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URBAN SAN ANTONIO AND REDEVELOPMENT: A PERPLEXING PROBLEM IN ALL MAJOR CITIES

Although urban San Antonio is steeped in 250 years of tradition and cultural uniqueness, the downtown facilities have become obsolete, underutilized, and underdeveloped.³⁸² With the last major building boom in the late 1920's and early 1930's, people migrated from the urban city and established residence in the more modern and compatible suburbs until the last half of the 1960's.³⁸³ It was then that HemisFair '68, the first world's fair held in the southern United States, gave impetus to the new interest necessary to reverse the trend of low density sprawl made possible by Bexar County's source of cheap, usable land surrounding the city.³⁸⁴ The financial legacy of the HemisFair provided the foundation upon which San Antonio has begun to redevelop its downtown structures and facilities.³⁸⁵ One of the major dilemmas with which the city must now contend is the incredible northward sprawl fostered by the phenomenal growth generated by several new building complexes.³⁸⁶

A significant degree of urban sprawl has been caused as a result of speculators purchasing land on the immediate periphery of urban developments and holding this property at inflated prices in expectation of a profitable sale.³⁸⁷ The essential danger of this situation is that if the city expands it will tend to circumvent these expensive pieces of real estate and obtain cheaper tracts beyond the fully developed regions of the metropolis. This leapfrog growth pattern not only causes premature low density urban development but often leaves pockets of underdeveloped areas in the immediate proximity of the center city.³⁸⁸ Other problems accompanying

382. SAN ANTONIO CITY PLANNING DEPT., DEVELOPMENT OF THE CENTRAL CITY DISTRICT § I, at 3 (1972).

383. *Id.* § II, at 12.

384. *Id.* § II, at 12, 19.

385. Portions of the \$100 million legacy are found in the \$15 million Civic Center, \$6.5 million Tower of the Americas, \$10 million Hilton Hotel and \$3 million river extension into the fairgrounds. Furthermore, in the aftermath of HemisFair there followed a \$32.5 million implementation of bank-office buildings and the \$50 million Rosa Verde Urban Renewal project involving a medical-professional complex, hotel-residential apartment complex and the redevelopment of the Mexican Market. *Id.* § II, at 19.

386. These include the University of Texas at San Antonio (U.T.S.A.), United Services Automobile Association (U.S.A.A.), and the University of Texas Health Science Center at San Antonio. Interview with Daniel Hebner, City Planner for San Antonio City Planning Department, in San Antonio, Jan. 20, 1976; see SAN ANTONIO CITY PLANNING DEPT., URBAN DESIGN MECHANISMS STUDY 55 (1972).

387. Interview with Daniel Hebner, City Planner for San Antonio City Planning Department in San Antonio, Jan. 20, 1976; accord, Note, *Public Land Banking: A New Praxis for Urban Growth*, 23 CASE W. RES. L. REV. 897, 902 (1972).

388. Interview with Daniel Hebner, City Planner for San Antonio City Planning De-

the rapid over-extension of the city are: (1) inflationary land prices induced by speculation;³⁸⁹ (2) leapfrog development promoted by the artificially high priced land near the urban core;³⁹⁰ (3) inefficient and expensive public services created in an attempt to adequately provide for the low density development;³⁹¹ (4) higher expenditures of natural resources and travel cost necessary to maintain relations with the established metropolitan areas;³⁹² (5) a lower tax base caused by the flight of industries and residences to the more aesthetic and less costly fringe areas of the city;³⁹³ and (6) higher taxes levied against the populous remaining in the city in order to compensate for those lured from the town limits by lower land costs.³⁹⁴ Since area, density, and distance are directly proportioned to urban economics and efficiency in terms of monetary and human costs, the very elements which made suburban developments so attractive must be utilized to reverse the trend and rebuild the central city district.³⁹⁵

Traditional growth policies encouraging unrestrained residential and industrial expansion as a means of inducing community progress are now being re-evaluated. Although increasing population and industrial expansion have ceased to make uncontained growth a desirable feature, only three states

partment, in San Antonio, Jan. 20, 1976; Note, *Public Land Banking: A New Praxis For Urban Growth*, 23 CASE W. RES. L. REV. 897, 902 (1972). But see Mitchell, *The Use of Special Districts in Financing and Facilitating Urban Growth*, 5 URBAN LAW. 185, 217 (1973). Aspects of sprawl which may be beneficial are that it may be "an efficient mechanism for 'banking' land for future development at a higher use [and] . . . discontinuous development insures that improvements over a vast area do not become obsolete simultaneously." *Id.* at 217.

389. Callies, *Commonwealth of Puerto Rico v. Rosso: Land Banking and the Expanded Concept of Public Use*, 2 PROSPECTUS 199, 202 (1968).

[U]rban lands, or lands adapted to urban development, are monopolized and kept unused by their owners, which creates an artificial shortage of land and raises its price at a rate higher than the raise in price of other properties and staple commodities

Id. at 202.

390. Leary, *Reports & Comment—California*, THE ATLANTIC, Nov. 1973, at 17; Note, *Public Land Banking: A New Praxis for Urban Growth*, 23 CASE W. RES. L. REV. 897, 902 (1972); W. WHYTE, THE LAST LANDSCAPE 9 (Anchor Books ed. 1970).

391. See ALI MODEL LAND DEVELOPMENT CODE 257 (Tent. Draft No. 6, 1974); Nelsen, *Historic Patterns in Urban Esthetics and Urban Reconstruction*, 2 ENVIRONMENTAL AFFAIRS 694, 695 (1973).

392. W. WHYTE, THE LAST LANDSCAPE 7, 8 (Anchor Books ed. 1970); Note, *Public Land Banking: A New Praxis for Urban Growth*, 23 CASE W. RES. L. REV. 897, 902 (1972).

393. Interview with Daniel Hebner, City Planner for San Antonio City Planning Department, in San Antonio, Jan. 29, 1976; see Mitchell, *The Use of Special Districts in Financing and Facilitating Urban Growth*, 5 URBAN LAW. 185, 216 n.86 (1973); cf. W. WHYTE, THE LAST LANDSCAPE 27, 28 (Anchor Books ed. 1970).

394. Zimmerman, *Tax Planning for Land Use Control*, 5 URBAN LAW. 639, 651 (1973); Note, *The National Land Use—Environmental Problem: Legal and Pragmatic Aspects of Population Density Control*, 43 U. CIN. L. REV. 377, 379-80 (1974).

395. SAN ANTONIO CITY PLANNING DEPARTMENT, DEVELOPMENT OF THE CENTRAL CITY DISTRICT § II, at 12 (1972).

have attempted to limit its ill effects through effective legislation.³⁹⁶ In the absence of such state guidelines, local municipalities have been forced to adopt their own devices to manage population and land use.³⁹⁷ With San Antonio's first comprehensive master plan still in a tentative stage, the city council should undertake to weigh its desired growth patterns and devices in light of other municipal experiences. San Antonio, as of yet, is not irretrievably plagued by the urban dilemma of balancing unrestricted growth with sacrificed aesthetics; it is therefore imperative that the city now embrace future planning techniques to maintain this desirable position.

San Antonio, though blessed in the combination of structures reflecting unique cultures in a variety of aesthetic spacious settings, must still overcome many distinctive visual liabilities. In order to maintain its status as a cultural, financial, and governmental center and contain the dangers of uncontrolled growth, the city must be appealing to its citizens since "[w]hat people perceive takes on proportions and develops into images . . . [which] often determine[s] . . . attitudes and values towards cities."³⁹⁸ Attractive downtown residential neighborhoods and landmarks, therefore, become important components of the city's renewal program.

HOUSING

In order to rejuvenate San Antonio's urban center, like programs in other major cities, the viability of residential quarters is essential.³⁹⁹ Alluring housing is one effective means of managing urban sprawl and maintaining

396. Hawaii, finding that the urban environment had deteriorated, enacted legislation to "provide for the development of urban design plans for each county to facilitate quality design in future development and construction, both public and private." HAWAII REV. LAWS § 57-1 (Supp. 1974). Vermont, by enacting VT. STAT. ANN. tit. 10, § 6042 (Supp. 1975) provides for a land "capability and development plan . . . guiding and accomplishing a coordinated, efficient and economic development . . . [through] distribution of population and of the uses of land for urbanization." See also FLA. STAT. ANN. § 380.04 (1973), §§ 380.05-.06 (Supp. 1975).

397. Innovative control measures include: *Village of Belle Terre v. Boraas*, — U.S. —, 94 S. Ct. 1536, 1540-41, 39 L. Ed. 2d 797, 803-804 (1974) (valid zoning to limit all land in village to single family dwellings), noted in 6 ST. MARY'S L.J. 495 (1974); *Construction Indus. Ass'n v. City of Petaluma*, 522 F.2d 897, 908-909 (9th Cir. 1975) (valid growth control by limiting the number of building permits issued annually); *Ybarra v. City of the Town of Los Altos Hills*, 503 F.2d 250, 254 (9th Cir. 1974) (valid zoning to control density through one acre minimum lot size containing no more than one primary dwelling unit); *Golden v. Planning Bd.*, 334 N.Y.S.2d 138, 143-44 (1972) (building permits restricted until adequate facilities furnished to area of proposed development held as valid attempt to provide balanced cohesive community dedicated to sufficient land utilization).

398. SAN ANTONIO CITY PLANNING DEPT., DEVELOPMENT OF THE CENTRAL CITY DISTRICT § II, at 14 (1972).

399. *Id.* § IV, at 45 states that "[t]he residential function will develop a 'market base' for downtown businesses and services, strengthen general security, and reduce circulation requirements."

the significant number of businesses and employees necessary to vitalize the downtown area.⁴⁰⁰ To effectively resolve the dwelling situation, San Antonio will have to rely solely on its legislative function since the Supreme Court has ruled that housing and its accessibility are not fundamental rights guaranteed by the Constitution.⁴⁰¹

The first consideration associated with the housing problem is the maintenance of those structures already in existence. By enforcing the minimal average standards set out in its building codes⁴⁰² and declaring nonconforming buildings unsafe,⁴⁰³ the city can at least hope to maintain the quality of structures already built.⁴⁰⁴ Unfortunately, however, local building codes discourage innovation in their effort to secure public health and safety.⁴⁰⁵ Furthermore, they are defective in not offering the inducement to repair and rebuild which is essential to construct a new downtown. In the construction of new buildings, the second component to San Antonio's housing problem, the city should plan many small complexes throughout the entire town. This procedure offers greater access and proximity to jobs, maintains racial

400. In 1972 there were approximately 2,400 residential units (most of which were old and substandard) to support 36,000 downtown jobs. It has been estimated that the city needs to expand the work function to 50,000 in order to redevelop the community. *Id.* at 45, 46. There is a geometrical correlation between the population of the city and the city's ability to support growth: "[F]or every dollar spent in a particular community, the income of the area eventually will increase by a multiple determined by the proportion of the additional income respent in the same community." Mitchell, *The Use of Special Districts in Financing and Facilitating Urban Growth*, 5 URBAN LAW 185, 215 (1973). San Antonio, therefore, must be able to house a quantity of employees sufficient to support its planned improvements. Diminished competition among builders often follows the high demand associated with increased growth. This in turn results in residential units of marginal quality. Note, *Municipal Self-Determination: Must Local Control of Growth Yield to Travel Rights?*, 17 ARIZ. L. REV. 145, 146 (1975); see Barnes, *How to Use Land*, NEW REPUBLIC, Sept. 21, 1974, at 10, 11.

401. *Lindsey v. Normet*, 405 U.S. 56, 74 (1972), where the Court stated "[w]e do not denigrate the importance of decent, safe, and sanitary housing. But the Constitution does not provide judicial remedies for every social and economic ill." Courts may also limit intervention in local growth control policies due to the virtual irrevocability of program invalidation decisions in the future. Note, *Municipal Self-Determination: Must Local Control of Growth Yield to Travel Rights?*, 17 ARIZ. L. REV. 145, 178 (1975); see Filer, *Metropolitization and Land-Use Parochialism—Toward a Judicial Attitude*, 69 MICH. L. REV. 655, 662-63 (1971) (judicial action may result in irreparable harm once growth has occurred).

402. See, e.g., UNIFORM BUILDING CODE §§ 501-5406.

403. UNIFORM BUILDING CODE §§ 203, H-202.

404. Judicial encouragement of minimal building standards has also begun to supplement legislative efforts. See *King v. Moorehead*, 495 S.W.2d 65, 78 (Mo. Ct. App. 1973) (preclusion of rent collection under theory of breached contract or breach of implied warranty where rented premises in violation of municipal housing code).

405. Rivkin, *Courting Change: Using Litigation to Reform Local Building Codes*, 26 RUTGERS L. REV. 774, 775 (1973). "Since codes represent a consensus with respect to effectiveness, they inevitably reflect traditional solutions and put a heavy burden of proof upon innovation." *Id.* at 779.

balance, and distributes the problems and advantages over the entire city rather than producing isolated pockets.⁴⁰⁶

Denial of building permits is a method for maintaining the quality of new developments.⁴⁰⁷ By imposing rigid quality demands on new buildings the city could eliminate future sub-standard housing units.⁴⁰⁸ The judiciary, however, must stand ready to modify these stringent regulations should they become arbitrary or unreasonable in light of new technological advances. The introduction of innovative building techniques and materials of equal or superior worth to the old have been upheld.⁴⁰⁹ In this manner quality is not sacrificed to an anachronous custom.

San Antonio's housing situation may be alleviated partially through the introduction of "urban homesteading"—a program whereby the city gives valuable rights (including fee title) to tenants of an abandoned building in return for the rejuvenation of the structure.⁴¹⁰ Although the concept is new, other large cities such as Philadelphia and Wilmington have adopted it with degrees of success.⁴¹¹

The distinctive feature of urban homesteading is that it is beneficial to both the city and the program's individual participants. A prospective owner immediately enjoys the opportunity to obtain a residence at the repair cost rather than the objective market value of the building.⁴¹² Moreover, once ownership is established, the tenant is no longer faced with the social stigma attached to participants of other types of government housing projects.⁴¹³ The city, on the other hand, is able to induce dwelling in

406. Ragsdale, *Constitutional Approaches to Metropolitan Planning*, 5 URBAN LAW. 447, 464 (1973).

407. The constitutionality of conditioning building permits on the public interest criteria of environmental issues should not become a problem since it embodies the valid traditional zoning goals of maintaining higher standards of building location and design. Note, *Municipal Self-Determination: Must Local Control of Growth Yield to Travel Rights?*, 17 ARIZ. L. REV. 145, 179 (1975).

408. See *Golden v. Planning Bd.*, 334 N.Y.S.2d 138, 143 (1972) (denial of building permits until adequate facilities supplied to the undeveloped area).

409. See, e.g., *Boise Cascade Corp. v. Gwinnett County*, 272 F. Supp. 847, 849-50 (N.D. Ga. 1967) (upholding the use of a thinner wood with the same rigidity and strength as that required by code); *McCray v. City of Chicago*, 126 N.E. 557, 564 (Ill. 1920) (ordinance requiring wood lath and plaster of certain dimensions void under evidence showing substitutes to be equally good).

410. Comment, *From Plows to Pliers—Urban Homesteading in America*, FORD. URBAN L.J. 273, 274 (1974).

411. See Comment, *Philadelphia's Urban Homesteading Ordinance: A Poor Beginning Toward Reoccupying the Urban Ghost Town*, 23 BUFFALO L. REV. 735 (1974); Comment, *Homesteading 1974: Reclaiming Abandoned Houses on the Urban Frontier*, 10 COLUM. J.L. & SOC. PROB. 416, 417 (1974).

412. Comment, *From Plows to Pliers—Urban Homesteading in America*, FORD. URBAN L.J. 273, 274 n.8 (1974).

413. *Id.* at 285 n.68. Furthermore, if the homesteader is a member of the lower income bracket, he need not fear that a rise in his income will force him from the program, a prospect which can occur in the federally funded housing projects. Comment,

blighted areas and thereby place more property on its tax rolls.⁴¹⁴ This, in turn, helps to reduce the individual citizen's proportional tax burden, thus discouraging urban sprawl and inefficient use of the city's physical facilities. Finally, a program of this nature which involves community participation is a major step forward in the general public education necessary to secure future municipal planning techniques.⁴¹⁵

Drawbacks to this plan for dispelling the housing shortage originate in the fact that it is designed for a lower income citizen and occurs in the impoverished segments of a city.⁴¹⁶ To insure personal safety and minimize potential neighborhood resentment, it would be wise to maximize the block size concept and attempt to settle one neighborhood at a time.⁴¹⁷ Individual financing of the poor also becomes difficult, but it is capable of being remedied through local as well as federal means.⁴¹⁸ The additional problem of securing property through the use of condemnation may not be a concern as long as it is done under the auspices of a public purpose.⁴¹⁹ Finally, however, it should be recognized that this method of improving the urban housing problem is by its very nature slow and expensive. For this reason it should be relied upon only as a supplement to existing housing programs rather than as a complete solution.

Government Programs to Encourage Private Investment in Low-Income Housing, 81 HARV. L. REV. 1295, 1297 (1968). Also, repopulation and reconstruction help stop the urban abandonment cycle. It has been stated that, "[w]ith deferral of physical maintenance, tenants move out, and the cycle of urban decay is accelerated." Langsdorf, *Urban Decay, Property Tax Delinquency: A Solution in St. Louis*, 5 URBAN LAW. 729, 732 (1973).

414. Comment, *From Plows to Pliers—Urban Homesteading in America*, 2 FORD. URBAN L.J. 273, 274 n.8 (1974).

415. SAN ANTONIO CITY PLANNING DEPT., SAN ANTONIO URBAN DESIGN MECHANISMS STUDY 2, 56-57 (1972).

416. One commentator points out that "[i]solated homesteading in deteriorated neighborhoods will have little effect and will not encourage participation by other families afraid for their safety." Comment, *From Plows to Pliers—Urban Homesteading in America*, 2 FORD. URBAN L.J. 273, 287-88 (1974).

417. *Id.* at 288.

418. *Id.* at 293 n.107. The city could encourage private loans by screening and recommending for loans only those applicants offering a high likelihood of non-default. Furthermore, city bonds could also be used to finance homesteading programs. *Id.* at 293. Also, with the enactment of proper enabling legislation, special districts similar to Texas water districts could be formed to handle the problem. See generally TEX. WATER CODE ANN. §§ 54.001-.738 (1971); Comment, *Homesteading 1974: Reclaiming Abandoned Houses on the Urban Frontier*, 10 COLUM. J.L. & SOC. PROB., 416, 451-53 (1974) (suggests that tax relief and construction aid are also local assistance tools); Comment, *The Water Control and Improvement District: Concept, Creation and Critique*, 8 HOUS. L. REV. 712 (1971).

The National Housing Act, 12 U.S.C. §§ 1701, 1715l(h), 1715z(b) (1970), provides for mortgages bearing minimal interest rates and a mortgage guarantee program to private institutions. Furthermore, loans are available to owners and tenants to rehabilitate their property under 42 U.S.C.A. § 1452b(c) (1969).

419. *Davis v. City of Lubbock*, 160 Tex. 38, 44, 326 S.W.2d 699, 703 (1959). In that case the court stated:

It has [been] declared [by the Texas Legislature] that the carrying out of the ur-

LANDMARK PRESERVATION

One of the costs of implementing urban renewal is the razing of historical landmarks. As victims of a pragmatic real estate market, these unique structures are eliminated from the landscape to be replaced by more economical and profitable buildings. Private property owners for the most part prefer a dollar generating structure to a less prosperous building of architectural distinction.⁴²⁰

Since 1927 zoning has been utilized as the classic form of government participation in land planning activities such as landmark preservation.⁴²¹ One reason zoning has maintained its status as a land use control is because of the strong presumption of constitutionality accorded it by the courts.⁴²² Land use legislation is only struck down upon proof that it is arbitrary, capricious, or unreasonable.⁴²³ Zoning has also remained a major land development tool due to judicial interpretations expanding its scope of police power protection beyond public health, safety, and welfare to include "spiritual as well as physical, aesthetic as well as monetary" values.⁴²⁴

ban renewal program, including the acquisition of land, the clearing of slum and blighted areas, and the disposition of the property 'are public uses and purposes for which public money may be expended and the power of eminent domain exercised.' *Id.* at 44, 326 S.W.2d at 703 (court's emphasis).

420. See Costonis, *The Chicago Plan: Incentive Zoning and the Preservation of Urban Landmarks*, 85 HARV. L. REV. 574, 575 (1972).

421. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926) (upheld constitutionality of zoning). See generally D. HAGMAN, *URBAN PLANNING AND LAND DEVELOPMENT CONTROL LAW* § 31, at 71 (1971).

422. See *Frost v. Village of Hilshire Village*, 403 S.W.2d 836, 842 (Tex. Civ. App.—Houston 1966, writ ref'd n.r.e.); *Burford v. City of Austin*, 379 S.W.2d 671, 676 (Tex. Civ. App.—Austin 1964, writ ref'd n.r.e.); 1 R. ANDERSON, *AMERICAN LAW OF ZONING* § 2.14, at 65-70 (1968).

423. See *Frost v. Village of Hilshire Village*, 403 S.W.2d 836, 842 (Tex. Civ. App.—Houston 1966, writ ref'd n.r.e.); *King v. Guerra*, 1 S.W.2d 373, 376 (Tex. Civ. App.—San Antonio 1927, no writ) (clear abuse of municipal discretion must appear as a predicate for judicial interference); 1 R. ANDERSON, *AMERICAN LAW OF ZONING* § 2.14, at 65-70 (1968).

424. *Berman v. Parker*, 348 U.S. 26, 33 (1954); see *Ware v. City of Wichita*, 214 P. 99, 101 (Kan. 1923); *State ex rel. Civello v. City of New Orleans*, 97 So. 440, 444 (La. 1923); *State v. Houghton*, 176 N.W. 159, 161 (Minn. 1920).

Until *Berman v. Parker*, courts upheld aesthetic restrictions because of their impact on property values and economic concerns. This property value test was unsatisfactory because: (1) courts used it as a fictional basis to support decisions, (2) it was "often unclear whether property values [were] used as a justification for the exercise of the police power or as a check against arbitrary application," and (3) it was possible that an aesthetic nuisance would increase property values. Crumplar, *Aesthetic Controls: Aesthetic Regulation of the Urban Environment*, 6 URBAN LAW, 622, 627-28 (1974). Jurisdictions today, however, uphold aesthetic regulation even in the face of depreciating property values. See, e.g., *City of St. Paul v. Chicago, St. P., M. & O. Ry.*, 413 F.2d 762, 767 (8th Cir.), cert. denied, 396 U.S. 985 (1969) (rezoning to protect view corridor upheld though land value depreciated in excess of 50%); *Manhattan Club v. Landmarks Preservation Comm'n*, 273 N.Y.S.2d 848, 851 (Sup. Ct. 1966) (historical designation upheld though reducing property value); *City of West Univ. Place v. Ellis*, 134 Tex.

Finally, zoning is a fast and direct technique of implementing specific land use policies.⁴²⁵

VILLAGE OF EUCLID V. AMBLER REALTY CO.

In the 50 years since the *Euclid v. Ambler Realty Co.*⁴²⁶ decision, zoning has displayed many weaknesses as a land control device.⁴²⁷ Primarily designed as a guide to future land use commitments, zoning

is predicated on the incorrect assumptions that long-range trends affecting land use may be foreseen well in advance and adequately provided for by the local legislature and that land use 'mistakes' which proceeded enactment would disappear.⁴²⁸

Furthermore, it does not operate as a positive force in ordering and controlling real estate uses. Zoning cannot control the timing of development or encourage desirable uses; rather, it is limited only to precluding undesirable uses.⁴²⁹ It is for these reasons that modifications such as planned unit development (P.U.D.), variances, and exceptions have gained prominence.⁴³⁰ Another innovation which offers cities like San Antonio potential relief from zoning's general inadequacies is a program of transfer developmental rights (T.D.R.) to protect its landmarks.

Under the T.D.R. system, owners of landmarks are permitted to transfer to other estates units of building privileges which would have been incident to the landmark property had historic restriction not been implemented.⁴³¹ Although New York City, which initiated this scheme, has not experienced absolute success with it,⁴³² a more intricate plan has been proposed for Chicago which promises to alleviate the flaws of the eastern cities' experi-

222, 227, 134 S.W.2d 1038, 1041 (1939) (inconvenience and depreciation in value do not make zoning ordinance unreasonable unless the depreciation constitutes confiscation by making the property worthless in its designated use); *Slater v. City of River Oaks*, 330 S.W.2d 892, 894 (Tex. Civ. App.—Fort Worth 1960, no writ) (zoning not invalid because it limits and depreciates business property value though business would be more valuable in another zone).

425. Comment, *Reclaiming the Urban Environment: The San Francisco Urban Design Plan*, 3 *ECOLOGY L.Q.* 535, 572 (1973).

426. 272 U.S. 365 (1926).

427. See Slayton, *State and Local Incentives and Techniques for Urban Renewal*, 25 *LAW & CONTEMP. PROBS.* 793, 807-809 (1960); Comment, *Bonus or Incentive Zoning—Legal Implications*, 21 *SYRACUSE L. REV.* 895 (1970).

428. Zimmerman, *Tax Planning for Land Use Control*, 5 *URBAN LAW.* 639, 674 (1973) (a major difficulty with zoning is court's ability to only preserve status quo); Note, *Public Land Banking: A New Praxis for Urban Growth*, 23 *CASE W. RES. L. REV.* 897, 906 (1972).

429. Note, *Public Land Banking: A New Praxis for Urban Growth*, 23 *CASE W. RES. L. REV.* 897, 906 (1972).

430. See Costonis, *The Chicago Plan: Incentive Zoning and the Preservation of Urban Landmarks*, 85 *HARV. L. REV.* 574, 631 n.219 (1972).

431. ALI MODEL LAND DEVELOPMENT CODE 69 (Tent. Draft No. 6, 1974).

432. Marcus, *Air Rights Transfers in New York City*, 36 *LAW & CONTEMP. PROB.* 372, 375, 378 (1971).

ment.⁴³³ The distinctive feature of the Chicago arrangement is that it creates a transfer district through which development rights may be transferred to more than one noncontiguous piece of property.⁴³⁴ A tremendous value of this district concept is the ability to control the density of areas within its boundaries. First, the districts can be drawn to encompass only those areas in which the city desires further development.⁴³⁵ Second, aggregate excess space can be limited by restricting the number of landmark designations within each zone and then in turn limiting the amount of transfer rights allowed to each structure qualifying for the right.⁴³⁶

Another laudable facet of the T.D.R. plan is that it provides for a less than fee condemnation procedure should an owner object to this historical designation assigned to his property.⁴³⁷ Less than fee condemnation not only prevents the government from taking more property than public use demands,⁴³⁸ but will also lead to a smaller public financial outlay necessary for condemnation compensation.⁴³⁹ Governmental interference with the private sector of the real estate market is also reduced by adoption of this scheme.⁴⁴⁰ This system is desirable with regard to its taxing structure since the city may still obtain revenue due on the portion of the landmark area not condemned, while the private owner's taxes would be reduced by the ratio which that condemned portion bears to the total structure.⁴⁴¹ Furthermore, the city is entitled to pool and resell the rights it has collected.⁴⁴² In this manner the municipal authority may cause potential developers to bid more amenities for civic purposes in an effort to win transfer rights concessions.⁴⁴³ Finally, the city as a whole benefits from the fact that not only has the landmark been preserved, but also all available space connected with the site will be utilized.⁴⁴⁴

433. See Costonis, *Development Rights Transfer: An Exploratory Essay*, 83 YALE L.J. 75, 86-87 (1973); Costonis, *The Chicago Plan: Incentive Zoning and the Preservation of Urban Landmarks*, 85 HARV. L. REV. 574, 589-91 (1972).

434. Costonis, *The Chicago Plan: Incentive Zoning and the Preservation of Urban Landmarks*, 85 HARV. L. REV. 574, 594 (1972).

435. See *id.* at 595-96.

436. *Id.* at 595-96.

437. *Id.* at 590, 593.

438. Interview with Daniel Hebner, City Planner for San Antonio City Planning Department, in San Antonio, Jan. 29, 1976.

439. Costonis, *The Chicago Plan: Incentive Zoning and the Preservation of Urban Landmarks*, 85 HARV. L. REV. 574, 593 (1972).

440. *Id.* at 593.

441. *Id.* at 593. Property owners could also donate their property in order to take a charitable deduction. See INT. REV. CODE OF 1954, § 170(c)(4).

442. Costonis, *The Chicago Plan: Incentive Zoning and the Preservation of Urban Landmarks*, 85 HARV. L. REV. 574, 590-91 (1972).

443. Cf. Platt, *Municipal Improvisation: Open Space Exactions in the Land of Pioneer Trust*, 5 URBAN LAW. 706, 720 (1973) (deliberate overrestrictive zoning forces developers to bargain for zone change or special use permit).

444. Costonis, *The Chicago Plan: Incentive Zoning and the Preservation of Urban Landmarks*, 85 HARV. L. REV. 574, 593 (1972).

Unfortunately, there still are some problems associated with this special landmark district. As is typical with privately owned landmarks, the owner must still bear the expense of maintenance and taxes on any uncondemned portion of his building though it is legally designed to benefit the public.⁴⁴⁵ This situation could be relieved by supplementary funding given to the owner from city taxes.⁴⁴⁶ Another objection to this form of historical preservation is that it would create confusion in real estate sales since there is presently no index to notify the public of the exact quantity of space existing in each lot within the district.⁴⁴⁷ Again, this objection could be remedied by the creation of a special title index within the transfer district constructively notifying the public of the exact status of each deed within the historical circumference.

A stronger argument against the enactment of T.D.R. is that it violates equal protection by creating a dual standard within the district—those with the extra rights and those without the supplemental rights.⁴⁴⁸ This viewpoint, however, takes a position that a lot-by-lot basis should be used as the measuring standard to determine whether equality without distinctions has been exercised.

Modern planners and designers realize that this is the wrong standard.⁴⁴⁹ The individual lot when used as the unit of developmental control (1) hinders planning on a community-wide basis while promoting sterile design in the singular locations; (2) presumes lot-by-lot development rather than development predicated on larger land and tracts as occurs in urban renewal plans; (3) fails to protect the special needs of unique areas and districts against the private market; and (4) prevents incentive zoning techniques from enhancing community amenities.⁴⁵⁰ The better method definitely encompasses larger regions such as the district proposed under T.D.R. Finally, it has been suggested that a scheme in which space considerations

445. *Id.* at 593; see Platt, *Municipal Improvisation: Open Space Exactions in the Land of Pioneer Trust*, 5 URBAN LAW. 706, 708 (1973) (retention of open space amenity throws total cost upon private owner).

446. Costonis, *The Chicago Plan: Incentive Zoning and the Preservation of Urban Landmarks*, 85 HARV. L. REV. 574, 593 (1972).

447. *Id.* at 593, 594 n.68.

448. *Id.* at 628.

449. Costonis, *The Chicago Plan: Incentive Zoning and the Preservation of Urban Landmarks*, 85 HARV. L. REV. 574, 622 (1972); Crumplar, *Architectural Controls: Aesthetic Regulation of the Urban Environment*, 6 URBAN LAW. 622, 628 (1974).

450. Costonis, *The Chicago Plan: Incentive Zoning and the Preservation of Urban Landmarks*, 85 HARV. L. REV. 574, 621 n.179 (1972). It has been stated that

[t]he traditional method of control has been based on a preference for lot by lot development. Such controls though effective on a small scale, proved disastrous when applied to major developments. In an effort to incorporate architectural advances many developers have sought to abandon the lot altogether.

Crumplar, *Architectural Controls: Aesthetic Regulation of the Urban Environment*, 6 URBAN LAW. 622, 628 (1974).

are capable of being transferred throughout a district is undesirable in that it may disrupt or destroy an already sound zoning plan.⁴⁵¹ This premise, however, is based on the reputed theory of lot-by-lot land planning. District planning, on the other hand, is conducive to the overall master plan of the city rather than to small isolated islands of patchwork zoning.⁴⁵²

LAND BANKING

Land banking, a viable solution to urban sprawl, refers to a policy whereby a government entity is used to control the speed and direction of urban expansion by obtaining land in the path of urban growth and regulating it in a manner designed to prevent premature development.⁴⁵³ Besides eliminating unchecked growth, land banking is also effective as a means of

[r]edeveloping the inner city, reducing the price of urban land on the open market, curbing private land speculation, providing for future public uses, and subsidizing certain private or public uses by selling or leasing below the cost of the acquisition⁴⁵⁴

By obtaining peripheral land in advance of anticipated needs, the city can control not only the direction but also the velocity of expansion by pricing according to the inverse relationship of cost and quantity consumed. Land banking could effectively be used to control land price inflation arising from speculation. By threatening to release low priced quantities of competing land, the government could greatly reduce the expectation of profit potential in speculation.⁴⁵⁵ Land banking operations also aid the state of public

451. Costonis, *The Chicago Plan: Incentive Zoning and the Preservation of Urban Landmarks*, 85 HARV. L. REV. 574, 628 (1972).

452. *Id.* at 621 n.179.

453. United States jurisdictions authorizing land banking are: ILL. REV. STAT. ch. 67½, §307.12 (Supp. 1975); KY. REV. STAT. ANN. §99.650(d) (Supp. 1974); LA. REV. STAT. ANN. § 33:7610 (Supp. 1976); N.Y. UNCONSOL. LAWS §§ 6251-85 (McKinney Supp. 1975); OHIO REV. CODE ANN. § 349.06 (Baldwin 1971).

Among the foreign jurisdictions successfully adopting land banking are Sweden, Denmark, and Israel. See Sidenbladh, *Stockholm: A Planned City*, SCIENTIFIC AMERICAN, Sept. 1965, at 106-108; Note, *Public Land Banking: A New Praxis for Urban Growth*, 23 CASE W. RES. L. REV. 897, 912 (1972); see generally, ALI MODEL LAND DEVELOPMENT CODE 254 (Tent. Draft No. 6, 1975); Comment, *Judicial Review of Land Bank Dispositions*, 41 U. CHI. L. REV. 377, 378 (1974); Note, *Public Land Banking: A New Praxis for Urban Growth*, 23 CASE W. RES. L. REV. 897, 898-99 (1972).

454. Note, *Public Land Banking: A New Praxis for Urban Growth*, 23 CASE W. RES. L. REV. 897, 899 (1972). But see Mitchell, *The Use of Special Districts in Financing and Facilitating Urban Growth*, 5 URBAN LAW. 185, 217 (1973). Land banking is disadvantageous to cities because: (1) unimproved land taxed at a lower rate is a tax liability, (2) delivery of services is more difficult through areas of interrupted development, and (3) unimproved land in the city forces development outward, thereby reducing the tax base. *Id.* at 217.

455. Note, *Public Land Banking: A New Praxis for Urban Growth*, 23 CASE W. RES. L. REV. 897, 935-38 (1972).

financial expenditures—it commands through timing and installation an economy of scale in public services.⁴⁵⁶ Finally, land banking through lease and resale allows the government to capture land value appreciation due to growth.⁴⁵⁷

In the absence of a metropolitan agency empowered to handle this land acquisition and dispersal program, enabling legislation could create a public corporation to operate the enterprise.⁴⁵⁸ The extensive advantages of this instrumentality lie in the fact that its operations would be tax exempt and that it would be a corporate entity separate from the local government. While remaining politically nonpartisan, the land bank corporation would be entitled to all revenues it generated, could sue or be sued under its own name, and could keep its self-secured obligations outside statutory limitations imposed on state securities.⁴⁵⁹ It is essential, however, that a land bank corporation be granted sufficient power to acquire property through eminent domain procedures in case open market negotiations fail.⁴⁶⁰ Furthermore, the land bank must be able to preempt smaller unit plans, such as zoning boundaries, so that the integrity of city-wide master plans may be maintained.⁴⁶¹ Finally, the financing portion of the enabling act should insure the corporation's ability to issue bonds and secure indebtedness through encumbrances of its property or pledging of its revenues.⁴⁶² This would insure its financial independence and ability to maintain working capital. Due to the volume of real estate necessary to make the bank effective, its acquisitions would have to be gradual, with a concomitant exercise of great care to obtain land which is essential to the city plan as well as any additional regional plans. In order to reduce the immediate capital outlay, the city should consider making installment purchases. This purchase

456. Comment, *Judicial Review of Land Bank Dispositions*, 41 U. CHI. L. REV. 377, 379 (1974).

457. *Id.* at 379.

458. See Note, *Public Land Banking: A New Praxis for Urban Growth*, 23 CASE W. RES. L. REV. 897, 942-48 (1972).

459. *Id.* at 943-44. Financial independence coupled with judicial review assuring compliance with legislative policies are necessary to combat "the often noted susceptibility of local agencies to economic and political pressure despite the presence of seemingly well-drafted and explicit land-use plans." Comment, *Reclaiming the Urban Environment: The San Francisco Urban Design Plan*, 3 ECOLOGY L.Q. 535, 568 (1973).

460. See ALI MODEL LAND DEVELOPMENT CODE § 6-304 (Tent. Draft No. 6, 1974); Callies, *Commonwealth of Puerto Rico v. Rosso: Land Banking and the Expanded Concept of Public Use*, 2 PROSPECTUS 199, 206-209 (1968).

461. See N.J. REV. STAT. 13:17-11(b) (Supp. 1975); N.Y. UNCONSOL. LAWS § 6283 (McKinney Supp. 1975); Crumplar, *Architectural Controls: Aesthetic Regulation of the Urban Environment*, 6 URBAN LAW. 622, 628 (1974) (controls in small scale subdivisions on a lot by lot basis prove ineffective when applied to major developments).

462. ALI MODEL LAND DEVELOPMENT CODE § 6-303(1)(b) (Tent. Draft No. 6, 1974). See also Kenkel, *Legal Aspects of Financing Certain Public Improvements*, 6 URBAN LAW. 381, 382-85 (1974) (discussion of general obligation bonds, revenue bonds, and combination bonds as legal vehicles financing capital intensive projects).

method is also attractive to the seller since it allows him to extend his tax payments over the years in which he receives his consideration.⁴⁶³

Initial financing of this type of program could come from two sources: (1) the bank's own obligations and (2) federal funding. Under the federal urban renewal program,⁴⁶⁴ up to two-thirds of the "net project cost" could be obtained.⁴⁶⁵ Additionally, San Antonio could qualify for aid amounting to 75 per cent of the project cost if it became situated in a "redevelopment" area or if the Secretary of Housing and Urban Development specifically approved this additional financing.⁴⁶⁶ Also the Housing and Urban Development Act of 1970 allows grants covering up to three-quarters of the costs pertaining to the acquisition of "undeveloped land which, if withheld from commercial, industrial, and residential development, would have special significance in helping to shape economic and desirable patterns of growth"⁴⁶⁷ Furthermore, the Community Development Act of 1974 is broad enough to encompass land banking techniques in its allocation of funds to local governments.⁴⁶⁸ By taking advantage of these federal programs plus the internal financing methods within the land banking system, San Antonio could initiate a viable land banking program designed to regulate its growth.

TAXES

Viable methods of encouraging redevelopment and upkeep in San Antonio's downtown area lie dormant in the city's present taxing structure. Under present laws, in fact, ad valorem taxes tend to encourage blight and sprawl. Residents are reluctant to make even minor improvements on their property since this increases the value of their land with a corresponding increase in property taxes. The resulting inferior condition of urban buildings in turn contributes to urban sprawl—people are drawn to the more aesthetically pleasing fringe areas of the city and suburbs.⁴⁶⁹ Sprawl is further encouraged by the tax system's failure to penalize holders of large parcels of

463. INT. REV. CODE OF 1954, § 453; see W. WHYTE, *THE LAST LANDSCAPE* 77 (Anchor Books ed. 1970).

464. 42 U.S.C. § 1452(a) (1970).

465. *Id.* § 1453(a)(2)(A).

466. *Id.* §§ 1453(2)(B)-(C).

467. *Id.* § 1500c-2 (Supp. 1976).

468. In accordance with 42 U.S.C.A. § 5305(a)(1) (Supp. 1976),

[l]ocal governments are granted money for the acquisition of real property . . . which is (A) blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth; (B) appropriate for rehabilitation . . . activities; (C) . . . the beautification of urban land . . . or the guidance of urban development; (D) to be used for the provision of public works, facilities, and improvements . . . or (E) to be used for other public purposes.

469. Markham, *The Property Tax—A Withering Vine*, 60 KY. L.J. 174, 187-89 (1971); Zimmerman, *Tax Planning for Land Use Control*, 5 URBAN LAW. 639, 648-55 (1973).

underdeveloped land in the city.⁴⁷⁰ By keeping large tracts of land off the market, an artificial shortage is caused which inflates property prices.⁴⁷¹ Development is thus forced outward in an effort to obtain cheaper rural land.

One solution to this dilemma would be to initiate a "site value" tax whereby the value of land is taxed regardless of its existent improvements.⁴⁷² This would eliminate the penalty attached to land improvements. Additionally, it could be used to discourage speculative holding of undeveloped lands by imposing such an exorbitant rate on this variety of property that it would be financially unsound to continue maintaining it in that condition.⁴⁷³ Furthermore, this taxing system would promote high density development and application of real estate to its best use.⁴⁷⁴ The "specific unit" tax which is levied against the number of items owned rather than their value would also promote beneficial maintenance and construction practices.⁴⁷⁵ This taxing formula could be used to plan and pattern land use "[b]y carefully adjusting the relative rates as applied to different classes of property"⁴⁷⁶ The definition of what constitutes a single unit—for example, whether a house plus a garage is considered as two taxable items or if it is defined as part of the home and taxed as one item—could also be used to design desirable growth. Finally, less radical methods inducing controlled growth, other than adoption of a whole new taxing structure, can be found in traditional tax exemptions,⁴⁷⁷ deferrals,⁴⁷⁸ and deductions.⁴⁷⁹ By use of any of these schemes, the City of San Antonio could encourage the type and quantity of urban development it needs to remain prosperous in the future.

470. See, e.g., INT. REV. CODE OF 1954, § 266 (capitalization of carrying charges such as interest and taxes can be added to basis to minimize gain when land sold); *Id.* §§ 1231, 1237 (profit on land held five years as investment not in ordinary course of business treated as capital gain providing no substantial improvements made).

471. It has been observed that "[t]his shortage is 'artificial' in the sense that it is created by the speculator's withholding of land from the market, rather than an absolute physical absence of land." Note, *Public Land Banking: A New Praxis for Urban Growth*, 23 CASE W. RES. L. REV. 897, 902 n.17 (1972).

472. H. GEORGE, *PROGRESS AND POVERTY* 436 (1955). "[U]nder this system no one would care to hold land unless to use it, and land now withheld from use would everywhere be thrown open to improvement. . . . [L]and speculation would receive its death blow." *Id.* at 436.

473. See Zimmerman, *Tax Planning for Land Use Control*, 5 URBAN LAW. 639, 656 (1973).

474. *Id.* at 656.

475. *Id.* at 658.

476. *Id.* at 658.

477. See 42 U.S.C. § 1452(g) (1969) (interest on obligations by public agency for urban renewal exempt on federal income tax).

478. See INT. REV. CODE OF 1954, § 1039(a)(3) (gain on sale of low income housing to tenant not recognized if reinvested in replacement housing).

479. See *id.* § 170 which provides deduction of land value given to municipality.

CONCLUSION

It is time for the introduction of controlled growth and aesthetic maintenance policies which will permit San Antonio to remain an enjoyable city to live in. By increasing the economic base in the central district, the city could easily find itself in the desirable position of being the regional focal point of south central Texas.⁴⁸⁰ However, in order to accommodate the population immigration following the city's expansion to a financial and cultural center, San Antonio must be able to provide adequate and well serviced facilities. For this reason it is essential to institute programs enlarging the residential and preserving the historical character of the downtown area. Although not a panacea, urban homesteading can definitely be used as a component in San Antonio's housing programs. It may be used in conjunction with other planning devices such as the existing building codes and taxing structures. Furthermore, the initiation of a transfer development rights plan would insure the preservation of many existing amenities within the city's historical districts. Also important to San Antonio's future would be the adoption of a land banking scheme with which to control the velocity and direction of the city's growth. The ultimate effect of utilizing these proposed planning techniques will allow San Antonio to recognize its full potential without forsaking its heritage.

480. SAN ANTONIO CITY PLANNING DEPT., DEVELOPMENT OF THE CENTRAL CITY DISTRICT § IV, at 45 (1972).