conditions led him to his conclude as follows:

This area analysis indicates that the study area generally exhibits a growing lack of proper utilization resulting in a stagnant and not fully productive condition of the land, which is highlighted by the proliferation of parking lots, storage yards and vacant land as the predominant land uses and the resulting low value of taxable improvements found throughout the study area. (Schoor DePalma, Inc., 2004, p. 24)

Roberts viewed the instances of discontinued commercial uses and other instances of deterioration and obsolescence as qualifying those properties for the “a”, “b”, and, or, “d” criteria of the LRHL. However, as can be seen in Figure 6-7, on the next page, he assigned these LRHL criteria to a much smaller portion of the Mulberry Study Area. Figure 6-7 maps the LRHL criteria classifications as Schoor DePalma (Roberts) applied them to the 14-acre Mulberry Street Study Area. The existing storage yards along Cottage Street, in fact, constituted much of the area Roberts classified under LRHL criteria “d”. Another group of properties Roberts classified under the “d” criteria were located in Tax Block 876, fronting Mulberry Street.

Roberts also concluded that the entire investigation area also qualified as an area in need of redevelopment under criterion “h”, which has come to be referred to as the “smart growth” criterion (Schoor DePalma, Inc., 2004). As noted in Chapter Three of this dissertation, criterion “h” states, in full, as follows:

The designation of the delineated area is consistent with smart growth planning principles adopted pursuant to law or regulation. (Local Redevelopment and Housing Law, N.J.S.A. 40A: 12A-1 et seq., as amended)

Furthermore, Roberts concluded that the Mulberry area, located in a one of the State Plan and Redevelopment Plan’s designated “Urban Centers”, was failing to meet smart growth planning principles because it was not promoting beneficial economic growth and renewal, protecting the environment, providing public facilities at reasonable cost, or creating jobs (Schoor DePalma, 2004). Roberts argued that the designation of the Mulberry area as an area in need of redevelopment would meet smart growth goals by “providing a full range of housing choices; promoting economic development by encouraging strategic land assembly, site preparation and infill development, public/private partnerships and infrastructure improvements; using open space to reinforce neighborhood and community identity; and encouraging the concentration of public facilities and services” (Schoor DePalma, 2004, p. 26). He also argued it would encourage the area to be redeveloped at more transit-friendly densities with a more pedestrian-friendly design, in furtherance of State Plan and Redevelopment Plan policy objectives (Schoor DePalma, 2004). Finally, he recommended that if NCPB decided to exclude any blocks from the area in need of redevelopment designation those same blocks should be considered for designation as an area in need of rehabilitation.



**Fig. 6-7. Map of Schoor DePalma's LRHL Criteria Classifications for the Mulberry Street Study Area.**

Note. Source is Schoor DePalma. (2004). Mulberry Street Redevelopment Investigation Report.



### **The Steck Report for the Mulberry Street Property Owner's Group – August 2004**

In response, to NCPB's report, the Mulberry Street Property Owners Group had their planner, Peter Steck, prepare a report in which he concluded that the Mulberry Street area did not qualify as an area in need of redevelopment per the LRHL criteria. The Steck report, entitled "Planning Evaluation Concerning the April 21, 2004 Mulberry Street Redevelopment Investigation Report for the Mulberry Street Area, City of Newark, New Jersey" was quite different in overall tone from the one Roberts prepared for NCPB. Steck's conclusions were based on both an analysis of the Mulberry area in relation to the LRHL criteria and an evaluation of Roberts' analysis and conclusion. However, the most fundamental difference was that in comparison to Roberts' contextual, historical, and holistic approach to the Mulberry area and the statutory criteria, Steck's approach was based on strict adherence to the statutory language and a more meticulous property by property site analysis. Steck conducted five separate walking tours for visual inspection. He analyzed maps, deed and tax records, ground-level photographs, aerial photographs, and Sanborn insurance maps, and conducted interviews with property owners, residents, and business owners (Steck, 2004, p. 10). Steck attributed his approach to the influence of John Buonocore, the Mulberry Street Property Owner's attorney, who counseled him to adhere strictly to the LRHL language and to put aside his planner-influenced, pro-redevelopment bias in evaluating whether the Mulberry area qualified as an area in need of redevelopment.

What I have to credit Jack Buonocore with is – as a planner you ride through an area that you wouldn't want to hang around yourself at night. It's clearly not a booming area. A planner's knee-jerk reaction is something has to be done and I credit Jack with the focus of – he kept telling me – look, read the statute. This isn't about what your vision of the future is. Does it meet the statutory

requirements? And, just because there was a vacant parking lot doesn't mean that it's automatically blighted. I credit him with focusing me as an attorney would in two ways. First of all, to benefit his client [Mulberry Street Property Owners Group]. He had an angle on this. And, number two, to tell me twelve times read the law because the sentences are very long, there are clauses in them in the blight criteria of the statute, and you just can't stop halfway in a sentence. (P. Steck, personal communication, July 17, 2009)

Consequently, Steck had a very different approach to the less developed portions of the Mulberry area and what they did, or did not suggest, about whether the area qualified as an area in need of redevelopment. More specifically, Steck viewed the large extent of surface parking quite differently from Roberts. According to Roberts, the Mulberry site's surface parking lots met the LRHL's "e" criterion because they were "not fully productive". Steck criticized Roberts' finding that the parking lots met the "e" criterion because Roberts had not linked such findings to any "condition of the title, diverse ownership, of the real property therein or other conditions" as required by the statutory language (Steck, 2004, p. 15). He noted that based on Roberts' broader reading of criterion "e" every surface parking lot in Newark could almost automatically qualify for an area in need of redevelopment designation" (Steck, 2004, p. 15). Steck argued, moreover, that Roberts' "automatic conclusion" that any surface parking lot in the Mulberry area was not fully productive simply made no sense in the context of other, nearby downtown Newark uses (Steck, 2004, p. 15). Downtown areas that had already been redeveloped close to the Mulberry site, including the Gateway Urban Renewal Area and NJPAC, had surface parking, noted Steck. Additionally, the government uses adjacent to the Mulberry neighborhood lacked adequate parking. Therefore, Mulberry's surface parking lots were meeting a clear need.

Moreover, Steck found flaws with Roberts' more contextually based Mulberry Street findings. As Steck related in his report, Roberts had suggested that the Mulberry Street area qualified for redevelopment because it was within walking distance of Penn Station (Steck, 2004, p. 13). Roberts had cited New Jersey Transit standards from their June 1994 publication, "Planning for Transit-Friendly Land Use: a Handbook for New Jersey Communities", which suggested that a five to fifteen minute walk, or a distance of one-quarter mile to one-half mile, constitutes a reasonable walking distance to transit stations. Steck pointed out, however, that the Mulberry redevelopment site was actually more than the recommended one half-mile maximum walking distance from Penn Station. In contrast, the Gateway Urban Renewal Area and the NJPAC Urban Renewal Area are within one-quarter mile of Penn Station (Steck, 2004, p. 12).

Additionally, throughout the report, Steck criticized what he considered Roberts' less meticulous parcel analysis of the nine tax blocks contained in the Mulberry area. Steck referred to Roberts' determination that most of the properties in Tax Block 872 would benefit from rehabilitation or restoration efforts and argued that because Roberts had made no individual property assessments such conclusions were speculative (Steck, 2004, p. 15). He argued, moreover, that Roberts' speculations about the rehabilitation potential of the properties bore no relation to the LRHL criteria for declaring an area in need of redevelopment (Steck, 2004, p. 15).

At the end of his report, Steck strikingly implied that Roberts' conclusions that the Mulberry area qualified as a redevelopment area under the LRHL was almost predetermined. He argued that Roberts was biased in favor of concluding that the Mulberry site qualified as an area in need of redevelopment because of his familiarity

with the physical design particulars of the NRC/Metro Homes redevelopment proposal, which the James administration had endorsed. Steck suggested that this knowledge biased Roberts' interpretation of the LRHL statutory criteria in favor of finding that the 14-acre Mulberry site was blighted.

Finally, it is observed that the Investigation Report [the Roberts/Schoor DePalma report] relies upon a future development plan devised by a private developer for the area to determine whether certain parcels are needed for effective redevelopment. To use the dimensions of a parking garage as the template for effective future development, for example, is a faulty application of the statutory criteria. It assumes that future development must be in the format of the Metro Homes plan already endorsed by the administration of the City of Newark. The Report's approach, however, essentially hands public policy over to a private developer and makes the developer's personal vision the basis for the taking of private property. This effort is misaligned with the spirit and intent as well as the letter of the Local Redevelopment and Housing Law. From a planning viewpoint, it is not fair and it is not constitutional. (Steck, 2004, p. 26)

#### **NCPB Holds Hearings to Determine Whether the Mulberry Site Qualified as an Area in Need of Redevelopment – June through October 2004**

From July through October of 2004, NCPB held a series of hearings on the Mulberry Street Redevelopment Proposal to determine whether the 14-acre Mulberry site should be declared an area in need of redevelopment under the LRHL. These hearings, which were held on July 19, July 22, August 5, September 27, and October 14, were marked by testimony from Roberts and Steck, representing the City of Newark and the Mulberry Street Area Property Owner's Group, respectively. However, it was not possible to obtain the transcripts of Roberts' and Steck's testimonies from these hearings. The brief descriptions of their testimonies, below, were obtained from the 2007 decision written by Justice M.P. Simonelli in Mulberry Street Area Property Owner's Group v. City of Newark, Superior Court of New Jersey Law Division: Essex County Docket No.

ESX-L-9916-04 (2007). That decision, as detailed later in this chapter, overturned the designation of the Mulberry Street area as an area in need of redevelopment.

Roberts' testimony revealed the primary factors that led him to conclude that the Mulberry area qualified as an area in need of redevelopment and his broader, contextual interpretation of the LRHL (Mulberry Street Area Property Owners Group v. City of Newark, 2007, pp. 17-18). Roberts testified he had concluded that, overall, the entire 14-acre area should be declared an area in need of redevelopment area because it met the "or other conditions" clause of the "e" criteria of the LRHL. The primary basis for his conclusion was the large percentage of the 14-acre area devoted to parking lots, storage yards, and vacant land. He testified that he had classified any lot in which the value of the land exceeded the value of the improvements as meeting the "e" criteria. He also testified that he had concluded that only 2 lots met LRHL criterion "b", 24 lots met criterion "d", and 4 lots met criterion "a". Based on his analysis and interpretation, criteria "c", "f", and "g" did not apply. Finally, he testified that according to his interpretation of the LRHL, criterion "h", the "smart growth" criterion, did not apply at all unless the "e" criterion also applied.

Roberts testified that he was aware of certain omissions in his analysis (Mulberry Street Area Property Owner's Group v. City of Newark, 2007, p. 18). He did not, for example, conduct additional research that might have militated against a blight declaration, including an assessment of the scope or extent of prior variance applications, the scope of private market real estate transactions, the existence of variances for the parking lots, and the crime data. Roberts also testified that he did not conduct any interviews of Mulberry Street area property owners, residents, or business owners. Too,

he did not inspect the interiors of any buildings. Moreover, despite the language of criterion “e”, Roberts testified that his application of the “e” criterion was not based on any analysis of conditions of title, ownership, or diversity of ownership of the parking lots, storage yards, or vacant lots. Finally, he did not interview any of the parking lot owners or their customers.

Steck, in turn, testified that he believed Roberts’ report was deeply flawed and that there was simply insufficient evidence to establish the area as one in need of redevelopment per any of the LRHL criteria (Mulberry Area Property Owner’s Group v. City of Newark, 2007, p. 20). He also questioned why, given the extent of existing surface parking and undeveloped parcels within the proposed 14-acre redevelopment site, it was necessary to seize fully developed and improved properties.

Nonetheless, NCPB gave greater weight to Roberts’ Report and adopted his conclusion that the 14-acre Mulberry site qualified as an area in need of redevelopment. Accordingly, NCPB passed a resolution on October 14, 2004 in which it expressed its determination that most of the Mulberry Study Area met the “e” criteria of the LRHL and recommended that the Newark Municipal Council declare the 14-acre area an area in need of redevelopment (NCPB, 2004, October 14). NCPB cited a number of reasons in support of its determination that the Mulberry Study Area met the “e” criterion of the LRHL (NCPB, 2004, October 14). The nature of the reasons and the language used suggested that NCPB, like Roberts, was interpreting the statute rather broadly and contextually. This was especially the case in relation to the redevelopment site’s proximity to downtown Newark and in relation to its proposed mixed use redevelopment design. Additionally, the stated reasons showed a strong smart growth slant which,

although arguably related to criterion “h” - the LRHL’s smart growth criterion - represented a considerable expansion of the meaning of criterion “e” and its “not fully productive” clause. Among the stated reasons, bulleted and paraphrased where indicated for the sake of brevity, were the following:

- The Study Area, over time, has experienced a significant loss of buildings and is currently underutilized given its close to the downtown area of the City of Newark.
- The delineated area is stagnant and currently exists in a less than fully productive condition for properties closely located to the downtown center of the City of Newark, which properties could provide increased housing, jobs, goods and services that would contribute to the public health, safety and welfare of the City of Newark.
- Sixty-one percent of the delineated area is either vacant land, storage yards or surface parking, 70 percent of the taxable acres in the Study Area contain improvements valued less than the land upon which they sit, and taxable improvements account for only 34 percent of the total assessed value of the taxable properties in the Study Area, which is low for a downtown area. [paraphrased].
- The excessive use of surface parking is an obsolete land use which, coupled with all of the substandard and abandoned structures, is detrimental to the public welfare. [paraphrased]
- Utilization of structured parking in the delineated area to support new mixed uses can meet existing and future parking needs for the planned growth of the City of Newark and conserve land for other purposes that will increase the tax base of the City of Newark.
- Redevelopment of the Study Area will eliminate the irregular configuration of the current land uses within the area and will make the land within the Study Area available for more compatible urban center uses, with densities appropriate for a downtown urban center.
- The Study Area is not fully productive, failing to contribute to the revitalization of the City of Newark by virtue of a failure to promote economic growth, protect the environment, provide public facilities, provide meaningful job opportunities and generate sufficient tax revenue for the City of Newark and does not adequately support the adjacent uses of the downtown area of the City of Newark.
- Designation of the Study Area as an area in need of redevelopment will help revitalize an area that has declined substantially overtime. Redevelopment of the Study Area may serve the public welfare of Newark’s citizens by: utilizing existing infrastructure; encouraging density in central Newark; providing a diverse, comprehensive, mixed-use neighborhood that offers housing, retail, recreation, and job opportunities; utilizing mass transit; locating parking in structures which will help promote higher densities and smart growth; and encouraging pedestrian activity. [paraphrased] (NCPB, 2004 October 14)

Moreover, NCPB stated in its resolution that the contextual, historical nature of Roberts' analyses and conclusions had heavily influenced its decision to recommend that the Mulberry site be designated an area in need of redevelopment under the LRHL (NCPB, 2004, October 14). As the resolution stated, Roberts' testimony and was "particularly compelling in light of his extensive personal knowledge of the historical background of the city of Newark, in general and the Study Area, in particular" (NCPB, 2004, October 14). NCPB stated that Steck's conclusions had been accorded less weight because they "lacked historical context and his dryly technical application of the statutory criteria to individual properties ignores the realities of the 'Study Area' taken as a whole" (NCPB, 2004 October 14).

Following NCPB's resolution, the Newark Municipal Council passed resolution 7RR110304 on November 3, 2004 officially determining that the Mulberry Street area (Mulberry Study Area) qualified as an area in need of redevelopment primarily under the "e" criterion of the LRHL (Mulberry Street Area Property Owner's Group v. City of Newark, 2007, p. 58). The language of the Municipal Council's resolution reflected the relatively more holistic, contextual, and smart growth oriented approach to the "e" criterion and the LRHL adopted by Roberts and NCPB. As the Municipal Council's resolution stated, the area met the "e" criterion because it [is] "stagnant and currently exists in a less than fully proactive condition for properties closely located to the downtown center of the City of Newark, which properties could provide increased housing, jobs, goods and services that would contribute to the public health, safety and welfare of the City of Newark" (Mulberry Street Area Property Owners' Group v. City of Newark, 2007, p.58).



### **The Mulberry Street Property Owner's Group Files a Lawsuit**

On December 9, 2004, the Mulberry Street Property Owner's Group filed lawsuit with the New Jersey Superior Court challenging the Newark Municipal Council's declaration that the Mulberry Street Area was in need of redevelopment and, in essence, blighted. The Group claimed that the City of Newark conspired with the Mulberry Street Urban Renewal Company (the joint partnership formed by NRC and Metro Homes) to take valuable land for below-market rates because of its proximity to the planned arena (now known as the Prudential Arena) (Mays, 2004 December 10). In the lawsuit brief, the Group alleged that the area did not qualify as blighted under the New Jersey Constitution and did not meet the criteria for an area in need of redevelopment under any of the criteria of the LRHL. The Group also alleged that Mayor James and members of the Newark Municipal Council were persuaded to favor the project by political contributions from the developers. Attorney John Buonocore emphasized that the potential for redevelopment of the Mulberry area to provide increased tax revenues and help revive downtown Newark, as touted by the James Administration, did not provide enough reason to declare an area blighted (Mays, 2004 December 10).

Whatever the merits of this project are, you can't do it on someone else's land. Whether this is the best thing that happened in Newark is irrelevant. They can't take private land for what appears to be a predetermined outcome. (Mays, 2004 December 10)

### **MULBERRY REDEVELOPMENT PLAN APPROVED— SEPTEMBER 2005**

Despite the fact that a lawsuit had been filed, the James administration continued moving forward with the Mulberry redevelopment effort. The next step in the process was the review and approval of a redevelopment plan for the now-designated Mulberry

Street Redevelopment Area. This occurred relatively quickly. On March 22, 2005, Schoor DePalma (Roberts) submitted a redevelopment plan entitled, appropriately enough, “Redevelopment Plan for the Mulberry Street Redevelopment Area” to NCPB for its review and approval. Per NRC’s and Metro Homes’ earlier concepts, the Redevelopment Plan entailed construction of a mixed-use project with 2,000 condominium units, 180,000 square feet of office and retail space, a central plaza, greenways, and a transit stop. NCPB held a public hearing on the Redevelopment Plan on June 6, 2005 at which it suggested a number of minor changes. Roberts accordingly revised the Redevelopment Plan, which NCPB considered and approved at its June 13, 2005 public hearing upon the recommendation of the Newark Department of Economic and Housing Development (Newark Municipal Council, hearing audio recording, September 7, 2005). The next step was for the Newark Municipal Council to hold a full hearing on the plan that would allow public comment.

That hearing, which did not occur until September 7, 2005, was a contentious one. It was marked by appearances from the Mulberry Street Coalition, Mulberry Street Area Property Owner’s Group, and Ironbound Community Corporation, all of whom opposed the project. During the hearing, members of the Mulberry Street Property Owner’s Group and Mulberry Street Coalition spoke out against the project calling it a land grab and alleging that campaign contributions played a large part in engendering favorable political support among Council members (Newark Municipal Council, hearing audio recording, September 7, 2005). George Mytrowitz, speaking on behalf of the Mulberry Street Coalition, noted that there had been considerable subversion of the LRHL statutory redevelopment process. Specifically, he reminded hearing attendees that Mayor Sharpe

James had announced the creation of a Mulberry Street Redevelopment Plan back in November of 2003 well before an official investigation had even been launched to determine whether the area even qualified as an area in need of redevelopment (Newark Municipal Council, hearing audio recording, September 7, 2005).

The Municipal Council's response to these comments was mixed as was their support for the redevelopment plan. Council Member Mamie Bridgeforth, who represented Newark's West Ward, on the other side of the city, was emphatic that the Mulberry area was deteriorating and blighted and qualified as an area in need of redevelopment. She opined that the area was "a mess" that "stinks to high heaven" (Mays, 2005 September 8). In contrast, Augusto Amador who represented the Mulberry area, stated that although he favored its redevelopment and believed it to be blighted, he could not support a plan that involved eminent domain. In spite of Amador's concerns, the Newark Municipal Council approved the Redevelopment Plan by a vote of 5 to 2 and immediately adopted an ordinance codifying the Redevelopment Plan's adoption (Newark Municipal Council, hearing audio recording, September 7, 2005).

Official approval of the Mulberry Street Redevelopment Plan received considerable media attention. It was a major story in the Newark Star-Ledger, which gave equal time to the opposition and proponent sides of the redevelopment saga. (Mays, 2005, September 8). The Star-Ledger stories were noteworthy for relating that city officials hoped the redevelopment of Mulberry Street would attract more middle class residents to live and work in Newark. Additionally, the stories emphasized that approval of the Redevelopment Plan allowed the City of Newark to choose a redeveloper but that "it has been clear from the start that Mulberry Street Urban Renewal Company (NRC's

and Metro Homes' subsidiary) would get the project" (Mays, 2005, September 8).

However, as detailed in the next section, any jubilation the Mulberry proponents felt was short lived as unfolding events took a dramatic turn against the redevelopment effort.

### **REDEVELOPMENT EFFORT ENDS: DERAILED BY THE LAWSUIT**

The two-year period from the summer of 2005 through the summer of 2007 was fraught with difficulties for the Mulberry redevelopment proponents. First, the James administration and all programs they were championing, including the Mulberry redevelopment effort, were suffering an increasing credibility gap because of mounting evidence that he had illegally made discounted land transfers to political allies and close personal friends. Eventually, evidence of James' involvement in these activities led to his indictment, conviction, and incarceration. This was a difficult circumstance for the Mulberry redevelopment effort because Mayor Sharpe James had been perhaps its most enthusiastic supporter and had unswervingly backed NRC and Metro Homes. With the rapid erosion of the mayor's powerbase in the face of mounting evidence of his illegal activities the political momentum for the Mulberry redevelopment effort began to wither.

After the Sharpe James fiasco, a bright spot appeared that seemed to offer renewed energy for the Mulberry redevelopment effort. On May 9, 2006, Cory Booker, a highly educated, independent, progressive, was elected Mayor of the City of Newark. He surrounded himself with a hand-picked, highly experienced staff to run the city's line agencies, including the Department Economic and Housing Development and the Planning Division, whose support he would need to tackle Newark's redevelopment issues. Additionally, he shared governance of the City of Newark with a nine-member Municipal Council that, after the election, had seven new members.

However, despite an infusion of new political will, redevelopment proponents faced two huge threats. One of these was the continuing lawsuit mounted by the Mulberry Street Area Property Owner's Group with the assistance of John Buonocore, one of the star attorneys from one of the most successful plaintiff eminent domain law firms in New Jersey. The second threat was the increasingly anti-eminent domain mood sweeping the country in the wake of the United States Supreme Court's June 2005 Kelo decision, which affirmed that economic development was a public use and upheld the municipal use of eminent domain to transfer property from private property owners to other private entities to facilitate it. The press was quick to fill the front pages of newspapers with stories of municipal efforts to use eminent domain to facilitate economic development (Sagalyn, 2008). The Kelo decision outraged much of the American public and suggested that all land owners were subject to having their properties confiscated in the name of economic development. Municipalities entering into redevelopment efforts were greeted with signs on poles and windows in affected neighborhoods warning against any abuse of eminent domain that would displace residents and small businesses for apparently private gain. New Jersey, and the residents of Newark were no exception to this sweeping tide of anti-eminent domain sentiment. All of these events, including Sharp James' legal troubles and the national mood about eminent domain and economic development, were threatening the viability of the Mulberry redevelopment effort.

The Newark Municipal Council was extremely aware of these sentiments and held a special conference meeting on the Mulberry redevelopment effort and the blight issue at the very beginning of August, 2006. Councilman Augusto Amador brought up the possibility of the Council removing the area in need of redevelopment designation

from the 14-acre Mulberry Street Area. At that point, however, NCPB had already approved the first phase of the project, which involved redeveloping land already owned by the developers. This was the five-acre area that had been purchased in 2002 from Steven Lenter. In short order, the Newark Municipal Council received a letter from attorneys representing the Mulberry Street Urban Renewal Company threatening to sue the City of Newark if the Newark Municipal Council passed an ordinance rescinding the area in need of redevelopment designation. A lawsuit from NRC, Metro Homes and their subsidiary, the Mulberry Street Urban Renewal Company, would have meant that the City of Newark would be simultaneously fending off serious legal attacks from opponents and proponents of the Mulberry redevelopment effort.

On August 2, 2006, in response to this threatened lawsuit, the Newark Municipal Council held a public hearing to consider rescinding the area in need of redevelopment designation for the 14-acre Mulberry site (Newark Municipal Council, hearing audio recording, August 2, 2006). That would necessarily have also rescinded the Mulberry Street Redevelopment Plan. Approximately 200 people, including many Mulberry Street area property owners opposed to the Mulberry Street Redevelopment Plan, as well as the redevelopers and their representatives, packed into the Council Chamber. The redevelopers, specifically NRC and Metro Homes, argued that removing the area in need of redevelopment designation would basically render the project non-viable. Among the speakers in opposition to the Mulberry Street Redevelopment Plan and the area in need of redevelopment designation were George Mytrowitz, representing the Mulberry Street Coalition, and Jeff Rows, an attorney from the Institute for Justice.

Despite the strong objections voiced by the opponents, the Municipal Council voted to keep the area in need of redevelopment designation for the 14-acre Mulberry site (Newark Municipal Council, hearing audio recording, August 2, 2006). Additionally, the Municipal Council approved an ordinance granting long term tax exemption for the Mulberry Street Urban Renewal. As the limited liability, joint venture subsidiary of NRC and Metro Homes, the Mulberry Street Urban Renewal Company would to serve as the Mulberry Street Redevelopment Plan project applicant for the municipal review and approval process. This appeared to be a significant green light for the Mulberry redevelopment effort.

On May 4, 2007, Mayor Cory Booker released a statement defending the area in need of redevelopment designation for the Mulberry site that was entered into evidence in the Mulberry Street Property Owner's Group's lawsuit. That lawsuit was being argued before the New Jersey Superior Court (Wang, 2006, May 6). In his statement, Mayor Booker stressed that the designation was based on extensive investigation of the area and he maintained that eminent domain is "one tool in our toolbox for redevelopment" that would only be used as a last resort (Wang, 2006, May 6).

A little over a month later, the changes in the legal climate against eminent domain-based redevelopment were cemented by new case law that came crashing in on the Mulberry redevelopment effort. Specifically, on June 13, 2007, the New Jersey Supreme Court issued a decision in Gallenthin Realty Development, Inc. v. Borough of Paulsboro, 924 A. 2d 447 (2007) that portended doom for the Mulberry redevelopment designation. In Gallenthin, the Court clarified that New Jersey's constitutional requirement that an area must be determined to be blighted before it can be redeveloped

is not met where the sole basis for redeveloping that area is that the affected property is “not fully productive” (Gallenthin Realty Development, Inc. v. Borough of Paulsboro, 924 A. 2d 447, 2007). Relative to the LRHL criteria this meant that a municipality cannot take property for redevelopment purposes, regardless of its lack of improvement, solely under the “e” criterion simply because that municipality believes the land is not fully productive or that it could be used in ways that would be more beneficial to the public (Gallenthin Realty Development, Inc. v. Borough of Paulsboro, 924 A. 2d 447, 2007). In Gallenthin, the New Jersey Supreme Court was very specific that, because no single clause in the language of the LRHL’s criterion “e” could be divorced from the criterion’s other clause, any finding of “a growing lack or total lack of proper utilization of areas” could only be considered relative to conditions of title and diverse ownership of the real property (Gallenthin Realty Development, Inc. v. Borough of Paulsboro, 924 A. 2d 447, 2007). Too, the court ruled that the term “or other conditions” does not mean any other conditions but conditions related to conditions of title and diverse ownership (Gallenthin Realty Development, Inc. v. Borough of Paulsboro, 924 A. 2d 447, 2007).

One month later, the Mulberry lawsuit came to a head when, on July 19, 2007, the New Jersey Superior Court issued a decision ruling that the Mulberry Street Area was not blighted under the New Jersey Constitution and did not meet the LRHL criteria for declaring an area in need of redevelopment. In her decision, Judge Simonelli found that the evidence clearly showed that the city had declared the entire Mulberry Study Area in need of redevelopment under LRHL criterion “e” based on Roberts’ finding that the majority of the area – which consisted of parking lots, vacant lots, and storage yards – was neither properly utilized nor fully productive and could be put to better use



(Mulberry Street Area Property Owner's Group v. City of Newark, 2007, pp. 59-60). She determined that in so doing the city had done exactly what the New Jersey Supreme Court ruled in Gallenthin a municipality could not do. Specifically, NCPB's determination that the bulk of the 14-acre Mulberry area met the LRHL's "e" criterion, which was based on the 2004 Schoor DePalma report prepared by Dave Roberts, had not connected the site's purported underutilization to conditions of title and diverse ownership. Judge Simonelli's ruling invalidated the designation of the 14-acre Mulberry site as an area in need of redevelopment. This, in turn, effectively nullified the Mulberry Street Redevelopment Plan.

The reality of the New Jersey Superior Court ruling, which was largely based on the New Jersey Supreme Court's Gallenthin decision, contributed to a lack of political will on the part of the Municipal Council to fight back legally or resurrect the redevelopment effort. Only a week after the ruling, the Municipal Council passed a resolution "strongly urging" Mayor Booker and his administration not to appeal the Superior Court's decision. The Superior Court's ruling, in conjunction with the Municipal Council's unwillingness to appeal the case, represented a direct victory for the Mulberry Street Area Property Owner's Group and the Mulberry Street Coalition after a four-year fight. For the foreseeable future, the Mulberry redevelopment effort was effectively terminated.

## CONCLUSION

This chapter has recounted the saga of a joint public-private effort to acquire and assemble a 14-acre site around Mulberry Street in downtown Newark and get it declared

blighted in order to redevelop it. Indeed, the emphasis in this chapter has been on the land acquisition and assembly process, including the potential use of eminent domain, and the blight declaration process. As detailed earlier in this chapter, the once-thriving, densely developed Mulberry Street neighborhood had been experiencing disinvestment since the middle of the twentieth century. For a variety of reasons, land acquisition and assembly activities actually began decades before the recent redevelopment effort. Property owners took advantage of the disinvestment and decline and began to amass and clear lots, tearing down housing and commercial buildings and replacing them with extensive surface parking lots. Some of the cleared parcels became storage yards, but many remained vacant. Some of the clearance seems to have represented a speculative holding strategy until the time was ripe for redevelopment and new construction.

By the time the recent redevelopment efforts began, the degree of blight in the Mulberry area may still have been debatable, but it had become apparent that from a highest and best use perspective the existing land use pattern was not generating what the James administration considered sufficient tax revenue. The potential for generating increased tax revenues was a primary factor motivating the Mulberry redevelopment effort. Redevelopment proponents were quite public about that.

However, as detailed earlier in this chapter, other factors were at play in the Mulberry effort and the decision to pursue a LRHL redevelopment strategy rather than a rezoning. In particular, Mulberry redevelopment proponents saw in the redevelopment of the 14-acre site the potential to attract a critical mass of affluent residents and employees, which they believed would help catalyze the rebirth of downtown Newark. Moreover, a redevelopment strategy would provide the pro-development James administration with

much more control over the land assembly process than would have been possible with a more ad hoc rezoning scheme. A statutory redevelopment strategy would also enable the James administration to essentially pick its favored redeveloper and designate them as the primary builder of a proposed urban village. In actuality, as city officials had already entered into land assembly strategies with NRC and Metro Homes long before the Mulberry area was ever designated an area in need of redevelopment, the choice of NRC and Metro Homes as the redevelopers was already secured. In fact, the outcome of the entire redevelopment effort, from the choice of NRC and Metro Homes as the putative redevelopers through NCPB's and the Municipal Council's designation of the Mulberry area as an area in need of redevelopment seemed predetermined. Eminent domain represented an enforcement stick to back up the underlying land assembly, acquisition, and land transfer processes. The United States Supreme Court's 2005 Kelo decision, which reaffirmed economic development as a public use and sanctioned the use of eminent domain to allow government to acquire private property and transfer it to other private entities to facilitate it, seemed to support these strategies.

Additionally, and similarly with the NJ-R-38, NJ-R-32, and NJCMD urban renewal projects, the story of the Mulberry redevelopment effort suggests several emerging themes. First, the tone of the memoranda and meetings NRC and Metro Homes held with Newark's Business Administrator and the Department of Economic and Housing Development suggest that the 14-acre tract of land and its 160-odd parcels were viewed as a transferrable commodity. Secondly, the increasing dependence of Newark officials on private sector money in the wake of devolution provided leverage for private developers like NRC and Metro Homes to proffer their own large-scale redevelopment

plan – in this case, an urban village. Essentially, NRC and Metro Homes private financial redevelopment resources were the funding streams the city was now chasing. Thirdly, in contrast to the redevelopment focus on actually blighted, outlying neighborhoods in the case of the NJ-R-38, NJ-R-32, and NJCMD projects, the focus in the Mulberry Street redevelopment effort was on a neighborhood that was less dilapidated than underutilized. As Mulberry Street was situated at the edge of Newark's redeveloping downtown the real estate community likely perceived it as a less significant investment risk compared to outlying, deteriorating residential areas with fewer infrastructure advantages. Fourth, just as in the NJCMD urban renewal project, the blight investigation and declaration process for Mulberry Street was essentially an after-the-fact formality. Fifth, as in the stories of the NJ-R-38 and NJ-R-32 urban renewal projects community-based, grass roots opposition had an enormous impact on the Mulberry Street redevelopment effort – this time effectively terminating it. Finally, as in the other projects I researched, the potential use of eminent domain was less prominent a factor in the land assembly process than was the joint public sector/private decision-making. Through their meetings and correspondence, NRC, Metro Homes, and Newark officials determined which site to target, how to fast-track the project, how to utilize the LRHL statutory language to best advantage – particularly the “e” criterion, and when eminent domain might be used. Once again, it suggests a process of land assembly without eminent domain.

Finally, as suggested by the story of the failed Mulberry redevelopment effort, land acquisition strategies and redevelopment efforts are only as valid and efficacious as the statutes and legal climate that supports them. That climate changed in New Jersey in

the summer of 2007 with the New Jersey Supreme Court's Gallenthin decision and its stricter interpretation of the LRHL. Once that decision was issued, and the applicability of LRHL criterion "e" was more tightly interpreted, the fate of the Mulberry redevelopment effort was sealed. Only a month after the New Jersey Supreme Court's Gallenthin decision, the New Jersey Superior Court invalidated the designation of the 14-acre Mulberry site as an area in need of redevelopment. For all intents and purposes, the redevelopment effort was dead.

In the nearly four years since the Superior Court's 2007 ruling invalidating designation of the Mulberry area as an area in need of redevelopment the neighborhood has witnessed relatively little change. Some façade work and remodeling of existing buildings has occurred but there has been little new construction. The extensive surface parking lots that dominate the neighborhood and serve the nearby state and local government offices and Newark City Hall continue to thrive. Given the ongoing severe economic recession plaguing Newark, the rest of New Jersey, and the entire nation, it is unlikely that conditions will change in the Mulberry Street area for at least a few more years. Moreover, in light of the legal and political climate relative to land acquisition strategies and eminent domain to facilitate economic development efforts and the stricter interpretation of the LRHL criteria, it seems unlikely that there will be any interest in redeveloping the Mulberry area for years to come.

## **CHAPTER SEVEN: SUMMARY AND INTERPRETATION**

### **INTRODUCTION**

Four sections follow the introduction in this chapter. The second section, which follows this introduction, provides brief recaps of the case studies: NJ-R-38 and NJ-R-32 in Clinton Hill, the NJCMD urban renewal project in the Central Ward, and the Mulberry Street redevelopment effort in downtown Newark, and salient changes in the applicable blight statutes and case law. In the subsequent section, I interpret my case studies for their meanings and lessons relative to Newark's redevelopment and land assembly processes, including the use of eminent domain. I then assess the implications of my case study interpretations for the themes addressed in the applicable literature. This is followed by a section on the policy implications of my research and case studies. My research covered redevelopment efforts during a 50-year time period, but it was limited to four case studies case in three neighborhoods in one city. Reflecting these limitations, the final section of this chapter considers areas for further research.

Table 7-1, below, provides salient characteristics for each of the four projects covered in Chapters Four, Five, and Six: NJ-R-38, NJ-R-32, NJCMD, and Mulberry Street. These salient characteristics are original and proposed project size (in acres), proposed and final land uses, project proponents, organized community opposition groups, funding sources, project location within Newark, project inception date, date land assembly began, blight designation date, and project completion date. The characteristics serve as indicators that provide a basis for comparison between the projects. Additionally, the characteristics foreshadow some of the overall findings and themes discussed in this final chapter.

**Table 7-1: Salient Characteristics of the Four Projects**

Characteristic	NJ-R-38	NJ-R-32	NJCMD	Mulberry Street
Original Proposed Acreage	78 acres	240 acres	150 acres	14 acres
Final Acreage	78 acres	94 acres	58 acres	N/A = Never Built
Proposed Land Uses	Residential Rehabilitation	Massive Light Industrial Park	Medical School and Teaching Hospital Complex	High-End Mixed Use Residential. (2,000 condos), Commercial, Office
Final Land Uses	Residential Rehabilitation, Clearance, New Units, Park	New Low/Mod Income Housing and Small Lt. Industrial Component	Medical School and Teaching Hospital Complex	N/A = Never Built
Project Proponent(s)	City of Newark: NCNCR and NHA, Mayors Carlin and Addonizio	City of Newark/NHA and Belmont Renewal Corp.	NJCMD, State of NJ, City of Newark/NHA, HUD, HEW, Mayor Addonizio	City of Newark, Mayor James, Private: NRC and Metro Homes
Organized Community Opposition Groups	CHNC	CHNC	CORE, CANPRR	MSPOG
Funding Source(s)	Fed. Urban Renewal Program	Fed. Urban Renewal Program	State of NJ, Fed. Urban Renewal Program, Bonds, HUD (Model Cities grant)	Privately Financed by NRC and Metro Homes
Newark Location	Clinton Hill	Central Ward & Clinton Hill	Central Ward	Downtown
Project Inception Date	12/56	Late 1950s	Early 1966	2002
Date Land Assembly Began	Late 1950s	Late 1950s	12/66 via Land Delivery Agreement	2002 via NRC's purchase of lands from Steven Lenter
Blight Designation Date	7/59	11/61	12/67	2004
Project Completion Date	Late 1960s	Late 1960s	Late 1960s	N/A = Never Built

Source: Newark Division of City Planning and NHA. (1973). Urban Renewal Progress: City of Newark 1972-1973.

## **SUMMARIES OF CASE STUDIES AND RELEVANT LAWS AND CASE LAW**

### **Redevelopment in Clinton Hill: NJ-R-38**

As recounted in Chapter Four, the NJ-R-38 urban renewal project occupied an L-shaped, 14-block, 78-acre site in Newark's Lower Clinton Hill neighborhood. Prior to renewal activities, the area was primarily residential and densely settled, containing 1910 dwelling units that housed over 6,200 residents. The site was not a true slum but, like the surrounding areas, it was affected by the overcrowding that was occurring as residents displaced by urban renewal in the nearby Central Ward poured into Clinton Hill. Nevertheless, the site was declared blighted under the Blighted Areas Act (BAA) in July 1959 and federal urban renewal grants were eventually procured to cover two-thirds of the nearly \$8 million cost for land assembly, acquisition and clearance. From inception through completion of land acquisition, the project spanned the later years of the Carlin administration and ran well into the subsequent Addonizio years. NJ-R-38 was different from other urban renewal projects in Newark's residential neighborhoods in that it entailed a strong rehabilitation component in addition to a clearance and redevelopment program.

The increased emphasis on rehabilitation rather than just clearance in the NJ-R-38 project reflected a number of factors. First, since the mid-1950s, the Newark Commission on Neighborhood Conservation and Rehabilitation (NCNCR) had been trying to establish a foothold in the urban renewal process in the face of NHA's power. Secondly, Mayors Carlin and Addonizio and their administrations demonstrated increased commitments to rehabilitation as the project continued into the 1960s. Both Mayors became keenly aware of affected residents' concerns about displacement and the relative ease with which the city could implement its eminent domain powers. They were



especially aware about how these concerns could turn voter confidence against them. Moreover, the determination of the grass roots Clinton Hill Neighborhood Council (CHNC) was instrumental in getting both administrations to maintain a strong rehabilitation focus, even after Mayor Addonizio shifted project control from NCNCR to NHA to expedite the renewal process. Over 500 housing units were demolished on the site, but CHNC was instrumental in getting NHA to substantially increase the rehabilitation component from 1,100-odd to 1,300-odd units.

### **Redevelopment in Clinton Hill: NJ-R-32**

The NJ-R-32 project was first announced by NHA in November, 1957 as a proposed 25-block industrially-oriented project primarily designed to permit the expansion of existing Central Ward industrial entities. However, in 1961, NHA received a firm proposal for project implementation from a redeveloper (Belmont Redevelopment Corporation) who expanded the project's scope into a proposed 74-block, 240-acre light industrial park designed to attract new industries that would extend south from the Central Ward into Lower Clinton Hill. Shortly thereafter, the federal Urban Redevelopment Administration (URA) gave NHA approval to expand the size and scope of the project. The Carlin administration championed the proposed project in this predominantly residential area, touting its tax revenue generating and job-creating potential. In November, 1961 the Newark Municipal Council determined that the site met the BAA's statutory blight criteria and declared it blighted. This provided the green light for NHA to begin assembling properties for a clearance program that, armed with the threat of eminent domain, would have displaced 17,000 mostly African American Newark residents.

However, as in the case of the neighboring NJ-R-38 project, CHNC mobilized residents against the NJ-R-32 project and was instrumental in reducing its size and changing its focus. CHNC hired consulting planner Walter Thabit to assess the need for such a large light industrial park in the heart of the Central Ward. Thabit issued a report concluding that a peculiar marriage of factors led to the expansion of the project concept including availability of federal funding, favorable tax laws, and broadening of the urban renewal concept from slum clearance to redevelopment of deteriorating areas with mixed use and light industrial projects. Most importantly, Thabit concluded that there was insufficient demand for light industrial uses to justify the proposal. He also uncovered evidence that the putative redeveloper's interest was a ruse to induce NHA to transfer the site to it at a discount, through negotiated purchase or eminent domain, so that it could be redeveloped with higher end residential uses. In response, Mayor Addonizio urged NHA and the Newark Municipal Council to downsize the project and change its redevelopment focus from light industrial to residential. NHA complied and a much smaller area was ultimately cleared such that, although 8,000 residents were displaced, more than 1,300 new low- and moderate-income residential units were constructed. Light industrial uses were limited to the expansion needs of General Electric and other existing plants.

### **The NJCMD Urban Renewal Project in the Central Ward**

In 1966, NJCMD's Board of Trustees decided to move from Jersey City to Newark because it determined it needed at least 150 acres of land for expansion and because Newark officials convincingly argued that, armed with the power of eminent domain, the city could assemble and deliver the needed land. In December 1966, months prior to any official investigation and declaration that the NJ-R-196 site was blighted, as

required under the BAA and the state constitution, NJCMD entered into an agreement with NHA and the city to deliver the 46-acre NJ-R-196 site and the already-cleared 11.5-acre NJ-R-72 site to the medical school with an option to acquire an additional 100-plus acres for future expansion. NJCMD emphasized that if the city did not deliver these lands by March 1968, it would be forced to consider moving to its alternative location, the 150-acre Dodge Estate in Madison, New Jersey. Mayor Addonizio, NHA Director Danzig, the Newark Municipal Council, State Assembly members, and the Newark business community had pushed hard for the move to Newark in the belief that the new medical complex would catalyze a revitalization of the deteriorating Central Ward. They also conceived of the medical center as a focal point of Newark's Model Cities effort. In the spring of 1967, and prior to holding any blight hearings, NHA filed an urban renewal plan for the medical center's NJ-R-196 site with HUD, which would enable it to obtain federal funding for \$13 million of the estimated \$17 million costs for land acquisition and clearance, and Mayor Addonizio applied for Model Cities funding. Housing conditions on the 46-acre NJ-R-196 site, though deteriorating, were similar to much of Newark, and it was a still-viable neighborhood that more than 3,000 residents, mostly African American, called home.

In an essentially ex post facto move, the Newark Central Planning Board (NCPB) held a lengthy hearing in June 1967 to determine whether the NJ-R-196 site should be declared blighted. Although the actual decision to declare the site blighted was delayed for months, the blight hearing revealed the serious concerns of affected residents, primarily through African American community representatives and grass roots community organizers who spoke at the hearings. They alleged, among other things, that

the site was not blighted, that NJCMD did not need 150 acres of land, that relocation plans were inadequate for those facing displacement, that the blight hearing was ex post facto, that the project was politically motivated by a desire to increase the city's track record of federal urban renewal funding, and that the project was a thinly veiled attempt to break the African American voting bloc and maintain white political control. A few weeks after the blight hearing concluded, Newark was reeling from several days of civil disorder resulting in the deaths of residents and massive destruction of property.

In the months following the blight hearing, the project was nearly eclipsed by mounting concerns over funding, relocation of displaced residents, NJCMD's acreage needs, and its role in the Model Cities effort. New Jersey's newly-created Department of Community Affairs, headed by Paul Ylvisaker, wanted the proposed medical center to serve as a model urban complex in which the 100-odd acres NJCMD wanted reserved for expansion also provided housing for residents and employees. After the NJ-R-196 site was finally declared blighted in December 1967, the Addonizio administration, facing considerable pressure from the African American community and grass roots coalitions, got NJCMD to reduce its total land requirements to 100 acres.

These issues were finally and formally resolved after the federal government, which held needed funding, stepped into the fray. In the early winter of 1968, HUD and HEW officials investigated the site and, based on their findings, issued a letter setting forth conditions that would have to be met for the project to receive urban renewal funding. Officials from NHA, HUD, HEW, NJCMD, and representatives of the affected community held hearings in February and March of 1968 to hammer out an agreement (the Newark Agreement) for meeting these conditions. Per the Newark Agreement,

NJCMD agreed to reduce its land needs to the 46-acre NJ-R-196 site and the cleared, 11.5-acre NJ-R-72 site. NHA agreed to revamp its relocation plan for affected site residents. NJCMD pledged to work closely with city and state officials in a broad affirmative action plan to promote minority contractor hiring for construction activities and to ensure medical complex employment opportunities for Central Ward residents. Additionally, NJCMD pledged to help establish community clinics to address the Central Ward's serious rates of morbidity and mortality, high levels of drug and alcohol dependency, and related social pathologies. Still the social cost for relocating the medical school to the Central Ward was high, entailing the destruction of a viable, 46-acre neighborhood and the displacement of its 3,000 residents and scores of businesses. More residents and businesses would have been displaced had the Newark Agreement not limited NJCMD's land assembly needs.

### **The Mulberry Street Redevelopment Effort in Downtown Newark**

Despite pockets of mixed residential and commercial use and a few established light industrial businesses, the single largest land use in the 14-acre area once slated for redevelopment along Mulberry Street is for-pay surface parking, which has been the case for at least three decades. These extensive parking lots performed an important service: they provided spaces for the cars of the staff and visitors of the nearby federal, state and local government buildings along Broad Street. Newark officials, however, including those in the city's Department of Housing and Economic Development, viewed the consignment of so much land for surface parking as a form of underutilization. Downtown Newark was struggling and, by 2002, city officials were concerned about the relatively low level of tax revenue generated by these parking facilities relative to other

commercial uses. They had begun studying redevelopment possibilities in the 14-acre, nine-block area that they had designated as the Mulberry Street Study Area. The Newark Redevelopment Corporation (NRC) had purchased about five acres of land in the center of the 14-acre area from parking lot owner Steven Lenter, hoping to build more of the two- and three-family housing that was being constructed in the nearby Ironbound neighborhood and the South Broad Street area to the south. NRC met with the Department of Housing and Economic Development in mid-2002 and the Department asked them to come up with a more ambitious plan for the entire 14-acre Mulberry Street Study Area.

In response, NRC partnered with Metro Homes and hired consulting planners and architects to design an ambitious redevelopment plan. The resulting redevelopment concept was based on creating a new urban village within the midst of the relatively recent redevelopments that had occurred in downtown Newark that would also be transit-friendly, taking advantage of Newark's transportation hub status and its network of highways and transit lines. Specifically, the redevelopment plan entailed clearance of much of the 14-acre site to be supplanted with mixed use structures arranged around a central plaza and containing over 2,000 high end condominium units and 180,000 square feet of higher end commercial and retail space.

Mayor James and the city's Business Administrator were big boosters of the project. They were convinced the project could capitalize on its proximity to the new Prudential Arena and bring in new residents and employees for an urban living experience similar to what Hoboken and Jersey City had been experiencing. In their

view, redevelopment of the 14-acre Mulberry Street area would address its underutilization and foment a revitalization of downtown.

In the next few months, NRC and Metro Homes – the presumptive redevelopers – met with and corresponded with the Business Administrator and the Director of Economic and Housing Development to work out a mode of fast-tracking the Mulberry redevelopment effort. In the associated memoranda and correspondence the parties agreed that the strategy would be to declare the 14-acre area in need of redevelopment under the applicable Local Redevelopment and Housing Law (LRHL), then acquire properties and clear the site for the proposed new uses. They further agreed that negotiated purchase would be the first tactic pursued for property acquisition, but the city's eminent domain powers could certainly be applied in the event of holdouts. At this point, no decision had been made by the Newark Municipal Council to have NCPB investigate whether, under the LRHL, the site qualified as an area in need of redevelopment. As there had been no blight investigation, determination, or declaration, this strategic correspondence set the stage for a predetermined outcome portending a vote by the Municipal Council in favor of blighting the site.

However, just as grass roots organizers fought the city's land assembly and clearance strategies in Clinton Hill and the Central Ward, similar citizen-based forces protested the application of such tactics in the Mulberry neighborhood. In this case, the opposition took the form of the well-organized, savvy Mulberry Street Coalition and its sister organization, the Mulberry Street Property Owners Group. They showed up at Newark Municipal Council and NCPB hearings during the first of two attempts to declare the Mulberry site in need of redevelopment (blighted). They hired their own attorney and

undertook their own planning to investigate whether the site qualified as an area in need of redevelopment under the LRHL.

NCPB's consultants had issued a report concluding that the site met the LRHL conditions for a blight declaration. In particular, the second consultant NCPB hired had concluded that the entire site met the "e" criterion of the LRHL and, specifically, the statute's "lack of proper utilization" language. NCPB's consultant had taken a contextual, holistic approach in applying the statutory language to the site conditions. In contrast, the Mulberry Street Property Owners Group's own consultant, taking a strict, statutory language approach, concluded that the site did not meet any of the LRHL criteria. Nevertheless, after a second major set of hearings, the Newark Municipal Council voted to declare the site in need of redevelopment. In response, the Mulberry Street Property Owner's Group brought suit. The project was defeated when the New Jersey Superior Court, relying on the Gallenthin decision and perhaps influenced by post-Kelo public sentiment against using eminent domain to facilitate economic development, determined that the city had too broadly interpreted criterion "e" and overturned the blight declaration.

### **Salient Statutes and Case Law**

The legal discussion in Chapter Two reviewed the statutes and case law applicable to municipally facilitated redevelopment efforts in New Jersey and highlighted those overarching events most relevant to my case studies. Three such events were preeminent. One of these events was the United States Supreme Court's clarified and augmented affirmation, in its 2005 Kelo decision, of its earlier stance in Berman (1954) and Midkiff (1984) that economic development is a public use and public purpose for



which municipalities may invoke the power of eminent domain though the public benefit may be less than direct or tangible. Another overarching event was the broadening and evolution of New Jersey's statutory language for declaring an area blighted from the BAA to the LRHL. The LRHL increased the number of criteria for determining whether an area is blighted and added language to the preexisting BAA criteria, including the "not fully productive" clause of the "e" criterion that, for a time, made it easier to declare certain areas blighted. The third event was the New Jersey Supreme Court's stricter interpretation of the "e" criterion in its Gallenthin decision, which suggested that the ability of municipalities to declare areas blighted is not unlimited.

## **INTERPRETATION: MEANINGS AND LESSONS FROM THE CASE STUDIES**

These case studies suggest that redevelopment efforts in Newark, from the 1950s until the present, have been marked by a number of recurrent, interrelated themes and patterns. These recurrent themes and patterns had a considerable influence on how land has been assembled and acquired for redevelopment purposes. They also influenced how redevelopment projects were conceptualized and how they were carried out. I explore these recurrent themes and patterns below.

### **Maintaining Control of the Redevelopment Process**

A recurrent theme running through the case studies was the desire on the part of Newark officials to maintain some measure of control over the land redevelopment process. This desire for municipal control played a significant role in how land assembly was carried out and how redevelopment projects were conceived and implemented. Moreover, a relatively broad variety of legal, formal, and informal mechanisms have

been utilized to exert control. As a result, and as discussed in the next few pages, this control theme has been manifested in multifaceted ways.

Indeed, in its efforts to exert control, the mayoral administrations and relevant line agencies, including NHA, the Newark Municipal Council, NCPB, and the Department of Economic and Housing Development, worked the legally delineated process in ways that furthered the city's desire for control. For each of the renewal projects I researched – NJ-R-38, NJ-R-32, NJCMD, and Mulberry Street – the city could have simply rezoned parcels to permit the desired uses. However, in each of these four cases, the city followed the more formal statutory redevelopment process, which involved declaring delineated areas blighted either under the Blighted Areas Act (BAA) or, for the Mulberry effort decades later, under the Local Redevelopment and Housing Law (LRHL) and its more expansive blight criteria. This seems contrary to reason because rezoning would appear to be the less cumbersome, more politically palatable alternative. The statutory redevelopment processes under the BAA and LRHL entailed more involved investigations, lengthier public hearings and the politically unpopular possibility that eminent domain powers would be exerted against holdouts. Rezoning, on the other hand, would not entail the use of eminent domain and, because it would not entail a land acquisition and clearance process, it would not threaten affected residents with immediate displacement. On the other hand, rezoning has the disadvantage that it would have opened up the entire redevelopment process to open bidding with the potential involvement of multiple developers. This, in turn, could result in a more ad hoc, piecemeal assemblage of land and, ultimately, a less congruent mix of land uses and

densities. In effect, the rezoning alternative takes control of redevelopment away from the city and places it in the hands of the private sector.

In contrast, by employing the statutory redevelopment process, Newark was able to exert much more control over the pace and pattern of redevelopment. In the first place, the statutory redevelopment process essentially forced the city to not only target specific areas for redevelopment but also to delineate defined boundaries around those areas. That delineated area, once investigated and declared blighted, could then be slated for land assembly, land acquisition, and clearance. That, in turn, permitted the city to literally raze existing buildings, which enabled it to exert tremendous control over future uses on specific parcels within a defined area. Secondly, blight declaration for the public purpose of redevelopment facilitated the invocation of eminent domain powers, if needed. Newark could strategically use the threat of eminent domain to expedite land assembly and clearance within that delineated area. Parcels not obtained through negotiated purchase could be obtained through eminent domain at fair market value, which generally resulted in some discounting of land acquisition costs. Expediting the clearance process in the event of holdout problems could reduce the risk that the project would not come to fruition. Thirdly, as attorney John Buonocore pointed out in the case of the Mulberry Street effort with NRC and Metro Homes, the statutory redevelopment process enabled Newark's Department of Economic and Housing Development to hand-pick favored developers. Working with a single, favored redeveloper increased the likelihood that Newark officials could oversee a more master-planned approach that entailed the construction of the exact uses, at the exact densities, in the exact phasing that the city desired.

Additionally, Newark officials interpreted the legally delineated blight criteria in a manner that enabled them to exert control over the redevelopment process in order to move the land assembly process forward. The city's interpretation of the statutory blight criteria facilitated the declaration of the 14-acre Mulberry Street site as blighted (in need of redevelopment). In determining that virtually the entire 14-acre site qualified as an area in need of redevelopment under LRHL criterion "e", NCPB's consulting planner applied a liberal, holistic approach to the statutory language. Specifically, he determined that because most of the site was devoted to surface parking, vacant lots, and storage yards and land values exceeded improvement values, the "growing lack or total lack of proper utilization of areas" and "not fully productive condition of land" language of the "e" criterion was satisfied. However, the consultant had taken those clauses out of context, which ignored the direct connection, in the statutory language, between those two clauses and conditions of title and ownership. He had never, in fact, researched the ownership and title of the site's 160-odd properties. In contrast, the consultant for the Mulberry Property Owner's Group applied a strict constructionist approach to the LRHL criteria and language with thorough review of ownership and title and internal and external structural conditions of individual parcels and concluded on that basis that the site did not qualify as blighted. As detailed in Chapter Six, the Superior Court viewed the NCPB consultant's conclusion in light of the Gallenthin decision and overturned the blight declaration. The Court determined that NCPB, the Municipal Council and their consultant had misread the statute, having taken the operative "e" criterion clauses out of their proper context.

Furthermore, my research suggests that the informal meetings and correspondence between city officials and developers, prior to investigating whether areas met statutory blight criteria, was another manifestation of the city's desire to exert control over redevelopment processes by forging public-private partnerships. Certainly, such communication could be equally advantageous for the putative redevelopers. This was evident in the early stages of the Mulberry Street redevelopment effort. As detailed earlier in Chapter Six, correspondence about the Mulberry Street redevelopment process between NRC, Metro Homes and Newark officials began in earnest in the fall of 2002, months before blight investigations began. NRC and Metro Homes contacted Newark's Business Administrator about fast-tracking the redevelopment effort, receiving tax abatements, and being designated the redevelopment entities. In short order, the Director of the Department of Economic and Housing Development met with NRC and Metro Homes to further discuss fast-tracking the project, hiring a consulting planner, and resorting to eminent domain if negotiated purchase of Mulberry area properties ran into holdout difficulties. Confirmatory letters and memoranda exchanged between the parties provided a written record of the substance of these informal meetings. In essence, the meetings and correspondence agreed that a statutory redevelopment strategy would be employed to declare the area blighted to facilitate land assembly and that NRC and Metro Homes would be the redevelopers. Thus, a blight determination was a foregone conclusion months before any property owners were notified that the area was being considered for redevelopment.

### **City for Sale: Land as a Transferrable, Deliverable Commodity**

Another recurrent pattern has been what I refer to as the “city for sale” theme. Herein, I am referring to the tendency for Newark officials to view much of the residentially occupied land within the city’s boundaries as a commodity easily acquired and transferred to public and private entities for redevelopment purposes. They viewed eminent domain as a powerful tool to assist with such endeavors. The position of Newark’s officials seems to have been that any neighborhood was subject to assembly, acquisition, and transfer, whether blight was declared under the BAA or the LRHL’s “e” criterion, as long as the city’s officials believed transferring it to other public or private entities could promote economic development or the highest and best use.

As detailed in Chapter Five, when NHA convincing the NJCMD Board of Trustees to pick the Newark site over Madison during hearings in November, 1966, Louis Danzig stressed that, armed with the power of eminent domain, it would be relatively easy for the city to condemn, acquire, clear, and transfer the needed Central Ward acreage, which was occupied by thousands of residents, to NJCMD. In making his argument, Danzig emphasized that the city had amassed an impressive record of land clearance to facilitate urban renewal activities. Later, during the June, 1967 blight hearings on the NJ-R-196 site, he noted that NHA had successfully relocated thousands of Newark residents in the wake of renewal activities. In the effort to render Newark’s land a transferrable commodity, the destruction of neighborhoods, relocation of families, dissolution of social networks, and disruption of lives were essentially permissible collateral damage.

Similarly, the tenor of the memoranda and meetings between Newark’s Business Administrator, NRC/Metro Homes, and the Department of Economic and Housing

Development during the Mulberry Street redevelopment effort, as discussed above, are suggestive of this recurring conceptualization of the city as a deliverable commodity.

Those Newark governmental divisions and NRC/Metro Homes seemed to view the affected properties as a deliverable tract of contiguous parcels – an outgrowth of the nucleus NRC had purchased from Steven Lenter – rather than an actual neighborhood housing 270 households and several small businesses. As noted, eminent domain was explicitly cited as a tool to help assemble properties and smooth out their acquisition and transfer in the event of holdouts.

Interviews I conducted corroborated the tendency for Newark officials and public and private entities entertaining redevelopment strategies to view land as a transferrable commodity, even in viable neighborhoods with stable residential populations. Moreover, this tendency to view neighborhood land as a commodity was often coupled with a desire to remove poor residents and redevelop their neighborhoods with uses that would generate higher tax revenues and attract more affluent residents rather than improving the existing poor residents' living conditions. Given Newark's demographics, such practices most deleteriously impacted African American residents. A community organizer I interviewed, born in Newark's Central Ward and working for a large community development organization in that area, expounded on this with direct reference to the Addonizio-era NJCMD urban renewal project. He noted that the tendency of Newark officials, in considering redevelopment proposals, to essentially view neighborhood land as a deliverable commodity was a long-standing phenomenon.

“... the commodification of the city is nothing new because if you go back to the Addonizio administration the way the medical school was foisted on the city. There was obviously no inkling of an interest in community benefit for residents there. It was, you know, pretty much an effort to – at least where it was spotted – where it was located – and the fact that Addonizio wanted to take all this land was a way to get rid of a lot of black people” (R. Cammarieri, personal communication, February 14, 2008).

### **Chasing the Funding Stream**

The case studies suggest that one of the primary factors shaping how redevelopment was carried out in Newark was the funding stream. This stream has shifted over the years from predominantly public, as in the heyday of urban renewal activities in the 1950s and 1960s, to predominantly private, reflecting post 1970s and 1980s devolution of federal and state programming and funding for urban redevelopment activities. My research suggests that during the urban renewal period, when federal funding was much more available, Newark officials and agencies, including NHA, aggressively pursued whatever funding they could obtain for whatever projects the federal government was willing to provide funding for even if it meant displacing thousands of residents. In no small part this reflected the fact that the Carlin and Addonizio administrations and NHA were convinced that establishing a successful federal funding track record for urban renewal would make it easier to obtain more federal money. These administrations also believed that establishing a solid federal funding track record was necessary for maintaining voter confidence and power. From the 1950s through the middle 1960s, Newark’s traditional manufacturing base still maintain a stronghold within city limits and Italian and Irish politicians still dominated the political machine. However, as Newark’s racial demographics and political and economic dynamic began to shift rapidly after 1960, establishing a solid funding track



record for urban renewal or any other federally subsidized projects became increasingly important for the white political machine, especially in the wake of the 1967 civil disorders.

“The 50s and 60s I think it was just the city was self-supporting and it was a normally operating society and there was just an ebb and a flow in the business community. Post riots, the city was way down and desperate to take any project and also kind of chasing the funding streams. So, if funding streams developed all of a sudden they would chase the funding stream whether that made sense for the city to chase or not. Funding streams like if the state or federal government all of a sudden had new programs for development opportunities they would chase ...” (R. Cody, personal communication, February 8, 2008).

The availability of federal funding through the 1949 and 1954 Federal Housing Acts was a powerful motivating factor for the scope of the NJ-R-38 and NJ-R-32 projects in Clinton Hill. In keeping with those federal regulations, two-thirds of the cost of site acquisition and clearance for NJ-R-38 and NJ-R-32, as with all federal urban renewal projects in Newark, was subsidized by the federal government. Federal urban renewal funds could also be used to fund more planning studies for further redevelopment and renewal activities, as long as statutory requirements were met. Situations could arise in which two or more urban renewal proposals could achieve a synchronicity in funding potential because of their proximity to each other, common goals, common economic stimulus impacts, or other apparent interrelatedness. The Carlin and Addonizio administrations and NHA took full advantage of such opportunities. There is strong evidence that such opportunities played a part in the expansion of the scope of the NJ-R-32 project into a giant, 74-block, light industrial project. As detailed in Chapter Four, Walter Thabit concluded, in his report, that the city had viewed R-32’s proximity to the proposed North-South Connector, which was also federally funded, as a boon

guaranteeing more federal funding for further planning studies. Thabit suggested that this dual funding stream had motivated the Carlin and Addonizio administrations and NHA to initially push the expanded proposal for NJ-R-32 along even in the face of powerful opposition from CHNC and the potential displacement of 17,000 residents and scores of businesses.

Similarly, the existence of multiple funding streams helped sustain the NJCMD project and provided the Addonizio administration with opportunities for augmenting its funding track record. In actuality, as detailed in Chapter Five, much of the funding for the project had been appropriated months before the NJCMD Board of Trustees decided on Newark's Central Ward as the new medical center site. By September 1966, Governor Hughes had pledged \$30 million as the state's share of the then-estimated \$70 million cost for the medical center. The other \$40 million needed for this highly complex project would come from the federal government, including \$13.6 million of the \$17.1 million needed to acquire and clear the NJ-R-196 site. In the spring of 1967, anticipating no delays in federal monies and state pledges, NHA prepared its urban renewal report for submission to URA.

Moreover, bolstered by this burgeoning funding chain, Mayor Addonizio applied for a \$200,000 Model Cities grant at almost the same time. This grant application was highly significant because making NJCMD's proposed medical complex a focus of the Model Cities effort ultimately increased awareness of the impact of the proposed medical center on the medical and medically-related social welfare needs of the Central Ward's residents. That, in turn, fostered increased concern about the large size of the project, and its potential expansion into 100 additional acres of Central Ward land on the fabric of

the remaining neighborhoods and residential relocation needs. These concerns fostered the involvement of the New Jersey Department of Community Affairs (NJDCA), HUD, and HEW in the project size and relocation issues, and hearings on the HUD/HEW demands with NHA and members of the Addonizio administration, which culminated in the Newark Agreement and the limitation of the project to a 57.9-acre campus.

As detailed in Chapter Five, the NJCMD project did not actually obtain urban renewal status and guaranteed funding until the spring of 1968, following adoption of the Newark Agreement. Technically, per the terms of the December 1966 land delivery agreement, NJCMD's Board of Trustees could have reneged on the Newark site and relocated to the Madison site had the project not obtained urban renewal status by the spring of 1968. Arguably, though, the enormity of the federal and state funding pledges and grants bolstered the resolve of the Addonizio administration and NHA to fight to keep the project in Newark.

In contrast, by 2002, two decades of devolution of federal and state funding and programming for urban redevelopment meant that, other than community development block grants (CDBGs), the public sector funding possibilities in Mulberry Street were very limited. CDBG funding, although non-categorical, is essentially earmarked for deteriorating communities with urgent needs, including affordable low- and moderate-income housing, anti-poverty programming, and infrastructure improvement. Although CDBG monies can be used for land acquisition to combat blight, they were not intended for redevelopment efforts focused primarily on rebuilding blighted with higher end housing and retail uses to generate increased tax revenues and make cities more globally or regionally competitive. As a result, Newark officials desiring to redevelop areas with

higher-end tax-generating uses after devolution were heavily dependent on private sector interest, involvement, and financing. Indeed, had the Mulberry effort come to fruition (refer to Chapter Six), NRC and Metro Homes would have financed virtually one hundred percent of the project costs, which would have entailed somewhere between \$350 and \$500 million. As discussed in the next section, the increasing dependence of Newark officials upon the private sector for redevelopment initiatives has impacted how such efforts are conceptualized and has changed the focus of blight determination and land assembly strategies.

### **Changes in Conceptualization and Focus of Blight, Land Assembly, and Redevelopment**

Throughout much of the 1950s and even well into the 1960s, urban renewal efforts in Newark were focused primarily on residential redevelopment, particularly on the clearance of slums and the construction of low- and moderate-income public housing on those cleared sites. During this period, redevelopment was more about reshaping urban space in ways designed to more directly benefit the general public. Although final outcomes and results varied, there seems to have been a clearer attempt to channel redevelopment towards providing tangible public uses. NHA redevelopment policies during the urban renewal period in the 1950s and 1960s reflected this bent concentrating on slum clearance to provide public housing and middle class housing and, in the case of the NJCMD project, a new medical school and teaching hospital to serve the Central Ward, catalyze its revitalization, and provide jobs. During this earlier period of Newark's redevelopment history, blight determinations appear to have more closely reflected actual conditions such as structural deterioration.

In no small part, these redevelopment tendencies reflected heavy reliance on federal funding for land acquisition and clearance and the fact that such funding was not available for redevelopment efforts with a non-residential component until 1954, when the Federal Housing Act was amended. My research suggests that into the early 1960s, Newark officials and NHA still conceived of urban redevelopment as a primarily residential phenomenon. Despite the 1954 amendments, urban renewal in Newark was still tied to the conceptual conventions of the 1949 Federal Housing Act, and Newark's residential Central and South Ward districts were the primary focus of active redevelopment efforts into the early 1960s (Kaplan, 1963). As noted in Chapter Five, NHA Executive Director Louis Danzig primarily conceived of urban renewal as slum clearance for middle class housing (Kaplan, 1963).

Thus, when the NJ-R-32 and NJ-R-38 projects were conceived in the Central Ward and Clinton Hill areas, the Carlin and Addonizio administrations still tended to conceive of non-residential components in urban renewal projects as closely tied to the projects' residential ones. As Walter Thabit noted in his CHNC-sponsored study of industrial demand in the NJ-R-32 project, this reflected the relative newness of conceiving of commercial, industrial, or institutional uses as major components of urban renewal efforts. Spatially and conceptually, NHA and other Newark officials tended to tie those earlier redevelopment efforts containing commercial or industrial components to large-scale housing demolition, construction, or rehabilitation. Thabit further noted that this conceptualization was a primary factor in motivating the large size, scale and scope of the NJ-R-32 project. NCPB, the Municipal Council, and NHA determined that NJ-R-32 and other mixed-use renewal projects literally had to be large enough to include as

much residential area as possible that could be designated as blighted. Even at this relatively early stage of Newark's redevelopment history, NHA and the Carlin administration needed a strong show of private sector interest in undertaking large-scale redevelopment. Thus, once the Carlin administration received sufficient private sector interest from Belmont Redevelopment Corporation in creating a light industrial park, NHA concluded it had to designate a 74-block area housing 17,000 residents for blight consideration in order to provide enough land that could be cleared for a new light industrial park.

Similar perceptions governed how Newark officials sequestered a site for NJCMD's new medical complex several years later. The proffered land – the 46 acres of the NJ-R-196 urban renewal site and 11.5 acres of already-cleared NJ-R-72 urban renewal land – had the advantage of proximity to the existing multi-university complex and downtown Newark. More saliently, the NJ-R-196 site contained enough sufficiently deteriorated, overcrowded housing that NHA was confident the entire 46 acres could be declared blighted per the BAA criteria and razed to accommodate NJCMD's permanent facilities. Moreover, there were plenty of similar, adjacent residential areas designated for renewal that NHA, armed with eminent domain powers, could assemble, acquire, and clear to provide the 100-odd acres NJCMD's Board sought for its expansion needs per the December, 1966 land delivery agreement.

Once the Great Society program and its heirs were phased out and federal and state funding began to dry up, redevelopment efforts in Newark increasingly began to reflect the goals and exigencies of the private sector. Redevelopment became more developer-driven and the focus shifted to blighting areas judged “underutilized” and

therefore incapable of generating sufficient tax revenues. The experience of the Mulberry Street redevelopment effort suggests that Newark officials had begun to interpret blight less in terms of actual deteriorating conditions than alternative, or future, possibilities deemed more financially and demographically desirable.

Thus, instead of focusing on clearing and reshaping Newark's spaces to create more uses with tangible public benefits such as affordable housing, industrial parks, and medical centers, blight investigation strategies and redevelopment efforts were increasingly focused on clearing "underutilized" areas and supplanting them with a critical mass of dense, high-end housing and retail uses to augment the tax base and attract more affluent residents and employees. Newark officials, including NCPB, the Municipal Council, and the Department of Economic and Housing Development, used the broader blighting criteria in the LRHL, especially the "e" criterion, and the threat of eminent domain to assemble contiguous acres of land and transfer those lands at a discount to private developers who had approached the city with their redevelopment concepts. The pursuit of the funding trail, now primarily private, was supplemented by the pursuit of private developers willing to risk their dollars to redevelop Newark.

Concomitantly, once a shift occurred in Newark from emphasizing existing conditions to potential uses as indicators of blight, redevelopment efforts shifted from areas completely built-up with existing structures to areas with large swaths of underdeveloped or vacant land. Too, the locus of redevelopment efforts shifted from large Central Ward parcels and other deteriorated areas to its declining downtown areas where reshaping and revalorization of large areas of contiguous, underdeveloped parcels could best help the city compete on a regional and global level. The Mulberry Street

redevelopment area, for example, represented a convenient nexus of these two conditions. It was located on the edge of downtown and it was not only less than fully developed but contained large un-built parcels (parking lots) that would require virtually no clearance. Residential uses and businesses were confined to a small enough percentage of the entire site that, in comparison to densely built sites in Newark's more residential wards, residential and business displacement would be relatively minimal. A further advantage from the standpoint of global competitiveness was its very close proximity to several key elements of the regional transportation system. Finally, the site was large enough, at 14 acres, and slated for a sufficient density of residential and commercial uses and residents and employees that it would have attained the necessary critical mass to provide economies of scale and pay off fixed costs.

### **Blight Investigations and Declarations as After-the-Fact Formalities**

A recurrent theme, or pattern, was that blight investigations and blight declaration processes were rendered as after-the-fact formalities. This was the result of public sector or joint public/private sector targeting of neighborhoods and sites coupled with agreements tantamount to the assembly of specific parcels for redevelopment months or even years in advance of public notice of any such intent. The result was a rather acute lack of transparency which, given the attendant clearance and displacement potential, played havoc with due process. This practice was especially apparent in the sagas of the NJCMD urban renewal project and the Mulberry Street redevelopment effort.

In the case of the NJCMD urban renewal effort, the NJ-R-196 site and surrounding Central Ward areas were not only targeted by late 1966, but were effectively slated for delivery to NJCMD through a December 1966 agreement between the medical



school and NHA and the Newark Municipal Council. As detailed in Chapter Five, the terms of this agreement included not only delivery of the 46-acre NJ-R-196 site to NJCMD but also an 11.5-acre already-cleared section of the NJ-R-72 project site, and the promised delivery, upon 18 months prior notice, of an additional 100-odd acres of adjacent lands to the medical school for its future expansion needs. At this point, the actual blight hearing in which the NJ-R-196 site would be considered per the BAA blight designation criteria would not occur for another seven months. Given that NHA's recommendations and the Newark Municipal Council's approval were necessary for blight determinations, NJCMD's December 1966 agreement with these two bodies essentially set the stage for a predetermined outcome that the NJ-R-196 site would be declared blighted. Thus, the June 1967 blight hearing, which was the first organized opportunity for affected citizenry to publicly comment on the NJCMD project was, for all intents and purposes, a formality.

Similar machinations were at play in the Mulberry Street redevelopment effort nearly forty years later. This time, however, the players included members of both the public and private sectors. Back in 2002, a couple of years before the actual blight hearing on the 14-acre Mulberry site, NRC and Metro Homes (the putative redevelopers) had already begun negotiations with Newark's Business Administrator and the Department of Economic and Housing Development to fast-track the site for redevelopment. In those negotiations, the parties discussed using the LRHL criteria to declare the site in need of redevelopment (blighted) because it was underutilized and they discussed the potential invocation of eminent domain powers if negotiated purchases failed. By strategizing to emphasize that the site's large expanse of surface parking

rendered it underutilized, they had already laid the groundwork for invoking the LRHL's "e" criterion as the primary basis for eventually declaring the area blighted. That is exactly what happened. NCPB's consulting planner determined that the entire 14-acre site met the "e" criteria for declaring the area in need of redevelopment, a predetermined outcome that effectively rendered the blight hearing a mere formality.

### **Public Participation and Grass Roots Opposition**

Well-organized grass roots opposition played a significant role in the outcome the redevelopment projects I researched. In Clinton Hill, CHNC's opposition was instrumental in getting the Addonizio administration to significantly alter the scope of the NJ-R-38 urban renewal project and led to a massive reduction in the size and scope of the NJ-R-32 project. Public opposition from CORE, CANPRR, and community representatives did not stop the NJCMD project, but it helped create the conditions for the enactment of the Newark Agreement, which curtailed the medical school's land grab. The well-organized opposition of the Mulberry Street Property Owner's Group was buttressed by a rising tide of public opinion and New Jersey case law against the use of eminent domain to facilitate the type of economic development envisioned for the 14-acre Mulberry Street site. These forces, combined with a timely lawsuit, ultimately defeated the Mulberry Street redevelopment effort.

For all of these redevelopment efforts, the basis of the opposition seems to have been less about the redevelopment concepts and more about the manner in which they were carried out and how that threatened private ownership of property and tenancy. In Clinton Hill, for example, residents and CHNC residents were well aware of the overcrowding they were experiencing and the concomitant deterioration in housing

conditions. Much of this overcrowding reflected the impact of residential displacement from the Central Ward to Clinton Hill as NHA tore down neighborhoods to put up, ironically, public housing. Clinton Hill leaders hoped for some response from the Carlin and, later, Addonizio administrations and, in fact, understood that some spot clearance might be needed. However, they anticipated that most of the problems could be adequately addressed through better zoning and building code enforcement and rehabilitation. It was when they realized NHA's proposed redevelopment projects meant more clearance, more displacement, more overcrowding, and more deterioration in properties and property values that they mobilized to oppose the city's plans.

The concern for the way redevelopment was being accomplished, as opposed to its likelihood, was especially evident in the testimonies of residents and community representatives during the June 1967 NJCMD blight hearings. One of the chief concerns was relocation for displaced residents. Louise Epperson, a CANPRR head, had admonished NCPB that her neighborhood was not blighted but demanded that if it had to be cleared then, at the very least, NHA had to provide all of the residents with decent replacement housing. Other witnesses were concerned with the after-the-fact nature of the blight hearings and the evidence that the entire exercise was a mere formality, noting that NHA and the Municipal Council had essentially promised the NJ-R-196 site and associated areas to NJCMD months earlier.

Similarly, members of the Mulberry Street Coalition and its spinoff, the Mulberry Street Property Owner's Group, were not against redeveloping the Mulberry Street area. There was recognition that the large expanse of land devoted to for-pay surface parking could be developed with residential and non-residential uses that would generate much

higher tax revenues for the City of Newark. However, it was precisely because of the extent of this essentially undeveloped land that would involve no displacement that members of the Mulberry Street Coalition and Mulberry Street Property Owner's Group questioned the need to consign their occupied and fully functioning residential and commercial properties for clearance and redevelopment (G. Mytrowitz, interview, July 16, 2009). Additionally, one of the leaders of the Mulberry Street Property Owner's Group communicated to me that NRC and Metro Homes' had hardly contacted any Mulberry area property owners to negotiate purchase prices (G. Mytrowitz, interview, July 16, 2009).

### **Emergence of Privatization of Redevelopment in Newark Challenges Conventional Views**

The case studies did not always fit neatly into the expected conceptual categories. A primary example of this is the timing of the emergence of private sector developers as primary actors in Newark's redevelopment efforts. The conventional view, widely supported by the political economy literature, is that privatization of American municipal redevelopment efforts did not emerge until the 1970s under neoliberalism when devolution of federal funding and programming was well underway. However, the empirical data from my case studies suggests that privatization of redevelopment efforts in Newark actually began to emerge in the late 1950s.

Indeed, private developer interest was an important component of the NJ-R-32 urban renewal project that was instrumental in the early expansion of the project's scope and size. As indicated in Chapter Four, the NJ-R-32 project received a boost when the Belmont Renewal Corporation gave NHA a firm proposal in 1961 for redeveloping the

NJ-R-32 site with industrial uses. Belmont also pushed for a slightly larger site than NHA had originally intended. Shortly thereafter, in November 1961, NCPNB declared a 74-block area (240 acres) blighted to make a vast area available for acquisition, clearance and redevelopment as a light industrial park.

Walter Thabit, CHNC's consulting planner, suggested that Belmont's real interest in the NJ-R-32 site had little to do with light industrial development (Thabit, 1962).

Thabit suggested that Belmont's interest in the site was motivated by the availability of federal funding because those monies, buttressed by NHA's ability to compel the land transfer through eminent domain, could subsidize the cost of land acquisition and clearance (Thabit, 1962). He noted there were indications that once the site was transferred to Belmont, the company was going to redevelop it for lucrative, higher-end residential uses instead of developing it as an industrial park. In other words, there was evidence that Belmont's interest in the NJ-R-32 site was a ruse. The implication is that Belmont had been shopping for a site with the potential for land acquisition write-downs afforded by subsidization and eminent domain. Belmont's 1961 involvement in the NJ-R-32 project, then, presages - by several decades - present-day empirical research findings (Staley and Blair, 2005) that private redevelopment entities rely on eminent domain to effectively subsidize, or write-down, land acquisition costs.

### **The Role of Eminent Domain: Is Eminent Domain Really the Problem?**

Throughout Newark's redevelopment history, eminent domain, although it is a distinct land assembly tool, has worked in tandem with strategies for blight determination that the city has either outright controlled or, in the case of joint public-private redevelopment efforts, facilitated. As eminent domain has been such a powerful land

assembly, acquisition, and clearance tool, the mere threat that it might be invoked has often obviated the need to actually use it. My case study research suggests that NHA, and later Newark's Department of Economic and Housing Development, were prepared to invoke the city's eminent domain powers in conjunction with blight declarations as a means of removing Newark's poor from areas the city wanted to reshape for revalorization and tax generation. Eminent domain has also been tied to supplanting less desired uses with ones that the poor and the displaced could actually utilize, especially earlier in the city's redevelopment history. NJCMD is one such example of an urban renewal project that produced tangible public benefits. On the other hand, it also displaced more than 3,000 residents. Indeed, in terms of displacement impacts and residential relocation programming, the use of eminent domain to facilitate urban renewal and redevelopment in Newark, even when there were tangible benefits has, at times, been rather ruthless.

Moreover, the threat of eminent domain has worked in tandem with increasingly broad concepts of blight and public use to aid Newark in large-scale transfers of land from NHA to public (e.g., NJCMD) or private entities or from one set of private entities to another (e.g., the Mulberry Street project). Newark's use or threatened use of eminent domain has become embedded in its particular political economy relative to the strategizing and timing of blight investigations and blight declarations. In keeping with a tendency for NHA and city officials to facilitate land transfers prior to declaring areas blighted there seems to have been a tendency to view eminent domain as a tool of first rather than last resort.

However, I argue that the public concern and media focus on the use, or threatened use, of eminent domain in municipally-facilitated redevelopment efforts is misplaced. My research on redevelopment efforts in Newark suggests that the crux of the problem lies with the broad array of strategies and processes associated with land assembly and land acquisition rather than on the simple mechanism of eminent domain. More to the point, land assembly and acquisition in Newark have been carried out in non-transparent ways that have delayed public input until statutory imperatives can no longer exclude public participation. This has long been a feature of the political economy of urban redevelopment and renewal in Newark. As detailed in Chapter One, Kaplan (1963) found that it was actually NHA's policy to delay public input and the potential engagement of neighborhood residents and community groups until after a project was officially announced so that controversies and costly delays were avoided or at least minimized.

As alluded to earlier, the exclusion of public input and public participation in the early stages of land assembly has been a common theme in the redevelopment projects I researched. NJCMD's December 1966 land delivery agreement with NHA and the Municipal Council for the NJ-R-196 site, a portion of the NJ-R-72 site, and 100-odd additional acres of land not only predated the blight hearings by several months but occurred without any community input. In fact, it is doubtful that anyone in the affected community knew or even suspected that such a transaction was in the works. Similarly, the assemblage of properties for redevelopment in the Mulberry Street area began quietly with NRC's purchase of land from Steven Lenter. It remained essentially covert as NRC and Metro Homes met with Newark's Business Administrator and the Department of

Economic and Housing Development. During those meetings, as I detailed earlier, the parties discussed blighting the area under the LRHL and using eminent domain in the event of holdouts. As long as the focus on eminent domain continues to direct attention away from such covert practices, there is no need for Newark, or other cities, to change the way they do business relative to redevelopment.

### **Unexamined Assumptions about Redevelopment and Public Use/Public Benefit**

One of the most important implications I can draw from my case studies of redevelopment in Newark that could be generalized to other cities is that in adapting to changing conditions, cities may fall prey to unexamined assumptions. Herein, I am specifically referring to the relationship between urban redevelopment efforts and uses that benefit the public. By changing conditions, I mean changes in funding sources and availability, changes in applicable statutes and statutory language, the evolution of relevant case law, demographic shifts, and changes in political will and public acceptance of economic development and the use of eminent domain.

For decades, since the early days of the federally funded urban renewal process, the assumption has been that redevelopment statutes, blight regulations, and eminent domain laws that facilitate land assembly will enable cities to benefit the public. However, as these Newark case studies suggest, cities' redevelopment goals and efforts have not, and do not, necessarily or solely reflect the public interest. At its greatest proposed extent, the NJ-R-32 project was designed to provide a 240-acre light industrial park in Newark's Central Ward that, city officials hoped, would generate jobs and bring in tax revenues. However, had it been built it would also have displaced 17,000



residents, mostly African American. Even after NHA substantially downsized the project in response to Walter Thabit's report for CHNC demonstrating inadequate demand for such a large light industrial area, the project still displaced 8,000 residents. The NJCMD urban renewal project provided needed medical care to the surrounding Central Ward neighborhoods and catalyzed the creation of outpatient community clinics and affirmative action programs that trained and employed scores of Central Ward residents. However, there is more than a little irony in the fact that providing a site for a new medical center to address the Central Ward's health needs entailed razing one of its viable neighborhoods and displacing more than 3,000 of the residents the medical center was supposedly designed to help. Finally, it is likely that had the Mulberry Street redevelopment proposal come to fruition, it would have generated more tax revenues for Newark than the existing surface parking lots. It may eventually have created enough of a critical mass of residents and businesses to recoup project costs and help revitalize nearby downtown businesses. Nonetheless, it would have entailed the destruction of a small mixed residential and commercial neighborhood of working class residents so that a new affluent community could take its place, inhabiting 2,000 high-end condominium units in mixed-use green buildings. Clearly, it is time to reexamine assumptions that redevelopment efforts will provide public benefits.

### **Land Assembly without Eminent Domain**

Eminent domain is only one mechanism among many available to municipalities in controlling land use and redevelopment. Newark employs a range of non-eminent domain strategies almost invisible to the general public to accomplish what eminent domain does legally and visibly. In neither case does the city does take legal title of the

properties targeted for redevelopment; eminent domain facilitates the transfer of targeted properties to other private, and sometimes, other public entities. The combination of non-institutionalized, land assembly-related strategies Newark has employed in facilitating redevelopment efforts has differed over the years to reflect the changing political context and the origin and availability of funding streams. However, the strategies have included NHA mapping out areas for redevelopment well in advance of blight investigations, determining redevelopment boundaries according to whether enough properties could be amassed in the appropriate configurations to meet statutory blight criteria, city officials and agencies holding meetings with interested private developers prior to blight investigations, and Newark agencies (e.g., NHA) entering into agreements with public and private entities for the delivery of land. This dissertation shows how these strategies have worked to facilitate land assembly in targeted sites and how they have enabled Newark to maintain control over the redevelopment process, which was the city's primary aim in employing them. These strategies defer investment, influence what does or does not get built on the affected parcels, and set the land assembly process in motion, including the consolidation of parcels under single ownership, long before eminent domain is used. Under such scenarios, blight designation was essentially pre-determined.

Since the Kelo decision negative media attention has been focused on the use of eminent domain to facilitate economic development and this has deflected attention away from non-eminent domain land assembly practices. In Newark, as in other jurisdictions, there has been a grass-roots political backlash against the impact of redevelopment efforts on affected property owners and residents and businesses. The backlash in Newark, as in other jurisdictions, has been popularized by the media as a reaction to the city's use of

eminent domain to facilitate redevelopment. However, affected residents, as in the case of the NJCMD urban renewal project and the Mulberry Street redevelopment effort, objected not so much to redevelopment per se as to the way in which the necessary properties were being assembled, including the fact that the public's input was not sought until after the nearly invisible, non-institutionalized, non-eminent domain strategizing had already occurred. As long as media attention is focused on the use of eminent domain to facilitate redevelopment the employment of non-eminent domain land assembly strategies for redevelopment that reflect collaborative public/private efforts may continue to remain nearly invisible.

### **REVISING URBAN REGIME THEORY, BLIGHT, AND EMINENT DOMAIN**

In the subsections below I briefly discuss the primary, or most apparent, implications of my case studies on the applicable literature that I discussed in Chapter Two. My focus here is on ways in which my research confirms, refines, or refutes certain theories that can be used to explain phenomena associated with redevelopment. These theories and phenomena include neo-liberalism and creative destruction, the growth machine, urban regimes, eminent domain and land assembly, and blight determination and designation.

In Chapter Two, I discussed literature that suggests that, in response to the hollowing out of the state and devolution, recent redevelopment efforts reflect a neo-liberal conceptualization of urban space that has motivated immutable forces of capitalism to destroy city areas to rebuild them, a phenomenon Weber (2002), MacLeod and Goodwin (1999), and Fraser, et al (2003) refer to as creative destruction. As Weber (2002) has noted, cities engage in creative destruction in which they strategically

stigmatize those properties that are targeted for demolition and destruction through legal regulations that codify concepts like blight and obsolescence. The creative destruction process and stigmatization of properties seems to have been operative in the decision-making behind the blight determination in the Mulberry Street redevelopment effort that took place between 2002 and 2007, at least a decade past devolution.

Indeed, a couple of years before the 14-acre site was actually declared blighted, the redevelopers had met with municipal officials to strategize how that could be accomplished by finding the LRHL language that most fit the fact that the majority of the site was devoted to for-pay parking lots. They were optimistic because, for the parking lot properties, land values exceeded improvements and tax revenue generation was well under par for a downtown site. Ultimately, the Newark Central Planning Board (NCPB), NCPB's consultant, and the redevelopers focused on strategically stigmatizing the large expanse of the site devoted to surface parking as a *prima facie* example of the lack of proper utilization countenanced by the LRHL's "e" criterion. Despite the presence of pockets of occupied residential and commercial properties that were in relatively good condition, NCPB's consultant determined that the entire site met the "e" criterion because of a lack of proper utilization. The blight determination was based on a holistic, somewhat selective reading of the statute that disregarded the need to attach a finding of lack of proper utilization to problematic ownership and title conditions. NCPB's consultant never researched ownership and title conditions on the site. The example of the blight determination saga in Newark's Mulberry Street redevelopment effort seems to confirm that the creative destruction process plays a significant role in municipal blight declaration efforts.

As I discussed in Chapter Two, Cox and Mair (1988) have noted that there is a relatively long history of growth oriented coalitions in American cities harnessing the power of the local state to make local economies more competitive and encourage capital accumulation. They also noted that growth oriented business coalitions have utilized the coercive power of the state to designate areas blighted to make them available for federal funding. Several individuals from organizations representing or reflecting private sector business interests testified on behalf of NJCMD relocating to Newark at NJCMD's November 1966 Board of Trustees hearing. Among them were individuals from the Board of Directors of the Greater Newark Chamber of Commerce, the Essex-West Hudson Labor Council, and the New Jersey Industrial Union Council of AFL-CIO. Such business sector support likely influenced NCPB's decision, several months later, to declare the area blighted. However, I did not come across enough data to definitively ascertain whether these organizations were sufficiently and purposefully tied to one another and to city and state officials in facilitating redevelopment such that the resulting relationships could be characterized as growth machine coalitions. Certainly, the Mulberry Street redevelopment effort would never have moved forward if not for the involvement of NRC and Metro Homes and their engagements with the Newark Business Administrator and the Director of Economic and Housing Development. Similarly, as discussed in Chapter Four, Walter Thabit had determined that the interest of the Belmont Redevelopment Corporation in the proposed NJ-R-32 light industrial park, though it may have been a ruse to hide Belmont's desire to build a high-end residential development on that site, helped more the project forward (Thabit, 1962). However, two private sector entities jointly meeting with city officials may not, as in the Mulberry Street effort,

constitute a coalition. In sum, it appears that despite some tendencies in that direction it does not appear that the engagement of business interests rose to the level of actual growth machine coalition formation in the Newark redevelopment efforts I researched. This is not a refutation of the model but rather my assessment that the model did not fully apply in these particular cases.

As discussed in Chapter Two, the urban regime model offers a broad view of how cities are governed. The urban regime model posits the formation of governing coalitions of public and private sector actors, generally including members of the business community, to push agendas reached by consensus (Stone, 2005; Mossberger and Stoker, 2001). It does not provide a template for understanding the micro-management of decision-making around a particular redevelopment proposal. However, the urban regime model can inform our understanding of redevelopment processes and strategies because the associated decision-making may reflect the agendas and concerns of these governing coalitions. Urban regimes are characterized by relative longevity and they differ from growth machines in that the latter has only one agenda – growth – whereas regime theory countenances the possibility of variation in agendas. Redevelopment may represent one such agenda. Stone originally identified four basic regime types, as Mossberger (2009) has noted: maintenance regimes focused on public infrastructure issues; development regimes focused on activist pro-growth agendas; middle-class progressive regimes focused on quality-of-life issues; and lower class opportunity expansion regimes focused on social capital formation and employment. In light of the devolution of federal funding and the hollowing out of the state, the model has been applied since the 1980s in explaining the importance of the business community in

governance that impacts local redevelopment decision-making. Mossberger and Stoker (2001) have noted an emerging literature on policy networks with some, but not all, features of full-blown urban regimes as well as mixed regimes that blend social reform, economic growth, and other agendas.

My research suggests that a phenomenon approaching the mixed regime concept has, in fact, influenced the governance and decision-making underlying urban redevelopment efforts in Newark. This hybrid, or mixed, regime concept seems to have been operative in the NJCMD urban renewal project. As noted earlier, business-related interests clearly advocated strongly for NJCMD to choose Newark over Madison for the location of the new medical complex. Witnesses opposed to the project who testified at the June 1967 blight hearing alluded to the likelihood that unnamed developers and members of the business community would benefit from the project. However, virtually all of the key decision-makers in the redevelopment effort, from conceptualization through the Newark Agreement, were relatively high level public sector employees. This list included, among others, Mayor Addonizio, Danzig (NHA), Warrence (NHA), Wood and Cohen (HUD and HEW), Governor Hughes, Ylvisaker (DCA), and Malafronte (NHA).

Two of the other redevelopment projects I researched seem to have involved joint public sector/private sector efforts reflecting a more traditional urban regime mold. I am referring most directly to the NJ-R-32 urban renewal project and the Mulberry Street redevelopment effort. Both projects involved public and private sector agents working with, or meeting with, Newark officials. The NJ-R-32 light industrial project not only reflected a pro-growth agenda but, until it was downsized, Newark officials were willing

to displace 17,000 mostly African American residents to promote it – especially after Belmont Redevelopment Corporation expressed interest in the site. Nonetheless, more research would be needed to substantiate the degree to which any of these collaborations truly reflected relatively long-standing relationships, which the more traditional urban regime model seems to require.

At the same time, Lawler (2002) has noted that emphasis on the growth machine and urban regime theory as explanations for collaborative governance that impacted redevelopment efforts can obscure the importance of a mayor's leadership and personal ambitions and agendas. Mayors, he noted, can counteract institutional weaknesses and ambiguities in redevelopment missions by providing a narrative that brings in federal funding and drives the project forward. My research appears to confirm the importance of mayoral leadership in the redevelopment process. As detailed in Chapter Five, Mayor Addonizio was instrumental in moving the NJCMD project forward and demonstrated initiative in pushing for funding and programming to make the new medical school a primary focus of Newark's Model Cities effort. His efforts ultimately set the stage for a deeper consideration of the social impacts of the project, which led to limitations on the size of the project and a better residential relocation program under the Newark Agreement. Moving ahead thirty-five years, Newark's major media reported that Mayor James was one of the primary boosters of the Mulberry Street redevelopment project, as he had been for the arena, touting the Mulberry project as the first urban village in Newark's history and a vital component of its downtown revitalization efforts. Although the project ultimately failed, it may never have gotten as far as it did without his advocacy.



The applicable literature suggests that municipalities have employed eminent domain to address the so-called land assembly problem, which is multifaceted (Heller and Hills, 2008; Gillete, 2005; and O’Flaherty, 1994, 2007). Specifically, the land assembly problem covers the difficulties inherent in assembling urban land, which is frequently inefficiently fragmented, and the problem of holdouts and holdins (Goodin, 2007), all of which can result in either over-assembly or under-assembly of land. Additionally, Cox and Mair (1988) have noted that eminent domain has played a critical role in the land assembly process by enabling local renewal agencies to receive federal write-down subsidies and loans for acquisition of blighted areas. In a study of post-urban renewal era redevelopment efforts in Mesa, Arizona and Lakewood, Ohio, after 2000, Staley and Blair (2005) found that eminent domain effectively subsidized land assembly for private redevelopers partnering with cities by lowering the costs associated with parcel acquisition and clearance. They also found that it reduced the uncertainty of acquisition for the future tenants the cities were trying to lure to the redevelopment sites (Staley and Blair, 2005). As a result, private sector entities in redevelopment have tended to court local governments and local governments have courted them.

My Newark-based redevelopment research, especially my interviews with key players in the Mulberry Street redevelopment effort, suggests that eminent domain does address these elements of the land assembly problem. The attorney for the Mulberry Street Property Owner’s Group, John Buonocore, noted that the statutory redevelopment process, which involves condemnation and the potential use of eminent domain, results in property valuation at fair market values as just compensation, rather than what could be privately negotiated. This essentially achieves a write-down on land acquisition costs (J.

Buonocore, interview, September 20, 2009). Too, the availability federal monies to assist with land acquisition during the urban renewal era represented a boon for addressing the land assembly problems of holdouts and holdins through a statutory redevelopment approach that countenanced the use of eminent domain. This was certainly operative in the NJ-R-32, NJ-R-38, and NJCMD redevelopment efforts.

However, as suggested earlier, perhaps the most useful aspect of eminent domain is that, beyond addressing the land assembly problem, local governments view it as another means of ensuring greater control over the redevelopment process on particular, favored sites. In particular, Buonocore emphasized that the statutory redevelopment route was superior in the eyes of Newark and other New Jersey municipalities because it enhanced local governmental control of the redevelopment process and the predictability of future uses and densities on a chosen site (J. Buonocore, interview, September 20, 2009). The potential use of eminent domain to assist in the assembly and acquisition of land enhanced this sense of control. This desire for local governmental control of the redevelopment process on favored sites suggests that the use of eminent domain is more arbitrary and more profoundly political than previously theorized. Although eminent domain is ostensibly a legal implement in the redevelopment tool kit, its use – or potential use – seems to become embedded in the unique political economy of the locality contemplating the redevelopment of a particular site.

In Chapter Two, I reviewed the literature that discussed the changes in how the concept of blight was defined and how and where it was applied to urban land. In particular, Weber (2002) and Gordon (2004) perceived a change in how blight was conceived that paralleled an expanded focus under the Federal Housing Act of 1954 to

include the supplanting of deteriorated residential uses with new non-residential uses.

The prior focus under the 1949 Federal Housing Act had been the clearance of slums and deteriorated residential areas so that they could be supplanted with public housing. Once this change occurred, however, attention shifted from actually blighted areas to potentially blighted areas. Concomitantly, the focus of redevelopment shifted from housing to economic development. This, in turn, encouraged private entities to begin to perceive deteriorated areas as areas for potential investment (Gordon, 2004).

In New Jersey, the statutory laundry list of criteria for determining blight gradually broadened from the late 1940s through the early 1990s as the blight label was increasingly applied to areas that were not so much slums as sites with obsolete non-residential buildings and underutilized tracts of land. Municipalities, Gordon (2004) has argued, have distorted the blight process by declaring areas blighted in which tax revenue collection is allegedly insufficient to cover their municipal service needs. As the calculus of blight has shifted to reflect increased developer initiation of redevelopment efforts in this post-devolution era, municipalities have steered private investment away from the most deteriorated areas and toward areas containing what Gordon (2004, p. 322) has termed the “blight that’s right”. These are areas that fit the statutory requirements, which in New Jersey means those criteria contained in the LRHL, but they are not in such bad shape that they pose too great a risk for private investment. Within this calculus, larger sites are favored because they are more likely to contain enough deteriorated buildings or underutilized areas to fit statutory blight criteria. Gordon (2004) has also argued that larger areas are perceived as better fulfilling requirements that blight determinations be in furtherance of a public use.

My Newark-based research seems to confirm Weber's (2002) and Gordon's (2004) hypotheses about changes in blight concepts and the impact of those changes on redevelopment efforts. The earlier projects I researched, specifically NJ-R-38 and NJ-R-32, were located in areas of Newark that were experiencing demonstrable deterioration and overcrowding. Areas of Clinton Hill may not have become actual slums, but housing and living conditions had sufficiently deteriorated that by the late 1950s CHNC had been trying for several years to get Newark officials to improve building and zoning code enforcement to address the growing problems. Similarly, the NJ-R-196 site may not have been any more of a slum than most other Central Ward neighborhoods, as CORE and CANPRR maintained at the June 1967 blight hearings, but NHA's door-to-door survey did reveal significant housing deterioration and considerable overcrowding. The applicable language of the BAA was sufficiently broad, even then, that the levels of deterioration in the NJ-R-38, NJ-R-32, and NJ-R-196 sites could easily meet the blight criteria.

In contrast, the Mulberry redevelopment effort decades later took place on a site that seems to have met Gordon's "blight that's right" catch-phrase. By that time, the blight criteria were even more broadly drawn under the LRHL than they had been under the BAA and there were more criteria providing more avenues for blight determination. In retrospect, the Mulberry site, which Newark's Business Administrator and the Director of Economic and Housing Development were championing for redevelopment, was particularly susceptible to classification as blighted under the LRHL's "e" criterion. The majority of the site was not only devoted to surface parking but land values generally exceeded the value of improvements. Tax revenue generation was suboptimal. At

fourteen acres, it was large enough to include most of the surface parking lots used by the nearby government offices and that made it relatively easy for NCPB, the consultant, and the Municipal Council to determine that the entire site met the “e” criterion because of a lack of proper utilization. Moreover, the site was a downtown one so the relatively large extent of underutilized land, which might have deterred investment in a Central Ward neighborhood, actually encouraged private investment by NRC and Metro Homes. To the redevelopers, its underutilization seemed less of a risk and more of an opportunity. Finally, the fact that so much of the site was effectively undeveloped meant that the residential displacement potential was relatively low, which was another attractive feature.

## **POLICY IMPLICATIONS**

### **Introduction**

The findings and interpretation from my case studies lend themselves to policy recommendations. This section presents several salient policy recommendations, which I have broken down by the topics they cover. In light of my concentration on Newark some of the recommendations relate most directly to New Jersey, but could still inform a review of redevelopment processes and protocols in other states.

### **Legislative Recommendations: LRHL Criteria**

The empirical data from my case studies suggests the need for revising New Jersey’s redevelopment laws. The LRHL criteria for determining whether an area is in need of redevelopment are of particular concern because once a targeted area has been so

designated (determined to be blighted) the local government may invoke eminent domain powers to facilitate its redevelopment. Thus, the criteria carry a tremendous amount of potential power that can directly affect private property rights. The empirical data from the case studies suggests that the criteria contain ambiguous language and terminology which makes them overly vague and susceptible to subjective and wide interpretation. Indeed, the susceptibility of criterion “e” led directly to the landmark Gallenthin decision and was an important factor in the termination of the Mulberry Street redevelopment effort. Additionally, there is some overlap between some of the criteria, such as criteria “a” and “d”, which compounds the vagueness and ambiguity of the terminology and the muddies the differentiations between some of the criteria. Ambiguous terminology, such as “obsolescence”, “faulty arrangement or design”, “deleterious land use”, and “obsolete layout”, among others, should be better defined. As feasible, or practicable, redefining them should countenance some sort of metric or measurable indicator(s) to minimize vagueness, ambiguity, and subjectivity. Certainly, given the Gallenthin decision, serious consideration should be given to amending the language of the “e” criterion to clear up any remaining ambiguities.

Criterion “h”, in particular, is too vaguely worded and open ended. This is the statute’s smart growth blight designation criteria. Given the broad range of urban planning principles subsumed under the rubric of smart growth, it becomes difficult to conceive that the redevelopment of any delineated area would not, in some manner, be consistent with smart growth principles.

Moreover, under the current LRHL only one of the eight criteria need be met for an area to be declared in need of redevelopment. This encourages municipalities to either

cherry-pick the most appropriate language to maximize the likelihood that an area will be declared blighted (in need of redevelopment). It also encourages the gerrymandering of redevelopment site boundaries to include as many parcels as possible that will meet at least one of the eight criteria. Given the potential impact of area in need of redevelopment designations on affected property rights, serious consideration should be given to requiring targeted sites to meet at least two or more of the eight criteria.

### **Considerations for the Judiciary: Substantial Evidence and Review of Blight Designations**

In keeping with the Wilson, Lyons, and Levin cases the primary judicial review standard of local governmental blight designations remains whether the court can determine that the decision to declare a site blighted was based on substantial evidence. The case law provides some measurable indicators as to whether particular sites met New Jersey's blight criteria per the then-applicable blight statute (Blighted Areas Act or Local Redevelopment and Housing Law). This has included such metrics as the percentage of structures evidencing deterioration or dilapidation. However, the blight criteria – under the BAA and the LRHL – have never included such metrics to any degree. I maintain that the judiciary should continue to use such metrics in reviewing municipal blight designations. Doing so may eventually provide enough pressure to compel the state legislature or the Department of Community Affairs (DCA) to – at the very least – provide a written guide containing measurable indicators and metrics of blight. Consideration should also be given to very carefully revising the LRHL criteria to contain such metrics.

### **When is the Use of Eminent Domain Indicated?**

Theory suggests that eminent domain is invoked to address market inefficiencies associated with holdouts and holdins and the fragmentation of parcels and ownership that make it difficult to amass contiguous areas for redevelopment purposes that collectively are referred to as the land assembly problem. The empirical data from the case studies suggest that much of the land assembly process actually occurs independent of the use, or threatened use, of eminent domain. Nonetheless, the fact remains that under New Jersey law as soon as areas are declared blighted for redevelopment purposes local governments may invoke their eminent domain powers. This, in turn, engenders the possibility of large-scale disruption of property rights and displacement. In light of Gallenthin decision, which followed public outrage over the Kelo decision, redevelopment countenancing the use of eminent domain to facilitate economic objectives has become increasingly politically unpalatable in New Jersey.

There are three immediately apparent policy implications that emerge. First, the use of eminent domain may be indicated when municipally sanctioned redevelopment goals that would serve the public interest cannot be reasonably achieved by rezoning the property. In other words, it must be the case that a comprehensive approach to a new land use scheme with appropriate densities and rates of growth cannot be achieved through rezoning because of the ad hoc development patterns that would result. Secondly, eminent domain must truly be a method of last resort after all other methods to impel holdouts and holdins to relinquish their properties have failed. Thirdly, all other methods means more than just a good faith attempt at negotiated purchase; it means after



negotiations based on known alternative methods has failed. Among these methods, described in Chapter Two, are joint ventures and land swaps.

### **The Role of the Mayor in Redevelopment Efforts**

The case studies demonstrate that Newark's mayors took relatively active roles in the redevelopment process, especially Mayors Addonizio and James. Mayor Addonizio's involvement was instrumental in persuading NHA to downsize the NJ-R-32 project alter its scope from primarily industrial to primarily residential to minimize interference with private property rights and decrease potential residential and business displacement. He was also able to persuade NHA to increase the rehabilitation component of the NJ-R-38 project, which somewhat mitigated the impact of the project's clearance activities. In so doing, he also aided the affected communities to stand up against the powerful NHA, which had become an acquisition and clearance juggernaut in Newark's older residential areas. Contrastingly, Addonizio worked closely NHA to pitch Newark's Central Ward for NJCMD's new site and helped make the project a primary focus of the city's Model Cities effort, despite the ensuing neighborhood destruction and massive residential displacement. Mayor James was portrayed by the local media as perhaps the primary public sector booster of the Mulberry Street effort.

The case studies suggest two primary roles for a mayor in the face of redevelopment efforts. On one hand, he or she can serve the public best by boosting those redevelopment projects that actually, directly serve the public interest and benefit the city and its residents while simultaneously minimizing deleterious impacts on affected property owners, residents, businesses, and institutions. Where property rights

and residential tenancy are severely jeopardized by the threat of eminent domain the mayor has a duty to protect the citizenry. He or she must negotiate with the problematic public and private entities to downsize the project, or improve relocation choices and reimbursement, or work to create alternatives to eminent domain.

As discussed above, viable alternatives to eminent domain include land swaps, joint ventures, and negotiated purchases. Land swaps would seem especially promising because they permit affected property owners to remain in their existing neighborhoods as they are redeveloped. This process creates buy-in of the redevelopment process and benefits land swappers by making them stakeholders in the outcome. In essence they become participants and “owners” of the redevelopment process.

### **What Role Should Community Organizations Assume in the Face of Eminent Domain?**

It is quite clear from the case studies that the first role of community organizations in the face of redevelopment and the threat of eminent domain is to attempt to negotiate with the public and private entities before areas are designated as blighted. Community organizations must demand to become active participants in any land use deliberations that countenance redevelopment long before the process proceeds to the blight hearing stage. Public and private entities entertaining redevelopment tend to be less than transparent about their target area and ultimate objectives. Therefore, community organizations do not face an easy task. It is incumbent on community organizations, however, to make their local government entities accountable by having them first attempt alternative and feasible ways of addressing neighborhood deterioration. Community organizations should demand that before local governments resort to

redevelopment and associated land assembly they should first attempt to resolve problems of deterioration and stagnation through enforcement of applicable building and zoning codes.

## **CONSIDERATIONS FOR FURTHER RESEARCH**

My research and dissertation have focused on one city – Newark, New Jersey - and four redevelopment projects spanning a fifty-year period. Confining my research to one city within a single jurisdiction has meant that I have only dealt with one state's redevelopment statutes and one state's evolving case law on redevelopment and blight criteria. In essence, the NJ-R-38, NJ-R-32, and NJCMD projects took place during the heyday of Newark's federally-subsidized urban renewal period. The saga of the NJ-R-38 and NJ-R-32 projects took place from the late 1950s into the early 1960s. Primary events unfolding around the NJCMD urban renewal project took place from 1966 through 1968. The Mulberry Street redevelopment, in contrast, took place at least two decades after the devolution of federal urban redevelopment funding and programming had begun. Two of the projects, NJ-R-32 and NJ-R-38, impacted the same section of Newark. In one of the projects, the NJCMD urban renewal project, all of the major players were public sector entities whereas the primary decision makers in the other projects included a mix of public and private sector entities. The Mulberry Street redevelopment effort, while it involved major public sector players, was especially developer-driven. Further Newark-based research might focus on specific redevelopment efforts during the period of active devolution of federal funding and programming, which means roughly from the 1970s through the early 1990s.

Additional research might focus on applying my qualitative case study methodology to the exploration of redevelopment efforts, past and present, in other New Jersey municipalities with a long redevelopment history. Potential candidates for such research might include, among others Trenton, Atlantic City, Asbury Park, Jersey City, and Long Branch. In each of these cities, redevelopment efforts have involved a mix of public and private sector players and decision-makers. Redevelopment efforts in each of these cities has also involved the use, or threatened use, of eminent domain to facilitate land assembly, acquisition, and clearance. This could allow for further exploration and refinement of the themes and findings from my earlier research on a cross-municipal level and, or, challenges to underlying assumptions.

Future research efforts might also involve applying my qualitative case study methodology to municipalities in other states with long redevelopment histories. This would allow for cross-jurisdictional, cross-municipal exploration of the themes I uncovered in my Newark-based research. Finally, if more reliable quantitative data on redevelopment initiatives involving the use of eminent domain becomes available that might provide opportunities for mixed-methodological studies of redevelopment efforts and recurrent themes, or patterns, in Newark and other cities.

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## Interviews

Dambach, A. (personal communication, July 17, 2009). Planner with the City of Newark with first-hand knowledge of the Mulberry Street redevelopment effort.

O'Flaherty, B. (personal communication, May 12, 2008). Economist and academic with 15 years of experience working for the City of Newark and with expertise in Newark's finance and taxation issues.

Cammarieri, R. (personal communication, February 14, 2008). Community organizer with a community development corporation in Newark who was raised only blocks from the NJCMD urban renewal site.

Reock, E. (personal communication, August 5, 2008). Researcher in governmental affairs who was involved in taxation issues associated with the 1963 Northeastern New Jersey Urban Renewal Survey.

Mytrowitz, G. (personal communication, July 16, 2009) Local business person with a private company in the Mulberry Street redevelopment area who opposed the Mulberry Street redevelopment effort and organized residents and business owners against the project at the grass roots level.

Shostack, H. (personal communication, November 3, 2008). Worked for two decades as a primary researcher for the nonpartisan Office of Legislative Services of the New Jersey State Legislature. Worked on redevelopment and eminent domain issues and wrote legislation to overhaul the redevelopment statutes for 1991 (Local Redevelopment and Housing Law),

Buonocore, J. (personal communication, July 20, 2009). New Jersey eminent domain attorney who represented the Mulberry Street Property Owner's Group in their successful grass roots lawsuit against the City of Newark's Mulberry Street redevelopment effort, which effectively terminated that project.

Zak, N. (personal communication, February 21, 2008). Director of Community Outreach for a community development corporation in the Ironbound section of Newark, just across the Northeast Corridor rail line from the Mulberry Street neighborhood. N. Zak was a strong opponent of the Mulberry Street redevelopment effort and attended the public hearings associated with the blight deliberations (area in need of redevelopment deliberations).

Anglin, R. (personal communication, November 20, 2007). Academic and urban theorist very knowledgeable about Newark's sociopolitical patterns and unresolved issues revolving around ethnic and racial succession relative to redevelopment.

Curvin, R. (personal communication, February 1, 2008). Academic, 1960s civil rights activist, and a co-founder of the Congress of Racial Equality (CORE). Testified against the NJCMD urban renewal project at the June, 1967 blight hearings on the NJ-R-196 site – two weeks before the July, 1967 civil disorders.

Codey, R. (personal communication, February 8, 2008). Currently the administrator for an affluent suburban community in Northern New Jersey, but was the director of development for a Newark community development corporation for 20 years. Provided a wealth of information on the redevelopment process in Newark, including land assembly issues and strategies and eminent domain.

Doggett, R. (personal communication, May 12, 2008). R. Doggett has many years of experience in Newark, dating back to the Great Society days of the 1960s working on social justice issues, including predatory lending and prisoner re-entry. Provided a wealth of knowledge about early Newark residential redevelopment and rehabilitation efforts at the neighborhood level.

Jaffe, S. (personal communication, December 12, 2007). Served as Executive Director of Governor's Select Commission on Civil Disorder in the wake of the Newark civil disorders. Very interesting perspectives on Newark in the 1960s and redevelopment issues at the time of the NJCMD project.

Lussenhop, T. (personal communication, May 30, 2008). Manages real estate development issues at NJPAC (New Jersey Performing Arts Center) and has been involved with NJPAC – off and on – for two decades. Very knowledgeable about large scale redevelopment efforts in Newark, especially downtown efforts.

Nelessen, A. (personal communication, August 4, 2009). Academic and urban designer with many years of experience in redevelopment, visioning, and visual preference surveys. Heavily involved in the Mulberry Street redevelopment effort at the conceptual design level. Provided a wealth of understanding about what makes redevelopment efforts succeed or fail in terms of size, location, and critical mass of population, consumption, and density.

Steck, P. (personal communication, July 17, 2009). Planner hired by the Mulberry Street Property Owner's Group to assess whether the Mulberry Street redevelopment site met the LRHL blight criteria. Employing a strict interpretation of the statutory language, including the "e" criterion, P. Steck determined that the Mulberry Street site did not meet any of the LRHL blight criteria.

Roberts, D. (personal communication, November 24, 2009). Landscape architect and planner hired by NCPB (Newark Central Planning Board) to assess whether the Mulberry Street area qualified as an area in need of redevelopment (blighted) under the LRHL. Using a holistic, liberal approach to the statutory language D. Roberts concluded that the entire site met the LRHL's "e" criteria because – given the large extent of surface parking

- it was underutilized. D. Roberts was involved in writing the legislation that eventually became the LRHL.

Schulgasser, D. (personal communication, August 2007). Schulgasser was Coordinator of Federal and State aid for Newark from 1977 to 2007 and was involved in programs directly related to redevelopment, including CDBG grants. Extremely knowledgeable about Newark politics and how agencies and politicians operate in the city. Provided many names of potential interview subjects.

Williams, J. (personal communication, May 2008). Williams, who is also an attorney, was a community and civil rights activist during the 1960s and heavily involved in Newark politics when Hugh Addonizio and Ken Gibson served as mayor. Provided keen insight on political issues related to redevelopment and knew Donald Malafronte, who was one of Addonizio's primary assistants.

Mallach, A. (personal communication, September 2007). Mallach, who is a housing expert and advocate, is extremely knowledgeable and insightful about redevelopment-related issues in New Jersey's larger urban areas. Mallach provided names of potential interview subjects.